



# Oversight of the Office of the Information Commissioner

**Report No. 14, 56<sup>th</sup> Parliament**  
**Legal Affairs and Community Safety Committee**  
**June 2018**

## **Legal Affairs and Community Safety Committee**

<b>Chair</b>	Mr Peter Russo MP, Member for Toohey
<b>Deputy Chair</b>	Mr James Lister MP, Member for Southern Downs
<b>Members</b>	Mr Stephen Andrew MP, Member for Mirani
	Mr Jim McDonald MP, Member for Lockyer
	Mrs Melissa McMahon MP, Member for Macalister
	Ms Corrine McMillan MP, Member for Mansfield

### **Committee Secretariat**

<b>Telephone</b>	+61 7 3553 6641
<b>Fax</b>	+61 7 3553 6699
<b>Email</b>	lacsc@parliament.qld.gov.au
<b>Technical Scrutiny Secretariat</b>	+61 7 3553 6601
<b>Committee Web Page</b>	<a href="http://www.parliament.qld.gov.au/lacsc">www.parliament.qld.gov.au/lacsc</a>

### **Acknowledgements**

The committee acknowledges the assistance provided by the Office of the Information Commissioner.

## Contents

<b>Abbreviations</b>	<b>ii</b>
<b>Chair’s foreword</b>	<b>iii</b>
<b>Recommendations</b>	<b>iv</b>
<b>1 Introduction</b>	<b>1</b>
1.1 This report	1
1.2 The committee	1
1.3 The Office of the Information Commissioner	1
1.4 The committee’s responsibilities regarding the Information Commissioner	1
<b>2 Oversight of the Information Commissioner</b>	<b>3</b>
2.1 Process followed by the committee	3
2.2 Statutory office holders	3
2.3 Legislative review	3
2.4 Strategic review	6
2.5 Staff funding	7
2.6 Office relocation	8
2.7 Priorities for 2018-19	8
<b>3 Examination of Annual Report</b>	<b>10</b>
3.1 Overview	10
3.2 Performance	10
3.2.1 External review service	10
3.2.2 Privacy advice and complaint mediation service	13
3.2.3 Assistance and monitoring service	14
3.2.4 Financial performance	15
<b>4 Committee comment</b>	<b>16</b>
<b>Appendix A – Officials at public meeting</b>	<b>17</b>

## Abbreviations

Annual Report	Office of the Information Commissioner, 2016-17 Annual Report
Attorney-General	Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice
committee	Legal Affairs and Community Safety Committee
DJAG	Department of Justice and Attorney-General
IP Act	<i>Information Privacy Act 2009</i>
QCAT	Queensland Civil and Administrative Tribunal
OIC	Office of the Information Commissioner
previous committee	Legal Affairs and Community Safety Committee of the 55 <sup>th</sup> Parliament
RTI Act	<i>Right to Information Act 2009</i>
Strategic Review	The strategic review of the OIC conducted under s 186 of the RTI Act
Strategic Reviewer	PricewaterhouseCoopers
Strategic Review Report	The report issued by PricewaterhouseCoopers on the independent strategic review of the OIC on 26 April 2017 and tabled on 11 May 2017

## Chair's foreword

The Legal Affairs and Community Safety Committee has oversight responsibility for the Information Commissioner under s 88 of the *Parliament of Queensland Act 2001* and Schedule 6 of the *Standing Orders of the Legislative Assembly*.

Section 195 of the *Information Privacy Act 2009* and s 189 of the *Right to Information Act 2009* set out functions of the committee under those Acts. These include monitoring and reviewing the performance by the information commissioner of the commissioner's functions under the Acts, and examining each annual report of the commissioner.

This report presents a summary of the Legal Affairs and Community Safety Committee's oversight of the Information Commissioner and her office, focussing on 2016-17.

On behalf of the committee, I thank the Information Commissioner, the Acting Right to Information Commissioner, the Privacy Commissioner and other staff of the Office of the Information Commissioner who assisted the committee with fulfilling its oversight responsibilities. I also thank the Parliamentary Service staff.

I commend this report to the House.



Peter Russo MP

**Chair**

**Recommendations**

**Recommendation 1**

**16**

The committee recommends the House notes the contents of this report.

## 1 Introduction

### 1.1 This report

The Legal Affairs and Community Safety Committee prepared this report as part of its statutory oversight of the Information Commissioner and her office, with primary focus on the 2016-17 financial year.

