

# **STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

**INQUIRY INTO STATUTORY OFFICE HOLDERS**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 6 MAY 2019**

**SESSION TWO**

**Members**

**Hon Adele Farina (Chair)  
Hon Jacqui Boydell (Deputy Chair)  
Hon Ken Baston  
Hon Kyle McGinn  
Hon Darren West**

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**Hearing commenced at 12.08 pm**

**Ms CATHERINE FLETCHER**

**Acting Information Commissioner, Office of the Information Commissioner, sworn and examined:**

**Mrs MICHELLE FITZGERALD**

**Executive Officer, Office of the Information Commissioner, sworn and examined:**

**Ms CATHERINE COOMBS**

**Principal Legal Officer, Office of the Information Commissioner, sworn and examined:**

**Mr ANTONIUS PRUYN**

**Complaints Coordinator, Office of the Information Commissioner, sworn and examined:**

**The DEPUTY CHAIR:** On behalf of the committee, I would like to welcome you to the hearing today. Today's hearing will be broadcast. Before we go live, I would just like to remind all parties that if you have any private documents with you to keep them flat on the desk to avoid the camera. We will begin the broadcast, thank you. I will introduce you to the members of the committee. To my left is Hon Kyle McGinn and to my right is Hon Ken Baston. I am the Deputy Chair of the committee, Jacqui Boydell. I tabled apologies for the Chair today, Hon Adele Farina, and also apologies for Hon Darren West. Thank you for coming.

I require you to take either the oath or affirmation.

[Witnesses took the oath or affirmation.]

**The DEPUTY CHAIR:** Thank you. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

**The WITNESSES:** Yes.

**The DEPUTY CHAIR:** These proceedings are being recorded by Hansard and broadcast on the internet. Please note that this broadcast will also be able for viewing online after this hearing. Please advise the committee if you object to the broadcast being made available in that way.

**The WITNESSES:** No objection.

**The DEPUTY CHAIR:** A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer during the course of the hearing for the record. Please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them because it is difficult for Hansard to hear. Please try to speak in turn. I remind you that your transcript will be made public. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in private session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement to the committee?

**Ms Fletcher:** Yes, thank you, Chair. Thank you for the opportunity, of course, of attending before the parliamentary committee. I have been the Acting Information Commissioner since July 2018 for

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a six-month term and then reappointed for a further six-month term from January 2019. If I can perhaps just explain, I have three of my staff with me today to assist because of their great familiarity with some aspects of the operations of the Office of the Information Commissioner so, where appropriate, I might defer to them for assistance.

**The DEPUTY CHAIR:** Absolutely.

**Ms Fletcher:** Thank you.

**The DEPUTY CHAIR:** I will commence today by referring to page 6 of the annual report and in particular to changes in leadership.

Former commissioner Sven Bluemmel was appointed as Victoria's Information Commissioner in September 2017. The Office of the Information Commissioner's principal legal officer Su Lloyd was then appointed Acting Information Commissioner until her resignation in April 2018. Principal Assistant Ombudsman Lisa Ward was then appointed Acting Information Commissioner for 12 months, but resigned when she was permanently appointed as a magistrate of Western Australia in July 2018. Catherine Fletcher was appointed Acting Information Commissioner from 16 July 2018. How has the office managed these changes in leadership and when is a permanent commissioner likely to be appointed?

**Ms Fletcher:** Thank you for the question. The handling of the transition between information commissioners I think has been handled very well by the office. The office is fortunate to have, although a small staff, great stability in staff. At least 25 per cent of the, I think, approximately 10 or 11 FTEs when I arrived had been in the office almost since the inception of the office in 1993, so there is a significant corporate knowledge that resides in the office. I think that has been really significant in terms of managing the change in leadership over the time, because of that great store of knowledge and great dedication to retaining the history of the knowledge in the staff. That has been able to assist, I think, all the information commissioners that have come through since the substantive appointment when Sven Bluemmel left in September 2017.

Su Lloyd, who was the first of the acting information commissioners after Mr Bluemmel's departure, had been within the office for some significant period of time. My staff may be able to address you exactly for how long, but she had been the principal legal officer and, of course, had a great understanding and very significant expertise in freedom of information matters. Her acting as the Information Commissioner was a very natural and logical thing for the office at the time. She occupied that position for, I think, a six-month term. Unfortunately, and as referenced in my executive summary, she passed away. She was terminally unwell during that time and passed away not long after she retired in April 2017.

