



Office of the Information Commissioner

Freedom of information for Western Australia



ANNUAL REPORT 2022/23

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We acknowledge the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures; and to Elders both past, present and emerging.

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This annual report and previous annual reports are published on the OIC website and are available in other formats on request.



Office of the
Information Commissioner

Freedom of information for Western Australia

11 October 2023

**SPEAKER OF THE LEGISLATIVE ASSEMBLY
PRESIDENT OF THE LEGISLATIVE COUNCIL**

ANNUAL REPORT TO 30 JUNE 2023

In accordance with section 63 of the *Financial Management Act 2006* I hereby submit my report for the reporting period ended 30 June 2023.

The annual report has been prepared in accordance with the provisions of the *Financial Management Act 2006* and the reporting requirements of the *Freedom of Information Act 1992* (WA).

A handwritten signature in blue ink that reads "Catherine Fletcher".

Catherine Fletcher
INFORMATION COMMISSIONER

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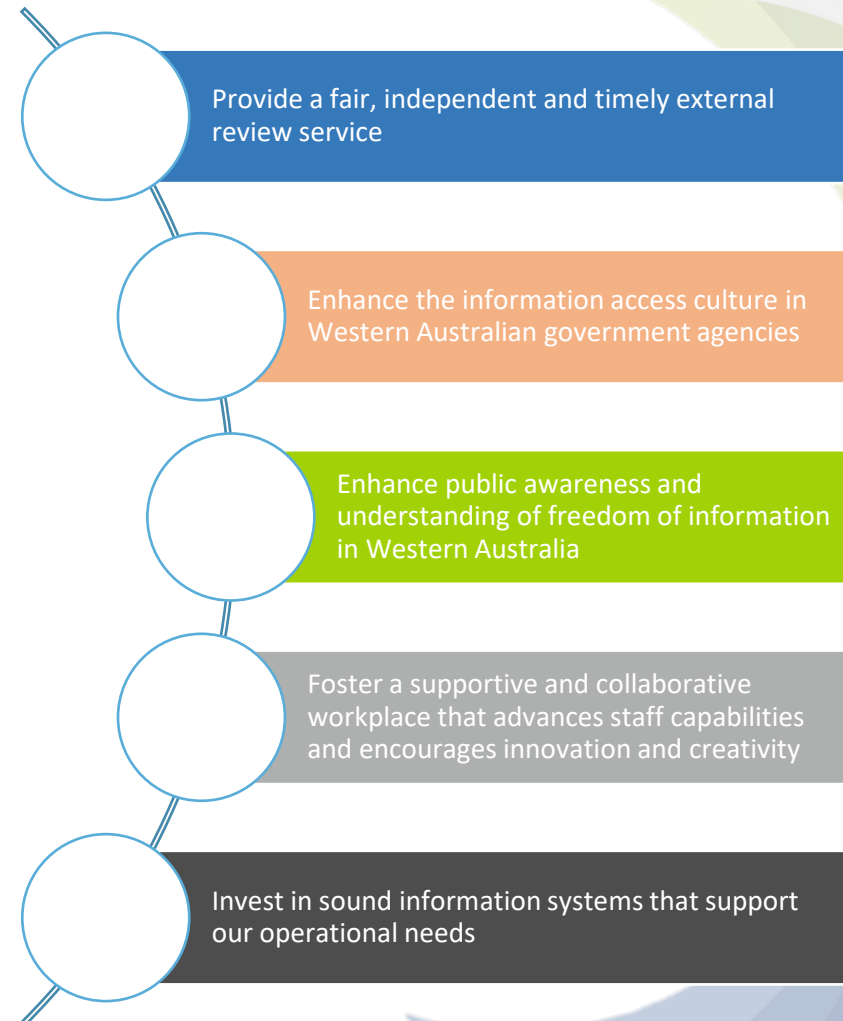
About this report

Welcome to the annual report of the Office of the Information Commissioner (**the OIC**) for 2022/23.