### 1.2 The committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly that commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup> The committee's areas of responsibility are Justice and Attorney-General, Police and Corrective Services, and Fire and Emergency Services. The committee has oversight responsibility for bodies including the Information Commissioner.<sup>2</sup>

### 1.3 The Office of the Information Commissioner

The Office of the Information Commissioner (OIC) consists of the Information Commissioner, who is an officer of the Parliament, and the staff of the office.<sup>3</sup> The OIC's functions include giving information and help to agencies and members of the public on matters relevant to the *Right to Information Act 2009* (RTI Act); conducting reviews into personal information handling practices of certain entities; investigating and reviewing decisions of agencies and Ministers; and reviewing and reporting on agencies in relation to the operation of the RTI Act and the *Information Privacy Act 2009* (IP Act).<sup>4</sup>

### 1.4 The committee's responsibilities regarding the Information Commissioner

The committee's functions relating to the Information Commissioner are:

- to monitor and review the performance by the Information Commissioner of the Information Commissioner's functions under the RTI Act and IP Act
- to report to the Legislative Assembly on any matter concerning the Information Commissioner, the Information Commissioner's functions or the performance of the Information Commissioner's functions that the committee considers should be drawn to the Legislative Assembly's attention
- to decide, in consultation with the Information Commissioner, the statistical information (including statistical information about giving access to information other than on an access application) agencies and Ministers are to give the Information Commissioner for the reports under the RTI Act
- to examine each annual report tabled in the Legislative Assembly under the RTI Act and the IP Act and, if appropriate, to comment on any aspect of the reports and to make recommendations
- to examine each strategic review report tabled in the Legislative Assembly under the RTI Act and, if appropriate, to comment on any aspect of the report and to make recommendations

---

<sup>1</sup> *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

<sup>2</sup> The committee also has oversight responsibility for the Electoral Commissioner, the Ombudsman and the Queensland Family and Child Commission: Standing Rules and Orders, Schedule 6.

<sup>3</sup> *Right to Information Act 2009*, s 123.

<sup>4</sup> *Right to Information Act 2009*, ss 128-131; *Information Privacy Act 2009*, ss 135-137.

- to report to the Legislative Assembly any changes to the functions, structures and procedures of the OIC the committee considers desirable for the more effective operation of the RTI Act and the IP Act
- the other functions conferred on the committee by the RTI Act or the IP Act.<sup>5</sup>

---

<sup>5</sup> *Right to Information Act 2009*, section 189; *Information Privacy Act 2009*, section 195. Amongst other things, the *Right to Information Act 2009* and the *Information Privacy Act 2009* also require that the committee be consulted on the selection process for appointment, and the appointment, of a person as the Information Commissioner, the Right to Information Commissioner or the Privacy Commissioner. The committee is not consulted on the process of selection for appointment where a person is re-appointed as Information Commissioner, Right to Information Commissioner or Privacy Commissioner: *Right to Information Act 2009*, s 135 (Information Commissioner), s 151 (Right to Information Commissioner); *Information Privacy Act 2009*, s 145 (Privacy Commissioner).



## 2 Oversight of the Information Commissioner

### 2.1 Process followed by the committee

In conducting its oversight of the Information Commissioner, the committee adopted the following process:

- examined the 2016-17 Annual Report of the OIC
- provided pre-hearing questions on notice to the OIC
- published the OIC's response to the pre-hearing questions on notice
- held a public meeting with representatives from the OIC (see Appendix A).

The transcript of the public meeting and the response received from the OIC to the questions on notice are available on the committee's website.

### 2.2 Statutory office holders

Since the committee last reported on its oversight of the Information Commissioner there has been a change in personnel in the position of the Right to Information Commissioner.<sup>6</sup> Ms Jenny Mead and Ms Clare Smith, who job shared the role of Right to Information Commissioner, resigned for personal reasons in 2017 after seven years in the role.<sup>7</sup>

The Right to Information Commissioner vacancy was advertised in October 2017. At the date of the committee's public briefing (30 April 2017), the selection process had been completed and the Attorney-General and Minister for Justice, Hon Yvette D'Ath MP (Attorney-General), was considering the appointment of the new Right to Information Commissioner.<sup>8</sup> Ms Louisa Lynch is the Acting Right to Information Commissioner to 11 May 2018.<sup>9</sup>

The other statutory office holders remain the same as the previous financial year:

- Information Commissioner, Ms Rachael Rangihaeata
- Privacy Commissioner, Mr Philip Green.

### 2.3 Legislative review

The RTI Act and the IP Act provide that the responsible minister must start reviews of the Acts no later than two years after the commencement of the Acts.<sup>10</sup>

The objects of the reviews are to:

- decide whether the primary objects of the RTI Act and IP Act remain valid
- decide whether the RTI Act and IP Act are meeting their primary objects

---

<sup>6</sup> The Legal Affairs and Community Safety Committee of the 55<sup>th</sup> Parliament (previous committee) tabled its *Report No. 68 – Oversight of the Information Commissioner* on 29 September 2017. The previous committee noted that Ms Mead and Ms Smith had tendered their resignations but that their resignations had not become effective by the date of tabling the report.

<sup>7</sup> Ms Rangihaeata, public briefing transcript, Brisbane, 30 April 2018, p 8. Ms Mead's resignation took effect on 4 February 2018. Ms Smith's resignation took effect on 31 March 2018.

<sup>8</sup> Ms Rangihaeata, public briefing transcript, Brisbane, 30 April 2018, p 9.

<sup>9</sup> Office of the Information Commissioner, 'Executive management team', <https://www.oic.qld.gov.au/about/our-organisation>, accessed 29 May 2018.

<sup>10</sup> *Right to Information Act 2009*, s 183(1); *Information Privacy Act 2009*, s 192(1).