I think the next transition—I am very happy for my staff to comment on this—was perhaps more difficult in terms of what had just happened, not in terms of the quality of the next person to be appointed Acting Information Commissioner. There is no doubt Lisa Ward came in as an outstanding person with great credentials, and I do not seek to comment upon how she handled the job. I think she was an excellent person to go into the role. But I think it is fair to say it was probably quite a traumatic time for staff having lost a colleague and a senior colleague at that. So, that was no doubt perhaps a difficult time. I think the transition was relatively smooth from what I understand; of course, I was not there. The committee might recall that the last appearance of staff of this office was handled in fact by staff because Acting Information Commissioner Lisa Ward was not well enough to appear before the committee on the last occasion. I read the transcript of that evidence and I think the staff, a number of whom are here today, handled that appearance very well. I commend them for the way in which they were able to do that in her absence before the committee. I also know former Acting Information Commissioner Lisa Ward, so I have had

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discussions with her about how the office handled that transition and I think they handled it pretty well.

There was no—I am very happy to defer again to some of my staff about this—significant loss of efficiency or effectiveness from my point of view in that transition or even from the handover from Sven Bluemmel to Su Lloyd. Su Lloyd, as I said, was eminently capable to act in the role of information commissioner as was Lisa Ward. Those transitions are always going to have some destabilising effect but despite that, I believe that the effectiveness and efficiency of the office has not suffered during those transitions. Of course, I have come in almost nine months ago—or a little over nine months ago—and I think things are tracking quite well.

Again, I am happy for the committee to ask particular questions, and I suspect you will, about our operation's effectiveness and efficiency, but I think we are tracking quite well. We have had an increase in the conciliation rate. The way in which we resolve matters has improved over the last nine months. Consequently, and this might have been explained at the last committee meeting, there has been less formal decision-making by the commissioner over that time, and I think that is an indication that sits comfortably with the improvement in matters being conciliated. I am not sure that there is much more.

[12.20 pm]

**The DEPUTY CHAIR:** Whether there was any likelihood of a permanent commissioner being appointed.

**Ms Fletcher:** That was the second part of your question; I apologise for not addressing that. The second part of your question—at the moment there is a recruitment process going on for the Information Commissioner. Interviews are taking place, as I understand it, next week, so I expect that a substantive Information Commissioner will be appointed before the end of financial year. That is my expectation, but I am not in control of that process. The Public Sector Commission is responsible for that process. If I might just open it up for staff to add any comments at all about transition or operations over the period of the journey with the successive Information Commissioners.

**Ms Coombs:** I do not have anything further to add.

**Mr Pruyn:** No, not really, other than a small correction. It was April 2018—I think it was—earlier—instead of 2017. Really, I think, in any organisation when you have some sort of traumatic upheaval, it will have its effect, then, I suppose, you just rely on each other to rally around. I concur with what Catherine had to say about the ongoing processes. They seemed to continue on as well as we could in the circumstances. Nobody dropped their bundle, so to speak.

**Mrs Fitzgerald:** I have nothing to add.

**The DEPUTY CHAIR:** Just in relation to the machinery-of-government amalgamations, at the 2018 hearing—I do not know whether you have the transcript with you or not. If you require it, I can —

**Ms Fletcher:** I have it.

**The DEPUTY CHAIR:** You have it, okay. On pages 2 to 3 it was advised that there were still some issues regarding the management of FOI applications across amalgamated departments resulting from the machinery-of-government changes. Is that still the case? What are the continuing issues arising from the amalgamations? Has the collection of statistics from agencies been affected as a result?

**Ms Fletcher:** I thank you for that question. As we are some 18 months on from some of the machinery-of-government changes being set into effect—perhaps 12 months for some—I think

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there has been a considerable bedding down certainly since our last appearance before the committee. There has been a certain bedding down that we have noticed in government agencies of the freedom-of-information service delivery, if I can put it that way. I think it was noted at the last appearance before this committee that most agencies appeared to be bringing together their various—where you had perhaps three or four agencies merging into the one, each which previously had their own FOI section, they had come together and were in the process of transitioning to having a unified or single FOI point of contact.

I think there was reference at the last committee hearing about the interactions we have with agencies about their operations through our agency reference group. We have those meetings every three or so months and I sit on those meetings with our advice and awareness officer, Alison McCubbin, who also appeared at this last committee appearance. The information or the feedback I am getting is that the transitions to a unified single point of contact within those amalgamated agencies is working reasonably well. It is a challenge, I think, for some of the agencies that receive very large requests. For example, I might just cite the Department of Communities, who have brought together housing, disability services and child protection; I hope I am right with all of that. There is now a single point of contact for that merged agency and it works very well. We have had meetings with them to talk with them about how they are going, handling both the single point of contact and also the very large volume that comes particularly, historically, to child protection. It seems to be working well.

We have also had meetings with some other agencies such as the Department of Mines, Industry Regulation and Safety—myself and Alison McCubbin, as I have said—and they have a single point of contact as well. I am just thinking of the larger ones. Of course, it has to be remembered that we only have a very small insight into the workings across all the government agencies, because only a small proportion of the FOI activity that goes on out there comes through to the Office of the Information Commissioner, but those with whom we have contact, either specifically one-on-one through executive briefings or by going out and giving training or through our agency reference group, seem to be anecdotally reporting that the practice is going quite well. That is what I would say about that, and I am very happy for staff to comment on that issue if there are any additional comments. No.

