

Office of the Information Commissioner

Freedom of information for Western Australia



ANNUAL REPORT 2021/22



Significant Issues

Recommended legislative and administrative changes

The Commissioner is required under section 111(4) of the FOI Act to include in the annual report to Parliament any recommendations as to legislative or administrative changes that could be made to help the objects of the FOI Act be achieved.

Previous recommendations for legislative amendment

As noted in last year's report, in past annual reports the Commissioner has made recommendations for amendments relating to the following issues.

- Appointment of staff by the Commissioner (highlighted as a priority amendment in the OIC's 2020 annual report).
- Outdated reference to 'intellectually handicapped persons'.
- Public health facilities operated by non-government operators.
- Consultation with officers of government agencies.
- Refusal to deal with amendment applications.
- Refusal to deal with repeat applications.
- Not confirming the existence of documents that are exempt under clause 14(5) of Schedule 1.

- Reference to closest relative.

None of the above amendments were made to the FOI Act during the reporting period. The Commissioner maintains the need for all of these amendments.

Review of the FOI Act

The FOI Act is now 30 years old and has been in operation for 29 of those years. With both the passing of time and the significant technological developments over the past three decades, it is now well overdue for review.

No substantive amendments have been made to the FOI Act since it came into operation in 1993. The FOI Act has not been reviewed since its initial implementation review in 1996 as required under section 113. During the same period, there have been significant advancements in the way information is created, used and stored. Substantial amounts of records and data are now readily available to agencies electronically and the publication of such information is now possible with minimal cost. As the public is able to access a wider range of information freely, the public desire to access government information has also increased (see NSW Ombudsman ['Opening up Government: Review of the Freedom of Information Act 1989'](#), February 2009 at page 19).

There has been significant growth in the number of access applications made to agencies since the FOI Act commenced. In the first eight months of the access provisions of the FOI Act (November 1993 to June 1994), there were 2,128 access

applications made to WA State and local government agencies. For the 2001/02 reporting period, 6,890 access applications were made. 20 years later, in the 2021/22 reporting period 20,354 access applications were made – representing an almost three-fold increase in access applications made to Western Australian State and local government agencies over two decades.

Further, cultural and political change throughout the world, together with greater awareness of the importance of openness and accountability of government, has reinforced the crucial nature of freedom of information in achieving these principles (see '[Report by the FOI Independent Review Panel, The Right to Information: Review Queensland's Freedom of Information Act](#)', 2008, (**the 2008 RTI Report**) at page 13).

In Australia, open government reform has come in two waves. The first wave came with the implementation of FOI legislation around Australia, which generally granted a right of access in response to a request for access (often referred to as the 'pull model'). The second wave, which involves legislative and cultural reform to encourage the proactive release of government information and enable more public scrutiny and participation, is still developing throughout Australia. This is often referred to as the 'push' model.

Some jurisdictions (including WA) are still using the original reactive approach to FOI – the 'pull' model – which primarily involves responding to individual FOI applications as they are received. Other jurisdictions have moved to the 'push' model of access to information (see the 2008 RTI Report at page 16). This model primarily requires an agency to proactively

disclose different types of government information to the public and use access requests as a last resort.

Submission to the Attorney General

As stated at page 38 of last year's [annual report](#), the OIC committed to preparing a submission to be provided to the Attorney General regarding a review of the FOI Act. That submission was provided to the Attorney General on 30 June 2022.

As well as drawing attention to the information set out above, the Commissioner submitted that a review of the FOI Act should consider the approaches to proactive disclosure of information in other jurisdictions, as a step forward from the existing first generation 'pull' model of the FOI Act.

The submission also referred to a [Key Features Table](#) developed in 2019 by Information Commissioners and Ombudsmen across Australia (including the OIC), which outlines the optimal or key features of FOI/Right to Information legislation. To assist with a review of the FOI Act, our submission summarised the key features that are either missing from, or could be enhanced in, the FOI Act and provided examples of equivalent provisions in other jurisdictions.

The [full submission](#) is available on the OIC website.

Consultation with the Commissioner about amendments to FOI legislation

Proposed amendments to the FOI Act are usually submitted through the Attorney General as the Minister responsible for the administration of FOI legislation. However, it is government policy that government agencies are required to consult the Commissioner in respect of any proposed amendments to FOI legislation they intend to submit to the Attorney General.

In general, and in keeping with the objects and intent of the FOI Act, the Commissioner does not support additional exemptions from access to information under the FOI Act, or the exclusion of the operation of the FOI Act, except in very limited circumstances. The Commissioner's view is that, firstly, it must be demonstrated that the particular documents for which exemption or exclusion from the operation of the FOI Act is sought are of a kind that require protection from disclosure. Secondly, the Commissioner must be satisfied that the current provisions in the FOI Act, including the existing range of exemptions, are not adequate to protect such documents from disclosure.

