



Question on Notice

Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission – 2020 Review of the Annual and Other Reports of Oversighted Bodies

Tuesday 18 February 2020

Mr Paul Lynch to the Privacy Commissioner: Could I ask you to take on notice a question as to what other gaps are that might need to be filled in? Not now, but if you could perhaps come back to us about that and give that a proper, considered response.

Privacy Commissioner Response

- The Privacy and Personal Information Protection Act 1998 (PPIP Act) remains fit for purpose and is technology-neutral.
- The Act provides a principles-based approach to the protection of personal information by NSW public sector agencies – NSW Government agencies, local councils and universities. The 12 information protection principles established under the PPIP Act guide agencies in ensuring the protection of personal information when carrying out their roles and functions.
- The Act very clearly sets out the obligations upon public sector agencies in their management of personal information and in addition, establishes a broader scope through certain statutory functions of the Privacy Commissioner which address privacy more generally.
- However, the PPIP Act is 20 years old and there is scope to enhance the legislation to address more contemporary issues. These are:
 - Inclusion of a mandatory data breach notification scheme – the Information and Privacy Commission (IPC) provided a submission in support of such a scheme to the Department of Communities and Justice (DCJ) in 2019. The submission is accessible on the IPC’s website.
 - Inclusion of State Owned Corporations in the PPIP Act – this would create consistency with the GIPA Act and provide a clear legislative right to members of the public. One SOC already opts in to coverage under the PPIP Act.
 - Amend the Privacy Commissioner’s function to include an explicit function of audit – this would enable the Privacy Commissioner to exercise the audit function as a proactive measure to assess systemic issues and assist the compliance and capabilities of agencies. The Privacy Commissioner identified in her submission to DCJ additional powers she would need in the context of a mandatory data breach notification scheme.
 - Create a function for the Privacy Commissioner or her staff to enter premises and inspect any thing – this power would be complimentary to powers in relation to the Privacy Commissioner’s audit function or in conjunction with the Privacy Commissioner’s existing functions for investigation.

- Introduce a provision that the Privacy Commissioner nor a member of her staff is compellable as a witness - this would introduce an equivalent provision to section 41 of the Government Information (Information Commissioner) Act.
- Create a function and power for the Privacy Commissioner to exchange information with the Cyber Security NSW in relation to potential matters relevant to a privacy breach but that may or should also appropriately be referred to the Cyber Security NSW.
- Introduce a provision that provides where an applicant applies to the NSW Civil and Administrative Tribunal for internal review that the Privacy Commissioner ceases to exercise the oversight function - this reform would provide consistency with the Government Information (Public Access) Act 2009.
- The Privacy Commissioner has raised these proposals with DCJ and the Department of Customer Service noting that the PPIP Act is within the shared responsibilities of the Attorney General and the Minister for Customer Service.
- The Privacy Commissioner and the IPC continue to engage productively with the Departments on privacy issues and policy and project work to which the PPIP Act applies.

Question on Notice

The Hon. ADAM SEARLE: *Just in relation to the volume of complaints: Given the level of visibility that you have got, what is your impression of those complaints? Are they largely well founded and made out about agencies not complying or dragging their feet in terms of wanting to give up the information? If you could provide the answer to that question on notice.*

Information Commissioner Complaints

An applicant may make a complaint to the Information Commissioner about the conduct (including action or inaction) of an agency in the exercise of functions under an Information Act, including conduct that is alleged by the person to constitute a contravention of an Information Act.¹ Section 89(4) of the *Government Information (Public Access) Act 2009* precludes the making of complaint about conduct of an agency that constitutes a reviewable decision of the agency even if the person is out of time to apply for a review of that decision.²

IPC INFORMATION ACCESS COMPLAINTS DATA 1.7.18 – 30.6.19

Total complaints received	Total complaints finalised	Category of reason for complaint and number of total finalised ()	Complaints finalised and made out in full/in part	Complaints finalised and complaint not made out, withdrawn or otherwise resolved
Total = 79	Total = 74	The decision-making process under a formal access application e.g. conflict of interest, communication restrictions, provision of acknowledgement letter (23)	Total = 18	Total = 56 Of 56 information provided in dealing with complaint. ³ Total = 35
		Information not provided in response to a formal access application (10)		
		Decision making time frames under a formal access application (10)		
		Open Access requirements (12)		
		Refusal to deal with a formal access application (3)		
		The timeframe to provide access to information in a formal access application (3)		
		Informal access (decision making, refusal to deal, timeframes to provide information) (3)		
		Formal application (application validity, payment facilities, review rights) (3)		
		Complaint withdrawn or out of jurisdiction (7)		

¹ Section 17 GIIC Act

² Section 89(4) GIPA Act

³ Section 19(1)(a) GIIC Act