

**REPORT OF PROCEEDINGS BEFORE**

**COMMITTEE ON THE OMBUDSMAN, THE POLICE  
INTEGRITY COMMISSION AND THE CRIME  
COMMISSION**

**2014 GENERAL MEETINGS**

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**At Sydney on Tuesday 18 February 2014**

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**The Committee met at 1.00 p.m.**

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**PRESENT**

The Hon. C. Cusack (Chair)

**Legislative Council**  
The Hon. S. Mitchell  
The Hon. A. Searle

**Legislative Assembly**  
Mr K. J. Anderson  
The Hon. P. G. Lynch

**ELIZABETH TYDD**, Information Commissioner, Information and Privacy Commission NSW, and

**ELIZABETH COOMBS**, Privacy Commissioner, Information and Privacy Commission NSW, sworn and examined:

**CHAIR:** Welcome. I declare open the Committee's 2014 General Meetings with the Information Commissioner, the Privacy Commissioner, the New South Wales Ombudsman and the New South Wales Child Death Review Team. I thank all the witnesses who will be appearing before the Committee today. Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Ms TYDD:** No.

**Dr COOMBS:** No.

**CHAIR:** I understand that you have a presentation to make to the Committee.

**Ms TYDD:** This is a valuable opportunity. If the Committee agrees, I will provide a five-minute overview of my role as chief executive officer and then move to the legislative responsibilities that I hold as Information Commissioner. Dr Coombs has a wealth of experience in appearing before the Committee and an extensive knowledge of privacy issues. She will provide an update in relation to privacy issues and the issues of concern to her.

**CHAIR:** Thank you. The Committee would be most grateful. Thank you for the effort you have gone to in preparing this.

**Ms TYDD:** I will take the Committee through the strategic priorities of the Information and Privacy Commission. I will then take it through some of the more operational matters. As the incoming chief executive officer, this was a valuable opportunity to look at the organisation, to consult internally and externally, to have regard to the legislation, to look at our corporate responsibilities and to define our priorities. Having undertaken that exercise, I consulted with Dr Coombs and with our executive director, Meredith Claremont, to establish nine key priority areas for the Commission going forward. They also have regard to the past operations of the Information and Privacy Commission NSW and build on the good work done by both Commissioners.

With a small organisation it is very important that we settle upon key priorities to better harness the Commission's resources, to direct them appropriately, to ensure that we acquit our statutory responsibilities and to serve the public. I will briefly run through the nine priority projects that we have identified. Of those, I will focus on three specific areas. The nine priority projects that we have settled upon include the website redevelopment. That involves facilitating extended functionality, for example, e-learning and e-learning modules. Likewise, that is picked up in the second priority project, which is educational resources. Of course, the report to Parliament under section 37 is a priority for the organisation, and I will deal with that in the five minutes allocated to the legislative responsibilities that I hold. Similarly, Dr Coombs will obviously outline the responsibilities she holds under section 61B and the report to Parliament in that regard.

Another privacy matter is the finalisation and implementation of a privacy governance framework. We have also looked at the requirement to have a robust communication framework. We are looking at our administrative function and our information management tools. I will elaborate on our practice and procedures, how we are working towards consistency and certainty in that regard, our knowledge bank, better tools for internal staff as well as our external clients, the communications framework that will augment that approach and also our information management tools. I will start with the information management tools because that gives us a baseline snapshot of where we are at as a Commission. It also segues nicely into the approach that the Committee has adopted in looking at all the independent agencies for which it has responsibility and which it oversees.

We have identified a need to ensure that our case management system—that is, our information management tools—provides accurate data to ensure that the information we are providing has a level of integrity that is warranted in this jurisdiction. Likewise, we want to promote transparency, openness, accessibility and accountability. To do that, we must have efficient systems. I am aware that the acting Information Commissioner corresponded with the Committee on 20 December and outlined the work

undertaken during her time as chief executive officer and Information Commissioner. I will pick up from where she left off in that regard.

In that correspondence she outlined that we were focusing on a backlog, which was identified in the 2012-13 annual report. I will provide the precise figures mentioned and data about application reviews as an example. There were 280 Government Information (Public Access) Act applications for review and we closed 237. Clearly, that heralds that there will be some degree of backlog and carry forward. Ms Lo focused her efforts and that of the Commission on working in partnership with the Privacy Commissioner to ensure that the whole Commission addressed those backlog issues. Those efforts have been realised to a very positive effect and we now have a different age profile for some of those matters. She focused on the oldest and most complex matters and they were largely able to be finalised. We are looking at managing matters within the past 12 months, which will place the Commission in a better position than it was. We need to build on the capability that we have developed and use tools more effectively to ensure that we continue to do so. In that way we will better serve our objective, which is being open and providing fair access to rights for information protection.

I will provide some more statistics. We know that if that is our history we must look to our future. Again, we are looking at a small snapshot of data. The monthly average of Government Information (Public Access) Act applications lodged review received during the previous financial reporting period was about 23 per month. We are seven months into the reporting period and we are now looking at about 28 applications per month. That could herald—if the trend continues and it may not—a 20 per cent increase in our total applications in only that category. In that context, we need to ensure that we have sound data, sound reporting systems and key performance indicators that tell us what is coming in the door and what is going out, how long it is taking us to close the cases and how they are being finalised. It will also ensure that we provide an effective oversight function.

Once our information management tool is refined and reviewed, we will then be in a position to maximise the benefits of the current project that we are undertaking, which is the review of our practices and procedures. In sound case management there is a requirement to ensure that a consistent application process is used. That will have to be tailored to meet Dr Coombs' specific legislative requirements and the specific legislative requirements that I might have in my role as Information Commissioner. However, overall there should be a process which is transparent and which well equips the staff of the Commission to undertake that important work.

For them it is a matter of ensuring that they have the necessary tools, such as a knowledge bank, precedence banks and standard correspondence. But we must also focus externally to ensure that things like our most frequently asked questions are documented and that they are provided on an upgraded website. When people access their information and privacy rights they should be able to do so knowing that they can obtain that information readily. It must be readily and consistently available to them, not only when someone calls and is given a particular answer. We are focusing our efforts on reviewing practices and procedures and defining with certainty the stages of an application so that a consistent case management methodology is applied by the Commission.

The third priority area that I will elaborate on is the external communications framework. We are looking to have a robust external communications framework that ensures that the information we receive from external stakeholders is applied to our educational tools and guidance and that it directs our work programs. An example is our frequently asked questions and answers. That informs what we publish so that the answers to those most frequently asked questions are readily available. Likewise, we need to be able to ensure that agencies become our external champions for information and privacy rights. We are a small organisation, so if we can identify with clarity and succinctly what the key areas are for agencies in applying these principles we can better assist them to promote them. We can do that, for example, through e-learning modules.

Just as we would seek to ensure that members of the general public have a thorough understanding and participate effectively in our processes, so too we must ensure that the trends in government agencies, the types of applications and the most challenging issues for them come back to us through our external communications framework and are translated into support processes. Information provided by external agencies for the evaluation framework will also enable us to see how effective we have been. How effective were we in promoting Privacy Awareness Week? How effective were we with the Have Your Say? What traction are we gathering so that we can further advance that proactive agenda?

Finally, there are two other outcomes about an external information framework that I would like to highlight. One is that, for a small independent agency such as the Commission, it is important to continue to have external input, to continue to look for best practice internationally and across Australia, and to continue to strive to modify procedures to ensure that that is met. An external communication framework affords us an opportunity to review other practices and procedures and then to translate those into a culture that is open and willing to strive to achieve best practice. It also enables us, as a small agency, to meet one of our needs and challenges, that is, to have sound relationships with external bodies who not only become our champions but who, in different agencies, are our service providers, if you like. Advancing our external communications will enable us to better manage the provision of the general services that are fundamental to the Commission's operations.

That is a brief overview of three of the main priorities. I now turn to the fourth, the section 37 report, which is more of a legislative obligation for me and a bit more specific to my role. There is a requirement that the Information Commissioner provide a report to Parliament as soon as practical after 30 June each year on the operations of the Government Information (Public Access) Act [GIPA] across agencies and in general. That requirement, to date, has not been acquitted so this year will be the first year that that has been done. We will provide a report that covers the previous three years and a fourth section of the report that enables us to look at trends. This is in recognition of a new and developing environment and we are seeking to gain as much input as we can into that report so that it will be a very meaningful one that will assist us in identifying best practice and in promoting that across agencies. It will assist us in identifying the trends that I spoke about earlier, in terms of external communications, the challenges for agencies, identifying how that information is advancing, how effective the current operation of the legislation is in advancing that information access regime, and to see if we have different issues facing different stakeholders. For example, local council issues may be vastly different from government department issues and we need to identify how we can best manage those.

The report is one of the priority areas within the Commission and resources will be applied to that, as they will also be applied to the 61B report. We are starting from a base that gives us the opportunity of being able to structure it but, given that it is the inaugural report, we are very conscious that it does not strive to be overly ambitious but rather, that it establishes a baseline from which we look at how to progress. We are looking at how reports are structured in other jurisdictions in Australia, what they look like and how they have presented their data. Have they presented just data? Are they analysing trends? Are they providing other information sources? Are they relying upon case studies? Our early thoughts are that we are attracted to the notion of case studies because there is some very good work that is being implemented in New South Wales and that provides guidance to agencies, to local government, to universities, as to how to better apply the objects of the Act. That report is under development and will be provided to meet the legislative obligation and, as I indicated, it will have annexures that cover the data from the last three reporting periods. The fourth report will attempt to bring together some of the trends that we are seeing in those reports.

**CHAIR:** An enormous task. Thank you, that was very informative.

**Dr COOMBS:** Thank you. First, I want to thank the Committee both for its interest and its support, as evidenced in your earlier reports of 2013 and 2012. It is both noted and appreciated. I also want to acknowledge Liz's appointment as Information Commissioner and the experience she brings to the role. I am looking forward to working with her in order to achieve the objectives and to perform the functions of the Information and Privacy Commission [IPC], in our two separate areas of responsibility. The matters I wanted to raise in my initial discussion with you primarily concern the issues that I will be facing in 2014. These are in addition to the ongoing complaint handling and policy advice on strategic issues or service initiatives, as well as perhaps any investigations we have going.

I will quickly list those. The foremost one is the code of practice for the movement of personal information outside New South Wales; data sharing and information security; think big data here—obviously the report on the operation of the privacy legislation, both the Privacy and Personal Information Protection Act 1998 [PPIPA] and the Health Records and Information Privacy Act 2002 [HRIPA]; public interest directions; consultation on the genetic health guidelines; communicating with stakeholders, as well as the privacy awareness work; and the privacy governance project. I want to address the issue that was raised in a previous hearing about drone surveillance. I will move through that quickly and can trim it down if you wish.

The transborder code of practice: In 2013 I commenced the process of drafting a privacy code of practice for the movement of personal information outside New South Wales. When the Act was first introduced

some 14 years ago it would appear—as one reads it and looks back through the files—that it was envisaged that a code would be introduced within 12 months of the enactment of the legislation.

For a variety of reasons, that did not occur. There were two previous attempts from privacy Commissioners that I have been able to identify. Agency service requirements commonly involve the disclosure of personal information outside New South Wales, for example, to other States and Territories and Commonwealth agencies. As you would be aware, advances in technology enable personal information to be easily transferred electronically out of New South Wales. At present there is no clear guidance to public sector agencies on their responsibilities in this area. The feedback that I have received is that agencies want clarity and certainty in this area and they are expecting guidance in the form of the development of a Code of Practice. Our intention is not to implement more heavy reporting or compliance requirements but to provide clarity and certainty in the simplest and clearest terms possible.

The situation under PPIPA is different to what is underneath the HRIP Act where there is, quite clearly, provision and protection around health information which is moved outside New South Wales. Most privacy regimes, both in Australia and internationally, do have this sort of protection in place. We are undertaking this work in close consultation with New South Wales public sector agencies and are still in the consultation phase. It has been an extensive and intensive piece of work but all the responses we are getting back have been supportive, not just in the sense that they think it will be helpful to them but also in terms of amendments to get a useful document that they can rely upon. I have the obligation under the Act to prepare and submit a draft code but it is the Attorney General who makes the code. I need to make that clear. I am anticipating, if all goes well, to be able to submit that in the next couple of months but it has been a more drawn-out process than we originally anticipated.

I move now to the loose term of "big data". Information security is important for privacy protection and I know that that is something that you will understand. However, a significant proportion of information held by the New South Wales public sector agencies—State Government, councils, universities—involves personal information. One of the information privacy principles is very much about the secure holding of personal information. In 2007 the former Government issued a policy requirement concerning security of electronic information and in 2012 the Government issued a Digital Information Security Policy. The implementation of those various policies over the years has been the subject of attention by the previous Auditor-General. I am liaising with the Department of Finance and Services about the sector's implementation of digital information security measures in terms of the policy and identification of areas which may have a particular privacy focus. That is an issue that I would like to see reflected much more in the nature of the section 61 report that I provide on the operation of the Privacy Acts. I am only flagging that that is an area for future work.

**CHAIR:** When do you provide that report?

**Dr COOMBS:** The section 61B report is an annual requirement and typically, as it was requested in *Hansard*, we provide it as part of our annual report. I want to make that report more comprehensive and rigorous, in terms of both quantitative as well as qualitative information, and to pick up those big issues which are happening across the sector, such as information security. I am also conscious that, with the ability to collect, store and analyse data—personal information—there is likely to be, if there is not already, very significant use of that data in ways which were not necessarily anticipated when the legislation was introduced in 1998. I think it throws up particular challenges in the privacy sphere, such as consent. I think that the notion of consent is something which is changing as we are seeing through the advent of technology. Once again, I want to be proactive, at the front of this, so we can introduce privacy by design methods. I am speaking both to the Department of Premier and Cabinet and the Department of Finance and Services about opportunities to develop a cohesive whole-of-sector approach. I look forward to being able to do something constructive in that space over the coming year but I am just flagging the issue at this point.

I have touched briefly upon the operation of the Act report, so I will not go further into that, other than to supplement what Liz has said about commencing a project to develop a framework along those lines. Obviously, we are looking at what other jurisdictions do, as well as internationally and to also pick up some of those trends which you have asked us about in the past. On the public interest directions, I have mentioned that, not just in the annual report but previously when I have appeared before you. Those public interest directions have largely been remade but we are going to continue to investigate ways that we can make those simpler and clearer for the public sector.