- decide whether the provisions of the RTI Act and IP Act are appropriate for meeting their primary objects
- investigate any specific issue recommended by the Attorney-General or Information Commissioner.<sup>11</sup>

Upon completion of these reviews, reports relating to their outcome must be tabled in the Legislative Assembly, as soon as practicable.<sup>12</sup>

The review of the RTI and IP Acts commenced in 2011. Two discussion papers were released for public comment in 2013 and a further consultation paper was released in 2016. Sixty-four submissions were received by the Department of Justice and Attorney-General during the 2013 consultation and a further 69 submissions were received in response to the 2016 consultation paper.<sup>13</sup>

The *Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009* (Review Report) was tabled in the Legislative Assembly by the Attorney-General on 12 October 2017.

The review found that the objects of the RTI and IP Acts are relevant and being achieved but that the legislation can be improved.<sup>14</sup>

The Review Report recommended amendments to the IP Act and the RTI Act to:

- *provide a single right of access to documents under the RTI Act and move the right of amendment of personal information held by agencies from the IP Act to the RTI Act;*
- *amend the IP Act to extend privacy obligations to subcontractors;*
- *reinstate a higher threshold for consultation with third parties;*
- *make the access application form and amendment application form optional;*
- *streamline disclosure log and publication scheme requirements;*
- *clarify privacy complaint processes and make them more efficient;*
- *give agencies discretion to provide applicants with a schedule of documents, rather than this being a mandatory requirement;*
- *amend the exemption and exclusion provisions to remove the exemption for investment incentive scheme information and permit the release of child protection information in certain circumstances;*
- *streamline annual reporting requirements and transfer responsibility for preparing the annual reports to the Information Commissioner;*
- *provide greater flexibility for agencies transferring personal information outside Australia;*
- *update a number of definitions in the IP Act; and*
- *address various operational issues identified as part of the review.*<sup>15</sup>

---

<sup>11</sup> *Right to Information Act 2009*, s 183(2); *Information Privacy Act 2009*, s 192(2).

<sup>12</sup> *Right to Information Act 2009*, s 183(3); *Information Privacy Act 2009*, s 192(3).

<sup>13</sup> Department of Justice and Attorney-General, *Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009*, October 2017, p 9.

<sup>14</sup> Department of Justice and Attorney-General, *Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009*, October 2017, p 5.

<sup>15</sup> Department of Justice and Attorney-General, *Report on the review of the Right to Information Act 2009 and Information Privacy Act 2009*, October 2017, pp 5-6.

The OIC advised:

*As previously reported to predecessors to this Parliamentary Committee, the uncertainty about when the review would proceed, and extended period before the review progressed and was finalised, caused OIC and potentially other stakeholders difficulty, including in relation to planning the allocation of resources for OIC functions for expected implementation. ...*

*The amendments proposed by the review will streamline the legislation, create greater certainty, efficiency and effectiveness. Such outcomes are sought at the earliest opportunity to avoid inconvenience and cost to stakeholders involved, including members of the community, organisations and government. OIC is looking forward to amendments to implement the review recommendations progressing as soon as possible to ensure the review outcomes are realised.<sup>16</sup>*

Further:

*Twenty-two recommendations require legislative amendment at this stage. However, it is important that the work involved with delivering the remaining recommendation, Recommendation 13, also progresses as a matter of priority. Two important pieces of work flow from Recommendation 13 – further research and consultation to establish (i) whether there is justification for moving towards a single set of privacy principles in Queensland, and (ii) whether a mandatory breach notification scheme should be introduced.*

...

*Consolidating the IPPs and NPPs into one set of harmonised Queensland Privacy Principles that are consistent with the APPs should reduce compliance costs and administrative burden on agencies in the long term, and would be a valuable red tape reduction exercise. As privacy demands on agencies increase, so too does the need for simple, accessible and consistent information about agencies' obligations. This is so, particularly as data has no borders and Australia will be under pressure to meet increased privacy obligations in Europe. Queensland consistency with the Australian privacy regime will reduce public confusion and ensure Queensland is at the forefront of privacy policy in this country, in line with its innovation and information economy objectives.*

...

*Data breach notification allows affected individuals to take remedial steps to lessen adverse consequences, and is an important transparency mechanism for governments. However, given economic and reputational costs associated with data breaches, entities may be reluctant to report data breaches unless mandated to do so. The Commonwealth's mandatory data breach notification scheme is an appropriate model on which to base a Queensland scheme.*

*The implementation of the recommended amendments to the legislation and other proposed activities have significant implications for OIC functions. OIC has a role to raise awareness and educate, train and support agencies and the community in relation to the operation of the legislation. OIC will need to assess the impact of the legislative changes and review our extensive online resources including guidelines, online training (e-learning, recorded webinars, videos), selfaudit tools and annotated legislation. We will also need to update our training course content, audit test programs, knowledge management resources, case management system, forms and templates. We will conduct training on specific aspects of the amendments to assist agency staff to understand the changes.<sup>17</sup>*

---

<sup>16</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 6 (question 10).

<sup>17</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, pp 7-8 (question 11).

## 2.4 Strategic review

One of the committee's functions is to examine each strategic review report tabled in the Legislative Assembly under the RTI Act and, if appropriate, to comment on any aspect of the report and to make recommendations.

