



The Accountability Agencies at Albert Facey House

By Catherine Fletcher
Information Commissioner,
Office of the Information Commissioner

Albert Facey House, located at 469 Wellington Street in the Perth CBD, is a government owned building located next door to the former Perth GPO building and opposite the Perth Railway Station. The location was formerly occupied by the Central Hotel which existed on that site from as early as 1909. Albert Facey House, constructed in the late 1980s, overlooks Forrest Place which was created in 1923.

Albert Facey House is named in honour of Albert Barnett Facey (1894 - 1982), an Australian soldier who fought at Gallipoli and who is perhaps best known for his autobiography, *A Fortunate Life*. Excerpts from *A Fortunate Life* feature throughout Albert Facey House, engraved on the stone wall cladding in the lobby and referenced on the glass partitions and wallpaper graphics throughout the remainder of the floors. They are a poignant reminder of a past, but not forgotten, era in the history of Western Australia.

Tenants of Albert Facey House acknowledge the Whadjuk Noongar people as the traditional custodians of the boodjar, on which Albert Facey House stands. The agencies in Albert Facey House pay their respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present, in a number of ways. This includes having signed, in July 2019, a joint statement of intent to work together where appropriate to, among other things, identify opportunities for Albert Facey House to be promoted and recognised as a cultural capability hub. This is appropriate given the long standing popularity of Forrest Place, and the land on which it is situated, as a community meeting place.

In 2020 Albert Facey House is occupied by a number of accountability agencies with oversight or review roles over various aspects of the public and private sector. Those agencies currently include the Economic Regulation Authority, the Equal Opportunity Commission, the Office of the Auditor General, the Office of the Information Commissioner, the Ombudsman, the Office of the Inspector of Custodial Services, the Health and

Disability Services Complaints Office and the Mental Health Tribunal.

From early 2021 the Office of the Commissioner for Children and Young People will also be located at Albert Facey House.

Members of the legal profession may interact with these agencies when acting for clients or seeking information to hold Western Australian State and local government bodies, and sometimes private bodies or individuals, accountable for their decision making and actions.

The sharing of Albert Facey House by these accountability agencies has also proven valuable for other joint activities related to their roles in promoting probity, integrity, accountability and transparency in respect of services accessed by the public or provided to the public.

This article provides a brief insight into the role of a number of the agencies at Albert Facey House and their leaders. A separate article about the role and leadership of the office of the Ombudsman features separately in this edition of *Brief*. The December edition of *Brief* will feature an article about freedom of information from the Information Commissioner.



Economic Regulation Authority

The Economic Regulation Authority (ERA) is Western Australia's independent economic regulator. The ERA's role is to regulate the gas, electricity and rail industries, and license providers of gas, electricity and water services.

The ERA was established by the *Economic Regulation Authority Act 2003* (WA). This Act provides for the ERA to carry out inquiries and other functions under the following legislation:

- *Energy Coordination Act 1994* (WA)
- *National Gas Access Act 2009* (WA)
- *Railways (Access) Act 1998* (WA)
- *Water Services Act 2012* (WA)

The ERA also conducts inquiries into economic matters referred to it by the Treasurer, provides support to the independent Rule Change Panel, and has a range of regulatory and review roles in the Wholesale Electricity Market and retail gas market.

The ERA aims to ensure that the delivery of water, electricity, gas and rail services in Western Australia is in the long-term interest of consumers and to maintain a competitive, efficient and fair commercial environment. The ERA makes its decisions independently from industry, government and other interests, and is not subject to government or ministerial direction when carrying out regulatory functions.

Another unique challenge for the ERA is that, while it is an independent Government authority, the majority of the agency's funding comes from the industries it regulates. The ERA must monitor the costs of performing each of its functions and ensure these are measured, reported and charged back to industry with a high degree of accuracy and transparency.

Many of the regulatory regimes administered by the ERA were designed for a world that no longer exists. For example, WA's electricity market, which now has a level of renewable generation not imagined when the current system was designed. In addition, many of these sectors are encountering rapid technological change.

The Chief Executive Officer of the ERA, Jenness Gardner, manages the operation of the ERA's 68 member Secretariat and supports the ERA's decision-making authority, the Governing Body. A significant challenge for the ERA's leadership is to retain and attract staff with a high level of technological skill and the ability to adapt quickly to new ways of working.

More information about the ERA is available at <https://www.erawa.com.au/>.