The aim of this annual report is to give a comprehensive overview of our performance during the year, provide insight into the goals and operations of our office and the operation of the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) in Western Australia. The services we deliver are designed to provide an outcome that gives the people of Western Australia access to documents held by WA State and local government agencies, as required by the law, and to provide a mechanism to ensure their personal information is accurate and up-to-date. We also educate agencies on their responsibilities under freedom of information (**FOI**) legislation and provide assistance to the community to help them understand their rights under FOI legislation.

The key message of FOI legislation mirrors the purpose of agency annual reports – greater accountability and transparency. We trust that this report on our activities and performance during the year provides valuable insight into our operations.

Strategic goals



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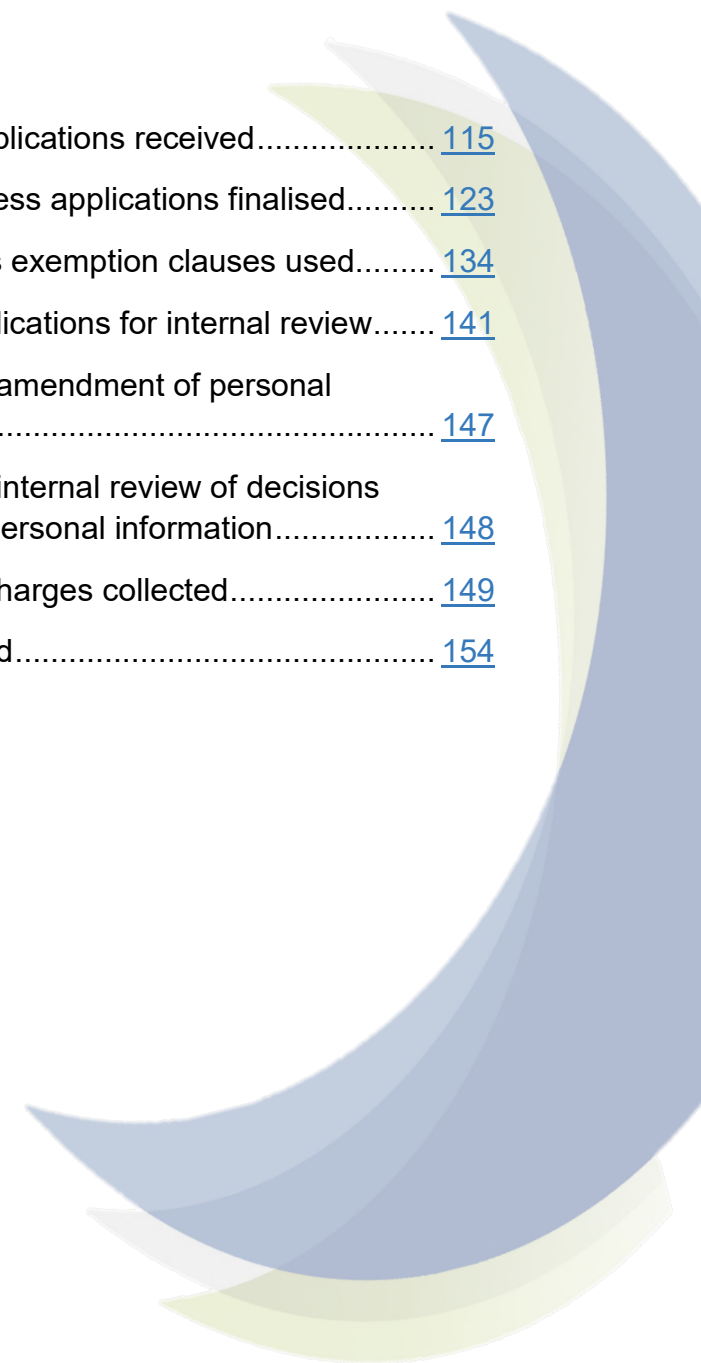
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Significant Issues

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.

Standing recommendations for legislative amendment

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 have been made to the FOI Act. The Commissioner maintains the need for all of these amendments, as well as the need for a comprehensive review of the FOI Act.

