

REPORT OF PROCEEDINGS BEFORE

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

**2016 REVIEW OF THE ANNUAL REPORTS OF OVERSIGHTED
BODIES**

At Sydney on Thursday 3 March 2016

The Committee met at 10.00 a.m.

PRESENT

Mr L. J. Evans (Chair)

Legislative Council

The Hon. S Farlow

The Hon. T Khan

The Hon. A. Searle

Legislative Assembly

Mr P. G. Lynch

Ms E. M. Petinos

Dr P. J. H. McDermott

CHAIR: Thank you for coming today. I declare open the 2016 Review of the Annual Reports of the Information and Privacy Commission, New South Wales Ombudsman and New South Wales Child Death Review Team. I thank all witness who will be appearing before the Committee for taking time out of their busy schedules to come to Parliament today.

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

SAMARA DOBBINS, Director, Business Improvement, Information and Privacy Commission, sworn and examined:

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

Ms TYDD: No thank you, Chair.

CHAIR: Would you like to make an opening statement before the commencement of questions?

Ms TYDD: Thank you, I have a brief opening statement. The opportunity to present to the Committee today is appreciated and I would also like to thank the members of the Committee for attending the Information and Privacy Commission [IPC] recently. It was a very positive engagement with IPC staff and they were rewarded by the experience.

On that occasion we provided an overview of our legislative context and outlined the IPC's respectful and responsive implementation of the model Parliament created in establishing the IPC. Today I would like to build on that background and provide some brief opening remarks outlining significant issues, priority areas and also our achievements. I propose to refer to matters general to the IPC and more specifically to the information access work program.

The achievements over the past two years build on the early work of the inaugural Information Commissioner in establishing the IPC and the five annual reports since that time reflect a congruence of vision and strategy from establishment to our current operations. The work of the IPC is conducted in four discrete areas. They are: investigation and review; communication and corporate affairs; business improvement; performance reporting and projects. These four business units are responsible to the two IPC directors who are present here today, Ms Samara Dobbins and Ms Roxane Marcelle-Shaw.

Turning to achievements in relation to investigation and review and in particular our case management, over the past two years we have significantly enhanced our case management processes and successfully addressed the historical backlog of Government Information (Public Access) Act 2009 (NSW) [GIPA] cases. So for the IPC, the most recent dashboard for January 2016 confirms our progress in relation to the age profile of cases, with 65 per cent of reviews and complaints and audits under four months old. This is in stark contrast to June 2014 when only 36 per cent of these matters were under four months old. Specific to GIPA, in January 2016, 75 per cent of cases were under four months old. This is a consistent and marked improvement from the age profile of GIPA cases in June 2014 where only 36 per cent of matters on hand were under four months old. In addition to improved case management, we have also invested in upgrading our case management system to ensure that it effectively manages our work flows and processes and we have invested in the professional development of our staff to ensure our internal capacity meets the requirements of the sectors that we regulate.

Briefly, in relation to communication and corporate affairs, we invested in a review of our website to enhance the service delivery through that upgraded website and we have implemented an external communication strategy to better serve both citizens and also regulated sectors. A total of 27 new publications were issued in 2014-15 and we actively supported the NSW Right to Information/Privacy Practitioners Network. We have strategically engaged with the practitioners chair and consultative forum, really to better understand the issues that they are facing and to address new and emerging issues; for example, third party objectors in relation to information access applications.

We have applied a strategic and innovative approach to communication and we have therefore been able to develop e-learning modules for information access and privacy. We have published regular bulletins and case note services which are very well received. We have conducted omnibus surveys for both statutory responsibilities to measure awareness and to look at how we might elevate awareness. We have developed guidelines and fact sheets including, in the GIPA space, the creation of new records and the interpretation of that provision and also legal professional privilege. These were identified as areas of need and we have responded to those areas of need.

In September 2015 for the first time we conducted an event to celebrate the Right to Know Day, an international day. We have responded to requests from the regulated sector to provide thought leadership and we have done that through our annual report but also through speaking engagements. We have had the publication of an article I wrote, "Around the World with Open Government" in the April-June edition of the journal "Public Administration Today" and we have provided case studies and conducted a number of speaking engagements.

In respect of our business improvement, we have continued to promote and support the use of technology to both support our internal performance and also to deliver better services to citizens and agencies. The review of our case management tool is highlighted in our annual report and the enhancements have delivered greater functionality, as set out at page 32 of that report.

The review and development of a new online GIPA tool has provided a more responsive service and improved quality and timeliness of agency application management and decision-making. But it has also delivered the benefit of enhanced consistency of the GIPA framework and also our reporting data which is relied upon heavily in the section 37 report. This functionality has also eased the regulatory reporting burden. We have worked with the Information and Privacy Advisory Committee to establish a future directions work program.

In relation to the fourth and last area of the IPC, performance reporting and projects, we have committed to being a very effective contemporary regulator and this requires the application of data and information to monitor and improve performance. Over the last two years we have introduced more consistent and rigorous reporting measures internally to elevate our own performance and accountability but also to elevate compliance by regulated entities. That functionality has also been improved with the GIPA tool and we will use that data to inform our forward work program.

Our annual reports evidence a greater focus on the strategic regulatory approach and a reliance on consistent data upon which to make findings and strategically direct our resources. This work is continuing with the development of a robust regulatory framework which was identified as a priority in our IPC Business Plan. That will better articulate our jurisdiction, our regulatory approach and inform a more targeted, effective regulatory suite of actions.

I would like to also recognise that we have been maximising our regulatory outcome through an integrated regulatory approach. This is a new initiative. In exercising our statutory responsibilities, we are motivated to respond to sector-wide issues and more effectively co-regulate where possible and appropriate. So in 2015 our audit of universities contract register compliance was informed by the work of ICAC but also by the recent work of the New South Wales Auditor-General. In 2016 we are continuing to work closely with the New South Wales Auditor-General to better elevate compliance across all sectors.

Most recently, the IPC has led work to better appreciate and, where relevant, coordinate our regulatory work program with other integrity agencies. This model is based upon the approach adopted in Western Australia through their Integrity Coordinating Group. That group comprises the Information Commissioner, the Public Sector Commissioner, the Auditor-General, the Corruption and Crime Commission and the West Australian Ombudsman.

Finally, I would like to turn to how we have progressed since the establishment of the Information and Privacy Commission. We were first established on 1 January 2011 and since that time considerable progress has been made for a very small organisation. If we are to compare the report of 2011-12 to the 2014-15 annual report, we see evidence of a significant increase—7.5 per cent—in the number of complaints and reviews finalised having been achieved with a reduction in budget that is comparable to the other reductions in budgets across the sector more broadly and, also, that reduction is reflective of our implementation of the GSE Act and a reduction in full-time equivalent [FTE] costs. I am pleased to report that our half yearly review also demonstrates that we are well advanced on a range of projects. We have maintained our efficiency in respect of acquitting statutory functions and have demonstrated agility in responding to new priorities, including effectively contributing to externally driven initiatives such as the Data Analytic Centre as they arise.

Mr PAUL LYNCH: Commissioner, one thing that has agitated some of us is the Government's use of the Sydney Motorway Corporation to deliver the WestConnex project, said to be Australia's largest infrastructure project. Because it is a private corporation it is not subject to the Government Information (Public Access) Act [GIPA]. I am wondering if you are aware of any other examples of that particular structure being used?