During the reporting period, the Commissioner was consulted about various proposed amendments to the FOI Act and the FOI Regulations, including consequential amendments arising from proposed amendments to other legislation.

Supreme Court appeals

An appeal can be made to the Supreme Court on any question of law arising out of a decision made on an external

review by the Commissioner. An appeal on a question of law is not a further full merits review and there is no appeal to the Supreme Court in relation to decisions on a deferral of access, imposition of charges, or the payment of a deposit. The Commissioner is usually not a party to the appeal.

This year, there has been no new appeal to the Supreme Court from a decision of the Commissioner.

As noted in last year's report, on 31 August 2021, the Court of Appeal delivered its judgment on the appeal against the decision of Archer J in *Lee v Department of Justice* [2020] WASC 105 (Archer J dismissed an appeal against a decision of the Commissioner to stop dealing with an external review pursuant to section 67(1)(b) on the ground that it was lacking in substance). The Court of Appeal dismissed the appeal: see *Lee v Department of Justice* [2021] WASCA 152. A summary of the Court of Appeal's decision is available in our [September 2021 newsletter](#).

As also noted in last year's report, at the end of the previous reporting period, there was one outstanding appeal before the Supreme Court arising out of the Commissioner's decision in *Re Mineralogy Pty Ltd and Department of Mines, Industry Regulation and Safety* [2020] WAICmr 14. There was no hearing of this matter or judgment of the Court. Instead, by consent of the parties, on 18 January 2022 Her Hon Justice Smith made orders setting aside the Commissioner's decision and remitting the matter to the Commissioner for reconsideration.

Links to all Supreme Court decisions relating to decisions of the Commissioner are available on our [website](#).

Multiple external reviews by complainants

Each year the OIC receives more than one external review from a number of individual complainants (access applicants and third parties). The following table shows a comparison between the number of external reviews received and the total number of complainants over the last ten years.

| | Number of external reviews received | Total number of complainants |
|---------|-------------------------------------|------------------------------|
| 2012/13 | 129 | 106 |
| 2013/14 | 107 | 83 |
| 2014/15 | 167 | 105 |
| 2015/16 | 133 | 95 |
| 2016/17 | 124 | 88 |
| 2017/18 | 165 | 103 |
| 2018/19 | 176 | 118 |
| 2019/20 | 166 | 127 |
| 2020/21 | 161 | 112 |
| 2021/22 | 194 | 144 |

On average over this ten year period, approximately 70% of external reviews received were where a complainant lodged a single external review and 30% of external reviews received were where a complainant lodged multiple external reviews.

Information Access Study 2021

Jurisdictional comparisons

Information Access Commissioners and the Commonwealth Ombudsman released the findings of their second cross-jurisdictional study of community attitudes on access to government information on 30 September 2021.

The research provides a broad insight into citizens' views and experiences of the right to access information. Key findings include:

- The importance of the right to access information is consistently recognised by respondents in each jurisdiction (ranging from 85% to 90% in 2021, consistent with 85% to 93% in 2019).
- The majority of respondents in each jurisdiction were aware that they had the right to access information from government departments/agencies (73% to 83% in 2021, consistent with 77% to 85% in 2019).
- The majority of respondents were aware of their right to access information from State government agencies and local councils, consistent with 2019.
- On average 3 in 10 respondents had contacted at least one government agency in the past three years to obtain government information.
- In general, citizens were able to obtain information successfully in each jurisdiction (61% to 88% in 2021, consistent with 60% to 91% in 2019).

The research findings are available on the OIC [website](#). The joint media statement from the Information Access Commissioners and the Commonwealth Ombudsman is also published on the OIC [website](#).

The Western Australia results

The Information Access Study 2021 for WA provides particular information on community attitudes to information access in WA. The results of the 2021 WA study are available on the OIC [website](#).

It is noteworthy that WA was the jurisdiction with the highest rate of success when people sought access to information. In the 2021 study, of the people who had tried to access information from WA government agencies in the last three years, 88% were successful in part or in full.

Approximately half of all respondents felt that their right to access government information was very important and more than one-third felt it was quite important, which was similar to 2019.

The success rate for access to information was highest for public universities, local governments and hospitals.

Consistent with the 2019 results, going to the agency website continued to be the most commonly identified method of accessing State-held information. Participants were asked about the types of government agency information and/or assistance they would like to access online.