The other part of your question was about the statistical returns, I believe. They are not due in until the end of June, so we will not know until they start coming in how that is going. I think, from memory, if I am right, and I am happy for staff to correct me here, in the first 12 months of the machinery-of-government changes we have been prepared to accept the statistical returns with some adherence to the divisions of various departments. I might be wrong on that, but from now on we are expecting a single set of data from the amalgamated agencies. I might just check that, if I can, with staff.

**Mr Pruyn:** There was pretty much a 12-month lead-in period. It was acknowledged that agencies that had combined would have difficulties in doing that, so we could have received statistics from the three previous organisations, in the knowledge that we knew that those three combined to be the new named organisation. From the figures that came in, I say we could be confident that there was no major anomaly that came to our attention that we would be concerned about. We really gave them a little bit of slack to start off with, but then, we did not put them on notice, but they understood that they would be responsible for the consolidation of the subsequent year so we did not continue on after that.

**The DEPUTY CHAIR:** Thank you. Back to the annual report, page 22. The acting commissioner wrote to the director general of the agencies that were impacted by the machinery-of-government

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amalgamations and offered a briefing for their corporate executive officers about the responsibilities and opportunities provided by the FOI act. Briefings were provided to the Department of Biodiversity, Conservation and Attractions; the Department of Local Government, Sport and Cultural Industries; the Department of Education; the Department of Water and Environmental Regulation; and the Department of Justice. At the time of the annual report, only five of the 11 new amalgamated departments had accepted the offer of a briefing. Have any of the other seven departments responded to the offer of a briefing, to your knowledge?

**Ms Fletcher:** I am not sure I would be able to answer that question here and now. It might be something I need to take on notice, unless staff can assist. Again, this is something that would have been offered through our advice and awareness function, I expect, and Alison McCubbin would be across the exact details of that. Can I just defer and see whether anyone can add anything?

**Ms Coombs:** I am not across that.

**Mr Pruyn:** I could not confirm exactly. We would have to check.

**The DEPUTY CHAIR:** We can take that as question on notice 1. We will advise you of the questions on notice when we send you the transcript, so you do not have to write that down.

**Ms Fletcher:** Good, great, thanks.

**The DEPUTY CHAIR:** I am going to move on to participant satisfaction with the external review process and refer to pages 9 to 10 of the annual report. I refer to page 10 and the overview table on page 9. To measure the satisfaction of the external review service, a post-review questionnaire is sent to the parties at the completion of every review matter. The target satisfaction rate was reviewed and increased from the 2016–17 from 80 per cent 85 per cent, as the actual outcome had consistently been over 85 per cent since 2013. This year saw an eight per cent drop from the previous year outcome, and was five per cent below the new target. The annual report focuses on the time lines of the external review processes as the reason for this decline. Are there any other apparent reasons for the drop in participant satisfaction that you would be prepared to share with the committee?

[12.30 pm]

**Ms Fletcher:** Thank you, Chair. If I might just ask Mr Pruyn to assist with this and perhaps Mrs Fitzgerald as well. The post-review questionnaires I do not have a great deal to do with, and particularly the further explanation there might be for the period of reporting, I might seek some assistance on.

**Mr Pruyn:** I think it is very difficult to pinpoint it, because of the survey number that goes out there and also the response rate and therefore the satisfaction in respect of that. The qualitative material is not necessarily available. It would be difficult to judge when people do not respond as to why they would not respond, because we do not then have a second survey to ask them to that effect. That is a dilemma there. I think it was our best guess that, maybe a bit speculative about the timeliness, because there was some comments, as a small amount of feedback, that indicated that was part of the reason dissatisfied before. We did not want to shy away from that commentary. We take on board why somebody would be displeased with the process, but it will be very difficult I think otherwise to make any judgement as to the rationale for the drop off.

**The DEPUTY CHAIR:** I am just going to in particular talk about the conciliation rate. The rate at which applications for review are resolved by conciliation or negotiation was 77 per cent in 2017–18, the highest rate recorded since 2007. Do you think there is a connection between the high conciliation rate and the lower than expected satisfaction rate?

**Ms Fletcher:** Very difficult from my point of view to draw any particular correlation between those things. Again, I might just see if Mr Pruyn has got any comment on that, or anybody else.

**Mr Pruyn:** The only thing that I could add is that, if I go back to the previous question and refer to the satisfaction rate when it dropped from 88 to 80—88 had been an increase and then we had a slight drop off. I think that has amplified the difference, in my view. We have dropped by 10 per cent, but in fact it could have been less if we had been tracking it, you know, the 85 or 86 per cent. I think that may have distorted the depth of dissatisfaction from the 88 to 80 per cent. Those kinds of figures, we are at the mercy of that every year. We do not necessarily have a consistent client base. If we knew that it was the same 100 people who we are always dealing with, then we could compare the previous year to the next year. We have a different 100 or 200 people coming to us and then we have all of the variables of the degrees of difficulty and I suppose the complexity and the characters involved. Other than that, it would be much more speculative.