Ms TYDD: There are a couple of mechanisms under the GIPA Act that enable the responsibilities for sound information, management and access to be enlivened. One of the provisions is section 121 of the GIPA Act, which places an obligation on agencies to ensure that their contracts for the provision of services by external parties that are non-traditional government parties include provisions to ensure that they can access that information. That is one provision that I understand is used. The other provision I would refer to is the regulation-making power. Service NSW has been included as one of those entities and captured, therefore, and through that mechanism it is incorporated within the GIPA Act. So there are mechanisms to achieve outcomes and no doubt the Government will give consideration to the legislative scheme broadly.

Mr PAUL LYNCH: Are there other examples of this type of arrangement where government responsibilities are given to a private company or a private corporation and, therefore, the GIPA Act is excluded?

Ms TYDD: I am pointing to the examples that would include the GIPA Act and how it might be included through section 121 and the regulation-making power. I cannot, at this time, point you to an example. Are you asking if they want to be included?

Mr PAUL LYNCH: No. What has happened is that the organisation delivering WestConnex is now a private corporation not subject to the GIPA legislation. I am asking whether there are any other examples of that sort of thing that you know of.

Ms TYDD: I cannot point to any immediately, but I would point to section 121 where it is private organisations delivering services on behalf of the Government and, therefore, section 121 places the obligation on the agency to ensure its contract allows them to fulfil the GIPA Act functions.

Mr PAUL LYNCH: Except that the GIPA applications keep being refused.

The Hon. ADAM SEARLE: That is a good point. It requires government action to bring those private companies under the GIPA regime. What happens if the Government simply does not do it?

Ms TYDD: My jurisdiction relies upon the objects of the GIPA Act in relation to those that are captured under the Act. It certainly does not extend to regulating per se private entities, save with those provisions I talked about, which would be section 121 and the regulation-making provision, and State-owned corporations that are subject to the GIPA Act. There are a number of State-owned corporations that are subject to the GIPA Act.

Mr PAUL LYNCH: There is meant to have been a review of the Government Information (Public Access) Act, due in 2014. I do not suppose you have any idea what has happened to it?

Ms TYDD: We are in regular contact with the department in relation to the progress of that statutory review. It is a meaningful review from the standpoint of the IPC. We have taken the opportunity to ensure that we provide submissions to that review and the department has continued to accept them. The opportunity that has presented itself at office level and direct to that statutory review is also informed by the statutory reports and this year's section 37 report makes specific mention of some of the considerations that could be taken into account in conducting that review. We certainly remain available and supportive of progress in that regard.

Mr PAUL LYNCH: Has anyone given you the slightest hint about when it will be completed?

Ms TYDD: No, I do not know when it will be completed.

Mr PAUL LYNCH: Your report on the operation of GIPA paints a negative picture about what has happened in New South Wales—total information release rates in decline, low levels of disclosure compliance, and an increase in reviews because of a failure to comply. What is the solution to all that?

Ms TYDD: I would contextualise some of the aspects that we will be developing a regulatory program to address. There are certainly some challenges. Those challenges are at a strategic level. It is also important to reflect that at a transactional level certain improvement has been made and I have pointed that out in the section 37 report—so timeliness, assistance to parties making an application to ensure that they are not deemed invalid, for example, and moving them towards validity. There is a clear and consistent improvement in respect of those mechanical and transactional aspects. The big challenge is the strategic application of GIPA around the

proactive release. Symptoms underpin those proactive release requirements and you will see a work agenda is articulated in the section 37 report to ensure that we work within our remit and within our regulatory model to target the most significant features, such as contract reporting, and to apply our regulatory guidance in that regard to elevate performance overall. The proactive release of information is the way in which government is able to be more accountable in the absence of the pull of a GIPA Act application.

In response to your question about declining release rates, the IPC is taking that forward and is examining it more. We know there are a number of factors. The sorts of factors we know are the types of information sought and held by an agency and the GIPA Act points out a couple of agencies where the release rates differ, when, for example, personal information is removed from that. It also contemplates a proper application of the words that we all avoid, the CPOPIADs and OPIADs—conclusively presumed that there is an overriding public interest against disclosure and other public interest consideration against disclosure—under the GIPA Act, which are how to ensure that what is provided, even if it is through partial release, demonstrates a proper application and a balancing of the factors in favour of disclosure and those against. All of the data we are now acquiring is very rich and we need to apply our best endeavours to properly understand, target and identify areas where we can elevate performance for agencies overall and apply our resources to do so.

The Hon. ADAM SEARLE: Commissioner, having a release rate declining from 80 per cent to 69 per cent in a couple of years is a cause of significant concern. Does it not point to a hardening attitude on the part of executive agencies against release?

Ms TYDD: We will certainly examine that. On one reading of the statistical information, that is a factor that must be considered and addressed and that is within our work program. The sorts of issues we are also conscious to ensure we capture are a greater knowledge of the GIPA Act application, and we are seeing that because mechanically we are improving. We are also looking at the sorts of issues around what are the predominant requests made for. Now, the granularity of the reporting framework does not really segregate in that regard.

The Hon. TREVOR KHAN: What does that mean?

Ms TYDD: Under the GIPA Act, there is a reporting regime and that reporting regime talks about personal and non-personal information. That means that an applicant can make application for their own personal information or someone else's personal information, but it does not necessarily give us an idea, for example, about applications for major initiatives, construction initiatives within the State, so that sort of granularity to enable us to target and understand better the application of the CPOPIADs and OPIADs, where information might be withheld, is something that we will need to look at through a deeper analysis. I would also point to the fact that partial release rates—

The Hon. TREVOR KHAN: Can we summarise that in some way? The propositions that are being put to you by the Labor members of the Committee are, at best, misconceived speculation at this stage? Is that fair?

The Hon. ADAM SEARLE: No.

Mr PAUL LYNCH: We were actually quoting the report.

The Hon. TREVOR KHAN: You were picking figures out.

The Hon. ADAM SEARLE: You can look at pages 38 and 39.

Ms TYDD: Those figures certainly are apparent and they have caused us to inform a work program to gain a greater understanding of the application and to gain a greater understanding of factors such as partial release. Partial release is invoked, if you like, if just a small section of a report is taken out. For example, a phone number might be taken out; that is counted as partial release, not full release. We are seeing a greater understanding of the Act, and we are seeing a greater understanding of the Act by the sectors regulated by the Act. We need to better understand where to target. I point to contracts. Contracts are an area that we have targeted because it is an area that demonstrates a need for improvement.

The Hon. TREVOR KHAN: Does that mean that where they quote figures of 69 per cent and 80 per cent, or whatever, they are comparing apples with oranges? Is that what you are saying?

Ms TYDD: I can say that there is a decline in overall release rates from 80 per cent to 69 per cent.

The Hon. TREVOR KHAN: I accept that. Are you saying that you cannot just look at those figures and come to the simplistic conclusion that those members are coming to?

Ms TYDD: We need to look further at those figures to understand the proposition and to understand where—

The Hon. TREVOR KHAN: I am trying as hard as I can.

The Hon. ADAM SEARLE: I think you should give up.

The Hon. SCOTT FARLOW: Looking further at some of those figures—I will jump in and ask questions along the lines of Mr Khan's—your annual report outlines that 55 per cent of internal reviews were upheld, which is up from 20 per cent in the past. Some of your analysis of that has been that this could potentially demonstrate a better understanding of the Government Information (Public Access) [GIPA] Act. Could that be the case?