Jenness Gardner,
Chief Executive
Officer of the
Economic
Regulation Authority

Equal Opportunity Commission

The office of the Commissioner for Equal Opportunity is established under the *Equal Opportunity Act 1984* (WA) (the *EO Act*).

The *EO Act* came into effect in July 1985, setting out the grounds of unlawful discrimination and the areas of life in which discrimination is prohibited. Those grounds include race, sex, pregnancy, impairment, age, and sexual orientation, in the areas of employment, education, accommodation, membership of clubs, and the provision of goods and services. Sexual and racial



Dr. John Byrne AM,
Commissioner for
Equal Opportunity

harassment in employment, education and accommodation are also unlawful.

The *EO Act* makes it unlawful to victimise someone who has lodged a complaint, or who has otherwise asserted their rights under the Act. The Act also provides for exceptions, such as educational institutions established for religious purposes, genuine occupational qualification, and accommodation for aged persons.

In 2019-20 the Equal Opportunity Commission received 1,318 enquiries and handled 578 complaints of discrimination.

The Commissioner is appointed by the Governor for a term of up to seven years and exercises independent functions and powers derived from the *EO Act*. The Commissioner is independent in the sense there is no capacity for the responsible Minister to direct the Commissioner in relation to the performance of those functions. This affords the Commissioner operational autonomy.

The core functions of the Commissioner are to investigate and attempt to conciliate complaints of discrimination and harassment, and to provide training, information, and advice to the community about equal opportunity law. The Commissioner may refer complaints which are not resolved by conciliation, or which are dismissed by the Commissioner, to the State Administrative Tribunal for determination.

The Commissioner is supported administratively by the Equal Opportunity Commission, comprising approximately 20 FTE public sector employees, undertaking the Commissioner's functions under the *EO Act*, some of which are delegated.

There have been four Commissioners since 1985 and Dr John Byrne AM has been in the role since 2016.

More information about the Equal Opportunity Commission is available at <https://www.eoc.wa.gov.au/>.

Health and Disability Services Complaints Office

The Health and Disability Services Complaints Office (HaDSCO) is an independent statutory authority providing an impartial resolution service for complaints relating to health, disability and mental health services in Western Australia and the Indian Ocean Territories, covering the public, private and not-for-profit sectors and prison health services.

The Office was initially established in 1996 as the Office of Health Review and changed its name to HaDSCO in 2010. The functions of HaDSCO are set out in the *Health and Disability Services (Complaints) Act 1995* (WA), Part 6 of the *Disability Services Act 1993* (WA) and Part 19 of the *Mental Health Act 2014* (WA). Under these Acts, the Director of HaDSCO's primary functions include:

- Dealing with complaints by negotiated settlement, conciliation or investigation;
- Reviewing and identifying the causes of complaints;
- Providing advice and making recommendations for service improvements; and
- Educating the community and service providers about complaints handling.

HaDSCO's focus is to achieve quality outcomes for service users and providers by resolving complaints as informally as possible, usually through Alternative Dispute Resolution, in the



Sarah Connie,
Director of HaDSCO

most timely and efficient manner.

In 2019-20, HaDSO received 2,629 complaints. It achieved various outcomes for individuals including apologies from service providers, explanations for treatment decisions and clinical outcomes, improved access to services and, in some instances, financial remedies such as fee refunds. HaDSO also identified a number of service improvements that were implemented by service providers to enhance services for the wider community.

HaDSO continues to provide an important role during the COVID-19 pandemic. Between 26 February 2020 and 30 June 2020, 161 complaints were received specifically about COVID-19 matters, representing 17 per cent of all matters in this period. Issues were raised around infection control measures, access to services and COVID-19 testing arrangements. These matters were prioritised and arrangements were made with service providers to streamline complaint resolution processes to minimise the impact on their service delivery during the pandemic.

The Director, Ms Sarah Cowie, was appointed to the role in April 2016 by the Governor of Western Australia. Ms Cowie reports to the Deputy Premier, Minister for Health, Mental Health, the Hon Roger Cook MLA and provides information to the Minister for Environment, Disability Services, Electoral Affairs, the Hon Stephen Dawson MLC on issues relating to the disability sector. Ms Cowie is supported by highly-skilled and dedicated staff. Ms Cowie's focus is on supporting improvements to health, disability and mental health services through complaint resolution and sector improvement. Ms Cowie and her staff recognise the inherent value in resolving complaints and using the outcomes of the process to drive system changes.