**CHAIR:** Can you explain public interest directions?

**Dr COOMBS:** The public interest directions modify the application of the privacy principles. I do not like to use the term "exemptions", but they modify how they are applied. For example, things such as Youth on Track, we looked at the ways that, for example, information could be shared and passed from one agency to another in that process. There are public interest directions which cover the sharing of information across the public sector for research purposes. Redfern-Waterloo was another project which had a particular section 41 public interest direction developed for it.

**CHAIR:** Do they take the form of a letter from you?

**Dr COOMBS:** No, we have a set format for them and they go over the purpose, what agencies are affected, how the principles are modified, and how long they will apply. They are quite prescriptive. The work we have done is to bring them into a standard template. Some have been modified to make them clearer in the sense that they have been written over various times. The big issue here with the public interest directions is they were really best used as short-term modifications, as matters that are piloted or tested or before legislation is modified or introduced. Some have been around for a very long time and I do not think that the whole policy or practice, as it was, of remaking those every 12 months was good. Prior to my coming into the role as Privacy Commissioner the then Acting Privacy Commissioner had notified the sector that there was an intention to either drop them or to seek that they be brought into the legislation.

Some things have occurred, for example, the Ombudsman which had a particular public interest direction had that brought into the legislation but there is still some work to do on some of the others. Obviously I will be working closely with the Department of Attorney General and Justice about that closer examination of the public interest directions.

I move now to the privacy governance framework. One of the issues that I hear quite regularly is, "We are very busy. Privacy is just one of the many issues on our plate. How can you assist in order to make this easy for us to grasp?" This is not just at the executive level but at the middle management level as well down to practitioners. I want to see this guidance brought into the governance of agencies so we have a process in place to get that simplified and condensed, to get it out into a very simple format.

In a previous hearing the Committee asked when we would get genetic health guidelines underway. I am very pleased to update the Committee that we have actually commenced the public consultation on the draft guidelines and the privacy impact assessment—comments actually close on 24 February. This will bring the New South Wales practice into alignment with what happens at the federal level—using the National Health and Medical Research Council [NHMRC] guidelines for the use of information about genetic information. It does not require health practitioners to disclose genetic information to relatives; it sets out for them those conditions and situations where they might want to consider doing that without a person's consent. So it is a series of guidelines recognising essentially the ethical dilemmas that many people in the health area experience. That piece of legislation has already been amended so we are coming in after those amendments were made. I look forward to completing that piece of work very soon.

I did quite extensive work last year in the community services sector with, for example, the National Disability Services organisation. I looked at the whole issue of what is changing in terms of policy and the use of the NGO sector to provide services for government in particular in the disability area, with very significant changes at the federal level, with citizen-centric provision of services to people with disabilities as well as what has been happening at the state level. However, I also recognise that many parliamentarians deal with a broad range of issues that include privacy impacts. So I am looking to seek feedback from people such as yourselves as to how I could better support you to assess the privacy impacts of whether its legislation or inquiries that you may be responsible for, to ensure that I am keeping up with my responsibility in terms of provision of advice to the Parliament on privacy matters. I am obviously starting very small in that area—this remains a part-time position—but I do think it is a very important part of my role and it is one that I look forward to hopefully dealing with more constructively in the coming years.

Moving quickly now to some of the privacy awareness issues. We are looking now in a more structured way at using global privacy events to bring privacy awareness to the local level. The Committee, of course, would be aware that there is a whole range of international days—for example, 28 January is Data Privacy Day, 28 February I think was Safer Internet Day—

**CHAIR:** 28 February?

**Dr COOMBS:** I am sorry, 11 February. Information Awareness Month in May 2014 will coincide with Privacy Awareness Week and Start Smart Online will be from 2 to 6 June. We have a series of events and we will be using our website—Liz has mentioned the work that we are putting in there to broaden its appeal to use it for a variety of mechanisms. This year Privacy Awareness Week will be very much about the right of access to your personal information, whether it is under the Health Records and Information Privacy Act [HRIPA] or under the Privacy and Personal Information Protection Act [PPIP]. One of the many issues raised with us concerns the right under these Acts to see what information the public sector may hold on people. We are going to very shortly put out—towards the end of February—a short survey to see the awareness amongst the community that they have this right. Have they utilised it? How has that experience been?

We will be using that to develop our tools as well as information resources that we will use to communicate the really important issues of Privacy Awareness Week. As we have always done, we will be working with the NGO sector as well as the New South Wales public sector and also the Asia Pacific Privacy Authorities [APPA]. We will pool our resources because it is the most effective way for small agencies such as ourselves to work. I move now to the report back on drone surveillance. The Committee has expressed interest in this form of surveillance, not only about the impact of the surveillance and what we were hearing about it but also about the technology and relevant legislation. I was recently provided with some very informative articles written by Dr Roger Clarke, visiting professor at the University of New South Wales in the Cyberspace Law and Policy Centre, as well as visiting professor at the Research School of Computer Science at Australian National University.

There were four articles, which cover a broad range of issues, but the final one concludes with looking at the impacts upon behavioural aspects of privacy. I think that material will be very useful and I will provide the Committee with it. We also discussed it with our Information Privacy Advisory Committee, which gives advice to Liz as Information Commissioner and myself as Privacy Commissioner and can also take referrals from the Attorney General, to try and get a rounded approach to it.

**CHAIR:** Sorry to interrupt you. I remember the questions that the Committee asked but would you refresh our memories as to what the issue was relating to the drone technology?

**Dr COOMBS:** The particular issue at that time was that there had been a report in the media about a woman who had been convalescing from surgery, she was resting on a bed and looked up to her balcony window and there was this sort of flying device peering in her window. She got up to investigate and it moved away. She was completely unable to find out who was operating it, who owned it. It got to the attention of the media. It was raised because we had most certainly been approached by the media. It was something which was relatively new for us and I think the Committee asked how our legislation covered that.

Essentially it would only be underneath the Privacy and Personal Information Protection Act, for example, if it was by a New South Wales public sector agency. Typically these devices—which are known by a whole variety of terms, "drone" is not the preferred term but is the one most commonly used—are used by individuals and corporations. It would seem that the most relevant pieces of legislation are in the Commonwealth sphere underneath the aviation area, perhaps the Commonwealth Privacy Act, but they are also possibly under the New South Wales surveillance devices legislation.

**CHAIR:** But it is unproven at this point, is it not?

**Dr COOMBS:** That is so.

**CHAIR:** There has never been a case involving a drone.

**Dr COOMBS:** Not that has come to us formally and I am not aware of any, for example, going to the tribunal. I am not even aware of any going through the Commonwealth privacy level. We had a recent meeting of the Asia Pacific Privacy Authorities and it came up again. It is one of those ongoing 'How do we grapple with this' issues?

**Mr KEVIN ANDERSON:** Last Tuesday there was a very sophisticated drone or surveillance device in one of the streets in the central business district of Tamworth. It was a large device, probably a half metre square, and it was hovering up and down the streets. It was significant enough for me to stop and watch to see what it was trying to do. Then it disappeared back over the rooves of buildings. It is a very valid point you raise.

I am really keen to investigate further where the Government sits in terms of legislation regarding mobile surveillance devices.

**Dr COOMBS:** It is an issue because the technology has become smaller and the price has also reduced—it has come down in the order of thousands of dollars to quite a reasonable figure, depending upon your budget. Someone said to me that they were able to obtain one for a few hundred dollars. I do not know whether that is actually the case. It is very important to acknowledge the beneficial aspects of technology such as when these mobile surveillance things are used in the case of identifying bushfires. There is a whole range of very useful uses for them. But when it starts to go peering over your fence or in your window it raises other issues of concern.

There is increasing awareness of privacy in the community. The Federal Privacy Commissioner released in October last year a community survey. It showed that people's concern about privacy has grown enormously; moreover, the action they are taking about their privacy concerns has also grown. In the period from 2004 to 2013 the figures for: "I will take my business elsewhere when I am dealing with the private sector" went from 24 per cent to 42 per cent, and in government services it went from 12 per cent to 24 per cent in the same period. This is significant as government services are typically in an area where the private sector may not be. People are so conscious of adequate protection and appropriate management of their personal information that they are using those concerns now to make choices. As the Committee knows, I could talk quite extensively on privacy so I will stop.

**CHAIR:** Was there anything further that you wanted to add?

**Dr COOMBS:** Amendments to the Privacy and Personal Information Protection Act to regulate the use of drones by individuals or corporations does pose some significant challenges for the scope of the Privacy and Personal Information Protection Act as it currently is, which is focused upon the public sector. It may be more appropriate under some of the surveillance devices legislation. That is something I do not want to be saying in black and white but it may be an issue for exploration. I will put that to you today.

I will just move very quickly to the casework and give you an update of the formal privacy matters handled in the second half of the year. I am pleased to say that we closed more than we received, that is always a very positive sign. The figures that have been coming through indicate that we received 133 formal matters—this is not inquiries or advice, just formal complaints—from 1 July to 1 December and finalised 176 in that same period. As Liz indicated, we are working very closely on how we can improve our data to report in a way which is appropriate to be accountable. Thank you for your interest. I know I have taken a very significant proportion of the time available today.

**CHAIR:** It has been most informative, thank you.

**Mr PAUL LYNCH:** I direct this question to both Ms Tydd and Dr Coombs. Are you satisfied with the level of staffing and resources? Do you have enough to be able to do your job properly?

**Ms TYDD:** I am aware of some of the correspondence and the former Commissioner's position in relation to her public statements about the baseline necessary to achieve the dual functions of the Commission and her statement being 28.6. Currently one of the issues that we are looking at is our administrative functions and how they are best served because it is a very small agency. So things like data integrity, how we ensure that our case management system continues to deliver requires a degree of expertise that sometimes small agency struggle to achieve. Do we try and advance that internally or do we enter into relationships with the department to ensure that we have a high level of service delivery to address those? They are matters that are currently under consideration.

In my very early days in the position, which is not yet three months, I would commend the statements made previously by Deirdre O'Donnell, former Information Commissioner and chief executive officer, but also in conjunction with discussions that the Privacy Commissioner and I have had. That was a baseline that was established. The work that we are now doing is going to provide us with an opportunity to better look at our resources, identify our priorities and apply those resources. At the end of that exercise there may be some further questions.

**Dr COOMBS:** We are always very conscious that across the sector there is a tightening and very little extra being provided in the sense of growth in positions. As we raise the profile of privacy it is likely that



demand will grow and I was very happy to see in your report you mentioned that you were going to be monitoring these aspects. As Ms Tydd has said we look forward to the opportunity, if or when required, possibly to come back to those issues.

**CHAIR:** Can I commend you in your presentation for referring to agencies as your champions because the traditional approach has been to see them as clients to be serviced. Seeing them as champions is perhaps harnessing them as a resource, which is a really efficient approach to take.

**Dr COOMBS:** The legislation very much places that onus upon agencies. That is sometimes why people see the privacy regime as complex but when people have concerns or make complaints about privacy it is the agency where the matter arose that has to deal with it. We oversight the review they have undertaken and I think that is appropriate. The governance of agencies should be very much about recognising that and building on it as a part of the way they do their business.

**The Hon. SARAH MITCHELL:** I want to ask a couple of questions about the new case management system you have referred to today and that is mentioned quite extensively in the annual report. You talk about how you will be able to use the case management system for better collection of data and analysis of trends. Have you undertaken any analysis or is it still too early in the implementation of the system?

**Ms TYDD:** It is the Resolve case management system that was purchased off the shelf in the knowledge that the Ombudsman also uses the system and it is a very useful connection to have. The case management system provides a capacity to manage those files and it also provides us with a capacity to identify our reporting requirements and to generate those reports. Things like age profiles, which were referred to earlier, are matters that we can customise to some degree within that case management system. It has allowed the organisation to define, I think possibly with some degree of accuracy—there are still teething problems; it has only been bedded in for about the last 12 months if I recall correctly—those parameters.

So what is an unacceptably old case? That is something that we have to measure through our key performance indicators. What categories of cases are most appropriate? How do we categorise complex cases versus those matters that can be resolved very quickly and very efficiently and then how do we generate those reports? That is the exercise we are undertaking now. We are doing so in talking with the Ombudsman. We are also getting a little bit of external support to help us refine our reporting capabilities and it may be that we need to better utilise what we have got or to enhance what we have got and you can do that via the Resolve system. That is the advice to date, so it is giving us some trends.

It can tell us one very pleasing outcome and that is that the age profile of the case has come down considerably in the last eight months because of the resources applied, so that is very helpful. It also gives us categories of types of applicants, where they are coming from, and then it will enable us through the 37 annual report to report on things like, "Well, are we getting an increased number of applications from local councils? Is privacy seeing different types of trends that we need to comment on and provide further advice about?"

**The Hon. SARAH MITCHELL:** Did you want to add anything?

**Dr COOMBS:** Only to reinforce what Ms Tydd said that it is a very essential tool for us. I think there are staff induction and training issues, so that they use it in a consistent manner in how they actually enter to categories the matters referred to, that's something I have observed in the privacy area. Some fine-tuning needs to occur there, but as a tool we are aware that the Office of the Australian Information Commissioner also uses the Resolve system and we have had discussions with them about how they use it from the privacy perspective as well.

**The Hon. SARAH MITCHELL:** With respect to community engagement, I note the attachments to the report about the Aboriginal action plan, the disability action plan and the multicultural services plan and reference to you attending different events. How do you determine which events you go to or is it something that you do in consultation with other agencies? What is the process for community engagement?

**Dr COOMBS:** Typically my approach is that if they ask, I want to go there. At this stage I have only said no if it has been a direct clash but I can change my days of work to ensure that I get there if have other commitments. The process is very much that we like to make sure that it is engagement consistent with the plans in terms of our objectives and priorities. As a result a number of agencies such as AbSec have come in and we have been working to assist them to get their privacy awareness matters and resources in place. We want to

provide tools and resources to those community groups to enable them to take on, in a confident manner, the raising of privacy awareness amongst their particular users, in the same way as with the National Disability Service. I was not the only one who could ever speak to them about privacy. It is the peak organisation that has a range of disability organisations associated with them. It was going out to talk to them so that they would be able to pick up the issue of privacy inside their organisations.