There was a significant increase in the proportion of respondents who wanted to access online information regarding decision-making, statistics and finance.

The 2019 and 2021 responses to the question about the type of information participants would like to access online are summarised in the following table.

| | 2019 (350 responses) | 2021 (354 responses) |
|--|----------------------------|----------------------------|
| Information about decision-making processes affecting the community | 50 | 62 |
| Policies and procedures | 60 | 60 |
| Statistics and datasets | 36 | 54 |
| Being directed to online action, for example, obtaining a service or conducting a transaction online | 54 | 51 |
| Financial information, for example, expenditure, procurement and contracts | 39 | 49 |

FOI research project

The culture of implementing freedom of information in Australia

In partnership with Monash University, the Office of the Victorian Information Commissioner and the South Australian Ombudsman, the OIC is participating in a research project led by Monash University on Information Access Culture in Australia – The Promise and Practice of Freedom of Information in the Digital Age.

The project will run for three years from 2021 and aims to:

- capture and analyse how FOI officers view information access, and the factors that shape their attitudes towards implementing FOI;
- determine the factors that play a key role in determining FOI cultures within agencies;
- identify and develop practical measures that can be implemented by regulators to improve these cultures; and
- identify any additional measures that may be required to improve the interface between records management and FOI practice.

It is intended that the research findings will provide an increased understanding of the culture of administering FOI and inform the OIC's training and awareness programs to increase the functionality of FOI in Western Australia. A well-functioning access to information system is crucial both for good governance and participation in the digital economy.

The OIC will contribute \$38,000 to the research project over three years. In April 2021, the project was also granted substantial funding by the Australian Research Council.

In April 2022 the Commissioner invited 30 WA agencies to participate in the culture research study. Those 30 agencies were selected by Monash University to represent a broad mix of large, small, metropolitan and regional organisations from sectors including health, local government, large departments, and statutory authorities. Ministers of the selected agencies were also separately invited to participate in the research.

The study included completion of short online surveys and participation in interviews with Monash researchers.

While the invitation to participate was extended by the Commissioner, agencies were requested to advise Monash University whether they wished to participate in the project in order to maintain the anonymity of the agencies.

The research project has been designed to provide anonymity for participating agencies and individual participants. While the researchers will engage with the participants, the research sponsors will not be provided with any identifying information. The content of responses and data collected by Monash University will not be attributed to any particular agency or individual in the final report or any preliminary findings, and the research sponsors will not have access to responses provided to Monash University, although anonymous quotes from responses may be included in the final report and scholarly publications.

It is intended that the final report will be published in 2024.

Updates about the research project are available on the Monash University [website](#).

Agencies not dealing with access applications within statutory timeframes

For some time the OIC has observed an increase in the number of applications for external review being lodged with the OIC without the agency having made either or both an initial decision or an internal review decision within the relevant statutory timeframe.

An agency is required to deal with a valid access application within the timeframes outlined in the FOI Act, including providing a notice of decision within those timeframes.

Engaging in early and meaningful dialogue with applicants can clarify the scope of an application and may help to identify the documents the applicant really wants. This reduces unnecessary work for the agency.

Initial decision

An agency has to deal with the access application as soon as is practicable and, in any event, within the 'permitted period'.

The permitted period is:

- 45 days after the access application is received;
- such other period as is agreed between the agency and the access applicant; or
- such other period as is allowed by the Commissioner.

If an access applicant does not receive the agency's decision within the permitted period, the agency is taken to have refused access to the requested documents and the applicant is taken to have received written notice of that refusal on the day the period ended. That is, the agency is deemed to have refused access.

An access applicant then has the right to seek internal review of an agency's deemed refusal decision, in the same manner had the agency given the applicant a notice of decision and advised the applicant of the right to internal review.

Internal review decision

An agency is required to give an access applicant (or a third party seeking internal review) written notice of its internal review decision within 15 days of receiving a valid internal review application, or such longer period as is agreed between the agency and the access applicant.

If a notice of decision is not provided within the time allowed under the FOI Act, the agency is taken to have confirmed the agency's initial decision. That is, the agency is deemed to have confirmed the decision under review.

External review

An access applicant (or a third party that has sought internal review) may seek external review by the Commissioner of an agency's deemed decision to confirm the initial decision, in the same manner had the agency given a notice of decision and advised the applicant or third party of the right to seek external review by the Commissioner.

In the reporting period, 11 of the 194 (5.7%) external reviews received by the OIC were made where either or both the initial decision or the internal review decision had not been made by the agency within the relevant statutory period.

