

Karen: intro

- Michael was appointed as an Assistant FOI Commissioner in November 2014 after a 20 year career in Local Government, including 15 years as a general counsel for a metropolitan Council.
- Michael was appointed as Acting Commissioner in August 2014. By the time the Office of the Victorian Information Commissioner commences Michael will have been Acting Commissioner for two years.
- Michael, welcome.

Michael: response

- Thanks Karen. I would also like to acknowledge the traditional owners of the land on which we are meeting and pay my respects to their elders, past and present.
- I would also like to thank you for emceeding today's forum. We very much appreciate your support and wish you great success in your new role as Health Complaints Commissioner.
- I would also like to thank the management of the Royal Melbourne hospital for kindly agreeing to host today's forum. When we conduct sector specific forum's we do try and have an agency from that sector host them to keep the forums as informal and hopefully as informative as possible.

Karen: right off the bat I think the topic that is front of mind for everyone is the new Office of the Victorian Information Commissioner. What can you tell us about OVIC?

Michael:

- Assistant Commissioner Sally Winton will be presenting an overview of OVIC later so I will just touch on some of the high level points.
- OVIC will combine our Office with the office of the Commissioner for Privacy and Data Protection.
- OVIC will commence on 1 September 2017 which is in 87 days! (or 62 business days).
- There will be an Information Commissioner and two deputy commissioners: a Public Access (or FOI) Deputy Commissioner and a Privacy and Data protection Deputy Commissioner.
- The Information Commissioner and Public Access Deputy will be the decision makers on FOI reviews and cannot delegate that decision making power.

Karen: has anyone been appointed to either of these roles yet?

Michael: no, the Government is conducting a contestable recruiting process for the Commissioner and Deputy positions. DPC will be leading that recruitment process and will recruit the Information Commissioner first and then the Information Commissioner will be involved in recruiting the two Deputy Commissioners.

Karen: do you know where the recruiting process is at?

Michael: my understanding is DPC has appointed a recruiting consultant but I have not heard anything further yet. DPC still have 87 days to recruit an Information Commissioner!

Karen: will you be applying for either of the roles?

Michael: it has been an absolute privilege to be Acting FOI Commissioner and I believe OVIC will have a lot of important work to do, so yes I do intend to apply for the roles.

Karen: how large will the new Office be?

Michael: our Office currently has 23 staff including Sally and I with 4 vacancies. Privacy and Data Protection is similar, so OVIC will initially have around 45 to 50 staff.

Karen: what changes will OVIC usher in for FOI?

Michael: again, at a high level, there will be greater powers for OVIC than we have currently in relation to being able to review FOI decisions of Ministers and Principal officers and also claims of cabinet in confidence. Decision making time for agencies is reduced to 30 days although if consultation is required under section 33 (personal information) or other sections then an automatic 15 day extension applies to provide 45 days decision making time. This reflects that the third party consultation now has to occur before the FOI decision not afterward. Section 33 is used in most health agency FOI decisions where some information is exempted, so I don't think the reduced decision making time will have a massive impact on health agencies.

OVIC will have the power to issue binding FOI professional standards too.

Finally, OVIC will also have coercive powers to compel the production of documents or to require an agency officer to attend a hearing before the Information Commissioner and also has the power to conduct own motion investigations. The amending Act also introduced criminal offences for FOI and agency officers who fail to comply with a notice to produce documents or attend a hearing and for anyone who obstructs, misleads or provides false information to OVIC. These offences are subject to 'reasonable excuse' defences.

Karen: you say any FOI professional standards promulgated by OVIC are binding. What does this mean?

Michael: it means the FOI Act mandates that the principal officer of each agency and any officer working on FOI must comply with OVIC's professional standards. Failure to comply will at the very least provide grounds for an applicant to complain to OVIC. Depending on the failure, at its most extreme it could amount to a criminal offence, although I think this is unlikely.

Karen: do you think the criminal provisions will be used?

Michael: I would hope not. I think it is very low risk for the health sector in particular. The health sector has a 92% release in full rate and has generally been very co-operative with our Office.

Karen: how do you think OVIC will use its new coercive powers?

Michael: that really will be a matter for the Information Commissioner, whether that is me or someone else. We are having internal discussions about how the powers might be used, but that will become clearer once an Information Commissioner is appointed.