We need to look to where the biggest opportunities are in the sense of making the biggest impact. To be honest, in the past it has been to provide support for them, particularly out in regional New South Wales, so I made the trip to Wagga Wagga, Dubbo and Bathurst because it is very hard to get people who will go out to regional New South Wales. That has been a focus of real effort as well. Moving forward in a strategic sense and asking, "How does that tie in with our plans and priorities?" and if we can get the maximum coverage, that would be ideal.

**Ms TYDD:** I might add one additional detail. The Commission is focused on maximising the message and the audience for that message but we are also conscious of the matters of substance that drive applications. The former Information Commissioner conducted two exercises of snapshots and one that was really interesting was around local councils. We found a really high level of compliance with statutory time frames. We also found that the overall results were very pleasing but there was also a finding that the number of applications were withdrawn because they were unfounded, they were not well-informed applications and so they would fail. We have been talking internally about, "Is that a priority area for us? Do we need to ensure that people know the system, know how to best apply and access their rights?" and we deal with them appropriately and they know how we are going to deal with them. That then ensures that the resources that you have are freed up to deal with real applications and not those that unfortunately are poorly founded, so education would be directed towards that matter of substance.

**CHAIR:** If those applications fail quickly that would make for really good time limits in the processing. Okay.

**Mr KEVIN ANDERSON:** I congratulate you on the annual report. You may as well submit the annual report; everything is in there. It is fantastic to read and it is very comprehensive. We note the legislative changes in 2012-13. Dr Coombs, I do not know how you get through the volume of work that you do being a point six, but you do a fantastic job with the staff that you have. Are there any further legislative changes you think we should be considering, given our changing environment as well as the different methods of surveillance these days?

**Ms TYDD:** That is a very opportune question because of its timing. There is a review of the Government Information (Public Access) Act. That is a statutory five-year review that commences this year. It will commence and be led by Attorney Generals from mid-2014, so input into that review would enable us to identify issues. We have commenced internally collecting an issues log and again we would like to rely upon our external sources. This Committee is a valuable source of information to us—likewise the Information and Privacy Advisory Committee—to ensure that the submissions going into that review are really well informed and have a contemporary application because in this area, as Dr Coombs has pointed out, developments are so rapid that keeping abreast of those developments and ensuring that the legislative framework is able to accommodate those rapid changes is really quite a task. We are using that framework to identify areas that may well better inform a process and a legislative framework in the future.

**Dr COOMBS:** You will find things about legislative changes in the annual report and through the year we saw Services NSW, Health and the Health Records and Information Privacy Act. I think there is possibly a need for some fine-tuning. I would need some time to formulate better and clearer recommendations around that. It would be useful if we could hear from the Committee in terms of these sorts of matters that come across your desk where we may be able to provide some useful advice and analysis.

**Mr KEVIN ANDERSON:** I would like to think more about that surveillance and whether it comes under the Government Information (Public Access) Act and the surveillance devices legislation. We are seeing more of those devices used in agriculture, for example, with cameras being placed so that they can travel, so that they can look at troughs and dates, and using solar panels on roofs to save time and manage their practices better. Services NSW is referred to in your annual report. Is that because concerns were expressed about that?

**Dr COOMBS:** To the best of my recollection I cannot recall any formal matters being raised with us or any inquiries either via the email system, by phone or in correspondence about any Services NSW outlets.

**CHAIR:** Another good question. Dr Coombs, officially you work three days a week?

**Dr COOMBS:** Yes.

**CHAIR:** Are you working three days a week? It sounds like a lot more than that.

**Dr COOMBS:** Obviously any member of the public service or statutory officer works many hours. I do not know the background as to why it is part time, but it is something we manage. We manage it well. I know there have been some comments in blogs and the like about the fact that it is part time. We make it work. With the support that I receive I do my very best to make three days work count as five days and to be as efficient and effective as I can by being strategic and focusing on the priorities.

**CHAIR:** Is there a management tool used in the public sector that evaluates appropriately workload and resources?

**Ms TYDD:** I think that is a matter that the Public Sector Commission may be able to provide better advice about in terms of the capability framework it is rolling out for the senior executive service. As statutory appointees we have regard to developments in the public sector. While application of the reforms applies, they are separate statutory appointments and that tool may not be used; rather it may be a comparative role in terms of other quasi-judicial appointments and the sorts of volumes, workload jurisdictional breadths that are applied there.

**CHAIR:** Obviously everyone wants to see efficiency within the public sector but then there is the tipping point where it turns into exploiting resources in a way that is of concern.

**Mr KEVIN ANDERSON:** I have one more question about the disability sector, which is an extremely demanding environment at the moment, given the move to a self-centred or person-managed approach with the National Disability Insurance Scheme and the Hunter Valley presently being a trial site. I am interested to keep track on how things are going through contact with your office and issues that may or may not arise?

**Dr COOMBS:** I would be very happy to do so. I have had discussions with the chief executive from the Department of Ageing, Disability and Home Care, as well as some of the executives, and have identified further areas that we might need to work on together in the coming year.

**CHAIR:** I was going to touch on questions on the same topic with the National Disability Insurance Scheme. We are looking at a transition from a publicly delivered service into a non-government model. Of course issues of guardianship, which are publicly mandated issues, will continue, but the services will be delivered and access to information will change status from public to non-government. I wonder how your jurisdiction will work with that change in status of information.

**Dr COOMBS:** My view very much is the frameworks in which those things occur need to take into account the privacy protection because (a) people with disabilities expect it and it is written into the United Nations convention on the Rights of Persons with Disabilities, as well as the nature of the responsibility. We have always had the view in the privacy area that it still remains your responsibility. If somebody else is providing the service as your agent, it does not absolve you or them from the responsibility of appropriately protecting privacy and managing information that is personal information.

**CHAIR:** Will their rights alter when they move from a public facility to a non-government facility? In other words, your jurisdiction will no longer apply.

**Dr COOMBS:** That is an area where we are having discussions. I do not believe those people will be without privacy protections, because there is a complex interplay between the State and the Commonwealth, and if it is health information underneath the Health Records and Information Privacy Act [HRIPA], we most certainly have a role to play in disability information and can be seen as falling underneath the HRIPA.

**CHAIR:** Is that irrespective of who is delivering the service?

**Dr COOMBS:** Yes. The HRIPA has jurisdiction for health service providers and for agencies that hold health information. In the area of health information, there is a threshold about size. But through the HRIPA, it

is our general view that there will not be a jurisdictional issue. My concern is that there is protection, and that is where we are flagging that interplay with the Commonwealth legislation and ours as an area that we need to be working through. The trial started last year, and there are certainly expectations that there is coverage for jurisdiction there. We have identified areas that we will continue to work together on to ensure that people do have appropriate privacy protection.

**CHAIR:** Do you envisage that it will be a continuum?

**Dr COOMBS:** I would want it to be that. I would not want it to be a gap in the middle, if I am understanding you correctly.

**CHAIR:** I am not saying a gap, but I am saying that at the moment families and staff all understand a system of privacy in the delivery of these services and how that all works. In respect of a person being able to access their rights, they need to know what their rights are, so if there is continuity in the arrangement when they transition, then, to me, that would seem to be beneficial to the clients and their families.

**Dr COOMBS:** The material that I have seen coming out of the Department of Ageing, Disability and Home Care is very clear on privacy rights.

**CHAIR:** Good.

**Dr COOMBS:** Of course, I have not yet seen all material or more recent material. As part of the preparation for speaking with national disability services I did review the literature and so the resources and material which was available. I am very conscious that it is an area where I still need to get well grounded, so I may come back and say there is a particular issue.

**CHAIR:** Thank you.

**Mr KEVIN ANDERSON:** Dr Coombs, to add to that mix, it has recently been brought to my attention that when a person with a disability manages their own affairs, there are now a number of labour hire organisations entering the fray, so they are now starting to broker for services on behalf of that person with a disability. There is now a raft of issues being thrown up. Notwithstanding privacy issues, there are also public liability issues and others that are starting to appear such as a labour company operating on behalf of a disabled client accessing services, so there is another loop in the chain, and I dare say it might be one to keep an eye on—I certainly am—as that situation develops.

**Dr COOMBS:** I am very conscious, too, that some of the responses I have given may be better informed if the Department of Ageing, Disability and Home Care have the opportunity to make comment on those matters as well, but I note that point.

**Mr KEVIN ANDERSON:** Thank you.

**CHAIR:** Again, Mr Anderson is reading my mind. I wanted to go to the next step regarding the interplay between public and private in your jurisdiction. Should a local council want to survey its ratepayers, it might contract a private business to do that for them. Is there an issue with handing over a database for the purposes of doing that and in respect of lots of control of that information?

**Dr COOMBS:** It would be a reasonable expectation that in the service agreement or the contract that was set up, that there was due attention to the requirement to comply with the privacy responsibilities of the council underneath the Privacy and Personal Information Protection Act [PIPA]. That would be an expectation.

**CHAIR:** A ratepayer with a complaint about that would need to be directed to the council?

**Dr COOMBS:** That would go through the internal review process. They could come to us and raise the matter and we would say to them, "These are the options you have. We recommend that you go to the council and request an internal review." The council then has a responsibility under the Act to advise us that they have received an application for an internal review, they need to provide us with a copy of their draft internal review report so that we have the opportunity to make a submission on it.

**CHAIR:** They are still responsible for the security and the use of the information, even though it has been excised on their behalf by a private contractor?

**Dr COOMBS:** I most certainly think that is appropriate. The contractual arrangements around such a project should include adequate protection of privacy.

**CHAIR:** Thank you. Ms Tydd, I am really interested in your comments about documenting the decisions, because making your decisions available is great guidance for people.

**Ms TYDD:** Absolutely.

**CHAIR:** Can you elucidate more about that database?

**Ms TYDD:** We are looking at all of the tools that our internal officers would use in making reviews, so the report framework itself and correspondence. Once the report is finalised and templated in a particular fashion, addressing all of the issues that it has to address, it becomes a tool that can be used externally, not only by government departments, local governments and universities, but also individuals who can search the database and look at similar cases that have occurred, what is the expectation, how do we apply the balance and test that is applied, what is a commercially sensitive matter. Those sorts of tests are best articulated through the decisions, and it is very interesting. One of the findings that the former Information Commissioner made from the snapshot report she undertook in relation to local governments and also in respect of Ministerial responsibilities or conduct under the Government Information (Public Access) Act was that, statistically, the internal reviews made by local councils upheld the original decision in a very significant number of cases.

However, once they were reviewed by the Commission and a review decision was provided and they were asked to revisit the decision under section 93 of the Government Information (Public Access) Act, then the decision was revisited in its entirety and was not upheld, so it is a vastly different outcome and it goes to your point about what does that decision do. It explains the operation of the Act. It gives them greater understanding of the issues that need to be addressed and how they are best addressed through an application of the legislative framework to show their reasoning and to 'justify', which is the wording of the Act, their decision. So once provided with a review decision from the Commission, the proportion changed dramatically and access was then granted in totality or in part, so they provided a very important resource.

**CHAIR:** Your plan is for that to be available. It will be much more efficient if people can search that themselves than to have to get permission to do so.

**Ms TYDD:** Yes. The Commission currently publishes significant decisions, because there are a large number of decisions and databases can become unwieldy, so we are looking at then using the decisions, not only to publish the significant ones, but also to inform our guidelines and inform other tools so that we take the essential issues and carry those forward.

**CHAIR:** Do you have a technology platform that will support that?

**Ms TYDD:** Through the website review that we are currently undertaking, we are hoping that the functionality will be enhanced and also accessed so that coming into the Commission's website, how to apply information that is there and that is provided within the framework on the server. It is about ensuring that people are able to access it. We are streamlining the homepage so that people are better able to direct their inquiries and better able to search and interrogate, and then the other option of working on our reports and our case management tool through Resolve as well.

**CHAIR:** What is the status of that proposal?

**Ms TYDD:** The current work with the website is well and truly under development. I am grateful to Dr Coombs, who has been very consistent in working on that particular project, and of course to Meredith Claremont, who is the sponsor of that project. So we are looking at finalising that matter very soon in July/August. We were hoping for 30 June, but we think there might be some degree of carry over, so we are hoping for finality on the website by about July/August this year.

**CHAIR:** That would be a breakthrough.

**Ms TYDD:** Absolutely.

**CHAIR:** Is it funded?

**Ms TYDD:** Yes, it has received capital funding and that is reported in our budget.

**CHAIR:** What was the funding?

**Ms TYDD:** The funding for the website, off the top of my head, was \$150,000.

**CHAIR:** Does anyone have further questions?

**The Hon. SARAH MITCHELL:** I want to ask about the conference you had in Sydney in August 2012, which I believe was instigated by your agency. Following on from that, I saw in the report there were glowing reviews from those who attended. You have had very positive feedback. Has there been any further enhancement between yourselves and any other organisations since that conference and would that be something you would do again in the future?

**Ms TYDD:** Is this the open government?

**The Hon. SARAH MITCHELL:** Yes, open government.

**Ms TYDD:** The direct follow-up since I have assumed the role has been in respect of external relationships, meeting with heads of department, promoting the role of open government through the public sector Commission and looking at opportunities there. We are looking to try to advance that State goal, number 31, through a number of mechanisms, and to incorporate that within our external review. In respect of the Commission going forward and how we measure the effect of that conference and what outcomes we had, it is something that, again, we are looking at in respect of our reports. For example, is an increase in applications a positive outcome from promoting awareness, or, rather, is an appropriate measure more around the application types.

We are looking at how we might better measure that, and that would incorporate those two prior projects that I talked about, because that is one of the most valid sources of information. When we apply our endeavours, what is the end result that we get for that, and should we reapply our endeavours, or how should we apply them differently. In respect of any views that Liz might have, the Privacy Awareness Week in some ways could be analogous, so there may be views that we should seek from Dr Coombs in that regard.

**Dr COOMBS:** Events such as the conference or Privacy Awareness Week give an opportunity and focus to actively raise the external relationships, but also the content. Obviously I will not speak on the open government conference. In terms of Privacy Awareness Week, we actively try to build on those, so we are now not looking only at what we are doing this year, but what we will be doing next year and will try to work through non-governmental organisations as well as Government departments and councils to get them thinking about the things for this year as well as the coming year. I do not want to overdo that, but it is what we think. We are most certainly looking to establish where there is awareness and a need and to find the people who are ready or prepared to take on that role with us.

