



Office of the Information Commissioner  
Queensland

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Dear Commissioners

**Productivity Commission Draft Report on Access to Justice Arrangements**

I am writing in relation to the Productivity Commissioner Draft Report on Access to Justice Arrangements (the draft Report). I apologise for not making a submission during the consultation period.

It has been brought to my attention that the draft report contains specific costings of the cost per case of privacy and FOI commissioners in Australian jurisdictions in chapter 9 that appear to be inaccurate and misleading. Such inaccuracies are of concern given that draft findings and recommendations are made on this basis.

The 'cost per complaint' set out in Figure 9.2 indicates that the cost for a 'privacy and FOI complaint' in Queensland in 2011-12 was \$12500, which is more than twice the actual average cost of approximately \$5500.<sup>1</sup> It appears that the draft report costings may have been calculated by dividing the total budget for the Office by the number of external review applications and privacy complaints finalised in 2011-12. However, only approximately 50% of the budget for the Office is allocated to the external review and privacy complaint functions.

The Office performs a range of other statutory functions including performance monitoring and reporting to Parliament and support and assistance activities including training, an Enquiries Service, extensive online information resources, expert privacy advice and community awareness activities. The resources of the Office are therefore allocated to a range of functions, beyond what it appears the draft report considers 'privacy and FOI complaints'.

There is no definition of 'privacy and FOI complaint', which is significant given there are substantial differences between the legislative frameworks and jurisdiction for each relevant body. For example, unlike the Commonwealth and

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<sup>1</sup> Total expenses for the Office of the Information Commissioner in 2011-12 were \$5.662M. 457 external review applications and 57 privacy complaints were finalised in 2011-12. Approximately half the expenses of the Office of the Information Commissioner are attributed to the external review and privacy complaint mediation functions. The approximate average cost of external reviews and privacy complaints finalised by the Office in 2011-12 is therefore \$5507.

Victoria, the Queensland Office of the Information Commissioner does not have jurisdiction to deal with FOI complaints. Relevantly, our functions include merits review of agency decisions about access to, and amendment of, documents, and a limited role of providing a mediation service for privacy complaints. Each jurisdiction has a different legislative framework for freedom of information and privacy, which makes comparative costings of 'complaints' difficult as each oversight body performs a different range of functions.

I also note that the draft report states that "*Efficiency and visibility of these services could be improved if they were run by the appropriate state or territory ombudsman ... or an amalgamated tribunal ...*" In Queensland the Office of the Information Commissioner was separated from the Queensland Ombudsman in 2005. The Office subsequently significantly improved timeliness, including finalising a substantial backlog of outstanding external review applications that were several years old in 2005. Since 2005 the Office has continuously improved the efficiency and effectiveness of the external review process, with particular success in early resolution strategies and a high rate (90%) of informal resolution where the parties to the review agree to an outcome and no decision is required. Applicant and agency satisfaction rates continue to exceed performance targets.

The effectiveness of the external review function has been enhanced through the synergy of the additional statutory functions the Office has performed since 2009 under the *Right to Information Act 2009* and the *Information Privacy Act 2009*. The Office is able to quickly respond to issues by supporting agencies to improve the quality of decision making and practices to reduce demand for formal applications that may subsequently be reviewed by the Office. Similarly, our performance monitoring activities have deterred poor agency practices and led to significant improvement in application handling.

In relation to visibility, detail regarding an applicant's external review rights are required to be included in the agency decision under the *Right to Information Act 2009* and the *Information Privacy Act 2009*. As a result, applicants have a clear path to the Office to exercise their review rights. The Enquiries Service and online information resources complement the information provided to applicants.

The Office of the Information Commissioner has provided an independent merits review service for decisions about access to documents since 1992, including 9 years as a separate statutory authority. The efficiency and effectiveness of the Office has improved over time with the depth of experience and synergy of the additional statutory functions allocated to the Office under the *Right to Information Act 2009* and the *Information Privacy Act 2009*. In 2013-14 the Office finalised over 500 external review applications, with no outstanding applications over 12 months old at 30 June 2014.

It is also important to note that the independence of the Office from other bodies which it reviews is critical to the effectiveness of the Office in ensuring it is clear to all parties that it is impartial and unbiased in conducting a review. The Office is required to independently review decisions about access to documents of, and deal with privacy complaints regarding, the Ombudsman and similar bodies in Queensland.

Yours sincerely

Rachael Rangihaeata  
**Information Commissioner**