New recommendation for the establishment of a Deputy Information Commissioner

Following the completion of the organisational review this year (see page [38](#) of this report), the Commissioner recommends an additional amendment to the FOI Act relating to the establishment of the position of Deputy Information Commissioner (or similar).

One of the key features of the proposed structure for the OIC recommended by the consultants as part of the organisational review was the creation of a Deputy Commissioner role.

Section 79 of the FOI Act prevents the Commissioner from delegating to a staff member the power under section 76 to make a decision on an external review (either confirming, varying or setting aside an agency's decision), or the power under section 75 to require an agency to produce disputed documents. Among other things, this means that if the Commissioner is on a leave of absence or is otherwise unable to perform her functions, the only available option is the appointment of an Acting Commissioner under section 59 of the FOI Act. Each appointment requires appointment by the Governor in Executive Council, and the administration of an

oath or affirmation by the Speaker of the Legislative Assembly. This process takes time and adds to the workload of Cabinet, Executive Council and the Speaker.

The benefits of creating a Deputy Commissioner position with statutory powers to exercise currently non-delegable powers include:

- reducing the need to appoint an Acting Commissioner;
- assisting to reduce the OIC's current external review backlog by having an additional person with statutory powers to finalise matters by formal decision when required; and
- assisting to enable the Commissioner to focus on strategic matters.

The creation of a Deputy Commissioner role for the OIC is in line with other similar Western Australian accountability bodies which also have Deputy roles (such as the Health and Disability Services Complaints Office, Office of the Inspector of Custodial Services and the Ombudsman WA).

Review of the FOI Act

The FOI Act has been in operation for 30 years. No substantive amendments have been made to the FOI Act since it came into operation in 1993. As noted in previous reports, with both the passing of time and the significant technological advancements in the way information is created, used and stored, the FOI Act is now well overdue for review.

As stated in the OIC's 2021/22 report, in November 2020 the Legislative Council's Standing Committee on Public

Administration (**the Committee**) produced Report No 34, *Consultation with Statutory Office Holders*. The Committee recommended that the Attorney General undertake a review of the FOI Act, with public consultation, to be tabled in the Parliament before the end of 2023.

As reported at page 50 of last year's [annual report](#), on 30 June 2022 the Commissioner provided a submission to the Attorney General regarding a review of the FOI Act. The [full submission](#) is available on the OIC website.

In November 2022, the Government advised the Committee that the recommendation that the FOI Act be reviewed by the end of 2023 had [not been formally accepted](#), due to the prorogation of the last term of Parliament, and that [three years remained a reasonable period of time](#) to table a review of the Act, from the date the recommendation is reissued by the Committee, should it resolve to do so.

In February 2023, the Committee produced Report No 38, *Consultation with Statutory Office Holders*. Among other things, that report recommended that the Attorney General undertake a review of the FOI Act and table a report in the Parliament within 3 years. In its [response to the Committee](#), the Government supported the recommendation and stated that the Attorney General will endeavour to table a report within the recommended timeframe.

Following this report, the Attorney General invited the Commissioner to provide a proposed terms of reference for a review of the FOI Act by the Western Australian Law Reform Commission. The OIC is preparing that document, to be provided to the Attorney General later in 2023.

Submissions and consultations

During the reporting period, the Commissioner was formally consulted about various proposed amendments to the FOI Act.

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 OIC also contributed comments and submissions (as requested) on a number of government proposals ranging from proposals affecting information disclosure more generally, privacy and information sharing (see below) and government accountability, integrity and transparency.

Privacy and responsible information sharing (PRIS)

As noted in previous OIC annual reports, in 2019 the Department of the Premier and Cabinet (DPC) released the [Privacy and Responsible Information Sharing for the Western Australian Public Sector Discussion Paper](#) and, in 2021, DPC published the [Privacy and Responsible Information Sharing Consultation Summary Report](#).

In December 2022, the Government [announced](#) it is drafting privacy and responsible information sharing (PRIS) legislation to 'protect the personal information of Western Australians and facilitate responsible use and sharing of government data'.