From the Information and Privacy Commission side, I am sure the conference gave us that opportunity, as does Privacy Awareness Week. I have to say that when we have the Asia Pacific Privacy Authorities in the city, they also give enormous opportunity to build relationship with not just non-government organisations, as I said before, but also with universities where there is a lot of thought leadership going on and where there are a lot of tools. In my area for example, for data leakage whereby you can actually have matching of people's personal data without loss of privacy. These sorts of mechanisms have been enormously useful.

**Ms TYDD:** Ms Mitchell, could I just add that I am sure a satisfaction survey was undertaken.

**Dr COOMBS:** Yes.

**Mr KEVIN ANDERSON:** It was 2012, I think.

**CHAIR:** Thank you.

**Ms TYDD:** That was a very positive. Likewise, the Australian Information Commissioner has raised with me the success of that conference. I need to acknowledge that. He has indicated that it was incredibly well received and it was vital that we had such significant people attend that conference to promote the open government agenda. Certainly from external feedback, both on the satisfaction survey and then other representatives of other jurisdictions, it has been very positive.

**CHAIR:** I am sorry that we have run a little over time. I formally thank you for appearing before the Committee today. We really appreciated the presentations that you gave. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to further questions?

**Ms TYDD:** Certainly.

**Dr COOMBS:** Certainly.

**CHAIR:** Again, thank you very much. It is greatly appreciated.

**Dr COOMBS:** I make available the articles on the drone surveillance.

**CHAIR:** Yes. We will deal with that separately.

**(The witnesses withdrew)**

**(Short adjournment)**

**BRUCE ALEXANDER BARBOUR**, Ombudsman,

**STEVEN JOHN KINMOND**, Deputy Ombudsman—Community and Disability Services Commissioner,

**CHRISTOPHER CHARLES WHEELER**, Deputy Ombudsman—Public Administration, and

**LINDA MICHELLE WAUGH**, Deputy Ombudsman, affirmed and examined:

**CHAIR:** I welcome everybody. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr BARBOUR:** No, thank you.

**Mr WHEELER:** No.

**CHAIR:** Mr Barbour, would you like to make a statement?

**Mr BARBOUR:** Thank you, Madam Chair; I would. Firstly, may I say that I am pleased to have the opportunity to meet with the Committee to discuss the work of my office during 2012 and 2013. I would like to use this time to outline some of the important work and results we have achieved in the last 12 months. I would also like to provide the Committee with an update on some of the current and future issues that I believe are important to the office and will be of a broader public interest. Yet again, it has been an extremely busy year for the office of the Ombudsman. The list of public reports alone, which you would have seen, shows the continuing breadth and complexity of what we do. I discussed our review of the use of tasers and our final report as part of our audit of the implementation of the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities with the Committee when we last met. I also spoke about our report to Parliament assessing the access that people in mental health facilities have to disability services and support.

Since our meeting in February last year I have reported on the administration of provisions aimed at providing assistance to students with disabilities sitting for their Higher School Certificate [Higher School Certificate] and the critical incident investigation into the death of Roberto Laudisio Curti. These are all important investigations, and I would like to provide the Committee with a brief update on developments since their release. I received a whole-of-government response from the Minister for Family and Community Services in relation to my recommendations following the audit of the interagency plan at the end of last year. The Government's new approach to Aboriginal affairs, which is Opportunity, Choice, Healing, Responsibility, Empowerment [OCHRE], touches on many of the issues raised by our audit. In other areas, work is underway to meet our recommendations. We will continue to monitor progress in this important area very carefully.

Both the departments of family and community services and health have accepted the recommendations in our report on the access to disability services and support for people in mental health facilities who have a disability. However, I have some concerns around the timeframes for implementing the recommendations that have been provided as well as the level of detail with which I have been provided, and I will be following that up. I recognise that disability services is an area undergoing an unprecedented level of change, but I do not feel many of our recommendations can afford to wait. Our report highlighted situations where people are in mental health facilities far longer than they needed to be. This is a serious problem and one that must be corrected as quickly as possible. I have sought additional detailed responses from both departments by the end of this month.

I have been very pleased with the response of the Office of the Board of Studies to my recommendations relating to Higher School Certificate disability applications. All but one of those recommendations have been accepted, with many already having been implemented. This includes releasing guidance on how the board will use its discretion when making decisions on applications, talking to school staff, parents and students to help to improve communication about the application process, providing case studies to schools about unsuccessful applications and explaining why they were declined, and producing a fact sheet for health professionals, explaining why a medical report is needed and outlining what is relevant for an application to try to prevent practitioners providing unnecessary health information.

The death of Roberto Laudisio Curti was tragic. Clearly it received a great deal of public comment and consideration. As such, I will not discuss the matter at length but I will note that, following the release of our review of the critical incident investigation, as well as the relevant Police Integrity Commission operation



instituted following the coronial inquest, the Government tasked a former Federal Attorney General, Robert McClelland, with reviewing the way in which critical incidents are dealt with. I met with Mr McClelland a number of times and provided a submission to supplement the Curti report recommendations. I am very happy to provide a copy of that submission to the Committee. As the Committee would be aware, Mr McClelland has now completed his review. The report is publicly available. The Premier has indicated he will discuss the report with relevant agencies and comment has been sought from us. I have prepared a further submission in relation to my views on that review. I am happy to provide a copy of that to the Committee also.

Commissioner Margaret Cunneen, SC, is due to report her findings on 28 February, but the Federal Commission continues on and will do so for some time. While the submissions we have provided are only part of what we have done to assist the Commission I thought it might also be useful to provide the Committee with copies of each of those submissions today. They deal with a broad range of topics including the working with children check, creating child safe institutions and out-of-home care. When we met last year there was some discussion of the role of the inspector of custodial services. Since that time the inspector has been appointed and I understand the Committee met with Dr Paget yesterday. I had a very encouraging meeting with Dr Paget soon after his appointment—with staff from my custodial services unit—and we will continue to develop a good working relationship with the inspector. This will include entering into a memorandum of understanding in relation to our respective roles.

As I noted when we spoke last year my primary concern is always to avoid unnecessary duplication and confusion between our offices. Were this to occur there is a very real risk that serious issues might get lost in the shuffle. I understand that Dr Paget feels the same way and I look forward to working with him to prevent this from happening. This brings me to some of the current and future issues we face that I feel will be of interest to the Committee. This year will be an exciting and very busy one for a number of reasons, not the least of which is that we have several new functions and responsibilities that have been provided to the office. The first is the creation of an Aboriginal Deputy Ombudsman specialist position. We have worked hard, as the Committee is aware, over the last 12 years to develop strong links with Aboriginal and indigenous communities and to work with them, agencies and non-government service providers to identify ways of overcoming the difficulties and disadvantage faced by many Aboriginal people across the State.

I believe the Government's decision to create a dedicated Aboriginal Deputy Ombudsman position is recognition of this commitment and our hard work. I look forward to recruiting and welcoming the new deputy into our office and working with them to ensure that the communities are receiving appropriate targeted place-based service delivery. The second major change to our work will be the introduction of a monitoring role in relation to allegations of abuse and neglect of people with disabilities in care. The Committee is well aware of the changes taking place around the provision of services to people with disabilities around Australia. It is vital that these changes are accompanied by appropriate safeguards including a strong framework for preventing and effectively responding to abuse, serious neglect and exploitation of people with disabilities.

A system for reporting and overseeing the handling of serious incidents, as well as establishing an exploitation offence, will be important parts of this new framework. In 2013 we were given responsibility for a number of additional legislative reviews and changes to the Firearms Act and the Restricted Premises Act as part of a suite of legislative amendments aimed at targeting and disrupting the activity of criminal organisations. We are in the early stages of both of these reviews and are currently identifying our information requirements. This will ensure that the NSW Police Force is capturing what we believe we will need to properly report to Parliament from the beginning of the review period. The recent review of the Law Enforcement (Powers and Responsibilities) Act by former Police Minister Paul Whelan and former Shadow Attorney General Andrew Tink has also recommended that my office review the operation of part 15 of that Act, which outlines requirements for police exercising certain powers, including arrest, search and seizure.

The Tink and Whelan report is now with the Government for consideration. These new functions and additional responsibilities demonstrate clearly the continuing importance and expansion of our role and our office's work. It brings me though to a very practical challenge: the new role involves new staff and while we are not entitled to additional space we have been advised our existing fit out is unlikely to adequately accommodate us in the future. As we are now rapidly reaching the end of our current lease I am working with Government Property NSW to try and find the best solution. This may mean refurbishing our existing office space, which will no doubt create some significant disruption, or it may mean moving the office elsewhere, which of course will also create significant disruption. Either way we will do our best to minimise the impact of those interruptions to our everyday business.

In addition to taking on new functions and responsibilities we are continuing our commitment to provide the best possible service to people in this State. With this in mind we are in the process of finalising a new service charter outlining what we are committed to doing as well as what we expect from those who contact us. This puts information already available in a number of different public documents into one clear statement. I am pleased to be able to table a draft of the charter for the Committee's consideration and I very much welcome the Committee's comment before we finalise that document. It is important that we do not merely outline what we will do but also occasionally check that we are meeting our commitments. As noted in our last annual report we have audited the level of satisfaction among those we deal with. This was a two-part process.

The first part involved surveying those who called our office during a two-month period and the results were very positive. Those results are set out in the annual report, but briefly: 90 per cent indicate they had no difficulty contacting our office and speaking to someone; 97 per cent thought the person they spoke to had the knowledge necessary to deal with their issues of concern; 100 per cent felt the person handled their inquiry politely and dealt with their inquiry fairly; 99 per cent felt they had been listened to and understood; 95 per cent said they were satisfied with the service they received; and 94 per cent said they would not hesitate to contact us again.

The second part of the audit involved sending a series of questions to those who had a written complaint dealt with by our Public Administration Division in several time periods and we are in the process of finalising that second stage at the moment. I know the Committee has a particular interest in the work that we do to make our office as accessible as possible. Our website is one of the best ways for people to get information about our work and better understand when and how to approach us. In January this year, a relatively quiet month, 12,875 people accessed our website, 1,692 were referred from other agency websites, and individual pages on the site were viewed over 53,000 times. The pages dealing with making a complaint continue to be our most visited, followed by our various facts sheets for agencies and members of the public.

With this level of interest and contact with our website we are obviously doing our best to make it as accessible and user friendly as possible. We are continuing to make the site better and have recently had an external plain English review conducted. We have already updated some sections of the site in line with the review recommendations, using simpler language and clearer headings to guide people through the site. We will continue to do this work in the coming year and once again I would welcome any comments from the Committee about the website and its accessibility. We are also working hard to make the best possible use of technology to increase our efficiency.

We introduced a new telephone system in June last year. The significance of this is that it will be integrated with our case management system, Resolve, which will allow staff to see the relevant complaint details automatically when they receive a call. We have also configured our system to record calls and this feature will be rolled out to staff dealing with inquiries from the public. This, although a rather long opening, which I apologise for, is really only a brief snapshot of some of the issues that would be of interest to the Committee. Thank you again for the opportunity to make the opening and my deputies and I are very happy to answer any questions you have for us.

**CHAIR:** Thank you very much. I must say I am a regular visitor to your website but I cannot say that I visited it 53,000 times. Before we proceed to questions can I thank you for offering to table those documents: The two submissions to the McClelland review, the Royal Commission submission and the draft charter?

**Mr BARBOUR:** I have a copy of the opening statement as well.

**CHAIR:** That is much appreciated.

**Mr PAUL LYNCH:** Mr Barbour, I think the statutory maximum period for your appointment and period that is most often used is five years. You have recently been appointed and your current appointment expires in June 2015; are you prepared to serve the full five years?

**Mr BARBOUR:** Yes. Firstly the upper limit of the term is seven years and traditionally Ombudsman are appointed for the full seven year term. I would like to clarify that. I was happy to serve for however long the Government wished me to serve. However, I indicated in a letter to the Premier that I was happy to be appointed until June 2015 and that was the term of the extension of my appointment.

**Mr PAUL LYNCH:** If you were happy to serve for seven years why did your letter say you were happy to serve until 2015?

**Mr BARBOUR:** I do not think there would have been a preference for an appointment of a third term. I have served two full terms now. That is one more term than any of my predecessors. To remain for a further 18 months would see my term being over 15 years or just on 15 years. I think that may well have been a factor that would have entered into any considerations about a further full term.

**Mr PAUL LYNCH:** Who chose that term, who chose that date?

**Mr BARBOUR:** I wrote the letter requesting that date.

**Mr PAUL LYNCH:** That is not what I asked. Who chose the term?

**Mr BARBOUR:** Well, the actual term and that date were ultimately chosen by me.

**Mr PAUL LYNCH:** That is an interesting choice of words. I will go back to the question: Who actually chose that term?

**Mr BARBOUR:** I am not sure who would have put forward alternatives in relation to the term. I am not sure who ultimately would have discussed those issues. I certainly, in my letter to the Premier, indicated that I was seeking reappointment until the end of June 2015.

**Mr PAUL LYNCH:** As your letter says "after discussion", that date was put to you by someone in Government?

**Mr BARBOUR:** No, actually that date was not put to me; I put that date to them.

**Mr PAUL LYNCH:** After discussions?

**Mr BARBOUR:** Yes, there are always discussions about reappointments.

**Mr PAUL LYNCH:** Did they put an earlier date to you?

**Mr BARBOUR:** Yes, there was suggestion of an earlier date.

**Mr PAUL LYNCH:** And what was that earlier date?

**Mr BARBOUR:** It was a 12-month period.

**Mr PAUL LYNCH:** So I take it from that that you will not be seeking reappointment beyond that 2015 date?

**Mr BARBOUR:** I have not yet made that decision. It is certainly open to me under the legislation to seek a reappointment I do not believe there is any issue as to my competency or ability in the role. I think I would be unlikely to but I would not want to, in all honesty, rule out that possibility. There are, as the Committee knows, a significant number of changes ahead and it may well be not simply about what is in my best interests, it might be what is in the best interests of the office in terms of some stable stewardship through some challenging periods that are coming up in terms of bedding down new jurisdictions and so forth. But that will be a personal decision that I will make in due course.

**Mr PAUL LYNCH:** Should you rule that out has the Government indicated to you that they have ruled it out?

**Mr BARBOUR:** No, that has not been indicated to me.

**Mr PAUL LYNCH:** Turning now to a different topic, equally interesting.

**Mr BARBOUR:** I am pleased.

**Mr PAUL LYNCH:** We might come back to that.

**Mr BARBOUR:** Thank you for that.

**Mr PAUL LYNCH:** Mr Searle may have some questions. We spoke about Operation Prospect, what is the current status of that, where is that all going?