In the absence of a substantive decision having been made by an agency, the OIC is required to undertake additional preliminary inquiries to establish the scope of the issues in dispute that the Commissioner is required to deal with. Any additional time required to be spent on external reviews when they are first received places a further burden on the already heavy workload of the OIC.

In 2017/18 a new question was added to the statistical information requested from agencies about decisions made outside the statutory timeframe. In the first year of reporting, 91% of applications received by agencies were reported as having had a decision made within the statutory timeframe. In 2021/22 the percentage has decreased to 87%. In five years

the percentage of access applications not dealt with within the statutory timeframe has increased from 9% to 13%.

The OIC's [2018/19 annual report](#) at page 36 included a related article titled 'Information about review rights when an agency does not make a decision within the time allowed under the FOI Act'. That year the OIC also added to its website the publication '[What if the agency delays making a decision?](#)'

There appears to be a significant ongoing issue with agencies not being able to deal with all access applications within the statutory period, which is a concerning trend. To assist agencies to deal with applications within the statutory timeframe and to reduce the work involved, the OIC encourages agencies to attempt early and reasonable negotiations with an applicant for the purpose of clarifying and, if possible, reducing the scope of the access application. In addition, agencies are encouraged to ask access applicants to agree to extend the time for the agency to deal with an access application where necessary. There will be occasions that some applicants will not agree. However, a reasonable extension of time when an agency is genuinely unable to deal with the application within the statutory timeframe is generally in everyone's interest.

Dealing with a sudden influx of applications and/or frequent access applicants

From time to time, agencies contact the OIC for advice about how to deal with a perceived unreasonable burden caused by a spike in the number of access applications received or multiple requests from a single applicant.

The FOI Act requires agencies to give effect to the legislation in a way that, among other things, assists the public to obtain access to documents and allows access to documents to be obtained promptly and at the lowest reasonable cost. There is nothing in the FOI Act that prohibits a person from making multiple access applications, including applications for the same information or documents.

While agencies should commit appropriate resources to meet their obligations under the FOI Act and to facilitate the disclosure of information generally, the OIC acknowledges that dealing with a large number of access applications can prove very challenging for agency resourcing.

When an agency is dealing with *any* access application under the FOI legislation, it should comply with the requirements set out in the FOI Act. To reduce the impact of this on agencies, the OIC suggests that careful attention should be given to the following issues, particularly when an agency is dealing with multiple applications from the same applicant.

Is each access application valid?

If an access application made to an agency is general or broad, it may be difficult for the agency to identify precisely what documents an applicant is seeking access to. Engaging early, meaningfully and constructively with an access applicant can result in matters being dealt with more expeditiously, resulting in benefits for the agency and the access applicant. For example, discussion should take place with an access applicant to agree and record the scope of an access application, where it is unclear or ambiguous. If, after taking reasonable steps to assist an access applicant, the agency is still unable to identify the precise documents requested by the access application, it is open to the agency not to accept the application as a valid access application.

Agencies should avoid immediately dealing with an access application in circumstances where the scope is unclear or the agency is unable to identify the precise documents requested by the access applicant. Work done to ensure clarity should ultimately require less work for the agency in dealing with a valid application.

A formal access application does not prevent agencies from early communication with an applicant with a view to finding an outcome that meets their needs.

Keep records for each application

It is important to retain clear records in relation to each FOI application, including information about the steps taken by the agency to deal with each access application and the documents to which an access applicant has been given access. While it is not a requirement of the FOI Act to provide a schedule of documents, the Commissioner considers that it is good practice for an agency to do so. This can also assist an access applicant to better understand the reasons why access to particular documents may have been refused, either in full or in part.

Consider what access can be provided outside of the FOI Act

Agencies are encouraged to give access to as much information as possible, where it can properly be done (section 3(3) of the FOI Act). It is important to keep a record of what information has been provided outside of the provisions of the FOI Act.

If an agency receives multiple applications for the same kind of document, the agency could consider creating a process for dealing with those kinds of applications outside of the FOI Act by proactive disclosure or informal/administrative release processes – see our publication [Open by Design – The FOI Act and Information Release in WA](#).

Can the scope of the application be reduced by agreement with the applicant?

Meaningful dialogue with an applicant may assist to reduce the scope of the access application. For example, the applicant may agree to reduce the number of documents requested and/or exclude personal information or business information about third parties, which removes the potential need to consult those third parties. For repeat applications, the agency may suggest that the applicant agree to exclude documents that have already been provided to them. This requires clarity and potentially agreement about what documents have already been disclosed.