More information about the Health and Disability Services Complaints Office is available at <https://www.hadscow.wa.gov.au/home>.

Mental Health Tribunal

The Mental Health Tribunal (Tribunal) is an independent decision-making body established by the *Mental Health Act 2014* (WA) (*Mental Health Act*).

In Western Australia individual psychiatrists are empowered to make involuntary treatment orders authorising psychiatric treatment without consent. The Tribunal's main functions are to review every involuntary treatment order made by a psychiatrist in WA to ensure patients are protected from any abuse of power under the *Mental Health Act*, and to determine, on an ongoing basis, whether the patient still needs the order. The Tribunal can also decide other questions under the *Mental Health Act*, including whether a psychiatrist may perform electroconvulsive treatment on a patient.

The Tribunal makes decisions based on information provided at a hearing. The panel at each hearing usually consists of a lawyer, a psychiatrist, and a community member. The legal member is the presiding member, managing the hearing and delivering the decision on behalf of the panel. Legal members decide all questions of law (including mixed questions of law and fact) with a majority of the three members deciding any other questions. On 30 June 2020, the Tribunal had 60 members consisting of legal members, sessional psychiatrist members and community members.



Karen Whitney,
President of the
Mental Health
Tribunal

The Tribunal usually holds hearings at the hospital or health service treating the patient. The Tribunal expects the patient's psychiatrist to prepare and tender a medical report to the panel, and to attend the hearing. The Tribunal also strongly encourages patients and their families to attend hearings. Patients may bring an advocate or a lawyer to speak for them if they choose. At the hearing, participants can call evidence, examine or cross-examine witnesses, and make submissions. Whilst the formal rules of evidence do not apply, the rules of procedural fairness do. At the end of a hearing, the Tribunal decides the questions in issue, notifies the participants of its decision, and provides oral reasons which can be transcribed if required. The Tribunal's decisions are reviewable by the State Administrative Tribunal.

The current President of the Tribunal is Karen Whitney. The President's primary role is to ensure that the Tribunal's activities are directed towards achieving its mission of safeguarding rights and promoting compliance and accountability under the *Mental Health Act*. The President must ensure that this mission is achieved in the most efficient and effective way possible. The President is ultimately responsible to the Minister for the governance of the Tribunal and all operational decisions and outcomes.

More information about the Mental Health Tribunal is available at <https://www.mht.wa.gov.au/>.

Office of the Auditor General

The origins of the Office of the Auditor General (OAG) date back to the first months of settlement of the Swan River colony. In May 1829, even before landing on shore, Captain Stirling formed a Board of Counsel and Audit for the management of the property of the Crown and of public property within the settlement. The early recognition of the importance of the audit function is encapsulated in section 65 of the *Constitution Act 1889* (WA).

The independence and the powers of the Auditor General have been strengthened and expanded since those early beginnings to meet the changing needs and expectations of the community and the Parliament, and to reflect the nature of the public sector that is audited.

The Auditor General reports directly to the Parliament and through two oversight committees, the Public Accounts Committee and the Estimates and Financial Operations Committee. The results of the OAG's work is encapsulated in approximately 30 audit reports tabled in Parliament each year, and communicated through briefings to members and committees of the Parliament. The *Auditor General Act 2006* (WA) and *Financial Management Act 2006* (WA) further require the Auditor General to form an opinion on whether a Minister's decision not to provide information requested in Parliament is reasonable and appropriate. The OAG also investigates public interest disclosures (protected whistle blower allegations) relating to mismanagement of public resources.

While the OAG's main focus is on whether public money is used for Parliament's intended purposes, broader aspects of performance are also audited. The OAG currently conducts annual audits of 180 State and 148 local government entity finances and key performance indicators, as well as entities' financial management and governance controls. The OAG also has powers to 'follow-the-dollar', which involves auditing functions delivered by non-government parties under contract on behalf of the State, and analyse how organisations spend government funds received through grants.



Caroline Spencer,
Auditor General

Another important function of the OAG is its performance auditing of the efficiency and effectiveness of public sector activities and service delivery. The OAG's performance audit reports require audited entities to respond to recommendations for improvements and commit to implementation timelines. Performance and focus area reports often include better practice checklists that provide guidance for all entities, and a new forensic audit function is using data analytics and other investigatory techniques to delve deeper to identify financial misappropriation.

