

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

STATUTORY OFFICE HOLDERS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 16 MAY 2012**

SESSION ONE

Members

Hon Max Trenorden (Chairman)
Hon Jon Ford (Deputy Chairman)
Hon Ken Baston
Hon Jim Chown
Hon Ed Dermer

Hearing commenced at 10.03 am**BLUEMMEL, MR SVEN****Information Commissioner, examined:**

The CHAIRMAN: On behalf of the committee, welcome to the hearing. We do not need to go through any formal process, because you are an officer of the Parliament. We have a few time pressures on us today, so, if you do not mind, we will get into our annual event and have a talk to you about how you are going. You have got these questions, anyhow.

Mr Bluemmel: I do, yes.

The CHAIRMAN: But members will ask their own questions as they occur to them. In point 1.1, we talk about your annual report and that your office still has considerable backlog complaints. So that is where we would like to start. My staff have just, quite rightly, pointed out to me that if there is any part of your evidence that you do not want to have on the record, you need to let us know. As we said when we spoke to you several years ago, we want to have a good working relationship with you. So if at some time you feel that you need to tell us something, but you do not want it on the record, we need to approve of that and then make the arrangements for Hansard. This is actually an open meeting, and we put this in the press; so someone could walk through the door and sit in the gallery.

Mr Bluemmel: Thank you very much, Mr Chairman. I am delighted to be here again. I, too, think this is a very important relationship, and of course being an independent officer, it has its limitations in terms of how I can make myself known and share the issues that I do need to share in the public interest, so I think this committee is the ideal forum.

The CHAIRMAN: I am cutting in on you, sorry, but we will be reporting this in our end-of-year process, so we will be reporting what you are saying, in our own language, back to the house.

Mr Bluemmel: Great; thank you. Mr Chairman and members, I will then go straight to the questions you have asked and take you through my answers, and of course I am at your disposal for any further questions. In terms of the backlog, I have gone through some of the figures. The overall size of the backlog is still largely unchanged. But there is good news in that we have managed to crack a lot of the older, more intractable matters. I will give you some highlight figures. At the end of June 2010, we had 85 total disputes on hand, at an average age of 223 days, so they are over six months old on average. We brought that down at the end of last financial year, so still 85 matters on hand, but with an average age of 192 days. I did some unaudited numbers yesterday using our live system. We have had an increase to 96 matters, but the age is again down to 187 days. Most encouraging of all, over those three periods, the percentage of disputes before me that are older than 12 months, at the end of June 2010, it was 20 per cent; at the end of June last year, it was only 14 per cent; and as of yesterday, it is only 13 per cent. So the backlog is still large, but we have made significant inroads in decreasing the age of matters by tackling the difficult ones and getting the old ones out of the way. That is still, in my opinion, unacceptable. I think that someone who comes to me on a dispute should not have to wait anywhere near that long. But the trend is very good, though. The other important change is that in last year's budget, my office was given some additional funding, which allowed me to recruit two more officers to reduce the backlog further. We have filled those positions and we expect to be able to make inroads into the backlog more quickly now.

The CHAIRMAN: That is a pretty important part of your function, obviously.

Mr Bluemmel: It is crucial.

The CHAIRMAN: Do any other members have any comments on that?

Hon ED DERMER: Only that is encouraging to hear, Mr Chairman.

Hon JIM CHOWN: When you say you have resolved a dispute, does that mean both parties are happy with the advice they have received?

Mr Bluemmel: No, not necessarily. Just over half the disputes before me get conciliated, in which case both sides are, well, hopefully happy, but at the least prepared, to settle on those terms that I have suggested. In the other matters—probably about 40 per cent on average—the parties do not agree to a resolution and I have to determine it by a formal resolution, and in that sense I operate like a court, where I take the evidence and I give the parties procedural fairness, but ultimately I make a binding ruling, and they can obviously appeal to the Supreme Court. So chances are that there is one party in those cases that did not get what it wanted.

The CHAIRMAN: I have just been told that I do need to go through a formal process with you. Have you signed and understood the “Information for Witnesses” form?

Mr Bluemmel: I have.

The CHAIRMAN: You will understand that these proceedings are being recorded by Hansard. You have been through the Hansard process before. That is, that if you refer to any document—which you might—during the conversation, you need to give us the title of the document so that we can track it down. The transcript will become a matter for the public record. If for some reason you wish to make a confidential statement—which I did talk to you about—you should request that the evidence be taken in closed session. Please note that until such time as your transcript is published, it should not be made public. I advise you that publication or disclosure of uncorrected evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. It is important that I read that out, because that actually protects you.

Mr Bluemmel: I understand. Thank you.

Hon JIM CHOWN: Just to bring you back to my question, when you state that disputes are resolved, they are resolved either through conciliation or through law, and there is no other come-back; they are final?

Mr Bluemmel: The only limitation on that is if a party decides to take my formal decision to the Supreme Court, which happens, on average, about once a year. In fact, there is an example of that at the moment with Apache Energy, which is obviously in dispute about the release of documents. I actually ordered disclosure of a very large number of documents from Apache almost two years ago now. That was appealed to the Supreme Court by Apache, the Supreme Court upheld my decision, and that is now being appealed to the Court of Appeal, which is the first time in Western Australian history that that has been done. I believe it is set down for 7 June.