Ms TYDD: Thank you for that question. Certainly there is the possibility of interpreting it that way. One would have to have regard to the outcomes of the NSW Civil and Administrative Tribunal [NCAT] decisions. They also demonstrate, on very preliminary figures, that more decisions are being upheld. That is a very preliminary assessment but it may be that that is a factor. It may be that coming to better understand GIPA is demonstrated in initial decision-making and potentially confirmed on review. I would like to take the opportunity, though, to recognise the important work of the IPC, in that when we make a recommendation and those recommendations to revisit the decision are accepted, 65 per cent of those cases vary the decision.

The Hon. SCOTT FARLOW: One of the things that I have heard you mention in the past is that more people are going to the NCAT rather than to the IPC, or there has been a rise in—

Ms TYDD: External reviews.

The Hon. SCOTT FARLOW: Yes, external reviews. Sorry, I will let you continue. What are your views as to why that is occurring?

Ms TYDD: The two avenues of external review—NCAT and the Information Commissioner—have consistently increased. Our NCAT figures are quite limited at this stage. That is because NCAT needs to report in its divisions to give us those figures. We do have those figures for this year, so we have relied upon them in the report. Internal reviews are declining, but the proportion of reviews overall is very similar. Another aspect of this report is that data is relied upon from the agencies and also, where possible, validated through our data. Our data says that we are taking the largest proportion of reviews, in that we are undertaking about 42 per cent of all reviews, and that is a remarkable achievement, I think, for the IPC. They are definitely increasing—and, in this one year, increasing very dramatically in NCAT. It may demonstrate a need for real certainty in decision-making.

You would be aware that the Information Commissioner has the power of recommendation in a very collaborative regulatory model that has clearly been effective, but NCAT is the final arbiter and has determinative powers. It may be that as some of the provisions of the Act, like third-party objectives, need to be better understood and appreciated, people are seeking the determinative authority of NCAT. But we are seeing external reviews increasing. What does that say overall? My preceding remarks would address that. I have addressed this in the section 37 report. We need to be mindful—I need to be mindful—and work with the department and other related entities to ensure that GIPA is continuing to serve its purpose of being accessible, affordable and timely, because we are a part of the New South Wales legal system.

The Hon. SCOTT FARLOW: To that point—some of the provisions that people use to apply through GIPA, and the fact that they are not necessarily customer friendly or easily accessible, whether it be online or in regard to payment and requirements for cheques, et cetera—are there any recommendations that you have made to government on how to improve that system?

Ms TYDD: The GIPA Act makes provision for online lodgement to occur with the consent of the Information Commissioner or following consideration by the Information Commissioner. I have done that on two occasions, and I am awaiting a third application that I have just been notified of. So agencies are wanting to progress in that regard. Yes, it would be a wonderful achievement to better harness technology and ensure that accessibility is promoted through the use of online lodgement. We will support that in any way we can. One step in that direction is the GIPA tool, which is a case management tool that we have made available to all agencies so that they can apply the statutory time frames through technology, and better manage the cases. The timeliness has increased significantly in relation to determinations under GIPA. Technology and systems, and also well-informed decision-makers, will elevate that performance. There has been quite a remarkable improvement in timeliness.

The Hon. SCOTT FARLOW: One of the other figures I noted was the decline in agencies performing annual mandatory reviews of their proactive release, from 85 per cent to 71 per cent. What are some of the things that you have been doing in that regard to work with agencies to ensure that they are reviewing their proactive release programs?

Ms TYDD: We have issued guidance. We want to demonstrate, through the section 37 report, the benefits. When we were preparing this section 37 report—the third report—we were very conscious that the first report was an acquittal of data. The second report started to fully understand and demonstrate the proper application of the GIPA Act through four pathways. The third report needed to do something more, and needed to have a regulatory purpose so that we were not just producing statistics that had no context, no meaning and did not inform forward work programs. So we undertook a strategic engagement with all the sectors to find out how the report could better meet their needs. They asked for a couple of things, and I am very pleased to say that, through the work of the IPC, we have acquitted those issues.

They asked for greater guidance and thought leadership as to how programs like a proper proactive review could be undertaken and how informal release might inform proactive release of information. They asked for information of what other jurisdictions were doing, and the international developments that we could point them to. They also wanted to know about local case studies to demonstrate the best application of some of those provisions. We have incorporated all of that in the GIPA report. The other feature that we are currently working on—which is not well articulated in the report because we are still working through that and it is a retrospective report—is that agencies wanted to use their data to improve their performance. So we are now moving towards a better performance reporting system. Through that, agencies will be able to look at their performance in granular detail—say, through a dashboard. That will address, certainly, the formal application pathway, and it will address the thought leadership needed to stimulate those other pathways, like the proactive release. We will continue to work on that program of proactively releasing information and better realise the strategic asset that is government-held information.

Mr PAUL LYNCH: You have mentioned timeliness. My recollection of the report is that there was a decline in timeliness in relation to decisions from Ministers' offices. Was there any explanation of that?

Ms TYDD: The ministerial sector is interesting. It is contained in appendix 4 of the report; I think it is on pages 82 and 83. In that report you will see that the ministerial sector has similar numbers to the university sector. It is about 60. Overall, in 12,000 applications its impact is one that we need to consider and then look at that sector specifically. I do not have an explanation in relation to timeliness but I would say in respect of release rates that one of the issues we have considered is that information not held made up a large proportion. You will see in the table at the bottom of the report that it did make up a large proportion. The release reports were then quite different when that was considered.

Mr ADAM SEARLE: What process do you follow to allocate resources within the IPC, as between privacy work and the other work of the agency?

Ms TYDD: I think the annual reports well demonstrate acquittal of both statutory work programs, particularly in the case management improvement areas. Likewise, our business planning looks to ensuring that we have an equitable distribution of projects across both streams. The 2013-14 business plan had about eight privacy-specific projects and about three information access-specific projects. We have only ever had a historical backlog in relation to GIPA matters—so that is pleasing in part—and we have addressed that. I would say that the allocation of resources in an organisation where largely our budget is allocated to fulltime equivalents [FTEs], to our intellectual capacity of staff, it is actually the case volumes tend to drive that distribution, which is managed by the manager of investigation review under the supervision of the director. We

look to a fair and equitable distribution to ensure that timeliness overall for the IPC is maintained and that the IPC and me as CEO are able to demonstrate an acquittal overall of the statutory responsibilities undertaken by the IPC. I am sure the annual reports demonstrate that both work programs are significant and both work programs are demonstrated in those reports.

Mr PAUL LYNCH: Is there a case to get rid of the \$30 application fee?

Ms TYDD: That is a very interesting question. The \$30 application fee is enshrined through the legislation, as you know. It does not apply to applications for external review by the Information Commissioner, and that is one clear statement of accessibility to a low-level dispute resolution or power recommendation conducted within the IPC. The \$30 application fee was the determination of Parliament at that time. I have not been involved in discussions which would consider that at this time, but certainly it is worth considering. And it is worth also looking at what occurs in relation to application fees and access to this form of justice in other jurisdictions. That is something we can turn our minds to.

CHAIR: Commissioner, I assume that you access Service NSW. Would it be correct that you promote your services through Service NSW?