On 26 April 2017, PricewaterhouseCoopers (Strategic Reviewer) issued its report on the independent strategic review of the OIC (Strategic Review Report). The Strategic Review Report was tabled in Parliament on 11 May 2017 by the Attorney-General and referred to the Legal Affairs and Community Safety Committee of the previous Parliament (previous committee) for its consideration under s 188(7) of the RTI Act. The previous committee reported on the Strategic Review Report in its *Report No. 68, 55<sup>th</sup> Parliament, Oversight of the Information Commissioner*, tabled 29 September 2017.

The OIC advised that it 'has made significant progress in implementing the recommendations of the Strategic Review.'<sup>18</sup> In its Annual Report, the OIC stated:

*We welcomed the report findings and accepted all recommendations. ... We note that six of the ten recommendations required additional ongoing funding for OIC or change to the RTI and IP Acts. The Information Commissioner has written to the Attorney-General outlining the implications of such recommendations.*

*In May 2017 we commenced work to improve our functions by primarily focusing on implementing the recommendations that did not require additional funding or legislative changes.*

*We immediately restructured our corporate services to consolidate all corporate services including the Information and Assistance, and Training and Stakeholder Relations teams into the existing corporate services function. We also established an enhanced corporate services leadership role in place of the substantively vacant Manager role, in line with the PwC recommendation. This role was advertised in May 2017 and appointment made in July 2017.*

*Prior to the Strategic Review, we appointed an acting Director to the Performance Monitoring and Reporting (PMR) function, on a secondment basis from the Queensland Audit Office. The position was created by reclassifying the vacant First Assistant Information Commissioner position. This approach provided dedicated leadership and focus on continuous improvement within the performance monitoring function. The Strategic Review endorsed the approach and the Director, Audit and Evaluation was made permanent in June 2017.*

*We commenced a formal training and engagement needs analysis across agencies to identify appropriate and specific requirements so we might coordinate our efforts more effectively.*

*We also started developing a remote communications and engagement strategy to focus and build on our current engagement efforts. This strategy will help us to further engage remote communities and agencies using a range traditional communication and digital strategies.<sup>19</sup>*

The OIC advised that in addition to the progress reported in the Annual Report, the OIC:

- *has worked with the Department of Justice and Attorney-General (DJAG) to progress a budget submission for recurrent funding for permanent staff in accordance with the review recommendations made by the independent Strategic Reviewer, PwC*
- *is providing advice as required in relation to recommendations regarding legislative amendments to the RTI and IP Acts, including providing OIC with an ability to accept privacy*

---

<sup>18</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 9 (question 12).

<sup>19</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 8.

*complaints at its discretion, and to enable OIC to administer the collection of performance reporting by agencies (with appropriate associated resourcing)*

- *has developed and implemented a policy entitled “Management and separation of functions” to address perceptions of conflicts of interest arising from OIC’s dual role of advisor and decision maker*
- *has explored the potential for automated application status reports to be produced and distributed to agencies. Unfortunately, OIC’s existing database does not allow for the automatic production of meaningful reports that could be provided to agencies*
- *is progressing the development and implementation of a career progression strategy for OIC staff*
- *has completed a training needs analysis to inform OIC’s training and engagement strategy and support effective coordination of OIC’s effort.*<sup>20</sup>

## 2.5 Staff funding

One of the key recommendations of the Strategic Review Report was that the OIC should receive additional permanent funding to allow for the creation of new permanent external review positions to effectively meet increased application volumes and complexity.<sup>21</sup> Ms Rangihaeata described the issues faced by the OIC because of insufficient funding for staff:

*The difficulty for us is that for a number of years—for nine years—we have had to temporarily staff a considerable chunk of our external review function. Because of that, we cannot permanently retain our key experienced staff. We have had quite a bit of churn, which was acknowledged in the strategic review report—I think it was 33 per cent that they calculated on figures we gave them in that period they looked at—and that really has an impact on the office. While we have had approval to access cash reserves in most years, a lot of years we have been underspent on that figure because we simply cannot fill all of those positions because people leave to gain greater job security and it is very hard to retain people and fill positions. It also has an impact on the more senior staff in terms of supervising new staff, bringing people up to speed and so on. At the moment we have one of those positions we cannot fill. While we have that level of demand, we are without a review officer and that has been the case since early this year. That has been a very common predicament for us over a number of years. At times we have been two down. It has been quite difficult.*<sup>22</sup>

The OIC described the likely impact if funding in line with the recommendations in the strategic review, and for resourcing future IT services requirements, is not obtained:

*The absence of additional funding in 2018-19 and beyond to support the increased workload will have a significant impact on the ability of the Information Commissioner to perform statutory functions as required under the RTI Act and IP Act, and ensure appropriate corporate governance, as recognised by the Strategic Reviewer.*

*Refusal of funding would result in substantial backlog of external review applications, with significant implications for timeliness and as a result an important limb of Queensland’s integrity and accountability framework will decline in effectiveness. For government agencies to be effectively open and accountable, independent and fair review of decisions made under the RTI*

<sup>20</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 9 (question 12).

<sup>21</sup> Recommendation a. See also, Rachel Rangihaeata, public meeting transcript, Brisbane, 30 April 2018, p 2.