Hon JON FORD: That is interesting. What happens if someone asks for information from a government agency that will affect a private enterprise? I am not thinking particularly about Apache, but you raised it, and there is an extraordinary set of circumstances around Apache, so I will use that as an example. A member of Parliament or a member of the public may ask you to release information that an agency has, and the company may come back in the first instance and say, “If you release this information, it will damage our business.” That is fairly subjective. What do you do to challenge that assertion by the company? What is the consideration? I am just looking for the process.

Mr Bluemmel: I am glad you have asked that, because there are a lot of misconceptions around that whole area. Firstly, if a person applies to an agency for a document that has in it the private business information of a company or a third-party individual—which is quite frequent—then before the agency discloses that, it has to consult with that party. The misconception is that that

party has a right of veto. It does not. All it has is a right to be consulted. The agency has to make its own decision about whether that document is in fact exempt under the FOI act. In terms of what I think is the crux of your question—that is, how is a judgement made as to whether it is exempt?—the realm of exemption in the FOI act is quite prescriptive. I will not read this out in detail, unless you wish me to, but it requires, in order for a matter to be exempt, that the matter is of a certain type of commercial nature, and, more importantly, that disclosure would have a certain negative effect; for example, it would reduce the value of the document in question to the company, because it is about some novel process of manufacture or some such thing, or because it would have an adverse effect on the affairs of that company. In some cases, you also have to go a bit further and you can actually say that even if all those things are met, the document still has to be disclosed where it is in the public interest to do so. So there are quite a number of permutations there. The subjectivity of it is —

Hon ED DERMER: It is like a double test in a sense.

[10.13 am]

Mr Bluemmel: In some cases that is exactly right; yes and sometimes, sadly, frequently, we see agencies apply only part of that test or we see agencies tell an applicant, “We consulted with a third party; they objected, therefore, you can’t have it.” That is incorrect. If the agency decides, notwithstanding the objection, “You can have it because we don’t think it’s exempt”, the agency has to notify that third party and then before it releases the document, the third party can appeal to me, so no harm is done yet. The Apache case was somewhat like that where Apache actually came to me wanting me to suppress disclosure, effectively, because they claimed it was exempt, even though the agency had decided to give it out. Even though there is arguably some grey area in there, we now have close to 20 years of commissioners’ decisions and a few Supreme Court decisions that give really useful precedent about when something in that category will be exempt.

Hon ED DERMER: You are developing your own version of the common law are you?

Mr Bluemmel: Very much so, yes. In fact, we often reference, not in a binding manner of course, the common law in other Australian jurisdictions that deal with similar issues. Sometimes we choose not to apply it, for a good reason. Other times we will apply because we consider it a useful test, so the grey area shrinks with every decision.

The CHAIRMAN: That is an interesting point. I think it has been a point of hot contention for 20 years. In the case of Apache or any other firm that says, “Our share standing will significantly take a dive”, which I think is probably arguable in the Apache case, against, “The public has a right to know”. If you look at other jurisdictions in the world, particularly America, it is heavily on the public has a right to know side. Are you trying to say that it is evenly balanced or is there more a bent towards “the public has a right to know”?

Mr Bluemmel: That issue really comes up only where there is that public interest question in play and that is in play in certain commercial exemptions but not in all of them. When I come to a situation in which a case is finely balanced—in other words, I have heard the submissions from both parties; they both made good submissions as to why it should or should not be released—one thing I do is go back to the objects of the FOI act, really a first principles issue. The first object of the FOI is to enable the public to participate more effectively in governing the state, in section 3. And the second one is to basically make the state more accountable. Therefore, if a matter is finely balanced, I will look at those objects and decide whether release or non-release will further those objects. Usually, if it is finely balanced, release will favour those objects, but it has to be finely balanced. If it is clearly exempt, then we are not in that situation. But in the Apache case, where it was somewhat balanced, of course—there were good arguments on both sides—ultimately I found that it was not exempt.

The CHAIRMAN: We need to move on because we have only an hour. We will move to 1.3 and come back to 1.2. This is the question about Premier and Cabinet's provision of shared assistance to ministers who receive applications.

Mr Bluemmel: Yes; I am very pleased to say that that recommendation, which came out of my report to Parliament two years ago, has been taken up by DPC. I spoke at the formal launch of that unit on 13 April this year. It is a unit within DPC, and DPC does have considerable experience in dealing with FOI of course. But I believe the unit has been operational for somewhat longer than that—I think since the start of the year. While it is a bit early to judge the success of it, I think that is a very welcome development because I was seeing decisions coming out of ministers' offices that were at times lacking. They were not applying the proper process or the proper law, not, in my opinion, due to any desire to deliberately circumvent the act, but due to a lack of knowledge and resources within the relevant offices. I think this will have a really good chance of clearing that up. What is important, though, is that the legal obligation of making the decision remains with the minister, not with DPC.