For multiple access applications from the same access applicant, consider whether section 20 is applicable

Consider whether the work involved in dealing with the totality of the access applicant's access applications would divert a substantial and unreasonable portion of the agency's resources away from its other operations: see, for example, *Re Mineralogy Pty Ltd and Department of Industry and Resources* [2008] WAICmr 39 and *Re Caffery and Department of Culture and the Arts* [2015] WAICmr 12.

Before refusing to deal with an access application, or access applications, under section 20, the agency must take reasonable steps to help the applicant change the application(s) to reduce the amount of work needed to deal with it/them.

Effective information access processes should ensure that as much information as possible is available outside the FOI Act. If those processes are in place, agencies can assist the public to obtain access to documents and help to ensure that dealing with FOI requests does not take away from the core business of the agency.

Accountability Agencies Collaborative Forum

The Commissioner is a member of the Accountability Agencies Collaborative Forum (**the AACF**), which consists of a number of small independent accountability agencies. The AACF meet three times yearly to discuss opportunities to collaborate, share ideas and provide mutual support. This benefits members by providing a collegial environment to communicate on matters unique to small agencies with accountability functions.

The Commissioner was chair of the AACF for 2021 and the beginning of 2022, before the role was handed over to the Director of the Health and Disability Services Complaints Office.

National Dashboard of Utilisation of Information Access Rights

The National Dashboard of Utilisation of Information Access Rights compares certain statistics regarding the utilisation of information access rights across access jurisdictions within Australia. In 2017, Australian Information Access Commissioners and Ombudsmen released the inaugural

dashboard of metrics on public use of freedom of information access rights, which fulfils a commitment made in the first [Open Government National Action Plan](#). The [dashboard](#) now includes seven years of data up to the 2020/21 reporting period.

The metrics for each jurisdiction reflect current available data that is reasonably comparable across jurisdictions. The metrics for Western Australia are compiled from the statistical data provided by agencies to the OIC each year.

What the data says about information access in WA in 2020/21

The data from the 2020/21 dashboard indicates, amongst other things, that Western Australia:

- receives the highest number of access applications received per capita;
- has the fourth highest percentage of access provided in full or in part (92%);
- has the lowest rate of external reviews received as a percentage of the total number of access applications received by agencies; and
- agencies reported that 86% of access applications were dealt with within the statutory timeframe provided by the FOI Act.

The National Metrics are not all directly comparable to the statistical data published about agency applications in the OIC annual report. The raw data from the statistical returns is used to calculate each metric in such a way as to link like

applications and outcomes that are reasonably comparable across the various jurisdictions. For example, in the National Metrics, the reported number of access applications where access is refused in full does not include applications where there is a decision made under section 26 of the FOI Act to refuse access on the basis that the documents cannot be found or do not exist. This is because not all jurisdictions have the equivalent of a section 26 decision available in their legislation.

A summary of the WA data contributed to the National metrics over the last five years

Metric 1: *Count of formal applications by type of applicant*

| 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---------|---------|---------|---------|---------|
| 17,306 | 17,258 | 19,258 | 18,392 | 20,354 |

Metric 2: *Formal applications received per capita*

| 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---------|---------|---------|---------|---------|
| 6.7 | 6.7 | 7.3 | 6.9 | 7.6 |

Metric 3: *Percentage of all decisions made on formal applications where access was granted in full or in part*

| 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---------|---------|---------|---------|---------|
| 97% | 96% | 94% | 91% | 92% |

Metric 4: *Percentage of all decisions made on formal applications where access was refused in full*

| 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---------|---------|---------|---------|---------|
| 3% | 4% | 6% | 9% | 8% |

*Metric 5: *Percentage of all decisions made within the statutory timeframe*

| 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---------|---------|---------|---------|---------|
| - | 91% | 90% | 87% | 86% |

Metric 6: *Percentage of applications received which are reviewed by the jurisdiction Information Commissioner/ Ombudsman*

| 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---------|---------|---------|---------|---------|
| 1.0% | 0.8% | 0.7% | 1.0% | 0.9% |