In [September 2022](#), the [Directors General Information and Communications Technology Council](#) approved the establishment of the Public Sector PRIS Implementation Steering Committee. Following an invitation to nominate a representative on the Committee, the OIC attends monthly meetings of the Committee as an observer and is also a member of a related working group.

We also provide feedback and assistance as requested to the Office of Digital Government (an office within DPC) and the State Solicitor's Office in relation to the proposed PRIS 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.

During the year, one decision of the Commissioner was the subject of an appeal to the Supreme Court.

That appeal (filed by the complainant) arose from a decision of the Commissioner to stop dealing with the complainant's external review pursuant to section 67(1)(b) of the FOI Act, against a decision of Health Support Services, on the ground that the matter was lacking in substance. The appeal (Supreme Court file reference: GDA 10 of 2022) was dealt with in conjunction with a number of other matters involving the same complainant (that did not involve a decision of the Commissioner) and was dismissed on 5 July 2023: see *Lee v The State of Western Australia [No 2] [2023] WASC 247*.

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

Information Access Study 2023

In 2023, the OIC participated in a third cross-jurisdictional study of community attitudes on access to government information with Information Access Commissioners and the Commonwealth Ombudsman. The study was coordinated by the Information and Privacy Commissioner of New South Wales and conducted by Woolcott Research and Engagement.

As in the previous studies conducted in 2019 and 2021, approximately 350 WA residents aged 18 years and over were surveyed in a mixed mode survey using online panel and computer assisted telephone interviewing.

The full results of the WA study are available on the OIC website.

Some of the highlights of the research from the WA survey are:

- Similar to 2019 and 2021 results, most respondents (88%) indicated that having a right to access government information was either very important or quite important. Respondents who had tried to access information held by a government agency in the last three years were much more likely to feel it was very important (58%).
- In 2023, slightly less people knew they had the right to access information held by the listed agencies (72% compared to 79% in 2021). Respondents were more likely to be aware of their right to access information from local governments/councils (55%), and least likely to be aware of the right to access information from public universities, state owned businesses and Ministers (29% respectively).
- Similar to previous years, close to a third of respondents (31%) had tried to access information held by government agencies in the last three years. As with previous years, respondents were more likely to access information held by local government (17%) and public hospitals and health services (15%).

- In 2023, significantly fewer respondents who tried to access information from these agencies were successful (77%), compared to 88% in 2021 and 91% in 2019.

This year two new questions were asked in addition to those asked in previous years:

- *How important is it to know when government uses technology to assist in decision-making that affects members of the public?*

Over three quarters (78%) of respondents indicated that knowing when the government uses technology that affects members of the public was important.

- *How confident are you that Freedom of Information laws in WA will ensure you obtain access to information about how decisions are made by government agencies?*

More than half (52%) of respondents were either very or quite confident that freedom of information laws ensured the public could access information about how decisions are made by the government. However, approximately a third of people (34%) indicated a lack of confidence in these laws.

The comparative study of results across the Commonwealth jurisdiction and the State information access jurisdictions in New South Wales, Queensland, Tasmania, Victoria, Western Australia and the ACT are available on the OIC [website](#).

National Metrics about Information Access Rights

The National Dashboard of Utilisation of Information Access Rights compares statistics on the use of information access rights across Australian access jurisdictions.

In 2017, Australian Information Access Commissioners and Ombudsmen released the inaugural dashboard of metrics on public use of freedom of information access rights, fulfilling a commitment made in the [Open Government National Action Plan](#).

The metrics for each jurisdiction reflect current available data that is reasonably comparable across jurisdictions. The metrics for WA are compiled from the agency statistical data provided to this office each year.

The National Metrics data now includes the data for 2021/22 (which is the most recent data across the jurisdictions) and was published in the reporting period. The most recent National Metrics are available on the NSW Information and Privacy Commission's [website](#).