**The DEPUTY CHAIR:** I am staying with page 10, but moving on to the timeliness of the external review process. It is acknowledged that an ongoing challenge for the office is the timeliness of the external review process. Some relevant issues in this regard that occur during the year include a 33 per cent increase in received external review applications up from 124 to 165, a decrease in FTEs and the appointment of two successive acting Information Commissioners following the departure of Sven Bluemmel in September 2017. Despite these issues, the office finalised 143 external review matters this year, a 13 per cent increase on the 127 external review matters finalised last year. I note that it states —

We will continue to review our processes wherever practicable without compromising the integrity of the external review process.

How has the office adjusted its processes to achieve these results?

**Ms Fletcher:** Thank you for the question. The adjustment to our processes is ongoing. We meet regularly to review our statistics. Mr Pruyn, as you have probably worked out, is our key personnel to help pull together our performance statistics, which we review on a monthly basis. We were always trying to keep on top of what comes in and what goes out, how much we have yet to be assigned to a working officer who can actually work on a matter. We are very conscious of those sorts of adjustments from month to month and working to best balance, I suppose, workload with our current resources. Of course there are issues about that, although largely the workforce is fairly stable. Since I have become the Information Commissioner, one of the processes that perhaps we have reinvigorated, not necessarily of my own initiation, but something that has been done in past times when a backlog of matters has built up is a bit of a targeted effort in conciliation to deal with matters at a very early stage, rather than allocating matters as they come in, sometimes look to some of the more recent matters that have come in, looked to the subject matter, the parties, the issue perhaps that underlies the request for documentation to see whether we can perhaps fast track a conciliation outcome. That has been going on since late last year, and that has been quite effective. I do not have actual figures for you on that, and I am not sure whether Mr Pruyn can provide any actual figures about that. I do not think we have been keeping those particularly. They just feed into our general conciliation rate, but there has been a number of successes. We have a couple of staff who have specific mediation qualifications, one in particular who has taken up this role to engage in what we would call, I suppose, early stage conciliation processes for those matters to see whether they need to actually go any further. I think that has been successful to a degree. We have a focus meeting, I suppose, to focus particularly on this issue coming up again next week. It is something that we are always mindful of. But given our resources we only have eight FTE dedicated towards complaints work. We are limited in the sense that we do not have the additional

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resources to throw at it. But I think there is some heart to be gained from the fact that in this period, of course, which covers the period before I came into the office, there had been I think quite a marked increase in productivity as is noted there: the increase in a number of external review applications into the office, yet an increase in those that were resolved through conciliation. There has also been, I might just point to, an improvement in the data that we have about timeliness, and with your permission I seek to refer to that. If I go back to the 2013–14 reporting period, the average number of calendar days to finalise a complaint was about 257 days, which was 36.7 weeks. Tracking since that time, there has been a drop in terms of the average number of weeks to finalise a complaint. We have gone, in the following period, 2014–15, 26.6 weeks; a slight increase to 27.1 weeks in the following reporting period of 2015–16; 2016–17, 27.7 weeks; and then in 2017–18, a little creeping up again to 29.9 weeks. I am hoping Mr Pruyn will be satisfied by my reference to that and I am not misleading you. I think Mr Pruyn is probably in a better place to explain some of that a little more, but it would appear that over time there is certainly an improvement in the number of weeks that it takes to finalise a complaint that is occurring in the office. I might just hand over to Mr Pruyn.

[12.40 pm]

**Mr Pruyn:** Without describing numbers in great detail, broadly, at a point in time when you have matters that do grow significantly older, when you look at the average time when they are finalised, then they come onstream for the purpose of the calculations. So if, say, in 2014–15, we had something that was a year old and we finalised it the next year, that accounts for 365 days and so on. There was a concerted effort a number of years ago to concentrate on not allowing things to get so old again. We have certain limitations with resources, and there is only so much you can do. A lot of the very older ones were sorted, and that accounted for a significant number of days being attributed to the average. It is again based on some weird and wonderful calculations. When we have a new lot, which is our next batch on hand, if we could keep them so they do not go to that next bracket of age, that is the plan. I think we have been incrementally successful in chipping away at that. I cannot boast a dramatic change. It is a thing that we are well aware of and we are trying as best we can to take as many days as we can off through that journey so that there is a little bit of currency when people ultimately get a result. That is the best I can offer, I am sorry.