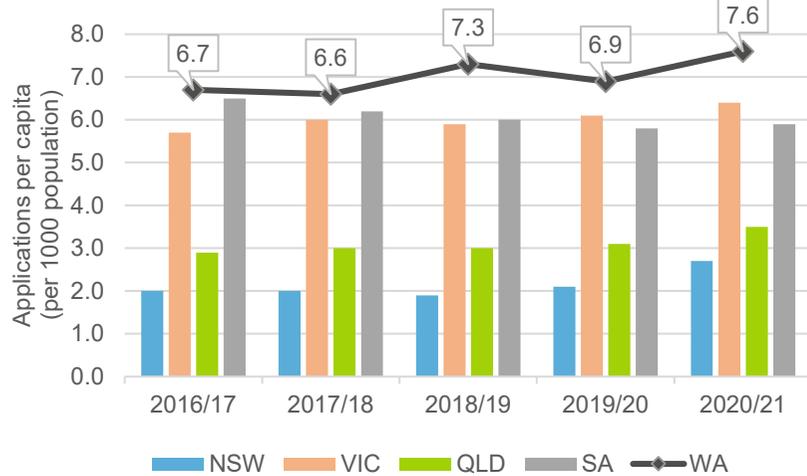
*The OIC has only been able to report about decisions made within the statutory timeframe since adding a new question in the agency statistical returns in 2017/18. The statutory timeframe in WA is 45 days or as agreed between the access applicant and the agency or allowed by the Commissioner (note that statutory timeframes vary across jurisdictions).

Considering the National Metrics across jurisdictions over the last five years

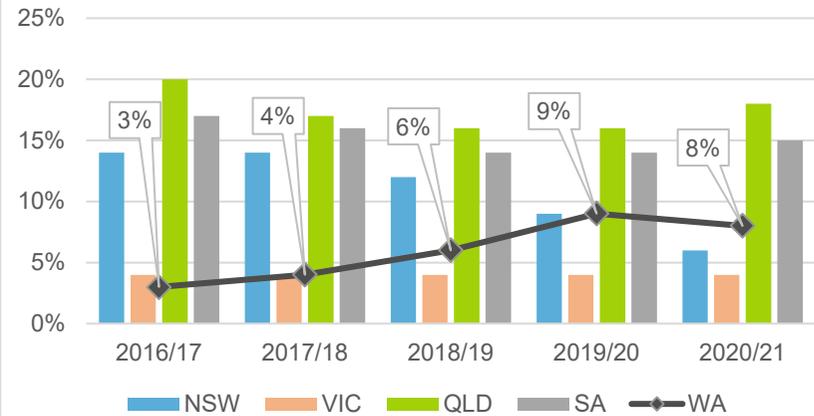
The following charts for metrics 2-6 show how WA compares with four other State jurisdictions over the last five years. Excluding Tasmania, Northern Territory and Commonwealth provides a closer comparison of similar jurisdictions that receive the highest number of applications.

The full dashboard of FOI metrics can be found on the NSW Information and Privacy Commissioner's [website](#).

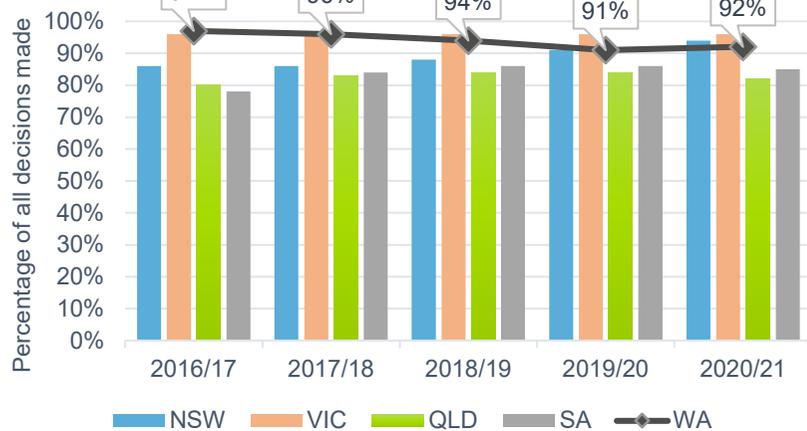
Metric 2: Formal applications received per capita 2016/17 to 2020/21



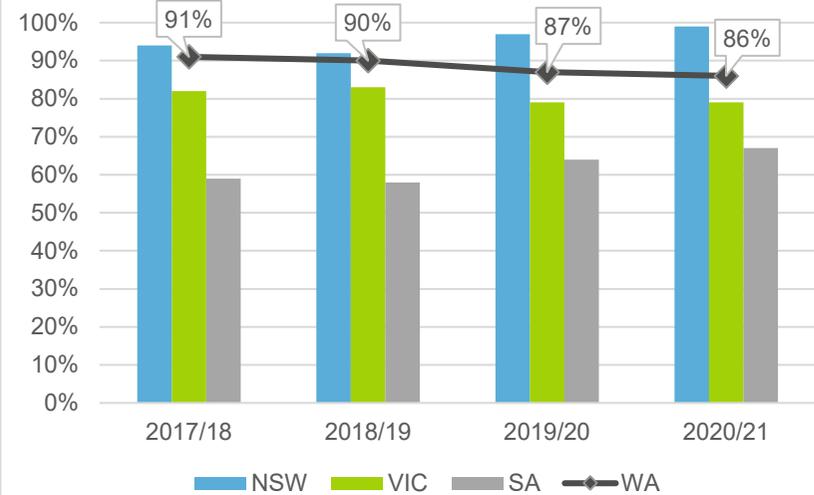
Metric 4: Percentage of all decisions made on formal applications where access was refused in full 2016/17 to 2020/21