Ms TYDD: We have a very positive working relationship with Service NSW and we are aware of their overall direction. Yes, using them more as a single point of contact for all citizens is definitely on our agenda. There are other mechanisms to promote information access. We do use them as an agency, particularly a frontline agency to send the message about GIPA. And they are very responsive to campaigns that we conduct, as are most government agencies—for example, Transport for NSW running the videos for both information access and privacy to ensure that members of the general public have a heightened awareness of their rights under the statutory regime.

CHAIR: Thank you for appearing before the Committee. The Committee may wish to send you some additional questions in writing, the replies to which would form part of your evidence. Would you be happy to provide written replies to any further questions?

Ms TYDD: Certainly.

(The witnesses withdrew)

ELIZABETH MARY COOMBS, Privacy Commissioner, Information and Privacy Commission, sworn and examined:

SEAN PETER McLAUGHLAN, Senior Privacy Advisor, Information and Privacy Commission, affirmed and examined:

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

Dr COOMBS: No, thank you.

CHAIR: Would you like to make an opening statement before we commence questions?

Dr COOMBS: I would, thank you, although I am aware your time is short so I will attempt to get to the issues that I think will be of the greatest interest to members. First, privacy has never been more relevant and more at the forefront of people's minds—Edward Snowden, WikiLeaks, Ashley Madison, the FBI and Apple have all done an enormous amount to increase consciousness. People are very aware of what their privacy means to them and what they want to occur in relation to it. My priority concern as Privacy Commissioner is always that citizens' privacy rights are respected, whether those privacy threats are in terms of threats to solitude—the right to have a private space—misuse of personal information or in relation to how the Privacy Commissioner can undertake her statutory functions. My statutory functions are detailed in section 36 of the Privacy and Personal Information Protection Act, the PPIPA, and section 58 of the Health Records and Information Privacy Act, HRIPA—that is at tab A of the pack we have for you. The coverage is broad in that it is also the public health sector as well as privacy not just in terms of the information base aspect but the right to solitude.

I turn to the things we have undertaken over the last two years, the achievements, the areas for improvement and the priorities for this coming year. I will be light on these because I know there is more to be gained from questions than a long talk. I will touch upon three areas. The first is assistance to agencies, and there I make reference to the assistance given to agencies by providing an online source of all the materials they need to embed good privacy practice in their management processes. I made a commitment in my 2013-14 annual report that that would be released. Whilst that occurred somewhat belatedly, it was launched in 2014 by the Hon. Michael Kirby. It was the first of its kind in Australia and has now been followed first by the Commonwealth and also Victoria.

Moving to privacy awareness and the promotion of privacy, we have run, as always, privacy awareness weeks in 2013-14. One thing I want to point out, because it was raised by the Committee in some earlier hearings, is establishing partnerships to get those messages out. I am very happy to say that we established a strategic partnership with First State Super and we have been running a privacy matters forum with their assistance and support. We have had one on customer service; another led by Hugh Mackay, a social commentator; and Michael Kirby has promised that he will be available for one this year as well.

The annual report provides details of the numbers of complaints so I will not spend too much time on that other than to say there is a need to improve reporting in that area to give a better sense of the number of requests for assistance divided into access and privacy. Statutory advice is one of the areas that is absolutely key to assist organisations. In regard to the work that comes into the commission, there are complaints and requests for assistance in interpreting the legislation and applying that to policy initiatives or programs. That latter area is one of the most critical areas for privacy and it makes up the bulk of the work that is done by the Information and Privacy Commission [IPC] in the statutory advice area. In the complaints area it might be about 50:50—60:40 in relation to access—but in 2013 to 2014 in the statutory advice area 94 per cent of the advice given of 136 was privacy advice and that is similar to what occurred in 2014-15. We have largely proven our effectiveness in that area. As one example I point to the second reading speech given by Minister Dominello when introducing the data analytic centre legislation in regard to privacy advice that was provided.

I am now going to move to the statutory report. This is the one on the operation of the privacy legislation. That was based on surveys of members of the public, non-government organisations, privacy practitioners, as well as State government agencies. The feedback in the issues they raised provided the basis for many of the recommendations that have gone through into the report. In regard to the action that has occurred on those recommendations I am proud to say that the Government was successful in introducing legislation to

address that 15 year gap in the protection of personal information moved outside New South Wales. I have noticed that another recommendation has been picked up and is the subject of a private member's bill to bring State-owned corporations [SOC] under the New South Wales privacy regime.

I do acknowledge that there are some things which could be done better and I have not provided the statutory report, as requested by this Committee, on surveillance and the use of technology in privacy adverse ways. That is an issue of resourcing and a range of other matters. I will get to that and to the priorities this coming year. We have had success with government agencies making privacy a higher priority. I acknowledge the work of Roads and Maritime Services in this regard. The gaps which have been identified by research and inquiries and most recently the upper House committee chaired by the Hon. Bronnie Taylor, which is examining service coordination in communities of high social need—

The Hon. TREVOR KHAN: An excellent member.

Dr COOMBS: That committee established that what is needed is far more support, resources and training from the privacy commissioner so people's understanding of what was appropriate to be provided from a service coordinator to other services was clear. It was not barriers in privacy legislation but the support and knowledge of people in the field. You will have noticed that in the most recent annual reports and statutory report to Parliament I refer to the structural and organisational arrangements not facilitating the undertaking of privacy statutory functions. I also refer to the commitment, which is recorded in *Hansard*, that the formation of the IPC would significantly provide more resources to privacy.

While there have been significant achievements in past years the model is a very challenging one. The reasons for my concern about the ability to deliver the statutory functions of the privacy commissioner, as intended by the Parliament, and to meet the expectations of the community are captured in the changes in the IPC organisational charts. They are all publicly available in the annual reports and you will find these in tab E. They visually capture the reasons for my concerns. I am pleased with, and I thank, the attorney and secretary of the Department of Justice for the recent establishment of a separate office of the privacy commissioner within the IPC. This effectively returns responsibility and resourcing to what it was in 2012. This new arrangement is on a trial basis until June 2016. Though it is just two months and we are not yet up to our full complement of seven staff, and transitions are always interesting, this is a positive development which is working well. It is enabling us and will continue to enable us to progress matters far more efficiently and effectively. I have examples of that.

Early feedback from agencies has been positive. I think the strength in the model is that the privacy commissioner needs to be independent, as intended by Parliament, and that officers dealing with privacy matters are under the direction and coordination of the privacy commissioner. I think it is important that there is the ability to have a budget that is there for privacy, and decisions can be made by the privacy commissioner in regard to a business plan and a structured process. I think it would be another improvement if the role of privacy commissioner was full time. Currently its effectiveness and standing is undermined by the fact that the department established it as a part-time role, but we can see how prevalent privacy issues are now on the front pages and in people's consciousness. I also think it would be a great improvement that the reporting of the IPC properly and fully disaggregates into privacy and access streams. I mentioned that in 2012-13 there are more figures available on the activity of the two statutory streams than what is currently available.

The 2016 year looks positive and I am very much looking forward to it. Our first priority is to provide guidelines to support the amendments to the Privacy and Personal Information Protection Act passed by the Parliament in late 2015. I can mention in greater detail what the guidelines would be. I want to work on the recommendations with the team on our statutory privacy report, particularly those that benefit citizens in the area of child protection and other areas. Firearm regulation is coming up again in New South Wales and in Victoria. I want to provide input to relevant legislative reviews, including the Government Information (Public Access) Act and parliamentary inquiries. I need to conclude the Opal electronic ticketing scheme investigation that commenced in 2014, which is way overdue. It is something that I am conscious of and I hope to be able to report on its completion shortly.