**The DEPUTY CHAIR:** That is okay.

**Ms Coombs:** If I could add something to put that in context. With the figure in 2016–17, there were 9.6 FTEs in the complaints division and the ratio of complaints finalised per FTE was 13.2. In the following year, which is 2017–18, there were eight FTEs and the ratio of complaints finalised per FTE was 17.9. That is not an entire picture. This adds context to the resources available and what was done during that time.

**Mr Pruyn:** Could I add one more thing? Just to repeat, we are always at the mercy of an unknown workload—the interest in FOI generally, but also the people who then exercise the review rights, which ultimately comes to us as an external review. We know when we know. There is no true predictor. If you saw over a long period of time, it could be 120 one year, 150 the next year, 160 and so on. One thing I can point out, though, is that in the last five years, there has been a significant group increase. For example, over the last five full years, we may have averaged 140 or thereabouts external review matters before the Information Commissioner and in the previous five years, maybe 110. Those figures alone do not look that scary or significant, but it is a 30 per cent increase, which has been maintained with either the same or less resources at points in time. Many options have been exhausted. As Catherine said, we try to keep on top of this as best we can. We are not naive. We are very happy to look inside our organisation to pursue options to make things go better or

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quicker. After a while, you run out of cards to play. I am not saying we have given up, but we have pursued many different angles to try to address it as best we can.

**The DEPUTY CHAIR:** I appreciate that. I think that is an ongoing thing that you have to manage, is it not?

**Mr Pruyn:** Yes.

**The DEPUTY CHAIR:** We will move to page 11. Under the performance data comparisons, that table indicates the average age of matters on hand has decreased from 225 days in 2016–17 to 99 days this year. The number of external review matters on hand older than six months has decreased from 21 in 2016–17 to 10 this year, and the number of external review matters on hand older than 12 months has decreased from 12 in 2016–17 to one this year. What do these figures indicate about how quickly the Office of the Information Commissioner is dealing with external review matters and how has that actually been achieved, because there are some quite significant figures there?

**Ms Fletcher:** Again, I think Mr Pruyn can probably talk about this far more expansively than I can. My understanding of what occurred during this period, again before I arrived at the office, was, as Mr Pruyn just explained, there was a concerted effort perhaps starting a few years ago to really address this issue of very old matters so that we are taking a far more proactive approach, I suppose, to try to get some sort of resolution of protracted matters. There will always be protracted matters. Given the types of huge variation in disputes, if there are lots of parties involved, lots of consultations that have to take place, there will always be protracted matters, but to drive those perhaps a little bit harder is the impression I am getting, and an initiative that perhaps commenced in the office before I arrived. I might hand over to Mr Pruyn to either confirm or clarify what I have just said.

**Mr Pruyn:** I can confirm that, yes, but just add a little bit more. At present, our average days on hand has increased slightly from the 99. That is only year to date, and that may vary to about 126 as at the end of April. In the scheme of what we have on hand, which is quite a large number, we do not think that that is too bad. We would like it better, of course.

The other thing is the age of matters. If you have a pool of complaints to be assigned to our complaints officers to deal with, there is only so much that an officer can deal with. There is a saturation point. You just cannot keep loading people up forever. We are not trying to break our staff. We do hold matters back for a period of time so that we have what we consider to be a workable, manageable caseload. What it means is that when you have more matters coming in, there is a delay in those matters being assigned, so everything before they get there could be an extra month older or 30 days older. Notwithstanding our other efforts, hence the idea of looking at those matters as best we can to see if there can be some kind of preliminary investigation prior to full assignment of the matter to see if issues can be resolved, even in part, and seeing if that benefit might then assist the officer when the matter is assigned to them.

**The DEPUTY CHAIR:** When the cases are received, is there a filter of urgency of the detail of the application applied—whether it is an urgent case and requires assistance immediately, so therefore the officer is asked to stop work on that case and reassigned to another—or is it simply a case of the day that it is received is the date that it is processed in reference to you saying that some might be held for a month or so while you manage workload? Is that how it works?

**Mr Pruyn:** It is not quite as simplistic as that in that we do not operate purely on an age basis. There is careful consideration of the senior staff with our on-hand matters prior to being assigned. The priorities would vary depending on what we have as to whether or not it could be seen to be resolved relatively quickly; whether or not there are other factors associated with that particular

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complaint which might influence them getting our earlier attention; and the degree of difficulty as to how much it would add to it. It is difficult to judge until you get into the investigation proper and determine how complex it might be. We try to assess that as we are going. It is not simply assigning on an age basis, but when you have a large number, there is a component of that. I have to acknowledge that that is there to a certain extent, but not purely that. We are constantly considering all the matters we have on hand, and they could be assigned well and truly out of age order.

[12.50 pm]

**Ms Coombs:** For example, it could well be that there is a pressing public interest in relation to an application.

**The DEPUTY CHAIR:** I was going to ask for an example.

**Ms Coombs:** Yes, a pressing public interest issue in relation to an application would mean that it would get earlier consideration than would otherwise be the case.