The CHAIRMAN: The health department?

Mr Bluemmel: Yes, the health department: again, good news; I have been kept informed of what is happening there. An officer has been recruited, I believe, for 12 months, starting in February this year. They have been tasked with developing a project, which, at the end of it, will hopefully result in a better whole-of-health approach to information disclosure generally but particularly under FOI because there is a lot of inconsistency there.

The CHAIRMAN: Moving on again, 1.5. You did have a chat to us when you were newly appointed about heading off to conferences and other matters and we supported that you should do that for all the reasons you were just talking about. Can you give us an update of how that part works? Do you get information from other quarters?

Mr Bluemmel: Very much so. The association has met three times. The first time I actually hosted it here in Perth in April 2011. We met in November 2011 in Canberra and on 30 March in Adelaide. The frequency may drop off, depending on what is on the radar. It has already been a very useful exercise. We have been able to share things like case law and precedents. We have actually developed a network of officers in the commissioners' office themselves so that, for example, if one of my legal officers is dealing with a particularly difficult legal issue, she can send an email to her equivalent in all the other Australian jurisdictions saying, "Has anyone recently decided a matter on this?" Now, we are not necessarily bound by how they decided that matter, but they can often really make our research a lot more targeted and efficient, so that has already paid dividends. We have also shared approaches to how we deliver training; for example, one thing I am keen to do is deliver online training so that I can particularly help government agencies from outside the metropolitan area, which find it difficult to attend my existing training program. As a result of that, I have a lead from, particularly Queensland, which is already in this space, which will allow me to approach the market for that sort of thing with a lot more knowledge and get a much better result. They are just a couple of examples; it is working very well.

The CHAIRMAN: It is positive. I must admit I did read the papers in my pack about this harmonisation laws and uniform legislation. This is question number 6. It does raise some interesting issues.

Mr Bluemmel: It certainly does. If I may have a few minutes just to put it into context. Unfortunately, this is often misunderstood. It results from a strong drive out of COAG to harmonise certain national laws, particularly regulatory oversight of certain industries, and I think we can all see what the benefits of some such thing might be if it is implemented well. What has, in my opinion, not been sufficiently considered is what that will mean for oversight laws, FOI, privacy, which of course we do not have in Western Australia, Ombudsman legislation, record keeping legislation and so on. Of the, I think some 36, COAG areas of proposed harmonisation, some of

which have already proceeded, there are different approaches to how those oversight laws apply. If you imagine, once you have this national harmonisation of a particular area, you are going to have a situation in which state bodies, say the state Department of Transport, will then be applying nationally consistent standards but still as Western Australian public servants. Some of the proposals involve applying the commonwealth oversight laws to those officers when they apply the national law. One of the potential problems with that is it means that a number of state public servants may perhaps have to learn commonwealth FOI. Some of those public servants may have to learn commonwealth privacy. As I say, we do not have privacy here so that is a fairly new concept. That all comes at a cost. In terms of the actual enforcement mechanism, some areas are proposing that there will be a specific oversight body just for those areas. There will be an education and care services information commissioner and an education and care services privacy commissioner and so on. That can lead to the same laws, say commonwealth laws, being applied by different oversight bodies in the different states leading to great confusion of the creation of common law in noise areas.

The CHAIRMAN: What about the legal issues?

[10.24 am]

Mr Bluemmel: There are certainly legal issues. In terms of constitutional issues, I think those issues have largely been thought about and, I think, covered, because the actual law which applies the federal regime to the state public servant is actually state law, so the state has chosen voluntarily, effectively, to apply that. It is not the commonwealth legislating for the state directly. So I suspect that is covered, although that is not an area that I am a particular expert in, I must confess.

The other problem is that you might then have a situation where a member of the public or an industry, if they believe that a state public servant has information that they want and they apply under FOI, if they then have a dispute with that person, or with that agency, they may not know where to go to escalate that dispute. For some disputes they might escalate an FOI dispute to me. For another dispute under a national law, they might have to escalate it either to the commonwealth Information Commissioner or to the commissioner specifically set up for that one body of law, or even to another state's commissioner whom we have chosen to be the oversight body for that particular body of national law, and I am just concerned that any benefits from national harmonisation of the subject matter will be partially, or perhaps even fully, eroded by the increasing bureaucracy and complexity of administering the oversight laws.

The CHAIRMAN: I think all of us here would agree that there is some risk of that. Perhaps one of the real ways of dealing with this is the last dot point we have here; that is, you report it in the annual reports while it remains a problem. Do you intend to do that?

Mr Bluemmel: I may do. It depends on how severe I think the problem is or whether it is being taken seriously. As I mentioned in that paper, I have some difficulty in terms of taking any kind of lead role on this. For a start, under my legislation, arguably this is not something that is in my area, where I should confine myself to my key roles, and this is arguably not one of them; and, secondly, I am simply not set up for that. In terms of my office, I have people who resolve disputes, and I have people who provide advice and awareness. I do not have even one policy person, for example, so it is a little bit difficult for me, and this is why I took the step of bringing it to the attention of DPC, who I believe received it constructively, and I believe that that is a more appropriate place for it.