I am keen to undertake privacy training and assistance in regional and rural New South Wales following on from the recommendations of the committee referred to earlier and to work with other agencies to address security issues. One of the most exciting things that has occurred—I was looking on my iPad before I came up to give evidence—is the parliamentary committee looking into serious invasions of privacy has recommended the formation of a statutory tort. It has also recommended greater powers for the privacy

commissioner and the privacy commissioner be empowered and resourced to undertake those as well as addressing some other issues in the domestic violence area and the jurisdiction of the tribunal. That report is on the website. I also very much want to report on the impact of technology upon privacy, as the Committee requested, and how those adverse impacts can be addressed. Those priorities are far more achievable now with the new arrangements and I want to publicly acknowledge and thank the officers who have come over to work with me in the Office of the Information and Privacy Commission. I am happy to make my full statement available to the Committee and to take questions from the Chair and members.

Mr PAUL LYNCH: You mentioned in your opening statement the issue of the exclusion of State-owned corporations [SOC] from the Privacy and Personal Information Protection Act regime, which inevitably I am going to ask about. Is there the slightest justification for them being excluded in the contemporary world?

Dr COOMBS: When that exemption was put in it was very much about SOCs being on a level playing field with commercial organisations. Since then private corporations are covered by the 1988 Commonwealth Privacy Act, and I think there are three SOCs prescribed under the schedule. I note that the statutory review of the Privacy and Personal Information Protection Act, which occurred in 2003-04, recommended that SOCs be included in the legislative regime of the New South Wales privacy legislation and the NSW Law Reform Commission made a similar recommendation that they be brought in. My view is that it is entirely appropriate.

Now you have seen the movement of the State-owned corporations into what is considered to be the government sector underneath the Government Sector Employment Act and I think other Acts as well. But also when you think of the nature of some of those utilities, for example, Sydney Water, most of us who live in the Sydney Basin are dependent upon their provision of water and their taking away of waste products. You cannot go anywhere else. They have voluntarily accepted a privacy regime and I commend them for that; however, it would mean that any of us who had a formal complaint if we were unhappy about how they dealt with that would not be able to go to the tribunal to seek formal redress, which would include an enforceable action or compensation. So yes, I think it is now timely to consider inclusion of State-owned corporations. That was actually a recommendation in my report, which is also a part of your pack.

Mr PAUL LYNCH: I am wondering what your view is of criminalising the publication or sharing of sexually explicit material without consent as opposed to pursuing it by way of a statutory tort. The other alternative, which I think they have done in Victoria, is to pursue it as a criminal offence. I am wondering whether you think that is sensible or likely to work. What is your view?

Dr COOMBS: I think it is a complex issue. I was listening to the radio this morning and I heard that there has been a report just released about the amount of sexually graphic imagery which is put up by young people themselves on the web. I do understand the criminalisation aspects or the benefits that may come from that but I do have concerns. I would like, though, to take that question on notice for a greater, more in depth response.

Mr PAUL LYNCH: That would be fine

The Hon. TREVOR KHAN: There is a difference between the voluntary sharing of material and the unauthorised—

The Hon. ADAM SEARLE: Revenge porn.

The Hon. TREVOR KHAN: The revenge porn exercise, is there not?

Dr COOMBS: I was not clear enough. What I am meaning is the origin of the material which is subsequently used has sometimes actually not been obtained through illegal means.

The Hon. TREVOR KHAN: Absolutely. It is a form of communication at an early stage. Obviously, it resides on somebody's phone and when the relationship falls apart—

Dr COOMBS: It becomes a tool of aggression.

Dr HUGH McDERMOTT: To damage the victim.

Dr COOMBS: That is right, and it is very serious. The committee which met on the statutory tort considered quite a number of cases which came up in hearings. I think that penalties in certain cases may be appropriate but I think it is a complex area. I note that there is a parliamentary inquiry into the sexualisation of children and young people. Is that not going to consider some of those issues through there?

The Hon. TREVOR KHAN: He has probably got another target in mind. The problem with any tort is torts are really good for upper middle class and upper class people with money. They are not too useful to a 20-year-old who is living on the bones of their tail and trying to pay their car off.

The Hon. ADAM SEARLE: On that issue, I think the Committee recommended an important role for the Privacy Commissioner in driving that process in being able to make take down or cease and desist orders. Where those orders are not complied with the commissioner herself could refer it to the NSW Civil and Administrative Tribunal as an enforcement mechanism, so that would not put it back on the victim. Is that as you understand it?

Dr COOMBS: Recommendation 3 is about the establishment of a statutory tort. Recommendation 6 goes into what should be the increased powers for the Privacy Commissioner, which are to make determinations which are enforceable. They are the very important aspects of any legislative response to serious invasions of privacy. This is consistent too with what my Federal colleague Timothy Pilgrim put forward to the examination of this issue which occurred at the Federal level. It is very important that there is a means so that people who do not have the wherewithal to employ a team of lawyers, to have access to a means of redress.

The Hon. TREVOR KHAN: Why not just charge the rooster who is intimidating his former girlfriend by publishing this stuff? Is that not the most educative lesson you can give to the individual and to a group of people?

Dr COOMBS: If you actually have a charge which can be followed through with the evidence and where there are appropriate penalties. That is where I am pausing, because I am aware that my knowledge is not detailed enough on what various offences exist where you might be able to slot those particular concerns under. I know that there have been issues raised about some of the inadequacies and you have really got to try to shoehorn a number of them in. I will refer to my colleague.

The Hon. ADAM SEARLE: Dr Coombs, as you understand it the Committee did not really examine thoroughly the criminalisation issue, did it?

Dr COOMBS: No.

The Hon. ADAM SEARLE: That would require some serious consideration.

Dr COOMBS: In terms of the response to the question, they are the sorts of things that I think need to be weighed up.

Mr McLAUGHLAN: Offences are good for registering the outrage of society in relation to what has taken place whereas the tort can be more specified to the individual and provide access to direct forms of compensation and that sort of thing.

The Hon. ADAM SEARLE: Such as the take down orders that were proposed?

Mr McLAUGHLAN: Yes.

Dr COOMBS: I have not read the report. I found it on the iPad at 10.25 a.m., so my knowledge of what is in it—

The Hon. SCOTT FARLOW: You are not the expert yet.

Dr COOMBS: But I was excited to see the recommendations and I am really looking forward to being able to work on those throughout 2016.

The Hon. ADAM SEARLE: I know this is a bit of a difficult question but do you feel the level of resourcing allocated to your office is now matched with the work program that you have sketched for the year ahead?

Dr COOMBS: In the area of providing greater training and support, no. I think that these are the things which are coming through consistently from parliamentary inquiries. Bronnie Taylor's committee was very heavy on that. I note that the last aspect of recommendation 6 talks about the Privacy Commissioner being adequately resourced to take on those extra expanded powers—and it is true. Seven was the number that Privacy New South Wales went into the Information and Privacy Commission with. It is a number which we will soon be up to. That is a tremendous benefit to be able to progress work, but I have to say agencies now are thinking we can do more for them.