<sup>22</sup> Public meeting transcript, Brisbane, 30 April 2018, pp 8-9. See also, Office of the Information Commissioner, Response to pre-hearing questions on notice, p 11 (question 14).

*and IP Acts must be timely. The withdrawal of funding in 2014-15 resulted in a significant backlog, with major delays for outcomes, including the release of information by either formal decision or through informal resolution negotiated by OIC.*

*Experience with previous backlogs has shown that applicants and agencies are less likely to informally resolve external reviews that are not dealt with in a timely way. OIC currently informally resolves approximately 85-90% of external review applications without a written decision. OIC is highly regarded across jurisdictions for efficient early resolution processes, which have been reviewed and replicated elsewhere.<sup>23</sup>*

## **2.6 Office relocation**

The OIC relocated offices in October 2017. The relocation costs were within the approved budget and the relocation has resulted in savings on outgoings for electricity, security and cleaning.<sup>24</sup>

When questioned on the benefits and disadvantages of the new premises, the OIC stated:

*The new premises have provided OIC with a contemporary fit-for-purpose workspace that supports staff to effectively deliver OIC's services. Additional benefits of the new premises is the savings on lease costs as compared to other available buildings, along with savings that have been achieved in outgoing[s] ...<sup>25</sup>*

The OIC has signed a financial commitment to rent the premises until 31 July 2022, with two extension option periods of 12 months each.<sup>26</sup>

## **2.7 Priorities for 2018-19**

OIC identified its priorities for 2018-19:

*2018-19 will be a significant year for OIC and right to information and information privacy in Queensland. As we approach ten years of the operation of the legislation, we must take stock and reflect on what we have achieved with stakeholders during this time, and where we need to prioritise our activities in the next few years to realise the best outcomes.*

*During 2018-19 we will conduct a self-assessment electronic audit of all agencies. This audit will be the fourth in a series conducted every three years since 2010. This tool provides us with a good health check across Queensland Government departments, local governments, Hospital and Health Services, universities, Government Owned Corporations, statutory bodies and other public authorities. We will combine this information with other audit and relevant information to help us determine our future priorities as we increase our expectations of agency maturity and self-management of RTI and IP obligations.*

*Over the next 12 months OIC will also focus on continuing to implement the Strategic Review recommendations, including strategies developed in relation to training, communications and engagement and career progression. If recurrent funding is received from 2018-19, OIC will fill the relevant positions as soon as possible to provide required stability.*

*Another key priority will be assisting in the implementation of the Attorney-General's recommendations arising from the legislative review of the RTI and IP Acts. The results of this review is integral to a contemporary legislative framework for right to information and*

---

<sup>23</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, pp 12-13 (question 16).

<sup>24</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, pp 11-12 (question 15).

<sup>25</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 12 (question 15).

<sup>26</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 12 (question 15).

*information privacy, and to an effective and high functioning organisation that protects Queenslanders' rights to information and privacy. OIC expects that the implementation of the review of the RTI and IP Acts will involve considerable resources in both the legislative development and implementation stages ...*

*Another ongoing priority for OIC is to raise awareness of, and promote, good privacy practices. And as evidenced by recent public concern about Facebook's alleged misuse of its users' data, public awareness of privacy incursions will continue to grow. So too will public expectations of respect for their privacy. This is pertinent for government use of online platforms for service delivery, information sharing within government, and the use of rapidly advancing technologies, such as biometric identification, CCTV, body worn cameras, drones, the internet of things and ubiquitous handheld devices. Government has a responsibility to be a pacesetter in maintaining and protecting its citizens' privacy, and OIC's privacy functions are crucial to securing high standards in governments' use of personal information and public confidence in government.<sup>27</sup>*

---

<sup>27</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 15 (question 21).

### 3 Examination of Annual Report

#### 3.1 Overview

The OIC tabled its 2016-17 Annual Report on 28 September 2017. The Annual Report states that it was prepared in accordance with all relevant Queensland legislation.<sup>28</sup> The Annual Report provides:

- an account of revenue and how the OIC used public funds
- a description of challenges and opportunities that influenced OIC's actions, as well as its priorities for the next year
- an assessment of achievement in meeting corporate and operational plans as measured against a range of performance indicators.<sup>29</sup>

#### 3.2 Performance

Amongst other things, the Annual Report advises on the OIC's performance in relation to the following service areas:

- external review
- privacy advice and complaint mediation
- assistance and monitoring.<sup>30</sup>

The OIC's performance in each of these areas is summarised below, as is its financial performance.

##### 3.2.1 External review service

In 2016-17, the OIC received 515 external review applications, the second highest number received since the RTI Act and IP Act commenced in 2009. This was 159 more matters than in the 2015-16 financial year.<sup>31</sup>

In response to a question about the increase in external reviews, the OIC advised that there is 'no identifiable trend in either applicant type, information sought or refusal ground relied upon by agencies and Ministers that assists in determining the reasons [for] the 2016-17 increase in external reviews.'<sup>32</sup>

With respect to the OIC's objective to provide independent, timely and fair review of decisions made under the RTI Act and IP Act (objective one), the Annual Report stated:

- 73% of applicants were satisfied with the conduct of reviews (exceeding the target of 70%, and 1% better than in the previous year)
- 92% of agencies were satisfied with the conduct of reviews (exceeding the target of 75%, and 1% better than the previous year)
- it took a median 86 days to finalise a review (meeting the target of 90 days, and 12 days less than in the previous year)
- 0% of reviews older than 12 months remained open at the end of the reporting period (meeting the target of 0%, and down from 6% in the previous year)

---

<sup>28</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 83.