Development of the National Metrics

Under Commitment 3.2 of Australia's first Open Government National Action Plan 2016-2018, the NSW Information Commissioner led work by Australian Information Commissioners and Ombudsmen to develop (within the remit of their jurisdictions) uniform metrics on public use of freedom of information access rights and the collection and publication of this data. The objective was that Australia will better

measure and improve our understanding of the public's use of rights under access to information laws.

The scope of the metrics covers:

- The type of applicant
- Application rates per capita
- Release rates
- Refusal rates
- Timeliness
- Review rates

In line with the milestones for Commitment 3.2 detailed in the National Action Plan, NSW lead a validation and pilot process for data collection and presentation, for release in the first data report using the metrics.

The National Metrics are not all directly comparable to the statistics published about agency applications in the OIC annual report. The raw data from the statistical returns is used to calculate each metric so as to link similar applications, and outcomes that are reasonably comparable across jurisdictions.

For example, in the National Metrics, the reported number of access applications where access is refused in full does not include those where there was 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 the jurisdiction.

Western Australia Metrics – 2017/18 to 2021/22

Description	2017/18	2018/19	2019/20	2020/21	2021/22
Metric 1: Number of formal applications received by agencies	17,258	19,258	18,392	20,354	21,169
Metric 2: Formal applications received per capita	6.7	7.3	6.9	7.6	7.6
Metric 3: Percentage of all decisions made on formal applications where access was granted in full or in part	96%	94%	91%	92%	91%
Metric 4: Percentage of all decisions made on formal applications where access was refused in full	4%	6%	9%	8%	9%
Metric 5: Percentage of all decisions made within the statutory time frame	91%	90%	87%	86%	88%
Metric 6: Percentage of applications received which are reviewed by the jurisdiction Information Commissioner/ Ombudsman	1.0%	0.9%	0.9%	0.8%	1.0%

More information about the eight years of National Metrics data is available on the OIC's [website](#):

What the data says about information access in WA in 2021/22

The data from the 2021/22 dashboard indicates that Western Australia:

- receives the highest number of access applications per capita;

- has the fourth highest percentage of access provided in full or in part (91%);
- has the lowest percentage of external reviews received, as a percentage of the total number of access applications received by agencies; and
- dealt with 88% of access applications within the statutory timeframe provided by the FOI Act.

Standing Committee on Public Administration

The Commissioner appeared before the Standing Committee on Public Administration (**the Committee**) on 8 August 2022. Following hearings with the Commissioner and other statutory office holders, the Committee tabled Report No 38, titled *Consultation with Statutory Office Holders*, on 14 February 2023. Report 38 is available on the Parliament's [website](#).

The recommendations of the Committee as they relate to the OIC and FOI in WA were as follows:

- **Recommendation 1:** The Office of the Information Commissioner upgrade its information technology systems in order to facilitate online conciliation conferences and improve the interrogation of freedom of information data.
- **Recommendation 2:** The Attorney General undertake a review of the *Freedom of Information Act 1992* and table a report in the Parliament of Western Australia within 3 years of the tabling [of Report No 38].

- **Recommendation 3:** The Attorney General consider increasing the budget of the Office of the Information Commissioner.

The Government's response to that report is available on the Parliament's [website](#).

FOI research project by Monash University

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 the culture of implementing Freedom of Information in Australia.

The three year project commenced in 2021. The objects of the project are 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.

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 the reporting period WA agencies participated in short surveys and interviews administered by Monash University. These agencies were selected to represent a broad mix of large, small, metropolitan and regional organisations from sectors including health, local government, large departments, and statutory authorities.

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.

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

The FOI Act outlines statutory timeframes within which agencies must deal with an access application, including providing a notice of decision.

The FOI Act provides that an agency must deal with an 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.

Section 13(2) of the FOI Act provides, in effect, that if an applicant does not receive a written notice of decision from the agency within the permitted period, the agency is taken to have refused the applicant access to the requested documents. In such circumstances, it is open to an applicant to seek an internal review of the agency's deemed decision.

Section 43(2) of the FOI Act provides that, if the agency fails to give an applicant written notice of its internal review

decision within 15 days after the applicant applies for internal review, or such longer period as is agreed between the agency and the applicant, the agency is taken to have decided to confirm its deemed refusal of access.