We are absolutely inundated with requests, particularly on the statutory advice side. So much now happens with technology and the desire to share data to get the benefits out in policy development terms, planning terms and service coordination that agencies are coming forward saying, "Can we do this? How can we best do it? What is your advice regarding de-identification?" They are saying, "We need to hear from Privacy. We all get the sharing of information side but we need to know how it is to be done from the Privacy Commissioner and the team."

CHAIR: You have raised a concern about the administration of the firearm register and ammunition purchases at 61B of your report, pages 34 and 35. Can you elaborate on that issue for the Committee?

Dr COOMBS: It is actually a very interesting issue because this is where the incursions into individuals' privacy become a larger issue for the community in terms of physical safety and theft. The matter was brought to my attention by the Shooters and Fishers Party, who had concerns about two things: the administration of the firearms registry but also the regulation surrounding ammunition. They were particularly concerned that the processes and the means to protect the privacy of people who are purchasing ammunition meant that their personal details could be publicly accessed and that could be followed through by either youth or criminal elements to target where people lived in order to steal weapons which could then be used in violent crimes.

I noticed today that in the Melbourne press there is actually a matter which has come up there whereby they have found that many gun clubs publish members' names, which might be in terms of functions that have occurred. They then couple that information with, say, the *White Pages* to find addresses and numbers. The police are indicating that they believe they are putting together various bits of information and it is providing a shopping list as to where you go so you can steal firearms. That was an issue that was raised with me, obviously about New South Wales. What I did in the recommendations—I think they are 24 and 25—is to say that I ask that the Auditor-General undertake a short, sharp performance review of the adequacy in terms of the public policy outcomes of the processes in train there and the regulation, and that the NSW Police Force should also look at the administration and form of processing around the Firearms Registry.

Dr HUGH McDERMOTT: Is there a time frame for that review?

Dr COOMBS: No. I am going to be following up now on the progress of that. It was a very unexpected matter that was brought to my attention; it did not come up through other means, but the folder of information which was brought to me by the Shooters and Fishers Party was very comprehensive.

Dr HUGH McDERMOTT: I agree with that. I do not often agree with the Shooters and Fishers but the reality is that it is a concern and has been a concern, especially with the NSW Police Force as well as other organisations. Obviously the Shooters and Fishers' agenda of why they want the registry review is different to, say, what mine would be, which is about public safety and questionable acts of having weapons like firearms in homes, but it is a serious concern and it has been raised with me by a number of community organisations as well as the NSW Police Force, so I think it has to be done.

The Hon. TREVOR KHAN: Is this a question or are you making a speech?

Dr HUGH McDERMOTT: Both—that is why I am on the Committee. I encourage that this review be done fairly quickly.

Dr COOMBS: We will report back on progress on that.

Ms ELENi PETINOS: Since we have touched on some of the projects you have been looking into, you mentioned in your opening remarks that you were not quite through the Opal investigation as of yet. Could you tell the Committee a bit about the examination thus far?

Dr COOMBS: I hasten to say to the Committee that the matter was placed on a website, it was made by a member of Parliament, so I am not divulging any information that has not been made available. It essentially concerns, amongst other things, what information is available to other agencies through the collection of personal information provided when people purchase Opal; it concerned the ability to travel anonymously and the concept of bundled consent—because you do not have any other option if you are using public transport. Paper tickets have largely gone and you must use Opal and so therefore the privacy policy really was not a matter so much of choice but one of you have to take it or leave it.

The point I need to make about that is that at the time that complaint was made—and it is quite old now—the ability to purchase cash Opal cards was not freely available. It is more available now and many people avail themselves of that. I forget the exact figures of people who choose to have a cash card without it being registered but they have grown. That is my recollection; we will check on those figures though if that would be of interest.

Ms ELENi PETINOS: So why has there been the hold-up in this particular investigation?

Dr COOMBS: It has been through a variety of things. It falls underneath the complaints area of the organisation. I do not have resources to be able to contract or to employ someone or free people up to undertake short, sharp reviews; so the resourcing has been a really very significant issue there. It is very hard to deal with ongoing case matters when you are running what was quite a detailed investigation. You will find in my report to Parliament that from that experience I say that it is necessary to have discretionary funds to be able to undertake—in this case it was not particularly high-profile, but if a high-profile breach occurred you would need to be able to respond quickly, effectively and very efficiently and get on to that because you do not want these things, as they did in New Zealand with the ACC, to multiply in the press; you want to be able to get to them.

My experience with the Opal investigation led me to say that there is a need to have some ability to get resourcing dedicated for the undertaking of those types of investigations. There are, of course, some other things which have occurred—other priorities that came up and people are doing multiple tasks; the short term frequently takes priority over things which have a date which has moved or can be moved.

The Hon. TREVOR KHAN: When can we expect the review?

Dr COOMBS: Very shortly, but I have said that before.

CHAIR: Thank you very much, Commissioner, for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of the evidence made public today. Would you be happy to provide a written reply to any of those questions?

Dr COOMBS: I would be.

CHAIR: Thank you very much for joining us today.

(The witnesses withdrew)

(Short adjournment)

JOHN DENISON MCMILLAN, Acting New South Wales Ombudsman,

CHRISTOPHER CHARLES WHEELER, Deputy Ombudsman (Public Administration),

STEVEN JOHN KINMOND, Deputy Ombudsman (Human Services) and Community and Disability Services Commissioner, and

MICHAEL GLEESON, Acting Deputy Ombudsman (Police Division), affirmed and examined:

DANIEL JOHN LESTER, Deputy Ombudsman (Aboriginal Programs), sworn and examined:

CHAIR: Thank you for taking time out of your busy schedules to join us today. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to the witnesses and the hearing process?

Professor McMILLAN: No, Chair.

CHAIR: Would you like to make an opening statement before we commence questions?

Professor McMILLAN: I will and thank you for the opportunity. It is a pleasure to have my inaugural formal meeting with the Committee. Proudly I represent an office that celebrated its fortieth anniversary last year and that grew in size, activity and influence during the unprecedented 15-year stewardship of my predecessor, Bruce Barbour. I start by acknowledging that under his leadership the NSW Ombudsman became internationally renowned as a progressive, innovative and effective Ombudsman office.

Committee members will be aware that a major reason for my appointment in August last year to a two-year acting term was to finalise the Operation Prospect investigation, so I will start with some brief comments on the investigation. In a progress report that I presented to the Parliament in November last year, I outlined three objectives that guide the investigation: that the conduct and finalisation of the investigation must be thorough, efficient and fair. I described the procedural fairness process then underway and forecast that the investigation would be finalised in the first half of 2016.

The procedural fairness process is substantially complete. Only one of the 33 parties invited to make submissions on the provisional adverse findings is yet to complete the process of document inspection and then subsequent preparation of a submission. We have received more than 1,000 pages of submissions from other parties and continue to receive correspondence from time to time, though in lesser volume. Not surprisingly, the submissions throw up issues that require further examination and reconsideration of these provisional findings.

The final report is in active preparation with a view to completion within the target that I advised to the Parliament. There will, after that, still be wind-down activities in the investigation, for example, relocating documents to their homes. There are still also difficult decisions that lie ahead in settling precisely how the report findings are to be reported. However, as my progress report commented, it is my intention to conclude the investigation with a special report for the presiding officer of each House of the Parliament and I expect that would be a public document.