<sup>29</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p iii.

<sup>30</sup> Office of the Information Commissioner, *Annual Report 2016-17*, pp 3-5.

<sup>31</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 1.

<sup>32</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 1 (question 1).



- 413 reviews were finalised (exceeding the target of 300, and up from 407 in the previous year)
- 88% of review applications were resolved informally without a written decision (exceeding the target of 75% and equalling the percentage in the previous year)
- 80% of review applications finalised to received (not meeting the target of 100%, and down from 112% in the previous year).<sup>33</sup>

The committee noted that 73% of applicants expressed satisfaction with the conduct of external reviews and asked the OIC if applicants provided reasons for their satisfaction/dissatisfaction. OIC responded:

*Applicants are invited to provide reasons for their satisfaction/dissatisfaction as part of OIC's end of review survey process. In 2016-17, out of 35 survey responses returned to OIC, 14 elected to not comment and 21 provided short comment. In terms of dissatisfaction, the tenor of concerns was connected to the limits on OIC's jurisdiction and dissatisfaction with not receiving further information on review. Undertaking an external review means considering access to information issues only- not for example, the conduct of agency officers in a particular case nor the content of information. External review staff frequently explain the confined scope of our jurisdiction with applicants during the course of an external review. In terms of satisfaction, the professionalism of OIC staff was a clear theme.*<sup>34</sup>

The committee asked about the use of an online survey tool for privacy complaints and was told:

*OIC introduced an online survey tool on 1 July 2017 to measure the satisfaction level of privacy complainants with OIC's complaint handling process. Learnings from the pilot of a survey tool were used to inform the question design and survey length. Unfortunately, the rate of return of surveys remains low, with only two (2) received in the 2017-18 financial year to date. With insufficient meaningful data obtained in four of the last five financial years to 2016-17, OIC has proposed to discontinue this as an SDS measure from 2018-19.*<sup>35</sup>

Given that OIC has consistently bettered the target of finalising 300 reviews per year, with over 400 reviews finalised in each of the past five financial years, the committee asked whether the OIC intends to increase the target. The OIC advised:

*OIC has achieved these results with temporary staff funded by approved access to cash reserves in most years to meet the additional unfunded demand since 2009. ... in accordance with the recommendation of the Strategic Review of the OIC, we have sought recurrent funding that would provide a consistent level of external review funding. Without additional funding it would not be possible to maintain this level of output, particularly when managing a very high level of incoming applications and a likely backlog. OIC will review this target once the budget outcome is known.*<sup>36</sup>

The Annual Report also advised:

- The OIC was impacted by 'continued limited resourcing and temporary funding; a corresponding high staff turnover; participating in and co-operating with the Strategic

<sup>33</sup> Office of the Information Commissioner, *Annual Report 2016-17*, pp 3, 17.

<sup>34</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 2 (question 3).

<sup>35</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 4 (question 7).

<sup>36</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 1 (question 2).

Review; and handling an increasingly high number of appeals before the Queensland Civil and Administrative Appeal Tribunal.<sup>37</sup>

- Twenty-one decisions went on appeal, compared with five the previous year. The Annual Report noted that ten of the appeals are related, and three of the appeals were lodged by an applicant who had lodged two appeals in the previous year.<sup>38</sup>
- Seven appeals from decisions of the commissioner were finalised by QCAT; two appeals were withdrawn; two matters were remitted back to the commissioner for new decisions.<sup>39</sup>
- The commissioner received four applications, of which two were granted, from non-profit organisations for hardship status. This means that processing and access charges were waived.<sup>40</sup>
- One application to declare an applicant vexatious was made by an agency but it was not granted.<sup>41</sup>
- With respect to OIC's failure to meet its performance target relating to the percentage of reviews finalised to received, the OIC explained that it was not met because of the large number of external review applications received.<sup>42</sup>

Noting that 21 decisions were appealed to QCAT in 2016-17, compared with five appeals in the previous year, the committee asked about the impact of appeals on resourcing in 2016-17 and the likely impact on resourcing in 2017-18. The OIC advised:

*The impact was felt across external review as a whole in that Principal and Senior Review Officers had less capacity to take on external review matters while also managing QCAT appeals. This necessitates more junior review officers taking on higher external review workloads and Assistant Information Commissioners needing to undertake higher vigilance in terms of supervision to ensure quality and timeliness of the review service. OIC has taken steps to mitigate the impact. We reviewed our suite of QCAT documentation to ensure that appeal books and submissions can be quickly and consistently created.<sup>43</sup>*

...