**Mr BARBOUR:** Operation Prospect is fully staffed and it is well underway. In this last period since the previous meeting with the Committee it has finalised a lot of the analysis of the information. I explained to the Committee at our last meeting the office has not dealt with, and I think very few organisations would ever have dealt with, the volume of material that this inquiry is dealing with. We are literally talking about millions of pages of information. We have continued the analysis of that information. We have conducted a large range of private interviews and private hearings pursuant to our Royal Commission powers, the matter is on track.

I anticipate that we will be in a position to finalise the matter with a public report by the end of 2014. That is the advice I provided to Premier and Cabinet when I sought additional funding beyond the initial period that it had been provided. We had been provided with funding only until the end of the financial year 2013-14. It was fairly clear that we were not going to complete it by then, but I remain optimistic that we will do so. However, having said that, there are all sorts of potential risks and issues that might arise, so it is very difficult to put a firm date on it.

**Mr PAUL LYNCH:** I refer to the McClelland report. You have conveniently given the Committee copies of the submissions, and I dare say we will look at those in some detail. Do you have a broader brush response that you might be able to deal with now?

**Mr BARBOUR:** As members know, we made recommendations about the importance in the public interest of there being an independent and transparent process of oversight in relation to critical incident investigations. In the recommendations about our review of the Laudisio Curti incident, we indicated that we thought we were best placed to be the agency to do that. As a result of those recommendations, and also the recommendations made by the Police Integrity Commission in relation to one of its operations and reports, the McClelland report was born. I think there are a number of positives about the review and a number of negatives. I will deal with the positives first.

I think the review endorses the need for there to be an independent system of oversight and also that that should reside within the office. We agreed with both of those things: We believe we are best placed to conduct that function and we are the most suitable organisation to do it. Where we depart from Mr McClelland's views is with regard to what he sees the system being and how it would work and also some of the discussions that he has in relation to his report, which seems to provide the basis for the views which he has formed and which led to some of the recommendations. Some of the discussion was critical of our use of language. I think it was described as being "emotive" and something else. I can look it up if members would like.

**Mr PAUL LYNCH:** I know the phrase you are talking about.

**Mr BARBOUR:** I reject that. At the end of the day, if you have robust oversight of agencies and you are going to the effort of writing a report to Parliament because what they have done is inappropriate, you need to use relatively appropriate language. I am always very conscious and concerned about the language I use, so I reject that concern. I think the report suffers from the fact that it is trying to meet everybody's needs and to satisfy everybody. As a result of that, in the wash there is a bit of confusion about how one might approach issues. I think there has been a lot of endorsement of both the New South Wales Police Force and Police Association positions that are factually incorrect.

I will not comment on a number of the recommendations or suggestions that were made in relation to other agencies; I will simply focus on my own agency. Mostly, however, we are concerned with the scheme that was suggested. What Mr McClelland appears to be suggesting is a watered down version of oversight that would not be comparable even to our existing oversight of police complaint matters. We maintain—and members will see from our first submission to him and our subsequent submission to the Department of Premier and Cabinet—that there is little point in implementing, and we would not be willing to accept, a scheme that is simply a veneer to address public concern about oversight and scrutiny. If we are going to do this properly and in the public interest, we need to have available to us the same suite of powers that we have available for any

other of our oversight functions in relation to the police. The suggestion that we should not is without base. We do not understand why that would be the case.

We also think that the concern raised about the role of the Coroner is misplaced and fails to recognise the fact that many critical incident matters that should be the subject of investigation do not lead to the death of an individual but rather serious injury and they never go before the Coroner. The fact that the coronial processes have taken such a prominence in what has been described by McClelland as the desired system is most unfortunate because I think it misunderstands the respective roles of the agencies, and certainly the role of the Coroner. The Coroner is charged with finding manner and cause of death and is not a substitute for either police responsibility or police oversight agency responsibility in relation to police misconduct.

Whether or not that issue is looked at in the coronial processes is largely discretionary or alternatively will arise only where there is a direct nexus between police conduct and a death. In so many of these cases there is not, but that does not mean there is not a conduct issue. We also think it is unacceptable that the conduct issues that might arise in a critical incident matter should be left unattended or not dealt with effectively until such time as the coronial process is completed. Those processes can often take two years or more and that is an unacceptably long period in which to fail to deal with what might potentially be quite serious and obvious police misconduct issues. I stress that just because a matter is a critical incident does not mean there are police misconduct issues.

In our suggestion to McClelland we made clear that we envisaged a scheme where the decision about whether or not there should be oversight could be made by us at a very early stage on the basis of having access to all of the information and determining whether there was any likelihood of a view being formed that there was any police misconduct. There are many critical incident investigations where it is very clear from the outset that there is no police misconduct. Our scheme as envisaged would mean that we would be able to say we do not need to monitor that, we do not need to look at that closely. However, where the information suggested that there might be or that there was, that would be a matter we would look at and monitor appropriately. That is it in essence. We have set out in both submissions the detail that we believe needs to support a proper system and we have identified in our most recent submission the areas about which we have concerns. We have provided a response to each of the recommendations that have been made that relate to our office.

**Mr PAUL LYNCH:** That is very helpful. Are there things that McClelland said in his report that touched upon your office that he did not raise with you in discussions?

**Mr BARBOUR:** There are a number of things in the final document that we were not briefed on. However, I did not have an expectation that we would be briefed on everything in any event. We did have a final meeting with McClelland very shortly before he tabled his final report. I would describe that meeting as him highlighting the issues that he thought were of most significance to us. It was a very quick meeting and did not really cover every issue. My Deputy Ombudsman, Linda Waugh, was also there. Would that be a fair summary?

**Ms WAUGH:** Yes, that would be correct.

**Mr PAUL LYNCH:** I am trying to get to whether there were things that you were not given an opportunity to comment upon to him that would have affected the Office of the Ombudsman.

**Mr BARBOUR:** It does not affect the office as it currently stands, except for the characterisation of our activities in the way he did during the discussion. However, in terms of the new scheme that he has put forward, clearly whether or not we get it is a matter for the Government and the Parliament to consider. In relation to that scheme, some of the ingredients that he put forward we think are very misconceived and were not the subject of discussion. We have interpreted his recommendations to mean that we should not have a role in directly monitoring critical incident investigations.

We find that entirely unacceptable. We cannot think of a type of police investigation that would require monitoring more than a critical incident investigation and real-time access to information. We have a monitoring power in relation to our normal oversight role of police complaints and it would also apply if a person made a complaint about a critical incident matter and we were as a result effectively provided with jurisdiction to review it. The idea that you would introduce a new statutory regime that is designed to create greater transparency and comfort in the mind of the public but not include a power that we already have in other matters does not seem very sensible to us.

**Mr PAUL LYNCH:** In your oral presentation you talked about some information from the New South Wales Police Force and the Police Association that was factually incorrect. What did you mean by that?

**Mr BARBOUR:** They were basically issues that went to the actual conduct of our oversight in relation to some matters, particularly the Lauderio Curti matter. We deal with those in our submission, so it would be best to read that rather than have me try to remember exactly what we said. There was a perception and it was put in the police submission to Mr McClelland that during our oversight of the Curti matter we were interfering with the police investigation. We reject that entirely. That was one of the areas that we thought was factually incorrect and we think the evidence does not support it in any way whatsoever.

In our experience, a different response takes place within the New South Wales Police Force around our oversight. When it is a local area command that is conducting a critical incident investigation or a high-level investigation, the commander, senior officers and officers throughout the command are very used to the role of the Ombudsman. They are used to us, how we operate, the fact we might monitor, how we conduct our investigations and our oversight practices. When a critical incident investigation relates to a death and the investigation is being undertaken by the Homicide Squad, the officers are not as familiar with our role and they are not as used to dealing with an oversight agency. I think their perception of our role is very different from the perception in a local area command.

That is perhaps best explained by a direct example because simultaneous with our doing the oversight of the Curti matter we were overlooking an incident in Kings Cross where some Aboriginal youths had stolen a car and ridden up onto a footpath. There was an injury, a shooting, allegations of assault and so forth. We were doing both of those at the one time. We had difficulties with the Curti matter; we did not have difficulties with the Kings Cross matter. I think that was partly because of who was undertaking the investigations and their level of experience, understanding and knowledge of the way we operate.

**Mr PAUL LYNCH:** The final topic I want to raise is the police early intervention system. The Committee has recently received a letter from the police saying that it is discontinuing work on the system because it does not have enough money. I take it that that is not a decision you would applaud and that there is some merit in pursuing work on that system.

**Mr BARBOUR:** I think that is a desirable system and it is one that I would continue to support. However, it is very much covered in cobwebs. It has been in abeyance for a long time and has been so because of the cost imperatives and police saying that they do not have enough funding. We believe that to do our job effectively with local area commands we must do our homework in terms of complaint histories of officers and talk to commanders about the sorts of things that would underpin an early intervention system. We are trying to do that because we think it is a very positive thing to do. However, without police having the appropriate resources it will not get off the ground.

**The Hon. ADAM SEARLE:** If you had been offered a full seven-year term would you have accepted it?

**Mr BARBOUR:** Yes.

**The Hon. ADAM SEARLE:** The annual report highlights a number of concerns with Community Services, including delays in implementing Ombudsman's recommendations. To what do you attribute those delays? Is there a systemic or cultural problem in Community Services or is it a resourcing issue?

**Mr BARBOUR:** I think there is a range of areas in which there are delays within Community Services, not only in terms of implementing recommendations but more significantly in terms of undertaking investigations into reportable conduct matters and also dealing with a range of issues that flow throughout the child protection system. I am happy to have Steve Kinmond answer that question in more detail. However, I think it is fair to say that there is no one particular area where delays are more outstanding than another. We see delays and problems, but they are things we monitor and we work closely with Community Services about them.

**Mr KINMOND:** I support the Ombudsman's comments. I think the general observation we would both make is that Community Services could improve its governance arrangements, similarly in recommendations, to ensure that they are driven and well implemented.

**The Hon. ADAM SEARLE:** Can you elaborate a little on that? In terms of the governance issue, you mean in terms of checking up on where their implementation is at, rather than things just drifting?

**Mr KINMOND:** That is correct.

**The Hon. ADAM SEARLE:** So do you think there needs to be more commitment to driving those by senior management?

**Mr KINMOND:** I think that is correct.

**The Hon. ADAM SEARLE:** Do you have any examples that you can think of? If you do not, I am happy for you to take it on notice so that we can get a better understanding of or insight into this.

**Mr KINMOND:** Beyond the issues that we have outlined in the annual report, I think they provide good examples of areas where we have raised important issues where the progress has not been optimal.

**The Hon. ADAM SEARLE:** The annual report also states that there has been a decline in the number of Police complaint investigations completed by New South Wales Police within the time frames they have set. To what do you attribute that decline?

**Mr BARBOUR:** I will leave the more detailed answer to Ms Waugh but this is an issue that we track. They do have particular time standards and performance standards against which we hold them to account. There is always a range of reasons why things are delayed. I do not think it is setting a bad trend. We refer to it in the annual report but I do not think this has been happening over a long period of time.

**Ms WAUGH:** It is correct that in the last couple of years there has been a decline. The completion rate—in terms of the time frames set by the NSW Police Force and not by us—has dropped to well below 50 per cent. In the annual report we also refer to the work we have done with police in relation to suspending investigations. It can be seen that there a drop has begun in the number of matters that are suspended. I think there is a connection between the two because the time frames significantly blow out when a matter is suspended. We have been working with police to change the rules relating to suspensions in order to bring that number down. It is on the top of the agenda to talk to the Professional Standards Command about that issue over the course of this year but we would like to see the net effect of changing the rules to do with suspension.

**The Hon. ADAM SEARLE:** Do you know what has driven the increase in suspensions?

**Ms WAUGH:** Many reasons were introduced as to why one would suspend a matter. A good example is that when a police officer was responding to an investigation, they would suspend the matter. Now, we have gone back to them and said: A police officer responding within 21 days to a draft report that makes findings or adverse comment about them is part of the investigation process and they should be counted out but another category should be counted in. Those changes are relatively recent, so we will be looking at what occurs over the course of the next few months.

**The Hon. ADAM SEARLE:** Finally Ombudsman, in answer to some earlier questions about your term you indicated that the position of the Government may be referable, you made some reference to "in the light of changes ahead". Are you able to tell us what changes you had in mind?

**Mr BARBOUR:** I do not think that was in relation to the Government's consideration. It related to my consideration about whether or not I would consider staying for a longer period and whether, if I did put that forward, one of the things that would be considered by me, and potentially the Government, would be the significant change in the office and whether or not there needed to be some consistency, in terms of leadership for a period of time.

If I can make the observation—and I do not mean it to sound in any way egotistical—I have had the benefit of presiding over what is an extraordinary office for some considerable period of time. I would like to think that I have done that well and that that has been recognised by governments of both political parties in extending and enhancing the work and role of the Office of the Ombudsman and in recognising the important contribution it can make. For an Ombudsman, the downside of that is that one is dealing with a greater area of responsibility and jurisdiction. When one sets a standard—particularly when one is holding other agencies to

account—there is an essential component of the standard to which one must hold oneself: that one must do a good job, do it fairly and be across all the issues.

Because I have been in the role for some time, I have had the benefit of new jurisdictions and responsibilities coming to me incrementally. When something new has happened, I have been able to address it in an appropriate way, in the confidence of knowing that I was on top of my brief and on top of all the other issues and areas of responsibility. I think the challenge for any new appointee would be to come into the office, with its current breadth of responsibilities, and to hit the ground running. Fortunately, they will have a very good senior executive team to support them but nonetheless, it has become an extremely large job and a very demanding one. Someone coming in is going to have a significant challenge and I do not envy them if they are new to the work of the office, having to get across all those areas of responsibility quickly.

If, at the time of my term ending, as a result of changes at the office there were new jurisdictions coming in and things that needed to have some degree of consistency around decision-making or application, that would be a factor that I, and potentially the Government, would consider as being relevant to the circumstances of any decision relating to either me or a new appointee. That is a very full way and a more detailed way of explaining why I think those things need to be considered.