**Ms Fletcher:** I might just add a couple of things to that. For the benefit of the committee's understanding as well, the process when matters come into the office is that effectively everything is given attention almost on the day that it arrives in the sense of who the parties are, where we need to obtain documents from and what are the contested or disputed documents, so that we get those as early as possible. We are requesting those things within days. We obtain the materials that we need to progress the matter and notify the parties that we acknowledge receipt of the complaint or the request for an external review. All that is done virtually almost —

**The DEPUTY CHAIR:** So there is a preliminary assessment done.

**Ms Coombs:** Correct.

**Ms Fletcher:** Yes, almost a triaging, if you like, of that. Then, on a monthly basis, we look at to whom we can allocate the outstanding matters.

**The DEPUTY CHAIR:** Moving on to page 13 of the annual report, specifically in relation to decisions of the commissioner, in 2017–18, 13 complaints were finalised by formal published decision of the commissioner. This is approximately half the number of published decisions last year, which was 25, and less than in 2016–17, which was 21. Why have the number of matters finalised by reported decision decreased? Is this a result of the increase in matters finalised by conciliation and negotiation only?

**Ms Fletcher:** Thank you for the question. Yes, I think we have partly answered that in some previous answers. There would appear to be a correlation between the improvement in conciliation of matters and the decreased need for formal determinations by the Information Commissioner. I think there is absolutely no doubt that there is a link between those matters. I do not know that I have a great deal more that I can say about that, unless staff want to assist further on that.

**Ms Coombs:** I do not have anything further to add.

**The DEPUTY CHAIR:** I cannot believe how quickly the time has gone, so I am going to move on very quickly, specifically to pages 15 to 17 in relation to CCTV footage. The 13 matters finalised by the decision of the commissioner are summarised on pages 13 to 19 of the annual report. Two of those 13 decisions related to access to CCTV footage. In fact, these were different decisions on the same application for access by the Seven Network, and you can see the summaries in the report on pages 15 to 17. At the 2018 hearing—transcript page 4—it was advised that a recent Supreme Court decision had narrowed the scope of what was considered to be personal information in CCTV

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footage. What is the acting commissioner's current approach to identifying what is considered to be personal information in CCTV footage?

**Ms Fletcher:** Thank you for the question. The decision that you refer to, of course, was the PTA decision. I am sorry; I do have it in my file, but I do not want to get lost in looking at that. I perhaps might say that the incidence of applications for CCTV since I have arrived in the office would appear to be less frequent.

**Ms Coombs:** There has been a dramatic decline, which I would attribute to the Supreme Court being very clear in its enunciation of what it considers constitutes personal information. In fact, it broadened the definition of personal information as opposed to narrowing it.

**Ms Fletcher:** Perhaps I can add to that. The broadening is such that the legal definition now provided by the Supreme Court is that a person recognises themselves in CCTV. I am paraphrasing that perhaps, and I hope I have done that correctly, but that is essentially a broadening of what "personal information" means. Any contradiction of that?

**Ms Coombs:** No. That is the upshot of the decision, yes.

**Ms Fletcher:** I did not have any involvement in that decision; however, of course, I have had recourse to it since the time that I became the acting Information Commissioner. The question is how we are addressing the issue of applications or contested applications for CCTV that cut across this issue of whether or not it is personal information. We have not had a great deal in my time since I arrived at the office in June or July of last year, as Ms Coombs says. As to whether or not I have a particular approach, it is on a case-by-case basis with everything, and there has not been enough of it for me to do anything other than be guided by the legal precedent that we now have from the Supreme Court from the decision involving the Public Transport Authority. I might throw it across. Is there anything further we can add to that?

**Ms Coombs:** That is an accurate indication of where we stand. I think we may have very few outstanding complaints in relation to CCTV at this stage.

**Ms Fletcher:** Perhaps I might just add that for the future, this is not going to be an issue that goes away. No doubt the committee is aware of recent developments, such as body-worn cameras et cetera that the police will be using. That is not a CCTV issue, but a video recording issue. On personal mobile devices being carried by police, we have not yet seen anything of that kind, but developments in technology are always going to mean that there are going to be new subject matters to deal with in the sphere of freedom of information as to what constitutes a document of government. We are alert to these sorts of things, and on the lookout for what other jurisdictions do in this regard. We look to some of their guidance material to some of the technologies that have come into Western Australia a bit after they have arrived in other jurisdictions.

**The DEPUTY CHAIR:** It is certainly an interesting space.

**Ms Coombs:** It is very interesting.

**The DEPUTY CHAIR:** Very interesting. I am going to run out of time with the questions that we have for you, but I will endeavour to get through as many as I can in the next five to 10 minutes. I might just confer on whether there are any we should tick off the top.