The CHAIRMAN: Well, it may be worthwhile you just looking at the memo you have given us and sending it to the standing committee of the Council. There is a standing committee of the Council that oversights these arrangements—new uniform legislation.

Mr Bluemmel: Yes. I have actually done that late last year; I sent it to the chair of that committee.

The CHAIRMAN: I would say this paper is of interest to us, but, in reality, it is of greater interest to that committee. We could just privately have a chat to members of that committee if we feel like it, just to see if formally those things are a problem. But I think all we can do is receive your report, note it—it is in our consciousness now. We have a role in public administration, obviously, but it is on the periphery of our interests.

Mr Bluemmel: Yes.

The CHAIRMAN: Can we move on then to question 7: investment in advice and awareness will pay dividends in improving your administration.

Mr Bluemmel: Certainly, I am happy to take you through my answers there. The first one is that I report annually on two key performance indicators, as it applies to the advice and awareness function, in my annual report and in the budget statements. The first one deals with agency satisfaction of advice and awareness services, and this is the annual questionnaire that I send out to all government agencies at the end of each financial year, and we have quite a high response rate for that. The satisfaction rating for that over the last two years was 98 per cent, which, obviously, we are very pleased about.

There is another key performance indicator in that area, which is the cost per advice unit, as we call it. This is simply the total cost of the program—the advice and awareness program—divided by the number of advice units we give—the number of people who attend our courses, the number of inquiries we have and so on. In the last financial year, that was \$150 per advice unit effectively, which is down on the previous year. I suspect that was quite a good value year, shall I say, because I had the opportunity to attend some large sessions where I was able to give a lot of FOI guidance to government agencies particularly.

They are the two formal indicators. However, we also, in addition to that, use some more management-focused indicators that do not necessarily get published but which we use to constantly refine and improve our advice and awareness program. The most formal of those is that when anyone attends one of our training courses, they are given the opportunity to fill out a questionnaire at the end—it can be anonymous—and they are basically asked two questions. The first one is whether the course met their needs for greater understanding of FOI, and the second one is whether the conduct of the course was satisfactory. In both cases, over the whole year we have received actually a 100 per cent positive rate from those who have responded. The more informal way that I also look at that is that I try to actually get to all of the training courses my office delivers—not for the whole day, but I welcome participants and then usually mingle with them over lunch or afternoon tea. What I try to do there is to hear from them how we can improve things: are there things that you have been wanting to know that this course is not covering—those sorts of things. So more from just a management and performance perspective, we are constantly gathering those facts and improving.

[10.30 am]

The CHAIRMAN: People like us, members of Parliament, worry about KPIs, particularly in soft areas like yours where it is not a question of dealing with 10 kilometres of road and whether it is built or not. What you have just spoken to us about are the practitioners in the process, but what about the people who are making the inquiries; what do you do about measuring their sense of happiness with your performance?

Mr Bluemmel: Do you mean people who come to me on resolution of disputes?

The CHAIRMAN: No, just making applications for information.

Mr Bluemmel: They go straight to the agency; they do not come to me. They only come to me when the agency effectively does not give them what they want.

The CHAIRMAN: The point I am making, though, is: is that not one of the key KPIs, though?

Mr Bluemmel: In terms of how much —

The CHAIRMAN: The reason the government has put you in place is to allow people to get information.

Mr Bluemmel: Perhaps if I can just put that into some perspective: fewer than one per cent of FOI applications ever get to me, so the other 99 per cent are resolved by agencies, and part of why we have this large annual survey is to get that information from agencies: How often did you disclose? What exemptions did you claim—those sorts of things.

The CHAIRMAN: So that explains why you would have a high importance on the process of agencies.

Mr Bluemmel: Exactly.

The CHAIRMAN: Do you have any other comment about your measuring process? From where we sit, it is very difficult for us to have any sort of questioning role of you because we do not know those people. We do not know the people who have made the applications, seeing if 99 per cent of them get a result or do not get a result and are happy with it, or the one per cent. All we get is to listen to you, and most members of Parliament, all they get is the chance to read your annual report. So you have got some pretty rare oxygen out there. Not many people are putting pressure on you from a government perspective. I agree you get pressure from other areas, but you do not actually get a lot of kickback from members of Parliament about the task you perform.

Mr Bluemmel: I do obviously get subjected to some pretty tight questioning at things like the estimates committee, before which I have appeared on a number of occasions outside the annual estimates process, and, of course, rightly so. I think that is the best place to do that, and of course here today. If that sort of pressure were exerted in the context of an individual dispute between a minister and a non-government MP, of course that would be entirely inappropriate. I am pleased to say that at no stage have I been subject to that sort of pressure; if I were, I would certainly take steps to bring it to Parliament's attention. However, in terms of where the pressure is as to whether FOI is working, 99 per cent of matters, as I said, that are decided, I never see. It is even fair to say that I do not administer the FOI act; agencies administer the FOI act and I act as a referee in that one per cent of cases where they cannot get a satisfactory outcome for the applicant. I note that you ask the question: is there a way to measure the improvement in administration that comes from training? That is why I am so keen on improving and growing the advice and awareness functions, so that agencies make better decisions in the first place, and that includes ministers.