The latest annual report of the Ombudsman's office noted that we had, over 40 years, dealt with more than 800,000 formal and informal matters. The office had grown from a staff of 14 in its first year to 220 at present. In the last year alone, we received more than 40,000 new matters, audited over 3,000 police complaint records, handled more than 1,400 reportable conduct notifications, provided training to more than 7,000 people and supported community visitors in more than 8,300 visitation hours. The trend line in all of those areas points upwards. For example, in 2014-15 there was a 20.8 per cent increase in complaints in the public administration jurisdiction, following a 9.5 per cent increase the year before; and in 2014-15, a 30 per cent increase in community service complaints, following a 15 per cent increase the year before.

The increasing workload unavoidably imposes pressures, both on staff and on throughput. We forever look for and trial different strategies to manage the increased workload. Chief among those is to work with bodies within our jurisdiction, to ensure that they have better systems and better trained staff to deal with complaints and problems so as to avoid the need for external complaint intervention. Over time, the office

spends proportionately more time on its monitoring, supervisory and scrutiny work than on stand-alone investigation.

The results can be confronting. For example, we currently decline about 80 per cent of local government complaints but compensate by working with local government bodies to ensure more effective front-line complaint handling. Last year, for example, we completed an audit of complaint handling in councils and published an advice sheet for councils on building a best practice complaint management system. However, the workload pressures, including upon Ombudsman staff, are a matter for real concern that we continue to raise in budgetary discussions with Government and that I also bring to the attention of this Committee. A prominent issue for us is that improved customer service falls within one of the Premier's 12 priorities for the State, and effective complaint handling is a key customer service satisfaction measure.

Across the board, the office strives to improve how complaints are handled in government and beyond. I will mention two projects on which we worked this past year. First, we are a member of a cross-Tasman technical committee that revised the Australian New Zealand standard on complaint management. The standard, published in October 2014, is one of the most popular guidelines produced by Standards Australia. In addition, we also participate in working parties that deal with social media, unreasonable conduct by complainants, apologies, dispute prevention, vulnerable people and people with a disability, and we have carried that work into the training packages and workshops that we undertake. Secondly, we have joined forces with the Customer Services Commissioner to develop a complaint handling improvement program that will form part of the broader customer service strategy that has strong State endorsement. This program involves a survey of complaint handling by government agencies, articulation of complaint handling commitments that all agencies will be encouraged to endorse, integrating the complaint handling procedures that operate across government, and formation of a new broadly representative complaint handling reference group to guide the new program.

I will now turn to look at work in a few specific areas, starting with the reportable conduct jurisdiction. In this area, we provide independent oversight of the handling of child abuse and neglect allegations against employees of government and non-government agencies. The scheme has been operating for 16 years. It is a unique Ombudsman function in Australia and, pleasingly, there are moves afoot in other jurisdictions to develop compatible schemes. A mark of the wide respect for the NSW Ombudsman's work in this area is that a reportable conduct forum that we hosted last week was attended by more than 800 participants, including members of Parliament. It was addressed by senior leaders from Parliament, government, churches, schools, community and recreational groups and advocacy organisations. A dominant theme in the forum discussions was that the scheme has had a marked impact in protecting children from abuse and neglect and that the scheme should be adopted around Australia.

The Hon. TREVOR KHAN: Hear, hear!

Professor McMILLAN: Importantly, the scheme was established by this Parliament, which can play an important role in safeguarding and enhancing the scheme. Committee members may be aware that I tabled a special report to Parliament early in February, asking Parliament to consider the implications of legal advice we received from the Solicitor-General that substantially extends the Ombudsman's oversight of workplace child abuse allegations to camps run by churches and other organisations. The wide range of organisations—into the thousands—that now fall within the scheme has significant public policy and practical implications that, in our view, warrant Parliament's consideration. I urge the Parliament to build on its earlier work by considering the issues raised in the report.

A compatible scheme of Ombudsman oversight that commenced in December 2014 is the disability reportable incidents scheme. It, too, is a unique scheme established by the Parliament of New South Wales that requires notification to the Ombudsman of serious incidents adversely affecting people with disability in supported accommodation. In the short life of the scheme since December 2014, we have received 746 notifications and 47 complaints; on average, about 60 notifications a month. Steps we have taken to support the scheme include formation of a best practice working group to work through the legal, policy and practical challenges with organisations within our jurisdiction; providing guidance and training to disability service staff on incident response; developing protocols with the NSW Police Force on their response to serious incidents; collecting and analysing and reporting on data; and providing expert advice to a Federal Senate inquiry into violence, abuse and neglect against people with disability in institutional and residential settings. Our work in the disability protection area has added significance as the transition to the National Disability Insurance Scheme accelerates this year and responsibility for ageing, disability and home care services is transferred to the non-government sector.

We have been working with Commonwealth and State agencies, and other disability complaints commissioners across Australia and New Zealand, to develop an appropriate quality and safeguarding framework for the NDIS. Once again, a strong theme in that consultation is the need for an integrated national oversight scheme for handling and investigating reportable incidents. I think it is fair to say that the NSW Ombudsman is widely regarded as a centre of excellent practice and experience in the design and operation of reportable conduct schemes. This Committee will be aware that Deputy Ombudsman Steve Kinmond has the additional designation, under our legislation, of Community and Disability Services Commissioner for New South Wales.

Another New South Wales innovation was Parliament's establishment, in 2014, of the new position of Deputy Ombudsman, Aboriginal Programs. The inaugural appointee is Daniel Lester, who spent the year criss-crossing the State, penetrating every corner of government, addressing every committee that should take note, and, I think, whispering into every ear within audible reach. The focus of our work has been to monitor the implementation of the Government's OCHRE initiatives. Over the past year we have visited 16 communities in New South Wales to observe OCHRE implementation and to hear directly about the on-the-ground experience. The insights of our work were captured in what, in my view, was an excellent Ombudsman's submission to Parliament's Standing Committee on State Development inquiry into economic development in Aboriginal communities.

Lastly, I mention that a long-standing and specialist function of the office in police oversight is scheduled to end this year with the formation of the Law Enforcement Conduct Commission on 1 January 2017. The Ombudsman's policing jurisdiction commenced in 1978. It was expanded in 1984 and 1993 to facilitate direct Ombudsman investigation of police complaints. We have oversighted approximately 3,200 complaints each year about policing matters. Since 1997 we have reviewed 28 legislative items that confer new and extraordinary powers on police in areas such as drug detection dogs, stop and search powers, and terrorism powers. We have conducted large-scale systemic reviews on matters such as use of tasers, conflicts of interest and policing domestic violence, and we work actively with the NSW Police Force to improve complaint-handling, incident response and service delivery.

We will hand over to the new commission a solid and proud record on policing oversight. We are working with government to facilitate a smooth transition to the new commission, to contribute our expertise and insight to its mission and to look after the interests and welfare of Ombudsman staff who may be directly affected by the transfer of functions.

Thank you to the Committee for the opportunity to share those opening reflections with you. My colleagues and I look forward to addressing any questions that you may have for us.

CHAIR: I thank the Ombudsman.

The Hon. ADAM SEARLE: You mentioned, in relation to Operation Prospect, that there are a number of challenges or difficulties in how you ultimately report findings or conclusions to the Parliament. Can you share with the Committee some of the challenges that you are currently addressing?