The current and State's 19th Auditor General, Caroline Spencer, is the first woman appointed to the role. The Auditor General, informed by her executive team, makes strategic decisions about office resourcing, performance audit topics and timing and other material issues affecting delivery of statutory functions and requests for audit. The role involves extensive stakeholder engagement, particularly with State and local government elected members, CEOs and Commissioners, community groups, the Parliament and its committees.

More information about the Office of the Auditor General is available at <https://audit.wa.gov.au/>.

Office of the Information Commissioner

The role of the Information Commissioner (the Information Commissioner) is established under the *Freedom of Information Act 1992* (WA) (the *FOI Act*). The Commissioner is appointed by the Governor, is independent of executive government and reports directly to the Parliament and not to, or through, a Government Minister.

The objects of the FOI Act are to enable the public to participate more effectively in governing the State and to make the persons and bodies that are responsible for State and local government more accountable to the public. Those objects are achieved primarily by the creation of a general right of access to State and local government documents subject to, and in accordance with, the FOI Act and also by requiring that certain documents concerning State and local government operations be made available to the public. An agency is required to deal with a valid application under the FOI Act by making a decision about access or amendment in accordance with the FOI Act.

The main function of the Information Commissioner is to provide independent external reviews of decisions made by agencies under the FOI Act on access applications and requests to amend personal information. In 2018/19, 19,258 access applications were made to Western Australian State and local government agencies. In that year, the Information Commissioner received 176 applications for external review.

The Information Commissioner's other responsibilities include ensuring that agencies are aware of their responsibilities, and that members of the public are aware of their rights, under the FOI Act; providing assistance to members of the public and agencies on matters relevant to the FOI Act; and recommending to Parliament legislative or administrative changes that may assist the objects of the FOI Act to be achieved.

The Information Commissioner is also a member of the State Records Commission, a body that has oversight of the State Records Office.

Catherine Fletcher was appointed to the role of Information



Catherine Fletcher,
Information
Commissioner

Commissioner in July 2019 for a five year term following 12 months acting in the role. The Information Commissioner is supported by 13 staff at the Office of the Information Commissioner.

More information about the Office of the Information Commissioner is available at <https://www.oics.wa.gov.au/en-au>.

Office of the Inspector of Custodial Services

The Office of the Inspector of Custodial Services (OICS) was established in 2000 as an independent statutory agency responsible for inspecting and reporting on the performance and standards of practice in Western Australia's prisons. In late 2003 the *Inspector of Custodial Services Act 2003* (WA) (the *ICS Act*) came into operation and the jurisdiction of OICS was extended to include the detention centre for young people.

The *ICS Act* requires that each facility (prisons, the juvenile detention centre, court custody centres and prescribed lock-ups) must be inspected and reported upon at least once every three years. The Inspector has discretion to undertake inspections, announced or unannounced, at any other time and on any number of occasions. The powers of the Inspector are wide-ranging and include the right of free and unfettered access to each facility, vehicles used, people and documents. The Inspector, staff and Independent Visitors have a high level of activity and presence within each facility.

The Inspector is also responsible for administering the Independent Visitor service in Western Australia. Independent Visitors are appointed by the Minister to specific facilities and are required to visit at least once every three months, however in practice they visit more frequently.

The Inspector works towards improving the transparency and accountability of the custodial system and reports directly to Parliament. The work of the Inspector includes publishing inspection standards for custodial environments, working with agencies to improve outcomes, achieving efficiencies and best practice in the system, and working to reduce risks for individuals in custody and the system overall.

The OICS has a Community Liaison Officer who provides the Inspector and staff with a highly valued cultural context in working with prisoners and young detainees, their families, and people in the community.

The emergence of COVID-19 and the response measures taken to combat its spread required a modification to the usual way of doing business for the Office. Under the principle of 'do no harm', the Office adjusted its methodology for mandated inspections and the strategy of continuous inspection through regular liaison visits. Recent easing of restrictions has allowed a resumption of close to usual practice, with modifications for COVID-19 safe practice.

The current Inspector of Custodial Services is Eamon Ryan, who was appointed in May 2019 for a five year term. Eamon is the third Inspector since 2003.

More information about the Office of the Inspector of Custodial Services is available at <https://www.oics.wa.gov.au/>.

Note that other key oversight agencies that were not featured in this article, notably the Public Sector Commission (PSC) and the Corruption and Crime Commission (CCC), are respectively located at Dumas House, West Perth and in Francis Street, Northbridge.



Eamon Ryan,
Inspector of
Custodial Services