In terms of the next part of the question about whether training can be linked to a decrease in complaints requiring external review, I would frankly say that it cannot be done meaningfully. I will give you a couple of illustrations as the reason for that. Because only, as I said, one per cent ever comes to me on a dispute, it is hard to see how we can properly have a cause and effect linkage that makes itself known in the stats in a very meaningful way. Let me give you an example. Between the financial years 2007–08 and 2008–09, external reviews before my office went from 102 to 181. I believe it was about the time that that happened that I last appeared before you. So that was an increase of 79 matters, or about 78 per cent. Of those 79 matters, 76 can be attributed to disputes between MPs and ministers, so, therefore, I think that it is not necessarily the quality of the process that determines how many come to me; it is actually what is at stake that determines that. Again, Apache is a good example. Apache was going to come to me no matter what the agency decided because there is too much at stake, and it was always going to appeal to the Supreme Court no matter what I decided because there is too much at stake. So it really comes down more to how much is at stake on any given matter than how well did the agency make the decision. That is not to say that agency decision making should not be improved; I think there is significant room there. But what I mean is that the caseload that comes to me varies so widely from day to day and year to year that I do not think it would be a meaningful measurement, which is a shame because I would like to be able to measure it.

The CHAIRMAN: We will accept that. We would like to move on.

Hon JON FORD: Commissioner, I was very interested in what you were saying. I think you said 99 per cent of cases do not come to you; it is only one per cent. Would you be shocked if I said to you that a lot of people I talk to about FOI applications assume that when they get a rejection from the agency, it is a decision by you?

Mr Bluemmel: I would be shocked by that and very disappointed. The reason for that—apart from the fact that it is clearly inaccurate as in it would be an inaccurate perception—is that if an agency is properly discharging its functions under the act, then not only does it have to make the decision, but within the decision it has to tell the applicant the name of the individual person making the decision and it has to tell the applicant their rights of review; and, of course, one of those rights is ultimately to come to me. So, hopefully, that would put the two into contrast that I did not make the decision; I am the person to whom you can go. If that is happening, and obviously in your experience it is, then that is a problem that I need to address by making sure that the agencies write clearer notices of decision. I agree; that would be a problem.

Hon JON FORD: The reason I raise it with you is that I had a particular application which I looked at and it was knocked back by the agency and I decided not to proceed, but I clearly understood it. In discussing that decision with other people, the feedback I got—I have had quite a few constituents come through my door asking me about FOI applications and I have explained to them what the process is. It is just interesting that there is this perception that the reply back from the agency is somehow endorsed by you. That is one aspect. The other one is that, in appealing that, it is very clear when you get it back; I think it says you have got—I cannot even remember now; it is so long ago—60 days to apply. I have told people and they have not understood that because they think there is some legalistic cost with that, so they see that as prohibitive—just writing a letter saying, “I disagree with the agency.” So I have encouraged people to do that. If somebody has missed the boat on the 60 days, is that an impediment for them to put in another FOI application?

Mr Bluemmel: No, it is not. You can put in another FOI application, restart the clock and then come to me. You can also, if you have missed the 60 days but there is a persuasive reason why the 60 days had been missed, apply to me and I can consider it out of time if I think it would be fair to do so. Now, it is pretty rare that I grant that, especially given that I have got so many people in my backlog who have been patiently waiting for my decision and I do not want them to slide down another rung. But there are certainly cases where I have granted that, and it might be because the agency has not properly explained the review rights, it might be because the person was overseas or dealing with a family trauma and those sorts of things. In those cases, I will take that into consideration and sometimes allow an application to be lodged out of time.

[10.40 am]

Hon JON FORD: Okay. I have been a minister. When I was Minister for Local Government, I got presented with this guy called Bob by the agency. Bob arrived in my office, he was given a room—he actually had stress balls—and he sat in the office. He was a very nice man. It was explained to me he was called the “nutter coordinator”. So he was offered up to me by the agency and he dealt with continuous vexatious phone calls. I used to walk past him, “How you going, Bob?” and he would be sitting there squeezing his balls, “Yes, Mr X; it is nice to hear from you again” blah, blah, blah. I assume that you, as the commissioner, are no different. Is there some mechanism that allows you not to be tied up with continuous vexatious complaints?

Mr Bluemmel: That is an interesting topic about which I have thought a lot. I actually do have the power under the FOI act to stop dealing with a complaint if I consider it is frivolous, vexatious or lacking in substance. I have considered exercising that power on a few occasions but I have never actually done so, because, to me, exercising that power completely deprives someone of their rights with arguably no right of review. And that is a big step to take. Sometimes it may well be justified, but I think the case where it is justified has not come to me yet. What I have seen, though, certainly

is matters come before me where the person who is after the document would broadly fit the category of conspiracy theorist and so on.