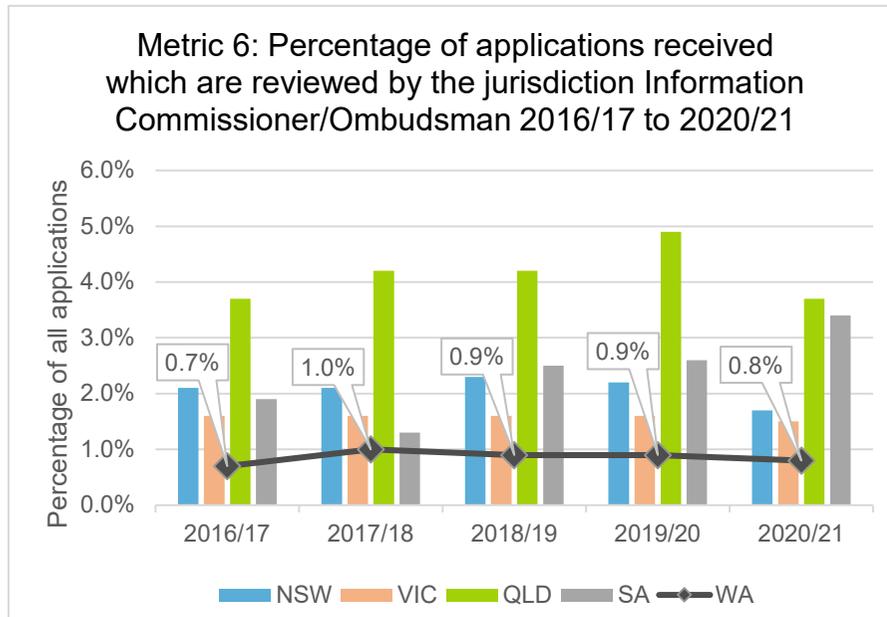


Metric 3 - Percentage of all decisions made on formal applications where access was granted in full or in part 2016/17 to 2020/21



Metric 5 - Percentage of all decisions made within the statutory time frame





WA Local Government Association (WALGA) Local Government Convention

The OIC joined with the State Records Office to host an information booth at the 2021 WALGA Local Government Convention for local government officers held on 19-21 September 2021 at the Crown Convention Centre. The stand in the conference exhibition hall gave attendees the opportunity to discuss State Records and FOI issues with staff from both offices.



Catherine Fletcher, Information Commissioner, Lena Stekyl, State Records Office, and Vivien Akerstrom, Investigations Officer, OIC, at the WALGA Local Government Convention.

Privacy and responsible information sharing (PRIS)

As noted in last year's report, in August 2019 the Department of the Premier and Cabinet (DPC) released the Privacy and Responsible Information Sharing (PRIS) for the Western Australian Public Sector Discussion Paper and invited public comment. The [PRIS Consultation Summary Report](#) was published by the DPC in September 2021. Among other

things, that report stated that the WA Government is committed to introducing PRIS legislation.

During the reporting period, we have provided further feedback to the DPC in relation to the proposed PRIS legislation.

Submissions and consultations

During the reporting period, the Commissioner was formally consulted or requested to make a submission on a number of matters. The following submissions were made in respect of legislative proposals or administrative practices affecting the FOI Act, the OIC or information disclosure more generally.

Senate Finance and Public Administration Legislation Committee inquiry – COAG Legislation Amendment Bill 2021

In September 2021, the Office of the Australian Information Commissioner (**OAIC**) provided a submission to the Senate Finance and Public Administration Legislation Committee's inquiry into the *COAG Legislation Amendment Bill 2021 (the COAG Bill)*. The submission was supported by the Commissioner and the other Australian State and Territory Information Commissioners and Ombudsmen.

The COAG Bill seeks to expand the 'Cabinet exemption' in section 34 of the *Freedom of Information Act 1982 (Cth) (Cth FOI Act)* to include the National Cabinet and its committees. The effect of the amendment would be to:

[R]emove public access to all National Cabinet documents falling within that exemption until the open

access periods in the Archives Act 1983 have elapsed, without consideration of the public interest in access to those documents.