**The Hon. ADAM SEARLE:** Thank you for your very comprehensive response.

**Mr PAUL LYNCH:** It is a eulogy.

**CHAIR:** I recently completed my Certified Practising Accountant [CPA] program in the United Kingdom and Scotland. I attended a number of conferences and met with the Ombudsman's office in the United Kingdom and in Scotland. I was stunned by the awareness there of the New South Wales Ombudsman. At each office it was indicated that the New South Wales Ombudsman's systems, customer approach and other areas of activity, was the benchmark that they were following. I was completely unaware of the high international standing in which you and the office of the New South Wales Ombudsman are held. I wanted to give you that feedback.

**Mr BARBOUR:** Thank you.

**The Hon. SARAH MITCHELL:** Thank you for a comprehensive report. I found it to be informative and I enjoyed the case studies. I think that is an important mechanism, not only for the Committee members but for members of the general public who might not understand the work that you undertake on a daily basis. Thank you for that aspect of the report.

I want to ask a couple of questions in relation to correctional centres and the number of contacts that have been coming from people in custody. The report notes that they have increased for the fourth year running. Is there any mechanism between your agency and the Department of Corrective Services or Juvenile Justice, in terms of notifying them of an issue that comes up so that, if it is something happening to an inmate or an issue of concern to an inmate in one centre that may be happening in other centres, it can be resolved before individual inmates have to contact you directly. Is there some way to manage those issues?

**Mr BARBOUR:** We have built up a comprehensive suite of ways to manage issues within the correctional environment. Our Corrections Unit not only conducts regular visits but, as you know from the statistics contained in the report, we are contacted orally and in writing thousands of times by inmates. We develop a clear understanding of what the key issues are and we track those and from an intelligence perspective, we use them in the best way we can. The manager of the Corrections Unit is in regular contact with senior staff of Corrective Services NSW and we talk through those issues with them. If we see a potential trend or an issue occurring, we inform them. We are provided daily with information about what is happening in relation to Corrective Services NSW—any serious incidents, any use of force. We have direct access to their database in order to assist us with our work.

The sorts of concerns that you are raising are probably handled about as well as they can be with the range of means in place. That is one of the reasons why we will need to enter into an effective memorandum of understanding [MOU] with the inspector. There may be issues that will come up as a result of the inspector's work in conducting audits and the work of official visitors that we will need to liaise with him about. That will ensure that our work is managed in as seamless a way as possible.



**Mr WHEELER:** There is a significant degree of contact between our staff and the staff of Corrective Services NSW, both within the centres and centrally. If we see an issue coming up that seems to be systemic, it is always raised.

**The Hon. SARAH MITCHELL:** The report mentions areas of concern such as segregation, time in cells and the age of some of the facilities. Some of the regional facilities are mentioned—Bathurst, Goulburn and Tamworth. In the next year or two, are there any areas of concern that you think would need immediate attention in regard to the correctional centres?

**Mr BARBOUR:** Some of the things that we have targeted over the last few years are things such as use of force, segregation, separation principles and so forth. One of the things that we are concerned about is ensuring that there is an active voice and a mechanism to hold the agency to account relating to the exercise of what are significant powers. We try to balance that with the other matters that are coming in the door because most of the matters that come in by way of direct complaint are usually day-to-day, mundane issues, relative to the outside world. However, for people in custody they are very significant issues. We try to balance those things well. For example, with the issue of segregation, there are particular provisions that we monitor closely to ensure that they are being followed. It is the same with separation.

We do not want to see punitive measures being introduced by way of punishment where there is not a proper provision to support that in legislation. As a result of our Use of Force work and the inquiries and investigations we have undertaken, there is a new Use of Force procedure that has been introduced and we are working with the agency to bed that down. Beyond doing things in that way, I cannot say that there is a particular issue that we are necessarily going to be focusing on. In the Juvenile Justice area, we are also looking at use of force in relation to some matters at the moment and they are the subject of investigation. There are some parallels within the Juvenile Justice system.

**The Hon. SARAH MITCHELL:** I want to ask about the visits to different communities referred to on page 6 of the report where it lists 42 different places that you have been to during the year. How do you determine which communities you go to and how do you prioritise your visits?

**Mr BARBOUR:** It depends on what the particular focus is at the time of investigation or inquiry. Some visits occur on a regular basis to particular types of institutions. We regularly visit Juvenile Justice institutions and Corrective Services NSW institutions, including regional areas. When visiting for a particular purpose, we attempt to coordinate other issues that might also be relevant in that area. We will either rely on an additional staff member or the staff members that are going from the Corrections Unit, in order to deal with those other issues. Many visits are related to particular types of inquiries.

For example, our recent major work, the audit of the Aboriginal and Child Sexual Assault strategy, that required us to go to a range of communities where there were large numbers of Aboriginal people and where we had information relating to concerns and risks to children in those communities. There will be particular drivers such as inquiries that will take us to particular areas. The visits are as coordinated and as planned as we can make them but obviously they will sometimes be directly related to particular inquiries and investigations. For example, we might have a matter in the public administration division that is the subject of investigation and we have to do a site visit. That will take us to a particular area as well.

**Mr KEVIN ANDERSON:** Are you able to outline what may be in the memorandum of understanding with the new Inspector of Corrective Services?

**Mr BARBOUR:** Importantly, what we will be trying to set out is what would be a seamless system in relation to accountability frameworks for custodial services. Clearly the Inspector's role under the legislation is to conduct an audit within a certain period of time for each institution, to coordinate the visitors program and so forth. Our responsibility is to deal with the handling of complaints and the issues that arise from that. The memorandum of understanding I think would set out what our respective responsibilities are. It would also provide a framework for us to effectively liaise with each other and refer to each other issues that are within our relevant areas of responsibility.

**Mr KEVIN ANDERSON:** Given that your complaints outline blocked toilets, televisions and withholding some personal belongings that have gone missing, do you think with official visitors having a greater role to play and with the Inspector there that some of those complaints may be channelled through them rather than the Ombudsman?

**Mr BARBOUR:** It may do. However, when the previous Inspector of Custodial Services was in existence there was a great deal of confusion within the correctional environment about which agency was responsible for what. We need to ensure that we do not get that confusion back again. If things can be sorted out on the spot then it does not really matter whether it is a visitor or one of my staff who is able to sort it out. The problem is that if you are making complaints and those complaints need to be properly researched and investigated then you need access to information. If there is no clarity about who is doing that then that is when the confusion starts. Once the inspectorate is fully staffed we will sit down to try and work through some of these things. The very type of issues you are talking about will be the subject of our discussions. We will try to make sure that we have a very workable framework and that everyone is clear about who is supposed to be doing what. Certainly from my perspective I would want the quickest and easiest way of resolving any issues of dispute to be the primary focus.

**Mr KEVIN ANDERSON:** Given that official visitors have been there for some time, are they not working?

**Mr BARBOUR:** I think it would depend on who you spoke to and on the visitors. With all programs where there are official visitors—visitors can be very effective and sometimes they are not as effective. That is not necessarily a reflection on the visitor but it might be a reflection on the management of the particular areas they are visiting. It might be the level of training that they have had. It might be whether they are new or whether they are very experienced. Those sorts of things I think factor into those sorts of considerations.

**Mr KEVIN ANDERSON:** I turn now to community services. Your report details some concern about the complaint-handling system within agencies. Given that we are moving to a person-centred approach in the disability sector and the Government's push for outsourcing in non-government organisations—the Government is moving away from being the provider and funder, it is clearing up some of those grey areas of conflict of interest—is there concern in your office as to how complaints will be handled in an area that has been handed over to a non-government organisation?

**Mr BARBOUR:** Absolutely. It is an issue that we have targeted and written about. Indeed, in several submissions in relation to new legislation we have specifically identified it as being a concern. I will ask Steve to address this in more detail in a moment but I think our starting position both within the community services framework; for example, out-of-home care, and also within the disability sector, as we see the significant changes coming in as a result of NDIS and so forth, our baseline is that individuals should not be any less protected or supported than they currently are. We are focused on trying to ensure that there are appropriate systems in place so that people are protected and that there are proper complaint systems and appropriate matters are notified.

In relation to the out-of-home care situation, it is not just about complaints being dealt with appropriately, many of the out-of-home care non-government service providers deal with those very well, but it is also about notifications in relation to issues under the working with children regime and our reportable conduct provisions. In the disability sector there are a range of issues that need to be contemplated, not only in terms of the service providers but also in terms of the changes that we are talking about to self-determined service delivery and programs. That is very much front and centre. In relation to the changes that are contemplated, in the latest disability bill we have highlighted that as being a concern. We still do not have in place the appropriate safeguards that have been negotiated for the test area in the Hunter as the first area in New South Wales. Our principal and what we have been trying to say to government and agencies involved is that these changes should not in any way detract from the opportunity for people to have an effective and proper complaint system in place. Do you want to add to that?

**Mr KINMOND:** What we are pleased to say is that the responsiveness of the non-government sector in relation to disability complaints is, of course, our jurisdiction and includes the non-government sector. Under the Community Services (Complaints, Reviews and Monitoring) Act the responsiveness of the non-government sector to complaints has been very good. The resolution rate of Ageing, Disability and Home Care [ADHC] and the non-government sector in relation to disability complaints has been quite excellent. It is consistently running around the 60-odd per cent mark and we are pleased that we do not sense a resistance by either the non-government sector or, indeed, by ADHC in relation to appropriate complaint-resolution practices.

For some time we have expressed concern about the issue of abuse and neglect in the disability field. We were pleased that in the draft Disability Inclusion Bill there is a proposal for a scheme, which would be

under part 3B of the Ombudsman Act, which would involve the notification of serious abuse and neglect matters from the funded sector and from the ADHC accommodation sector. Essentially we would have an oversight function, similar to the oversight function under part 3A in the child-related employment field, where we would be able to deal with quite serious matters in a very active way and ensure that very thorough oversight. What has been pleasing to note, for example, is that the report last year of the Victorian committee that looked at institutional abuse of children referred to the evidence of Dr Joe Tucci who has referred to the child-related employment system and the reportable conduct system under part 3A of the Ombudsman Act as world's best practice. The challenge will be in relation to disability abuse and neglect matters whether within the time we have New South Wales can move towards world's best practice in terms of oversight and responding to abuse and neglect matters in disability accommodation environments before it moves to a national scheme.

**CHAIR:** Are you suggesting that your jurisdiction will end when it goes national?

**Mr KINMOND:** That is a very good question. The question as to what the safeguarding arrangements will be under a national system is still very much an open question. We have nine different jurisdictions across the country. The issue will be: Where will the oversight system lie under a multibillion dollar system? We are keen for that issue to be progressed as soon as possible. We have put out a draft paper. It reflects discussions that I have had with other Commissioners across the country as to what we believe to be the fundamental elements needed to be in place by way of safeguarding. What we can ensure is that the Committee receives a copy of that document probably first thing tomorrow morning.

**CHAIR:** Can you describe the decision-making process?

**Mr KINMOND:** Essentially, given that it will be national system, at this stage we are in early discussions with government and others in terms of getting an understanding as to the leadership that the Commonwealth Government will provide on this issue. It seems to us that if it is going to be a national system then obviously the Commonwealth Government will need to work with States and Territories. But we are taking the view that we would expect the leadership to be shown by the Commonwealth Government as to what the ultimate safeguards will be in terms of the National Disability Insurance Scheme [NDIS].

**CHAIR:** I am struggling with the Government's arrangements for the NDIS. I am not sure how these decisions have been made in relation to the New South Wales jurisdiction. Is that something that the New South Wales Government has a voice in? Has it been decided by the Ministers or is this new corporation that has been set-up making those decisions?

**Mr KINMOND:** If we look, for example, at the Ombudsman's current oversight in terms of the launch sites there are certain service provision issues that we will still have an oversight of. If you trace the money, the money is still coming into many of those sites unless the packages have been developed under the National Disability Insurance Agency [NDIA] from ADHC. We still have a buy-in, but there is a preliminary agreement on foot. I understand that the Minister for Disability Services has written to his counterpart, which essentially would mean that the New South Wales Ombudsman would have oversight in that area if it involves the expenditure of NDIA money.

**Mr KEVIN ANDERSON:** It is no doubt going to be a changing market for those service providers: now they will have to start knocking on people's doors rather than having businesses knocking on their doors. Indeed, the Auditor-General has highlighted some financial challenges that some of those organisations may now face. Given that we were talking about the Commonwealth's role, will the Ombudsman have a role to play in looking after the financial component of those with a disability when they now seek to access those services and they feel that they are perhaps not getting the best deal?

**Mr BARBOUR:** We have not had a role like that in the past and I very much doubt that we would have a role like that in the future. That will ultimately be dealt with in different ways. However, the dilemma is going to be that not only are services going to be provided by corporate entities but also by individuals and family members and so forth. One of the challenges in setting this scheme up is how to introduce accountability and transparency frameworks across the board, whether it be financial or in terms of quality of service provision and complaint handling. It is going to be a vastly different scheme and individuals will be able to choose with their pot of money what services they get and from whom. So it could literally be a situation where it is a family member who is providing a particular service and being paid. All sorts of issues are going to crop up. It is a very complicated area to manoeuvre through to everyone's satisfaction.

**Mr KEVIN ANDERSON:** I have already had inquiries from labour hire companies acting as brokers on behalf of a person with a disability who are then being charged workers compensation, public liability and so on. They are acting not only on behalf of that person with a disability but also the family member who has hired the labour hire company on behalf of that person with a disability and so it goes. It is going to be a very tricky situation.

**Mr BARBOUR:** It is. We have identified that in discussions we have had as well but we have not yet heard from the Federal Government as to what solutions are in play.

**Mr KINMOND:** The short term proposal by the New South Wales Government is that if there is NDIA money involved, regardless of the entity that ultimately gets the money, we would have jurisdiction.

**Mr KEVIN ANDERSON:** If it comes through New South Wales?

**Mr KINMOND:** That is right. If there have been inappropriate responses by those people who ultimately are being given money under this scheme then the interim arrangement is that we would be able to chase that issue.

**Mr KEVIN ANDERSON:** In the first instance.

**Mr KINMOND:** The bigger question is that when you roll the scheme out nationally what will be the safeguard arrangements in place? Will it be an overarching national system or will there be consistent State and Territory oversight arrangements put in place?

**CHAIR:** Thank you for that advice. We look forward to getting a copy of that submission. It is comforting to know an interim arrangement is in place and obviously we will continue to monitor that. We need to talk about child deaths shortly but before we do so I will ask a couple of quick questions. In relation to the appointment of an assistant ombudsman dealing with Aboriginal issues, can you advise us of the timing of that appointment?