Hon JON FORD: I cannot believe that!

Mr Bluemmel: But I will still take that matter seriously and make inquiries. I think the bigger problem is with agencies. I know for a fact that a number of agencies struggle with repeat vexatious applicants who sometimes request the very same document over and over again. Of course, sometimes they may be struggling with mental health issues and so on. But agencies do not currently have the ability under the FOI act to deem someone vexatious and refuse to deal with them. In a small number of highly problematic cases, that causes a lot of stress and cost.

The CHAIRMAN: I am keen to move on from 2.9. But in that bracket, though, you have got members of Parliament on fishing trips. Having been one and been on a few fishing trips of my own, how do you deal with that?

Mr Bluemmel: When I went back to that explosion in external reviews after the last change of government—of course, this is all on the public record—the entire increase of historical levels could be explained by disputes between MPs and ministers, and there was a small number of non-government MPs responsible for almost all of that. Again, I do not think that would surprise anyone.

Hon JON FORD: It was not me, Max!

Mr Bluemmel: Based on that, I looked at whether it would be appropriate for me to use that power of whether it is frivolous or vexatious when the matter came before me. But I had to look at each matter on its own merits, and even though someone has already lodged a large number of matters before me, as long as the next one that comes along, of its own, potentially has some merit, I will deal with it on its own merits without prejudice as to the history. That made life quite difficult and that is why, of course, our time frames blew out and we are recovering slowly now. But, again, to me, actually declaring something vexatious, especially from an MP where you can argue that the MP represents a constituency, FOI is a tool quite rightly at their disposal. It is not for me to give them quotas; not that I could anyway. But I think it would be a very dangerous thing to consider that. In terms of fishing trips, the FOI act, again, allows you to do that; that is probably what it ultimately comes down to. I will look at each individual matter on its merits.

The CHAIRMAN: I am keen to move on from 2.9. This is a bit of an inquiry of our own, so this is an area we have our own interest in and this is the Integrity Coordinating Group. Are you involved?

Mr Bluemmel: Yes, I am. I have been a member since September 2010.

The CHAIRMAN: So question 2.10 is an important question for us. Is that group established under any act of Parliament, administrative order or any other legislative instrument?

Mr Bluemmel: No, none of those. It is a group that is, effectively, established by the goodwill of the people who participate in it. It has no formal legal status or power as a group; it does not make formal decisions, per se. What we do, where appropriate and when it does not hinder our independence, is coordinate our activities to ensure that we increase the standard of administration and increase the level of integrity across the sector.

The CHAIRMAN: And you do not report to a minister?

Mr Bluemmel: No, we do not.

The CHAIRMAN: Including the Premier? Is there any sort of report that goes to any minister at any time?

Mr Bluemmel: No, not to any minister.

The CHAIRMAN: Is there a memorandum of understanding between the group?

Mr Bluemmel: No, there are terms of reference, which are actually on the web. They are quite brief. Would you like me to share them with the committee?

The CHAIRMAN: Yes.

Mr Bluemmel: The terms of reference are: fostering collaboration between public sector integrity bodies; encouraging and supporting research, evaluation and policy discussion to monitor the implementation of integrity and accountability mechanisms in Western Australia and other jurisdictions nationally and internationally; and inspiring operational cooperation and consistency in communication, education and support in public sector organisations. As I said, it is not a group with any formal standing or existence, as such, and it takes up a very small amount of its members' time, I would say. We usually meet four times a year. Probably the highlight is once a year when we have our ICG forum and invite all public servants who wish to come to a forum where usually the commissioners and sometimes a guest speaker will be available to give a short talk each and then, most importantly, to take questions and answers from the floor. There is one very good example of how my involvement in that helps the FOI act, and that is that at last year's forum the theme was integrity in decision making. The other members—the Auditor General, the Corruption and Crime Commissioner, the Ombudsman and the Public Sector Commissioner—all gave a talk about the importance of integrity in decision making. One of the topics was the inappropriate disclosure of government information. Other areas like the Public Sector Commissioner and the CCC, of course, were talking about misconduct in inappropriately disclosing information that a public servant should not be disclosing. I was then able to immediately counterbalance that by reminding the audience that proper disclosure in good faith under the FOI act is not only acceptable, but also a legal requirement. You actually had those two, at some level, differing agendas up on the stage at the same time and public servants actually being able to get answers to difficult questions, such as, "What if I have this sort of issue? Can I do this and can I do that?" The feedback that we got after that forum was extremely positive because we were all there at once. That is the sort of value that it is designed to add.

The CHAIRMAN: Question 2.13 is: do the member agencies of the ICG have communications agreements with each other?

Mr Bluemmel: We do not have a formal agreement, no.

The CHAIRMAN: Are formal minutes and records kept of each meeting?

Mr Bluemmel: Yes, they are. They are kept by whichever organisation is currently chairing the ICG. At the moment that is the Auditor General.

The CHAIRMAN: Is that a continuous record?

Mr Bluemmel: Yes, I believe it is.