*OIC considers that these appeals has/have a substantial impact in 2017-18. OIC's role on external review is quasi-judicial. For this reason, although OIC generally takes a very limited role in appeals arising from decisions of the Information Commissioner the number of appeals, the complexity of interrelated appeals and the legal issues they covered has meant that a considerable amount of review officer time has been spent in the preparation of submissions and fulfilment of directions issued by the tribunal as well as time before the tribunal in hearings. This is time that otherwise would be spent on review work. Thus the impact of appeals on resourcing in 2017-18 is the reduced ability of review officers to undertake a full complement of review work while attending to appeal obligations.<sup>44</sup>*

---

<sup>37</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 17.

<sup>38</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 19.

<sup>39</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 19.

<sup>40</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 23.

<sup>41</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 23.

<sup>42</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 21.

<sup>43</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 5 (question 9(b)).

<sup>44</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 6 (question 9(c)).

The committee asked whether the number of appeals in 2016-17 was aberrant or if it is expected that the OIC will continue to have large numbers of decisions appealed. The OIC stated:

*2016-17 was an aberrant year in that 10 related matters were appealed to QCAT. Another 5 matters were from decisions connected to a single applicant. OIC strives to provide independent timely and fair review of decisions made about access to information and cannot predict what proportion of its decisions or even which matters are likely to be appealed. Each decisions turns on its own particular facts and circumstances. OIC will continue to issue plain English decisions addressing submissions made on review and explaining the rationale for its decisions. With increasing demand for OIC's external review service, a complementary increase in QCAT appeals is possible. However, as at 20 April 2018, OIC had received 8 QCAT appeals in 2017-18.<sup>45</sup>*

### **3.2.2 Privacy advice and complaint mediation service**

With respect to the OIC's objectives to provide an independent, timely and fair privacy complaint mediation service (objective two) and to assist agencies to achieve compliance with the privacy principles (objective five), the Annual Report advised:

- 100% of agencies were satisfied with the privacy complaint mediation service provided (exceeding the target of 75%)
- 84% of privacy complaints received were finalised (failing to meet the target of 100%)
- it took a mean average of 39 days to make a decision whether to accept a privacy complaint (failing to meet the target of 14 days)
- it took a mean average of 146 days to finalise an accepted privacy complaint (exceeding the target of 90 days; up from 83 days the previous year)
- the OIC provided 312 advices, consultations and submissions (exceeding the prior year by 85)
- the OIC participated in 239 meetings, regional visits and information sessions (exceeding the prior year by 92)
- the OIC did not conduct any reviews (failing to meet the target of one review)
- the OIC provided 222 advices to the community, government and private sector organisations
- the OIC held approximately 90 consultations with state, national and local government agencies.<sup>46</sup>

The OIC explained the discrepancy between the target of 14 days to make a decision whether to accept a privacy complaint and the result of 39 days:

*Most decisions are made within the target of 14 mean average days. However, there are a handful of complaints that take a lot longer to consider. Because we receive a small number of privacy complaints in a financial year period, a handful of privacy complaints that take longer can have a big impact on the overall timeliness of decisions. For example, 10 percent of the complaints we received took over 100 days for us to make a decision whether to accept the complaint, with one complaint taking over 200 days. The complexity of the complaint combined with an inability on the part of the agency, and in some instances, the complainant, was the*

---

<sup>45</sup> Office of the Information Commissioner, Response to pre-hearing questions on notice, p 6 (question 9(d)).

<sup>46</sup> Office of the Information Commissioner, *Annual Report 2016-17*, pp 25-26.

*reason for these timeframes. We are reviewing all OIC performance targets in 2017–18 and will consider these issues as part of the review.*<sup>47</sup>

With respect to the failure to meet the target of 90 mean average days for finalising an accepted privacy complaint, the OIC stated:

*Our result for 2016–17 was 146 mean average days. This was due in part to a small number of 7 complaints accepted in 2016–17 in which one complaint took over 250 days to finalise and another complaint that took over 200 days to settle. Of these two complaints, one was successfully resolved through a financial settlement. While the other was not resolved through mediation, the complainant indicated on their survey form that they were kept informed about the progress of the complaint and that the time taken to deal with their complaint was in line with their expectations.*<sup>48</sup>

The OIC received 68 privacy complaints and closed 57 privacy complaints, which is consistent with previous reporting periods.<sup>49</sup>

The OIC accepted eight privacy complaints and successfully mediated four privacy complaints.<sup>50</sup>

The OIC expects that new and emerging technologies, information security, public safety and information will continue to require a significant proportion of the OIC's resources in 2017-18.<sup>51</sup>

### **3.2.3 Assistance and monitoring service**

With respect to the OIC's objectives to improve agencies' practices in right to information and information privacy (objective three) and to promote greater awareness of right to information and information privacy in the community and within government (objective four):

- 100% of agencies were satisfied with the information and assistance provided (exceeding the target of 80%)
- 98% of agencies were satisfied with the quality of information provided (exceeding the target of 75%)
- 41 training activities were provided (exceeding the target of 30)
- 9,676 people were trained (exceeding the target of 500)
- 94% of course participants were satisfied with sessions (exceeding the target of 75%)
- 684 awareness activities were conducted (exceeding the target of 190)
- 5,081 enquiry (written and oral) responses were provided to agencies and the community (exceeding the target of 2,500)
- 173,506 website visits (exceeding the target of 80,000 and up 20% from the previous year)
- 4 monitoring and compliance activities (failing to meet the target of 10).<sup>52</sup>

---

<sup>47</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 29.