**Mr BARBOUR:** Yes, the Deputy Ombudsman role is yet to be legislated and the anticipated date of commencement would be 1 July and at this stage that is what we are working towards.

**CHAIR:** Are you able to start the wheels rolling on that without the legislation or are you waiting on the legislation?

**Mr BARBOUR:** I am going to wait until the legislation is through but also I want to wait until we have got confirmation of ongoing funding for the position, which is still subject to negotiation. We have funding for a few years but that is all we have been given at this stage and I am very reluctant to recruit a new statutory officer for the office without some commitment that there is going to be ongoing funding to provide for that.

**Mr PAUL LYNCH:** Or what his term will be?

**Mr BARBOUR:** Exactly.

**CHAIR:** Have you an estimate of what would be required for the position to be effective? What sort of funding would you be looking for?

**Mr BARBOUR:** The package that has been agreed to by the Government is a Deputy Ombudsman and several positions which would support that, plus ongoing administrative costs and so forth. I think it is in the order of \$720,000 annually. Funding will be provided to support that out of funding which relates currently to the OCHRE initiatives in terms of the accountability framework but that is only guaranteed for the next two years, I think, and after that we need to ensure that we are going to have ongoing funding.

**CHAIR:** Between that new function, which is an exciting one, and the new role that you are playing in relation to abuse and neglected people in care, what sort of additional staff members are you looking at?

**Mr BARBOUR:** I think the disability abuse provisions are in the order of about 10 staff and that budget is a little over \$1 million and the Deputy Ombudsman role and support staff would be in the order of about four or five additional staff, including the new Deputy Ombudsman position.

**CHAIR:** So you are looking at accommodating another 15 people, are you?

**Mr BARBOUR:** That is for those two functions. In addition to that we have new legislative reviews. Each legislative review usually means two additional staff and a range of other things which are likely to require additional staff. On the opposite side of the ledger once Operation Prospect finishes there will be a reduction in the people we currently have for Operation Prospect, but overall there will be a net increase. We also have additional funding for our new responsibilities in relation to changes to the Working With Children Check and our obligation to provide notifications of concern to the Children's Guardian. That is also being funded for an additional few positions.

**CHAIR:** The Working With Children Check was funded for accommodation. Did that accommodation funding come with funding for the staff?

**Mr BARBOUR:** No, not for the additional staff that we got. Our dilemma is that our premises have not been purpose fitted out for our needs. As we have grown in individual areas we have had to refit the premises to the best of our ability with additional funding from Treasury. Ironically, we do not believe we have enough space, yet because the fit-out is quite an old fit-out; it is not done to the scale that the Government Property now requires government agencies to be fitted out to. Our premises is technically large enough, if anything slightly larger than what we are entitled to have, given our number of staff, but what that fails to take into account is the nature of our business and the fact that we have highly secure areas where staff cannot go in, we have an enormous number of files for various activities that we need to keep, we have people coming in off the street for regular meetings and we host a lot of meetings and activities, we do training and we conduct hearings at our premises, so we do need to have space that is not strictly allocated to staff numbers and is excess to that. We are in the process of looking at alternative accommodation and also the Government Property Group is in negotiations with our current building management around potential incentives for us to stay. All I can say really is stay tuned and we will see what happens.

**CHAIR:** We will. Thank you very much. I will place my other questions on notice. I did wonder, though, with the Board of Studies report you did on special consideration being given to HSC students—and I apologise for not being familiar with the detail of it—is there open reporting in relation to the consideration being given? I think the concern was that some schools were seen to be a lot more successful than other schools. Is there openness in how they are explaining the outcomes of that process?

**Mr BARBOUR:** Yes. Unfortunately at the crux of the issue, as we identified it, was there was a lack of information around what the systems required and how to properly apply them and some schools were far better at making applications than other schools. The level of education and information that was available to people about accessing the provisions was not good and certainly the Board of Studies has responded very positively on all of those areas to ensure that the system works better in the future. There was a lot of misinformation around at the time and unfortunately it turned into a bit of a public-private school sector debate. We did not really find that was the case. Where schools knew about the provisions and they had teachers that were interested in them, whether they were private or public did not really matter. It was about that level of interest, confidence and information, but certainly some of the private schools were better resourced in terms of people being able to make applications on behalf of students.

**CHAIR:** Will there be any follow-up reporting to show improvement and greater equity? I am particularly interested, wearing another hat as a regional member of Parliament. I find that regional and country schools are not as good at researching all the details and making the most of those, and that there is a gap between regional and city results, which could potentially be one of the problems.

**Mr WHEELER:** The Board of Studies responded very positively to what we were suggesting. From what we have seen they have clarified the rules and the criteria. I think it is a lot more open and clearer than what it was. There was one area where we had some further discussions about what we thought was appropriate. What it comes down to in the end is the priority put into it by the school itself. If they see it as something important they put the effort in and the results change. With a number of government schools that effort was not being put in. Maybe it was a resource issue and they did not have the people who could put that time into it but certainly it was not an issue where the scheme was being sorted, from what we could find.

**Mr BARBOUR:** But in terms of the particular issue you are concerned with, Chair, we will go back and have a look at whether or not there is going to be any public reporting on the part of the Board of Studies about this scheme and access to it and we will get back to you.

**CHAIR:** Thank you. We will now move to the NSW Child Death Review Team.

**(The witnesses withdrew)**

**BRUCE BARBOUR**, Ombudsman, on former affirmation:

**KATHRYN McKENZIE**, Director Systemic Reviews, New South Wales Child Death Review Team, affirmed and examined:

**JONATHAN GILLIS**, Convenor, New South Wales Child Death Review Team, sworn and examined:

**CHAIR:** Mr Barbour, thank you for the European standards that you sent us.

**Mr BARBOUR:** They were very good, really interesting.

**CHAIR:** They were fascinating. Is it possible for us to benchmark our own legislation against those standards?

**Mr BARBOUR:** Yes, I see no reason why not. The interesting thing is that in Europe there are only national ombudsmen, there are not provincial ombudsmen because of the nature of the government structures, so a lot of the legislation relates to areas that would more traditionally fit under the Commonwealth Ombudsman's functions but also under things like Human Rights Commissioners and so forth because in a number of the European countries ombudsmen are also specialised in terms of children's issues and also human rights issues or they are charged with wearing both hats, so in many countries the ombudsman will also be the Human Rights Commissioner. So there is a slight difference in terms of legislation and approach but I do not see why not. I think the really significant thing for me about that declaration was the recognition of the role that the office can play in the broader issue of rule of law, democratic right and oversight of government and to have the European Parliament recognise that and to pass that I thought was pretty significant.

**CHAIR:** And also the criteria for independence?

**Mr BARBOUR:** Yes.

**CHAIR:** And the relationship between Executive Government and the oversight was prescribed in those standards.

**Mr BARBOUR:** Yes.

**CHAIR:** Thank you for that. Before we proceed, Ms McKenzie and Mr Gillis, do either of you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Ms McKENZIE:** No.

**Dr GILLIS:** No.

**CHAIR:** Would anyone like to make an opening statement?

**Mr BARBOUR:** Yes, thank you very much. It is now three years since the Child Death Review Team was transferred to my office. This year presents a considerable opportunity for the team to address some of the longstanding challenges we have experienced and we have briefed the Committee on in past meetings and to advance core actions to improve how we undertake and communicate our work. In the year since our last General Meeting the team met on four occasions—in March, July, September and December. In October I tabled the team's annual report on the deaths of children registered in New South Wales in 2012. The report made 12 recommendations focused on strategies to reduce preventable deaths related to sudden and unexpected deaths in infancy, off-road fatalities, drowning in private swimming pools and youth suicide.

The report also detailed substantial action by agencies in response to the team's previous recommendations, including work to improve guidance for Community Services and Health staff on preventing the sudden and unexpected deaths of infants, public education and identification of other strategies to reduce low-speed vehicle run-over fatalities and development of a specific warning code to identify medicines requiring a child-resistant closure. The March meeting of the team comprised a planning day, which provided

the opportunity to review our work and consider strategic priorities for strengthening and improving the effectiveness of our prevention activities.

The team developed a high-level strategic plan for 2013-16 and is progressively implementing the initiatives. I can provide a copy of that to the Committee. As the Committee is aware, a key priority for the team is the development of an enhanced and integrated deaths register and data system. I am pleased to advise that Treasury approval of our business case for the new register has enabled us to move forward with critical efforts to strengthen the team's analysis and reporting of trends and patterns in child deaths and to improve the efficacy of our work. We expect to complete the core work to develop the new database this financial year. We are also using the opportunity to explore enhancements to how we report data and key issues arising from our reviews of child deaths, with a focus on making the information as easy to understand as possible. By way of example, we are examining options for improving our reporting on information relating to remoteness and socio-economic status.

We have advanced other important areas of work that have previously been discussed with the Committee: We have obtained expert advice from the Australian Institute of Health and Welfare on best practice in identifying and reporting the Aboriginal and Torres Strait Islander status of children who have died. We are in the process of implementing the Australian Institute of Health and Welfare's recommendations to bring the team's approach in line with best practice, address problems with data consistency and comparability, and enable reporting on trend information for Indigenous children. Consistent with the vision of the Special Commission of Inquiry into Child Protection Services in New South Wales we are increasingly integrating the child death review functions under my office. In addition to developing the integrated data system, this year we will be looking at where we can align our reporting on child deaths and related issues to provide greater context to the work and minimise public confusion about multiple child death reports.

In this regard, in the first quarter of this year, we will table the report from the team's research project on causes of death of children with a child protection history in conjunction with a report by my office on the broader New South Wales child protection system. In October, we intend to table the team's annual report on child deaths at the same time as I table my office's biennial report on reviewable child deaths. Madam Chair and Committee members, Dr Gillis and Ms McKenzie and I are able to answer any questions that you have.

**The Hon. ADAM SEARLE:** What are the main challenges for the year ahead for your office in this area?

**Mr BARBOUR:** I think firstly bedding down the changes to the data system and our effective case management system. The system that we have selected is a system that is consistent with our current case management system. It is called Resolve. We have contracted them to develop the integrated deaths register. The register will be relevant, not only for our work in the Child Death Review Team [CDRT], but also our reviewable death work, both in the child death area and also the disability death area. We are concurrently working on strategies for migrating data to the new system, which will be a significant challenge in itself. We have got 17 years of data that we need to migrate, completing our evaluation of various reporting solutions and working out what best needs are being met in respect of that system. That is probably a very significant priority, because so much of what we are able to do and how effective we are able to do it into the future very much hinges on the effectiveness of that system.

**The Hon. ADAM SEARLE:** The status of that system?

**Mr BARBOUR:** Correct. Secondly, we are very pleased with the fact that we now have additional advice and information to support how we identify Indigenous children. We are guided by the Australian Institute of Health and Welfare [AIHW] report, and we will be introducing systems to ensure greater consistency and we will be following the guide of the AIHW. In addition, we focus regularly on 10-year data trends in respect of particular issues, the issues that we are looking at, and we will be reporting on our next report, which relates to asthma. Dr Gillis has been directly involved in relation to reviewing cases in relation to asthma deaths, so that will be a 10-year review. So far, we have identified 21 asthma deaths in the cohort that we will be reviewing for that 10-year period, and we will be reporting on that, so that is another area we will be working on. In addition, we will be following up a lot of the work that we have done in relation to significant recommendations around swimming pools, around sudden unexpected death in infancy [SUDI] and also around off-road vehicles.



You will recall that our last report covered a 10-year review of off-road vehicles and we made some quite strong recommendations for follow-up action in relation to quad bikes and other off-road vehicles. One of the things that the team has become more focused on is areas where we can identify significant opportunity for prevention. Off-road vehicles is a perfect area for that. On-road vehicles are regulated in their use and in terms of how old people need to be, where they can be driven, what experience you have to have, licensing and registering. There is next to nothing for off-road vehicles. It seems to be unacceptable to the team that, through that dearth of regulation, young children are dying unnecessarily using equipment that is not suitable for them and without there being proper safeguards and warnings in place. Following on those things, I think, is another key issue. The strategic direction that we have put together I will provide to the Committee and that will set out some of the other things we want to do up to 2016.

**The Hon. ADAM SEARLE:** On the theme of prevention, will you update the Committee on plans to meet with the New South Wales Mental Health Commission to discuss prevention of suicide among young people?

**Ms McKENZIE:** Youth suicide is obviously a major concern of the team. This year the team is putting a greater focus on what is happening in New South Wales around targeted prevention of suicide. One of the things we are doing in relation to that is meeting with the staff of the Mental Health Commission of New South Wales, and we meet with the Mental Health Commissioner on a regular basis about a whole range of issues, and they are keen to meet with our team about youth suicide. We will hold that after we have further progressed with our reviews of suicide deaths in 2013, but certainly the Mental Health Commission is one of the key organisations that we will be meeting with, but we will also be meeting with other organisations such as Suicide Prevention Australia and others.

We are meeting with NSW Health to look at the data that they hold that can provide some more context to the data that we report on around youth suicide and also to talk to them about the work that they are doing to evaluate the current New South Wales suicide prevention strategy. In respect of suicide, part of the concern is that the number of deaths, whilst it has not been increasing, it has not been reducing either. Our team's focus this year is on what is happening on the prevention end and where we can add value to that.

**The Hon. SARAH MITCHELL:** Following on from Mr Searle's question, will you look separately at regional areas and the issues there?

**Mr BARBOUR:** Yes. Clearly that is one of the factors that we look at in terms of all deaths, but certainly for things such as suicide where there is a social element, and there is a context that you need to look at and the types of risk factors, then location is one of the factors you would definitely look at. We are also trying to see whether or not we can provide better clarity in respect of our information and reporting on remoteness as well. We appreciate that is a very technical approach. One of the things that the team is very committed to is trying to make its work and the report more readable, understandable and relevant.

We have had an enormously difficult time trying to identify who actually reads the report and uses it as a resource and getting information back from those people about how we can improve it, despite our best efforts to target through particular survey data. The year before you would have seen that we commissioned a survey and asked people to come back and tell us information. We got very few responses, so we are guided by the members of the team and their experience and their collegiate network about who uses the information, but certainly some of the feedback we get and from talking to our interstate colleagues, there is a greater emphasis now on trying to be less technical in the reporting of this information and provide it in a way that is potentially more easily read, more easily digested, more relevant in respect of the statements it makes, so that a broader group of people can have access to it and can use it more effectively.