I do apologise for this. I am going to condense a little bit of information so that we can get through it. I am going to refer to pages 27 through to 34. I know that is quite a big scope, but they are in relation to recommended legislative change. The first one will be "Consultation with officers of government agencies". The annual report recommends legislative change in relation to consultation with officers of government agencies regarding personal information consisting only of prescribed

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details, which can often be time consuming without adding anything towards the objects of the FOI act. The same legislative change was recommended in the 2016–17 annual report and, consequently, in other annual reports. To what extent could that consultation delay the resolution of an FOI application? Is this a common problem as far as the office is aware?

[1.00 pm]

**Ms Fletcher:** Thank you for the question.

**The DEPUTY CHAIR:** That is one—I have a couple of them.

**Ms Fletcher:** Oh, okay.

**The DEPUTY CHAIR:** You know, answer them, because they are quite intensive.

**Ms Fletcher:** All right. I think I can answer this question. Look, it continues to be an issue because the obligation is on the agency to consult their own officers about personal information. If we had an amendment of the kind that is suggested, the information that pertains to their role, their job title—standard things about their work—those things can just be assumed as being not an issue. It causes the consultation to be protracted. Although, by and large, I suppose my limited experience with it is that most well-informed FOI coordinators will be across this and will be able to advise their officers, their staff, that these are prescribed details and that there is no basis for—they are required to be disclosed, even though it is in the kind of information that is personal to them. But it, effectively, arises out of their position and the role that they perform. It would certainly simplify things if the amendment was performed. I do not know whether anyone else wants to add anything to that. It is an ongoing issue and it could make things simpler.

**Ms Coombs:** It also depends on how many of those officers are involved or are mentioned in the documents. It may well be that you could have 10-plus, and that is going to affect how long it takes the officer who is dealing with the application to make a determination, because they are required to consult.

**Mr Pruyn:** We have also had some feedback through government agencies that they are getting better at negotiating with access applicants so to avoid the necessity to try and not get around it but work with it so that they might end up with editing of material and give some priority as to the kind of access they want. That is another method being adopted at the coalface by agencies.

**The DEPUTY CHAIR:** On page 29, specifically, the recommended legislative change in relation to public health facilities operated by non-government operators, the annual report recommends legislative change in relation to privately operated health facilities which provide public patient services, pursuant to contracts with the Minister for Health. The same issue was noted in the 2016–17 annual report. The annual report notes the recent example of this in the Midland Health Campus. It advises that —

Unlike the operators of privately run correctional facilities, these operators are not subject to the FOI Act even to the extent that they are providing publicly funded health services to the public.

It recommends that the FOI act be amended to close that gap. The answer to the question on notice 2 from the 2018 hearing revealed that this issue was first raised by the Information Commissioner with the Department of Health in 2012 and that the only reply was from the Attorney General in 2013 to the effect that views were being sought. Do you know if that is being progressed?

**Ms Fletcher:** I do not know whether it is being progressed at all. It is an issue that I have certainly raised, again, since I have been acting in the role as the Information Commissioner. I have raised it again with the Attorney General, but it is not something that has been specifically acted on. The

issue is becoming, I think, more acute as more government services, not just health, are perhaps being contracted out. Can I just also refer the committee to the former Information Commissioner Sven Bluemmel who was questioned quite extensively about this issue. I think he, particularly, made a submission to government—and I am not sure where else his submission went to—at the time, arising out of the Pisano case. In his evidence to this committee back in 2016, he extensively addressed this issue and why it was a problem. So no, to my knowledge those recommendations have not been further acted on. It is becoming a slightly longstanding issue and I suspect one that is going to become even more of an acute concern for the application of the Freedom of Information Act to services of government that are not covered. If and when there is a suggestion of a review of the act, it would be one of the most urgent recommendations that we would suggest be addressed.

**The DEPUTY CHAIR:** Thank you. I am going to move to our last question, which is to do with staffing issues within the Office of the Information Commissioner. I refer to page 40 of the annual report —

This year saw an unusually high amount of significant staff movements: a redundancy under the Voluntary Targeted Separation Scheme; a retirement; an officer on parental leave; two resignations; two acting arrangements; a secondment; two recruitment processes; and one new appointment.

To what extent did these staff changes impact on the Office of the Information Commissioner operations during 2017–18? Has the situation changed in 2018–19?

**Ms Fletcher:** Thank you for the question. I have already addressed, in response to an earlier question, the changes in the Information Commissioner at the leadership level, so I do not propose to address that again. In the voluntary targeted separation scheme, I think there was only one FTE that was lost as a result—or made redundant during that time—and that was in the administrative services section of the office. The retirement, I believe, refers to Su Lloyd, if I am right. The officer on parental leave came back to the office shortly after my commencement. A person at an early stage of their career, a young lawyer in our office, returned to work in the complaints area and was offered a position elsewhere and I made the decision to allow them to go on secondment—I do not think that is the secondment that is referred to in the report—in the hope that that person may well come back. They are a very talented person, who we are hoping will come back.