The CHAIRMAN: You have answered some of our other questions. Question 2.14 is: are formal minutes and records kept for all meetings? There is a dot point: which agency administers the FOI requirements for that? Do you do that yourself?

Mr Bluemmel: The ICG itself, not being an actual organisation, would not meet the definition of "agency" under the FOI act, so one could not make an FOI application to the ICG. Of course, one could apply to a member of the ICG and whatever is in their possession would then have to be considered under that application, but all the members of the ICG, except, I think, the Public Sector Commissioner, are exempt agencies from FOI.

The CHAIRMAN: What about the question of relevance? If I wanted to get the minutes of a past meeting, how would I do that?

Mr Bluemmel: I think it would be a request to the chair, which is currently the Auditor General. If it were you, it would obviously be a different issue than if it were a member of the public or the press.

The CHAIRMAN: I am saying me, as chairman of this committee.

Mr Bluemmel: I think that would be directed to the chair currently, which is the Auditor General. If it were a member of the public or the press, that would be problematic. I do not think we would be able to give any sort of access because of the nature of what we talk about. We may talk about upcoming activities that are designed to clamp down on a certain type of misconduct and so on, and that could be harmful to disclose in those sorts of circumstances.

The CHAIRMAN: Question 2.15 gets down to some of the tintacks about our concerns. Is there a potential conflict between the statutory independence of your office and participation in integrity coordination, because it really occurs without any governance or guidance of government? By “government” I mean Parliament, not the administration.

Mr Bluemmel: I think there would only be a conflict if the ICG itself actually had some sort of power or status. As an organisation—it is not an organisation and it does not have that status; it is an activity, if you will, which we participate in. If it were a formal body with decision making powers, I think there would be a conflict, and that is exactly why it is not run like that.

The CHAIRMAN: But in your own evidence earlier in the day, and my own experience over many years as a member of Parliament, these sorts of meetings, for good or bad of the system, actually do make a difference. There is clear evidence that, over the last two decades in Australia, meetings of Auditors General, for example, have changed the auditing process without changing a single solitary act, by getting together and discussing the best way to conduct audits. You have already said yourself today that the information commission is getting together and has improved the process by getting together. So even though there is no outcome in terms of the matters you have just described, there is still an outcome in function.

Mr Bluemmel: Hopefully, yes.

The CHAIRMAN: I will just finish that point. We do have a concern about that. We are not saying that we have to panic about that at the moment, but the committee does have some concern about that, because you are getting together, whether you do it rightly or wrongly, but you would certainly be doing it rightly in your own mind, and will gradually change the concept of administration. That is fine but, as a person involved in the Parliament, I would like to have some feedback on that from time to time and I would like to know in my own mind as a parliamentarian that it is going in the right direction. We could all agree that many things that are done with the best intention do not always work out to have the best outcome. That is why we are asking these questions.

We will move on to question 2.16. With the appointment of an integrity coordinating commissioner, such as a retired judge or someone like that—you might think that is a bit of overkill on what I have just stated, but it does reflect a view from where we sit.

Mr Bluemmel: I think it would need to be asked—obviously you have done this thinking—what outcome such an appointment would be looking at achieving. I think it would be problematic because, again, if there is going to be an appointment of a commissioner, it would need to be very clear, of course, what his or her roles and powers are, and that might actually result in the formalisation of the ICG, or its equivalent. That would then cause me some concern about the independence of the individual officers because we do have quite different roles, even in how we go about our practice. I operate much more like a court or tribunal, and that model would not at all suit the Ombudsman, for example, because the Ombudsman needs to have a much broader look at improving public administration and resolving complaints, whereas I am there to make legal determinations only.

[10.55 am]

Hon ED DERMER: So, item by item rather than in a broader sense?

Mr Bluemmel: Precisely. Having the same set of powers for both types of outcomes would not, in my opinion, work at all well. Again, the Public Sector Commissioner's role is not just about maintaining integrity in the public service; it is a key aspect of the role but it is broader than that. It is about making sure we have the right public service to support the government to go forward in all of those.

The CHAIRMAN: Unfortunately, we are quickly running out of time. We will go back to question 15. It is not just a question about you being involved in the ICG. We have had in the past—and there is always the chance of—bodies such as the CCC coming into strong public disrepute. Maybe the office has had difficult issues to deal with relating to the CCC and the police in other matters. That could affect you.

Mr Bluemmel: By association you mean?

The CHAIRMAN: Yes.

Mr Bluemmel: I certainly do understand and appreciate the concern. My suggestion perhaps would, if anything, be less formality around that collaboration in terms of the ICG than more, but of course that would not address all the issues you have raised. In terms of the parliamentary oversight concern, perhaps that is something where a committee like this regularly takes us members of the ICG, as members of the ICG, to task.

The CHAIRMAN: That is really what we are talking about. We have just got half an eye on this. When we say we have got half an eye on it, we are warming up to it. If we put two eyes on it, it would become a bit of an issue. Our concern is that a range of things are happening. Like all meetings, people try to do things in the correct manner but we do not know what it is. We do not have any impact on what it is and we do not have any reporting process on what it is. It is a bit of a secret society. I know that is an extreme view of it but it is a secret grouping. As a member of Parliament I have no idea at this stage what the intent of the grouping is. It is a collection of very senior individuals who have very senior responsibilities, most of them with a responsibility to Parliament. I would say those linkages are not there.