<sup>48</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 29.

<sup>49</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 28.

<sup>50</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 28.

<sup>51</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 26.

<sup>52</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 33. The counting methodology for the performance target relating to the number of monitoring and compliance activities was altered to focus on the number of reports tabled in Parliament. In the past, individual desktop scorecards sent to agencies had been counted: Office of the Information Commissioner, *Annual Report 2016-17*, pp 33, 39.

The Annual Report also advised:

- the Enquiries Service received:
  - 3,759 telephone calls (up from 3,460 in the previous year)
  - 1,252 emails/letters (up from 1,111 in the previous year)
  - 135 web inquiries (up from 78 in the previous year)<sup>53</sup>
- three new resources were published and 41 resources were ‘extensively reviewed’<sup>54</sup>
- 8,454 participants completed the OIC’s online training courses, with 94% of training participants satisfied with sessions provided<sup>55</sup>
- the OIC promoted awareness through:
  - activities: Right to Information Day, the Solomon Lecture and Privacy Awareness Week
  - its website
  - engagement with rural and regional agencies<sup>56</sup>
- the OIC tabled five reports to Parliament:
  - Desktop Audits 2014-16 – Website compliance with right to information and information privacy – local governments and hospital foundations (tabled 17 August 2016)
  - 2016 Right to information and information privacy electronic audit – Queensland public sector agencies’ responses and comparative analysis with 2010 and 2013 results (tabled 17 August 2016)
  - Follow-up of Report No. 2 of 2014-15 – Review of universities’ implementation of recommendations – Compliance with right to information and information privacy – Griffith University, Queensland University of Technology, University of Queensland and University of Southern Queensland (tabled 30 November 2016)
  - Compliance review – Gold Coast Hospital and Health Service – Review of the Gold Coast Hospital and Health Services compliance with the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld) (tabled 14 February 2017)
  - Desktop Audits 2016-17 – Website compliance with right to information and information privacy – hospital and health services (tabled 21 March 2017).

### 3.2.4 Financial performance

The OIC reported that it ended the 2016-17 financial year ‘in a secure financial position with adequate reserves to fulfil our responsibilities in 2017-18.’<sup>57</sup> The financial statements report a deficit of \$324,000 for 2016-17 (higher than \$247,000 in the prior reporting period). The OIC explained the reason for the deficit and the likely funding for temporary staff in 2017-18:

---

<sup>53</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 34.

<sup>54</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 35. See also, Office of the Information Commissioner, Response to pre-hearing questions on notice, pp 2-3 (question 4).

<sup>55</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 36.

<sup>56</sup> Office of the Information Commissioner, *Annual Report 2016-17*, pp 37-39.

<sup>57</sup> Office of the Information Commissioner, *Annual Report 2016-17*, p 53.

*We accessed \$324,000 from cash reserves (accrued surpluses) to fund additional temporary External Review staff, in accordance with approval from the Attorney-General under section 133 of the RTI Act. However, we continued to experience difficulty recruiting and retaining temporary external review staff.*

*The Strategic Review recommended that OIC be given ongoing funding to allow for the creation of permanent external review positions. The Review report is currently being considered by the Legal Affairs and Community Safety Committee and the Queensland Government. The Attorney-General has approved access to \$546,000 from our surplus cash reserves for 2017–18. These funds will be used to retain temporary review officers pending a permanent funding solution as recommended by the Strategic Review report.<sup>58</sup>*

#### **4 Committee comment**

The committee congratulates the OIC on its performance in 2016-17, especially in light of increased demand for its services.

The committee recognises, however, that not all users of OIC's services are satisfied with the OIC's service and/or with the Information Commissioner's decisions. This is evidenced by users expressing dissatisfaction in surveys conducted by the OIC, complaints received by the committee about the OIC, and by the lodging of appeals to QCAT against decisions. The committee has given due consideration to the issues raised in complaints to the committee but does not consider there to be any systemic issue at the OIC that needs to be addressed.

The committee notes that the OIC has sought recurrent funding in accord with recommendation a. of the Strategic Review to facilitate the creation of new permanent external review positions, and that as an interim measure, the Attorney-General has approved access to \$546,000 from OIC's cash reserves to fund temporary staff in 2017-18. We recognise the challenges that temporary staff have presented to OIC in the form of turnover and continuous recruitment and training.

The committee appreciates the assistance provided by the Information Commissioner and OIC staff as the committee performed its oversight role. We take this opportunity to express our continued support of the Information Commissioner and the OIC in promoting accountability, openness and transparency.

##### **Recommendation 1**

The committee recommends the House notes the contents of this report.

---

<sup>58</sup> Office of the Information Commissioner, *Annual Report 2016-17*, pp 53-54.

## Appendix A – Officials at public meeting

### Office of the Information Commissioner

- Ms Rachael Rangihaeata, Information Commissioner
- Ms Louisa Lynch, Acting Right to Information Commissioner
- Mr Philip Green, Privacy Commissioner