**The Hon. SARAH MITCHELL:** Last year you put out a paper on low-speed vehicle run-overs. Are you able to provide more information about who that paper was distributed to and if you have had any feedback?

**Mr BARBOUR:** We had a wide distribution. We can get back to you on the detail. We have a whole list of various agencies and entities. We also put it on our website. We make it available to whoever we think is going to have an interest, so it has a wide circulation. We can give you details about that.

**The Hon. SARAH MITCHELL:** Thank you.

**Mr KEVIN ANDERSON:** In respect of those identified as Aboriginal, how will the Aboriginal Deputy Ombudsman integrate and help to identify and look at preventable deaths in that community?

**Mr BARBOUR:** Technically there will not be a role for that Deputy Ombudsman in that area, because that Deputy Ombudsman will not be a member of this team. The function of the Deputy Ombudsman will be to oversight the Opportunity, Choice, Healing, Responsibility, Empowerment [OCHRE] programs. However, because of the nature of those programs, they cross over all of the disadvantage, child protection, educational neglect, health-related issues, so there will clearly be a nexus, and that is something that I will be making sure happens within the office. Much like the work we do now across different areas, we will develop appropriate methods within the organisation to make sure there is that buy-in. I am hoping that we are going to be able to attract an experienced, well-known Aboriginal person for the role who will not only be able to fit in and do the sorts of work that we want them to do, but we will also bring some specific community connections and additional knowledge to our office that we do not already have.

**Mr KEVIN ANDERSON:** Are you seeing a trend in the Aboriginal community in relation to child deaths?

**Mr BARBOUR:** What we see each year, unfortunately, almost across the board is an overrepresentation of Aboriginal children in relation to every category of death where prevention is a key factor. Often with some of the Aboriginal children, there is also a link into community service notifications and risk of significant harm [ROSH] notifications. Certainly that is the trend that we are seeing, that is why it has been so important for the team to get clarity about how best to report these figures, because we need to be as precise and consistent as we possibly can. Unfortunately to date, the way the team over 17 years has reported on and calculated or identified Indigenous children and young people has not been consistent.

Methodologies have changed and different sources of information have been used, so to develop trends and analysis is very difficult, because we are not able to compare like with like. One of the things that the AIHW report has recommended is a way forward in relation to how we might do that by restricting any trend analysis to only data that has actually been consistently used data all the way through, which might be births, deaths and marriages, for example. The risk of that is if we publish something we would have to notify the reader that it will not be complete, but at least that way we can provide some consistency in respect of reporting.

**Mr KEVIN ANDERSON:** The overall mortality rate of 2012 is substantially lower than 2011. Is that trend consistent in the Aboriginal community as well?

**Ms McKENZIE:** We would have to take that on notice.

**Mr BARBOUR:** I am happy to look at that and take it on notice. We have not broken it down in respect of the entire figures. In relation to each of the different categories of death, we have provided a breakdown, but I am happy to get back to you and provide that information.

**Mr KEVIN ANDERSON:** The reason I ask is that there is an enormous amount of work going on in the Aboriginal and Torres Strait Islander communities, looking at how we improve overall health, starting with adults, working all the way down to children and vice versa. There have been an enormous number of programs. I am interested to know if those programs are actually helping some of those areas that we are targeting and if the reports that have been put out previously about how to reduce preventable deaths are making a difference, or are they sitting on a shelf gathering dust?

**Mr BARBOUR:** I certainly understand the importance of that. It is something that the office is very committed to working in as well, as you know. One of the realities of dealing in this area is that, unfortunately, we are talking about change probably being generational change. While we can provide reactive and proactive programs to assist, the capacity for those to actually change things long term within communities is mixed. That is one of the things that we have reported on regularly. We will definitely provide you with the figures. However, my sense is that because last year we had such a significant decline in the number of total deaths, I suspect there would have been reflected in that a similar decline in the number of Aboriginal and Torres Strait Islander children and young people who died.

However, when you break that down into each of the types of deaths and the categories, you would still see within those, in most cases, an overrepresentation given the population numbers and the percentage of Aboriginal children. I suspect that there would have been a reflection, but we will actually provide you with

proper detail. I endorse your commentary: There is a lot of effort being put in, both at State and national levels. We are very active in that space as well. It is very disturbing to see in many cases a failure of systems to properly change on the ground these very compelling issues.

**Mr KEVIN ANDERSON:** Thank you. I do appreciate that.

**CHAIR:** Congratulations on your focus on off-road vehicles. I grew up on a farm and I cannot believe any of us survived. It is a different system now. I used to drive the tractor and I had to stand up to get the clutch in while the guys on the back were feeding the animals. Do you know what I mean? Everybody helps: It is a family business.

**Ms McKENZIE:** Yes.

**Mr BARBOUR:** But can I just say that you are in the safe category, though, having done that.

**Dr GILLIS:** Yes, that is true.

**Mr BARBOUR:** In our experience, children and young people that are using off-road vehicles for farming purposes—tractors, other vehicles such as trucks—there does not seem to be a correlation between that and deaths. Most of the deaths are recreational vehicles, such as dirt bikes and quad bikes. Maybe in the farming context, there might be greater adult supervision sometimes or there might be more training and education; I am not sure.

**CHAIR:** Well, you are working, not mucking around.

**Mr BARBOUR:** Yes. Often those vehicles are far more stable as well than dirt bikes and quad bikes whereas with dirt bikes they are up in the air and they fall off or they crash into trees, and with quad bikes they are inherently unstable unless you are a very sophisticated driver of them.

**CHAIR:** Yes. WorkCover has done a lot of work on this issue as well.

**Ms McKENZIE:** Yes. There is quite a bit of work in terms of the work space.

**CHAIR:** I think they are trying to get farmers to wear helmets which is, like, you know—

**The Hon. SARAH MITCHELL:** Never going to happen.

**Ms McKENZIE:** That is right. Certainly what the team found in terms of the regulation, as Bruce was flagging earlier, and anything in relation to recreational use of those vehicles on private properties, there is nothing really on that.

**CHAIR:** I wish to clarify off-road deaths in State forests. Off-road deaths on public land would be included as well?

**Ms McKENZIE:** Yes. Some of the information in the report, particularly around off-road motorcycles shows that quite a proportion of those occurred in State forests.

**CHAIR:** Yes.

**Ms McKENZIE:** We know that that is a particular issue, but the deaths were not limited to State forests. Certainly some of them were occurring there.

**CHAIR:** Up in my area of the North Coast we have had some areas where people can do recreational motorbike riding. They have to pay, obviously, but my sense is that they are closing down. It is probably something we want to see more of, not less of, because at least the courses are designed.

**Ms McKENZIE:** Yes.

**CHAIR:** I would be very interested in your review.

**Ms McKENZIE:** The team certainly will be keen to see some progress on that recommendation and to get some expert advice back. What the team essentially has asked for is for the Department of Premier and Cabinet to convene relevant experts in this field to provide some expert advice on what more, if anything, needs to be put in place.

**Mr BARBOUR:** That was one of the dilemmas. There is no agency or no authority that actually has responsibility or coverage for this area.

**CHAIR:** Yes.

**Mr BARBOUR:** There are a number of different agencies involved with road safety and transport safety and those sorts of things. The team decided that the best process was to recommend that the Department of Premier and Cabinet bring together the relevant parties for this and actually look at what needs to happen in terms of any additional regulation or administrative processes that need to be put in place. They are yet to report back. We will be following that up before the next report.

**CHAIR:** That is great. Would you consider someone from NSW Farmers or a rural representative group? The cultural issues are very significant.

**Ms McKENZIE:** We would expect that they would be included as part of that.

**Mr BARBOUR:** Absolutely.

**Ms McKENZIE:** There has been some substantial work done by Farmsafe and others around quad bike use.

**CHAIR:** Yes.

**Ms McKENZIE:** There is quite a bit of work happening at the moment at the University of New South Wales that is aimed around quad bikes. It would be looking at that. Part of what the team has recommended is about bringing together professionals to look at what currently exists and what work is currently happening and what more needs to be done. We would expect that that would be included.

**CHAIR:** Thank you. I wish you every success with that. I would also like to ask you about the gender imbalance in child deaths. It is really quite stark. I wondered if any consideration has been given to this. To me, gender is the biggest indicator of a child dying, even more than their race. It is so stark for all ages. Has any consideration being given to why it is that boys are hurting themselves and hurting other people?

**Ms McKENZIE:** The team has considered some aspects of that, and certainly in the higher age groups—the 15- to 17-year-olds—where it is much easier to pinpoint why there would be a higher proportion of male deaths than female deaths. It is related to some of the risk-taking behaviour and the nature of the deaths that are related to transport incidents and other factors.

**CHAIR:** But it is also true of the sudden infant death syndrome [SIDS], is it not? It is true of every age.

**Dr GILLIS:** Yes. It is a global phenomenon.

**CHAIR:** Yes.

**Dr GILLIS:** It is a historical phenomenon. There are many theories of it, but I am not sure anyone has ever pinpointed it down, apart from the adolescent one. In a sense, that is intuitive. Boys are greater risk-takers at that age, so that has always been common. You probably notice there is always a peak in drowning in males of about 15 or 16 when they start taking risks. But in terms of the gender imbalance for chromosomal or genetic defects, that has always existed and I am not sure anyone has really figured that out. I will search the literature for you to see if there is a latest theory. I am a paediatrician by training and I have been taught that ever since I started paediatrics.

**CHAIR:** I have been told it is because of the Y chromosome.

**Dr GILLIS:** That is right.

**CHAIR:** There is no countervailing information.

**Dr GILLIS:** That is right. We used to say that. You learn from the very beginning of paediatrics that it exists. One gender fares better and the other gender fares worse.

**CHAIR:** You need a second chance.

**Dr GILLIS:** There have been a lot of theories about it but I will look up for your own interest if there is a latest theory. But it is not an Australian phenomenon. It is a universal one.

**CHAIR:** In terms of the research program, as you indicated the risk-taking behaviours really are something that we perhaps might feel more able to do something about—something more productive.

**Dr GILLIS:** That is right; exactly.

**CHAIR:** Has any consideration been given to studies in that area, even just to highlight the gender imbalance?

**Dr GILLIS:** Yes, and the risk-taking.

**CHAIR:** I am not sure that boys get a fair go.

**Ms McKENZIE:** It is particularly stark around transport fatalities. We do highlight that in the reports. There is targeted work done by agencies in New South Wales to specifically target risk-taking behaviour in relation to young males in relationship to transport and speeding.

**Mr BARBOUR:** You might recall the very specialised road safety campaign.

**CHAIR:** It was excellent.

**Mr BARBOUR:** Certainly in terms of the agencies that are out there doing front-line prevention work, this is something that is well known to them and they are targeting this group through that work. It is certainly something we are live to. It would probably not necessarily be something that we would do specific research on, unless we saw it being a space where there was not anybody else doing anything on it. We have to try to focus on those limited areas, but certainly we can take that on board.

**Dr GILLIS:** We do monitor. I suppose this is obvious, but one thing we can see is what happens to the trend in those deaths. If there are sudden changes in those deaths, then that is another issue.

**CHAIR:** The area of particular interest to me is reviewable deaths, particularly in relation to children who have died of violence and the imbalance in it. My sense is that boys are more vulnerable to being killed by mum's de facto than girls. Maybe the girls are suffering in other ways, but so many of those reviewable deaths are boys who are eight to 12 years of age and who are completely helpless.

**Ms McKENZIE:** Actually, the highest proportion is really young children that we see.

**CHAIR:** Even younger ones are shaken and all of that.

**Ms McKENZIE:** Younger ones, yes.

**Dr GILLIS:** Yes, you are right.

**CHAIR:** But the males predominate. I just wonder if there is something in the dynamic of those relationships that makes boys particularly vulnerable. Men seem to think that boys can take it. That attitude really concerns me.

**Mr BARBOUR:** Yes. Look, I do not know; it is a very interesting question that you pose. I am just trying to think through some of the abuse-neglect deaths that we have reviewed in the Ombudsman function

under reviewable deaths. There have been some very high-profile deaths, which of course have been young girls as well.

**CHAIR:** Yes.

**Mr BARBOUR:** I think it would be a very interesting issue to look at to see how the numbers actually play out, but certainly because of the familial link it almost seems to be very much about who was there at the time of the particular occurrence which leads to the loss of control. There may well have been long-term abuse for a period of time, but not much is known about the loss of control that leads to the death in those cases. It would be something that we could certainly look at, but I am just not sure statistically whether it would always be boys. It seems to be very much based on context—who is there at the particular time.

**CHAIR:** I understand, and I absolutely would not want to underplay girls being injured. But can I suggest that when you do look at the figures, you will be surprised.

**Mr BARBOUR:** Yes.

**Ms McKENZIE:** In the reviewable child deaths focus area, not the Child Death Review Team [CDRT] area, in the next report we are actually looking at familial homicide. That will be something that we will cover.

**CHAIR:** Will that include de factos?

**Mr BARBOUR:** Yes. Indeed, the Domestic Violence Homicide Review Team apparently has done some recent research into these areas as well, but that is yet to be published.

**CHAIR:** Thank you.

**The Hon. ADAM SEARLE:** I should probably be more familiar with this aspect of your work, but when you are doing that do you look at the socioeconomic context as well?

**Mr BARBOUR:** Yes, absolutely. In the reviewable deaths area that is under the Ombudsman function, the vast majority of reviewable deaths would have a whole raft of fairly common repeat factors. There would often be a socioeconomic element. There would be an element of connection and link-in to Community Services, reporting, and so forth, and a whole range of other things. It is a fairly typical pattern.

**The Hon. ADAM SEARLE:** Pattern of distribution?

**Mr BARBOUR:** Yes.

**CHAIR:** Thank you very much for appearing as witnesses today. Are there any documents that you want to leave with us?

**Mr BARBOUR:** I have a copy of the opening statement and a copy of our strategic plan.

**CHAIR:** Thank you very much. We really appreciate that. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

**Mr BARBOUR:** Certainly.

**CHAIR:** Thank you very much.

**Mr BARBOUR:** It is a pleasure. Thank you.

**CHAIR:** Once again, we really appreciate your time and that you have been bearing with us through the changes. We felt so engaged that we have run over time.

**Mr BARBOUR:** Thank you.

**(The witnesses withdrew)**

**The Committee adjourned at 4.15 p.m.**

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