Mr Bluemmel: Can I illustrate another area of cooperation between the agencies that already happens, which is even more informal than this? My agency, together with primarily the Ombudsman but occasionally with one or two other agencies like perhaps the Health and Disability Service Complaints Office, undertake regional awareness programs where we head out to the regions, usually twice a year, and have sessions for community groups, local media and public servants in those areas and so on. It is coordinated because it saves us venue hire and all of that. Ultimately, we each go there with our own message and talk to the group. That is the sort of thing we do. In terms of what the ICG does to try to improve the level of administration and integrity, yes, it is a step removed from that; but ultimately, say, the annual forum that we run, which is really the key product that we put out, is designed so that we can all be out there in one hit and efficiently address a large audience and be able to answer their questions.

The CHAIRMAN: Most people would say that is a good outcome but we are not a part of that, are we?

Mr Bluemmel: Of either one, you mean?

The CHAIRMAN: Yes.

Mr Bluemmel: I would argue that in some ways you are because I do both of those things as Information Commissioner, which I think can help improve the outcomes under FOI, and they are the only outcomes that I am charged with. Therefore, sessions like today's—speaking with you and speaking with the estimates committee, among others—are things that are part of my operations, if you will, on which I am reporting to you, in the same way as when I go on my next regional outreach visit, which will be to the Pilbara in August, that will obviously be in my annual report and something I can speak to you about.

The CHAIRMAN: Will the participation be in the annual report of the ICG?

Mr Bluemmel: Yes, though I am not sure if it was last year.

The CHAIRMAN: I would suggest it would be, even if it is only a paragraph.

Mr Bluemmel: I agree with that and certainly things like the value of the forum last year and so on is exactly the sort of thing that I think Parliament should know about.

The CHAIRMAN: We have run out of time, but I want to address question 17 because you half addressed it in the last few minutes. Do we need a separate integrity agency and a separate information commissioner and public sector commissioner? Parliament is struggling with those issues at the moment. This committee is struggling. Our current inquiry is looking into the question of how we make all of that work better. We have an inquiry developing within this committee looking at just that. Should all these functions be streamlined to a single integrity commission to replace the present separate strategy officer you have now? Should there be a further umbrella over the top of the ICG group and we start doing those things you have talked about on a collaborative basis but have a more open process in terms of capacity of Parliament to know? The present coordination and sharing of services suggests that such rationalisation could be achieved with minimal disruption. You half described that a few moments ago. What do you think?

Mr Bluemmel: I would strongly caution against it. I have a couple of suggestions. First, again our jurisdictions intersect at certain parts but the parts where they intersect are not the whole picture. For example, FOI is not just about integrity. FOI may well be about integrity if I believe that an agency or a minister is inappropriately withholding documents under FOI. That could easily be an integrity issue. But in most FOI cases it is not about integrity; it is about people's right to know. It is about people being able to participate in government, and to be able to do that they need to have information at their disposal. Therefore, I would be concerned that if it were brought under a single umbrella, the integrity part of it would be focused on and the rest may be weakened. Similarly, with the Ombudsman—of course I cannot speak for him—his role is far broader than just increasing integrity. His role is also about ensuring that public administration continues to improve and so on.

The CHAIRMAN: Conversely, the CCC is the opposite. Every issue is about integrity. You have that context. From where we sit as members of Parliament, we view that differently. You view your function; we view the outcome. There will always be that conversation between us.

We have run out of time, sorry, commissioner, but we did want to raise that issue with you because it is concerning the committee. We have got to the stage where we have to decide what we are going to do about it. It is part of this whole question of how you make a public service work, how you make a whole range of issues responsible to Parliament and how you make that performance of officers like yourself and their response to Parliament. I think in some ways yours is much easier and precise under the legislation and pretty clear, as you keep on describing. We would argue that the situation involving the Public Sector Commissioner is a totally different argument. It is a much broader issue with a whole raft of ebbs and tides. The probability is that we are going to start looking at that but we have not decided. Members, we have run out of time.

Hon JON FORD: We should say it has nothing to do with your particular function. We had a recent inquiry and we had an expectation of how different agencies would interact with each other and they clearly did not. I want to make it clear that we are not reflecting on you. It is just about administration.

The CHAIRMAN: That is what I am trying to say. We are looking at the outcome, not the function. Clearly, that is your function but we will always ponder what all those things mean in the greater context.

Mr Bluemmel: If I can just say one thing very briefly. I would just caution against thinking that even though we all have a role to play in ensuring and improving integrity, each of us do not have

roles that then go off in different areas that are not focused on integrity. In fact, it might be a small part of what we do, except for someone like the CCC.

The CHAIRMAN: Thank you for your attendance. I found it very informative. We will report to the house around October, November.

Mr Bluemmel: I look forward to it.

Hearing concluded at 11.05 am