Karen: are there any quick tips you can provide for health agencies on the new changes?

Michael: for health agencies in particular I think it will largely be business as usual, save that the section 33 consultation is required before the agency decision, rather than after. One important issue to be aware of is that if OVIC does publish binding professional standards then the principal officer has a statutory duty to make sure all staff members working on FOI comply with those standards. Separate to that the principal officer must also ensure all staff of the agency are aware of the requirements of the standards, so this is a separate and potentially quite onerous statutory responsibility.

Karen: my last question on OVIC, what will happen to all your reviews and complaints that are received prior to OVIC commencing? Will they be dealt with under the existing (old) or new FOI provisions?

Michael: under the old or existing provisions. The new FOI provisions will only apply to reviews and complaints received by OVIC from 1 September 2017.

Karen: changing topics slightly now, in May last year the Special Minister of State announced there would be a comprehensive review of the FOI Act and the Public Records Act. Where is that review at?

Michael: it has not commenced. During the Committee stage of the debate on the OVIC Bill the Special Minister of State indicated as the Government had not been able to commence complete the review before its expected due date of 31 March this year, the Minister was not prepared to commit to a fresh date to commence the review. I expect what will happen now, although I have not been told this and so do not know this, is that the review will become an election commitment in next year's State Government election.

Karen: do you support the FOI Act being reviewed?

Michael: I do. I think the current FOI Act is a pre-internet Act trying to operate in an information age. Most interstate jurisdictions have moved to a push model of FOI where a lot of information is proactively released and FOI is a last resort. In Victoria, our Act is what we call a pull model of FOI where an FOI application is the first thing you do if you want information from Government. So I think updating the FOI Act, and the Public Records Act, could be really valuable and make a significant difference to how much and how easily Government held information is released.

Karen: reflecting now on your time as Acting Commissioner, what are some of your achievements in that time?

Michael: I think we have achieved a lot over the past two years, so I think we are well placed. I am supported by a terrific hard working team, some of whom you will get to meet and hear from today. Together we have simplified our decisions, revamped our website with streamed content for agencies and applicants, conducted a detailed training needs analysis which over 250 agencies responded to and as a result launched in March this year a comprehensive agency education program. That program includes a suite of face to face training offerings as well as a free online introductory FOI module. We are constantly reviewing and refining these educational offerings to make sure we are meeting the needs of agencies and their FOI officers. Demand for those sessions has been really strong and the two way communication during those face to face sessions I think is really pleasing. By that I mean that we learn a lot from agencies during each session as well.

In addition to those achievements I think we are engaging more meaningfully with FOI agencies. We now publish a free monthly FOI bulletin, conduct regular forums like these, participate in the whole of Vic Government FOI Managers network and are looking for joint opportunities with other bodies like the VGSO and Public Records Office of Victoria.

Karen: what challenges have you faced?

Michael: the main challenge has been workload. Our incoming review and complaint caseload has increased by 40% this year compared to last year. We have a significant backlog of reviews and complaints. This existed when I became Acting Commissioner but grew significantly in my first 10 months as Acting Commissioner as I was the sole review decision maker. Fortunately, Sally Winton joined us as Assistant Commissioner in October and that has helped us cope with the increase in workload, although that increase has meant that we have not reduced the backlog of particularly reviews as much as we would have liked.

Karen: what are the main challenges from an FOI perspective that you think OVIC will face?

Michael: it will have operational challenges to make sure all agencies understand the changes to the FOI Act. We are planning to roll out free face to face training to assist agencies and to support this training with an online overview module and written materials. I expect there will be some short term priorities like issuing professional standards to assist agencies with the new changes too.

However, I think the main challenge for OVIC will again be workload. Our open cases are currently just over 500, which has grown significantly recently as we have diverted resources into the transition and other issues. Fortunately, the State Government has recognised this increased workload and funded 3 new positions in this year's budget: 2 new senior case managers and education officer. Those additional staff will help enormously but there are still going to be a lot of decisions for the Information Commissioner and Public Access Deputy to make!

Supplementary questions:

- What has happened to the number of FOI appeals to VCAT during the time the Office of the FOI Commissioner has been operating?
- What are the trends in release rates of documents?
- Will you be doing more forums like this?
- How will the interactive sessions this afternoon be structured?
- Questions from the audience.