In the previous reporting period, the Commissioner noticed that an increase in applications for external review were received without the agency having made either or both an initial decision or an internal review decision within the relevant statutory timeframe. At the time, no data was available and the OIC subsequently started to record these matters.

For the 2021/22 reporting period, the OIC received 195 valid applications for external review. In 11 of those matters, either or both the initial decision and the internal review decision had not been made by the agency within the relevant statutory period.

During the current reporting period, 156 valid applications for external review were received and, in 9 of those matters, either or both the initial decision and the internal review decision had not been made by the agency within the relevant statutory period.

A guide is available on the OIC website to assist applicants to understand their rights when a notice of decision is not provided in the statutory period: [What if the agency delays making a decision?](#)

The OIC will continue to monitor these matters and consider whether they warrant particular targeted action.

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.

Association of Information Access Commissioners (AIAC)

The Information Commissioner is a member of the Association of Information Access Commissioners (**AIAC**). Established in 2010, this is a network of Australian and New Zealand information access authorities who administer access to information legislation. The purpose of the AIAC is for members to exchange information and experience in the exercise of their respective oversight responsibilities, and to promote best practice and consistency in information access policies and laws.

The AIAC meets twice per year, and the Commissioner attended both AIAC meetings in the 2022/23 financial year. The first took place on 7-8 December 2022 in Wellington, New Zealand. The second meeting, on 2 June 2023, was held in Sydney. Following the Wellington meeting, the AIAC released

a [communiqué](#) marking 40 years since both Australia and New Zealand introduced information access legislation.

A Communications Working Group (**CWG**) has formed between the agencies of the AIAC. The CWG provides an regular forum through which communications, education and engagement officers can collaborate on campaigns, discuss matters of common interest, share ideas and experiences, and work together to enhance public trust and confidence in access to information. The International Access to Information Day events and promotions are an important focus of the group.

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.

ICIC meeting – Manila, Philippines

In June 2023, the Commissioner attended the 14th meeting of the ICIC in Manila, Philippines. The theme of the meeting was *Bridging Information Across Nations: Concretizing the Global Role of Access to Information for Democratic Preservation, Inclusivity, and Development*. At this

conference, the Commissioner was a panellist in a parallel session entitled *Policy Framework for ATI in the Global Arena: Paradigm Shift and Reforms*.

A number of the public sessions from the ICIC meeting, including the Commissioner's panel session, are available on the [ICIC YouTube channel](#).



Delegates at the ICIC meeting Manila, Philippines

Indonesian ministerial delegation visit

On 1 December 2022, the OIC received a visit from members of the Indonesian Coordinating Ministry of Political, Legal, and Security Affairs of the Republic of Indonesia. Also in attendance was the Indonesian Consul General of the Republic of Indonesia in Perth, the Vice Consul for Information and Socio-Cultural Affairs, and the Director of State Records WA.

In this meeting, participants discussed the implementation of the FOI Act in WA and its equivalent in Indonesia, the *Public Information Disclosure Act 2008*. The Coordinating Ministry gained a deeper understanding of how freedom of information

laws and information access bodies work in WA and across Australia.



Staff from the OIC and the Indonesian Coordinating Ministry of Political, Legal, and Security Affairs of the Republic of Indonesia; Indonesian Consul General of the Republic of Indonesia in Perth, the Vice Consul for Information and Socio-Cultural Affairs, and the Director of State Records WA

Information Management

By virtue of her role as Information Commissioner, the Commissioner is one of four State Records Commissioners under the *State Records Act 2000*. As State Records Commissioner, the Commissioner takes an active part in a broad range of public sector information related projects led by the State Records Office, including projects relating to revised record-keeping standards and principles, information management and information classification.

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 is 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.

The Working Group is comprised of agency and independent office representatives and was established to assist with the development of guidance materials to support the implementation of the WAICP. During the year, the OIC continued its involvement with the Working Group in a review of the WAICP and the WAICP Supplementary Guide, and in the development of associated training resources.