Resignations: I would probably need some help from staff as to where those—I am struggling to know who the resignations were. I might actually ask my executive officer, Michelle, to speak to some of this.

Before she does, however, just in terms of, I suppose, my impression of how things have gone since all of this occurred in the reporting period that we are talking about, I think we have come into a bit of a period of stability—I would hope—in that we have bedded down a couple of key positions where there were two staff in acting roles and had been in those acting roles for a considerable period of time. The two staff members have now been made permanent. That, I think, provides greater stability to the office. We have recruited an administrative assistant to assist the executive officer, which was a much-needed—and had been planned before I arrived—planned-for addition to the staff, which I think allows a whole lot of things to happen that perhaps we were a bit stretched to try to achieve before that: things like policy, compliance with requests from the auditor et cetera. We have a recruitment process on at the moment for a new legal complaints officer. So we are, hopefully, bolstering —

**The DEPUTY CHAIR:** I was just going to ask you about that.

**Ms Fletcher:** Yes, and that has come about because of the acting arrangement that we had before—if Ms Coombs does not mind me referring to the fact that she was confirmed as the permanent

principal legal officer. Her substantive position of a legal complaints officer has now been filled. We could not do that until her permanency was addressed. In the period that I have been there, we have brought on a couple of new admin people and we have bedded down some issues with our complaints staff, making acting into permanent and we are recruiting some more complaints staff. So, personally, I feel that we have developed some stability in our human resources area and in fact are making some improvements in that regard, so it has been fortunate that nobody else has decided to leave whilst I have been here, but I might just throw that open to staff as well.

[1.10 pm]

**Mrs Fitzgerald:** In respect of the staff movements in that particular year, which might not seem like a lot generally, but for a smaller office like ours, which does not usually have a lot of staff movements, it was quite a lot. The resignations that were referred to were Sven Bluemmel and Su Lloyd, so our two most senior experienced officers left during the year. In terms of the impact of the staff movements in that year, not complaints-related, which has already been covered, but administratively in terms of governance and the running of the office and those kinds of things, bearing in mind that the Information Commissioner is basically on most things the final decision-maker in terms of having to review all of the accounts, and make decisions on all governance issues, there is no sort of senior person who takes that role over. So when a new commissioner starts, all that has to be taught and passed over to the new commissioner; and even when it is an internal member of staff, when Su Lloyd was appointed for six months, I mean, that was not an issue that she was involved in previously—she was specifically in the review and complaints area—so a lot of that was new to her as well, and so that also had to be passed over and taught with each one who started. So, administratively, that did cause a bit of a delay in governance, and that was shown in our internal audits. A lot of change has happened. Again, with the voluntary redundancy, the other administrative officer, who quite often was a backup for accounts and HR processes, left, and those processes were not able to be updated by the time audit came around because a lot of time had to be spent sort of administratively dealing with the changes in staffing.

**The DEPUTY CHAIR:** I think we can understand that, with a small office and the number of changes.

**Mrs Fitzgerald:** Yes, but as the commissioner did say, we have appointed an officer to assist with that, so that has sort of been addressed as a result of the audit.

**Mr Pruyn:** At the risk of dragging it on one more minute, if you would not mind, just to add a bit more depth to the recruiting process, we are also bound by certain restrictions within the legislation about being appointed by the Governor and so on, and even though we adopt a lot of public sector employment standards, we also have time delays because of legislative provisions placed on the way in which staff can be appointed; and, again, we are small, so when we need to employ someone, somebody is taken away from operations to be the HR person—an additional individual—and we have to go through that process. So a lot of things that happen in our organisation have to be temporarily put on hold while we finish something else. Sorry, but that is just to give a bit of clarity to that.

**The DEPUTY CHAIR:** I think you manage the constraints under which you operate exceptionally well, and, on top of that, a difficult year.

**Ms Coombs:** It was an incredibly turbulent period.

**The DEPUTY CHAIR:** Yes, it certainly seems so, so I congratulate you on being where you are right now.

**Ms Fletcher:** Thank you. I really appreciate those comments because I think it has been a difficult time, but it is a very solid office in terms of personnel. As I said earlier, at the start, having that what

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I think is really quite a unique sort of corporate history embedded in the office has made my role much easier, so I am very grateful to the staff. Thank you for your acknowledgement of that.

**The DEPUTY CHAIR:** That draws our questions to a close. Thank you for attending today. We will end our broadcast. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. Errors of fact or substance must be corrected in a formal letter to the committee. When you receive your transcript of evidence, the committee will also advise you when to provide your answers to the question on notice. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence to the committee for the committee's consideration when you return your corrected transcript of evidence. Thank you for attending.

**Hearing concluded at 1.15 pm**

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