The OAIC submitted that the existing provisions of the Cth FOI Act:

[P]rovide an adequate framework to balance the need, in appropriate circumstances, to maintain the confidentiality of opinions, advice, recommendations and deliberations that occur as part of government decision making – including by National Cabinet – with the public's interest in and right to access government-held information.

In the event that Parliament considers that a non-conditional exemption for documents relating to National Cabinet and its committees is necessary, the OAIC suggested the inclusion of a legislative requirement to publish specific National Cabinet documents in a timely way.

Further information regarding the COAG Bill, including a full copy of the OAIC's submission, can be found on the Parliament of Australia's [website](#).

Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Bill 2021

The Commissioner was invited to comment on the *Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Bill 2021* before it was introduced (and passed) in the WA Parliament. During [parliamentary debate](#) on the bill on 17 June 2021 it was noted that the Commissioner had been 'consulted in the

development of [the] bill' and was 'happy with the bill in totality'.

On 4 August 2021, [a correction was provided](#) to the Legislative Council which clarified that the Commissioner 'was consulted on an early draft of the bill and provided feedback on the draft without indicating her happiness or otherwise'.

Australian Government's proposed digital identity legislation

As noted at page 45 of last year's report, in July 2020, the OIC provided feedback on a scoping paper in relation to the Australian Government's proposed digital identity legislation.

As part of a subsequent public consultation phase, in July 2021, the OIC provided a brief submission, within her statutory constraints, to the Digital Transformation Agency, in response to the Australian Government's [Digital Identity Legislation Position paper](#).

The Commissioner noted that digital identity legislation should provide strong privacy protections and effective oversight mechanisms; privacy protections should be enshrined in primary legislation; that, as WA does not currently have State privacy laws or a State privacy oversight body, consideration should be given to ensuring that the proposed digital identity legislation contains provisions that enable states such as WA to 'opt out' of coverage by the Commonwealth *Privacy Act (1988)* (where they have opted in) and to 'opt-in' or revert to coverage by the applicable State privacy laws if and when State privacy laws are enacted; and that significant weight and consideration should be given to submissions made by

privacy oversight bodies around Australia, including but not limited to the Office of the Australian Information Commissioner.

Association of Information Access Commissioners (AIAC)

The AIAC was established in 2010 and consists of the statutory officers in each Australian and New Zealand jurisdiction responsible for FOI and information access.

The purpose of the AIAC is for members to exchange information and experience about the exercise of their respective oversight responsibilities and to promote best practice and consistency in information access policies and laws.

Cooperation between jurisdictions allows the sharing of information, which in turn assists each jurisdiction to more effectively utilise their own resources based on the learning and work of other jurisdictions.

The September 2021 AIAC meeting was hosted by the Queensland Information Commissioner's office, which the Commissioner attended remotely.

The April 2022 AIAC meeting was hosted by the NSW Information and Privacy Commission, which the Commissioner attended in person.

International Conference of Information Commissioners

The Commissioner is a member of the [International Conference of Information Commissioners \(the ICIC\)](#). The ICIC is comprised of Information Commissioners and Ombudsmen from across the globe, who meet to discuss issues related to the protection and promotion of the right to public information for the benefit of citizens. The Information Commissioners of Australia, Queensland, New South Wales and Victoria are also members of the ICIC.

In June 2022 the Commissioner attended remote sessions of the 13th International Conference of Information Commissioners, held in the City of Puebla Mexico. The theme of the conference was *Access to information, participation and inclusion in the Digital Age*.

The conference produced a [statement](#) entitled 'Access to information as a milestone of the digital age to guarantee human rights, the inclusion of groups in situations of vulnerability and the strengthening of democratic institutions in the 21st century'.

A number of the public sessions from the ICIC conference are available on the ICIC [YouTube channel](#).

Western Australian Information Management Framework Working Group

Following Cabinet approval for the development of an Information Management Framework (**IMF**) for Western Australia, the IMF working group was established in 2022. The IMF will be coordinated by the State Records Office and aims to provide support to the sector in the development of consistent and compliant information management practices.

The Commissioner has joined with other agency representatives to form the working group, which supports the work of the State Records Office in the development of the IMF.

Western Australian Information Classification Policy Working Group

In August 2020, the government launched the WA Information Classification Policy (**the WAICP**). The WAICP provides a common language for agencies to identify risks and apply appropriate sensitivity labels that will assist agencies to protect, store and share their information assets.

During the year, the OIC continued its involvement with the Information Classification Working Group in the development of toolkits, guides and templates that will assist agencies in their implementation of the WAICP.