Professor McMILLAN: These are outlined, in part, in the progress report that I presented last year to the Parliament. We will report within a reporting framework that is in the Ombudsman Act and in the Police Act. Some of the matters on which we report have been referred by, for example, the Inspector of the Police Integrity Commission. Some of the matters have arisen from complaints and public interest disclosures. Some have arisen from own motion decisions within the office. There can be fine differences in the reporting criteria and procedures according to the basis for the matter that was investigated. To the extent possible, my intention is to consolidate a report that will satisfy each of the different reporting requirements. As indicated, my expectation is that that report would be a public report, although it is at Parliament's discretion to decide to make the report public.

We have received many submissions from people requesting anonymity in any reference made to them in the report. We are giving serious consideration to that but clearly there is quite a deal about Operation Prospect that is on the public record. Given the history of the matter, it is vital that it is a comprehensive public report that will satisfy people's request for a thorough investigation. But there is scope, from one sentence to the next in a report, to anonymise details that are inessential to the public record and which, if exposed in personal form, could cause unwarranted prejudice to someone. So we will wrestle with that issue.

The Hon. TREVOR KHAN: Is that a decision for you or is it a decision for the Speaker and the President to make?

Professor McMILLAN: If, in the report that I present, details have been anonymised there is no issue for the Speaker but, yes, an option is to include details with a special request. Committee members would be aware that one of the issues that has been prominent over the many years of this investigation is whether there have been criminal breaches. There are separate requirements for the Ombudsman to refer matters to the Director of Public Prosecutions [DPP]. As a general rule those matters would not be exposed fully in a public report because a referral includes an outline, a detailed documentary transcript and other evidence that may have been collected.

Those are examples of the difficult decisions with which we have to wrestle but my commitment is to a report that places as much detail on the public record as possible. I hope the occasion does not arise for this Committee or for some other body to come forward and say that there are unexplained gaps. The Ombudsman's Office has a continuing role, presence or discretion to supplement any report or statement that it has made on the public record. That is a foreseeable step as well.

The Hon. ADAM SEARLE: There are two aspects of Operation Prospect. The first aspect really goes to what happened and why it happened. There would be a number of individuals who—I will put it neutrally—might have conflicting interests. In relation to the natural justice process you have been going through, has any party flagged to you a non-cooperation with the process, or a view that the process is not valid or is no longer able to deliver an outcome fair to all the participants in the process?

The Hon. TREVOR KHAN: Does the question that you are putting relate only to what we could describe as the first part—that is the bugging—as opposed to the second part?

The Hon. ADAM SEARLE: Yes, exactly.

Professor McMILLAN: I will give an answer and you can see whether it adequately addresses that. There are what we have described as 33 affected parties. There are 33 parties—individuals and agencies—who have been advised of provisional adverse findings. They have been given an opportunity to make submissions and they have been given the opportunity to inspect documents held by the office prior to making a submission. All but three parties have taken up the offer or signalled their intention to make a submission. Most parties have undertaken document inspection, sometimes lasting over many days. We have received detailed submissions that in individual cases can be over 100 pages. Some parties in those submissions have reserved their right to make further submissions if the Ombudsman should take the findings down a different path.

The Hon. ADAM SEARLE: To be clear, these potential adverse findings relate to the so-called bugging part of the inquiry, not the whistleblower part?

Professor McMILLAN: Yes, mostly to that first stage, what you have described as the "bugging" part.

The Hon. ADAM SEARLE: How many persons have received potential adverse findings in relation to the second part of the inquiry, the part relating to the potential unauthorised release of materials—the so-called whistleblower aspect?

The Hon. TREVOR KHAN: In the loosest of terms.

Professor McMILLAN: I cannot put a precise number on it but I can say there is a handful of parties because there were suggestions and counter suggestions about what occurred. On many of the issues we are investigating under referral or whatever, parties have made complaints to us. There are opposing views presented on a great range—

The Hon. ADAM SEARLE: They are conflicting views.

Professor McMILLAN: Yes, conflicting views. Parties claim to be adversely affected whichever way the finding goes. There will often be a party who claims to be adversely affected either because in their view a finding against them is unwarranted or a finding of wrongful behaviour that adversely affected them has not been made.

The Hon. ADAM SEARLE: This question is not a reflection on you or your office, but a previous parliamentary inquiry on this subject did form the view—

The Hon. TREVOR KHAN: Which one?

The Hon. ADAM SEARLE: I think it was the second. It formed the view that given where things had ended, a successful resolution of the Prospect matter through your office was almost impossible. I know you will discharge your duties diligently.

The Hon. TREVOR KHAN: I think that was a majority finding and we should make that clear.

The Hon. ADAM SEARLE: It was a finding. Do you think that is close to the mark or do you feel that you will be able to satisfactorily resolve all the conflicting materials and provide a full answer to the mystery that is Operation Prospect?

Professor McMILLAN: I have reflected at length on that issue and that led to the statement in the progress report that the investigation must be thorough, efficient and fair. Those criteria can lead to different and conflicting results. To take the criterion that it be efficient, there is already a view expressed by some that it has not been efficient. The office has defended itself on that and said if people fully understand the scale and contentious nature of the investigation it has been as efficient as possible.

As to whether it is fair, there will always be differing views, in part reflecting the outcome. My view is that the procedural fairness process we followed has been impeccable and exhaustive. In my years in the law I have rarely seen a procedural fairness process that has been conducted over such a long period with every attempt made, within the circumstances of a private inquiry, to be fair.

The third criterion, thorough, is the one on which I feel quite confident. At this stage that is very much the objective that drives me, given that the other stages are largely complete. The issues under investigation have been the source of much contention and disputation and complaint. The matter has been investigated a number of times, never to anybody's satisfaction it seems. I am satisfied that our investigation will be exhaustive and thorough to the point where there will not be a need for further investigation. Whether people accept the findings is another matter, but my primary commitment is to ensure that when the report on this is done people can at least be satisfied that it was an exhaustive, thorough, comprehensive investigation.

The Hon. ADAM SEARLE: I think you mentioned that three parties had not taken the opportunity of reviewing documents.

Professor McMILLAN: Three said they would not make submissions. Almost all of the other 33 affected parties have taken up the opportunity of document inspection, often with lawyers accompanying them.

The Hon. ADAM SEARLE: Has any party simply not responded or not participated in the process at all?

Professor McMILLAN: No, from memory all parties have responded at one stage or another.

The Hon. ADAM SEARLE: I know your office was given a particular budget for this process, I think under your predecessor. Are you able to inform us as to the cost of the Operation Prospect matter conducted by your office?

Professor McMILLAN: It has been a special allocation. There is a figure; I do not have it in front of me.

The Hon. ADAM SEARLE: I am happy for you to take the precise figure on notice and if you think that is different to what you think the ultimate projected figure may be—that X has been expended to date and you expect the total to be Y.

Professor McMILLAN: I am happy to take those on notice. We have been pleased with the budgetary support and resource support we have received from the Government.

The Hon. TREVOR KHAN: Is there a point—say, in three months or thereabouts—when you would be in a position to give this Committee and perhaps the Parliament an update as to where you are and the likely conclusion date?

Professor McMILLAN: Yes, I am prepared to do that—indeed I think there would be value in that. I found the request last year to present a progress report challenging when I started investigations but it was a valuable opportunity to reflect on what had occurred and to keep people informed. If the Committee would like to make a request along those lines, I would be happy.

The Hon. ADAM SEARLE: I think we would.

The Hon. TREVOR KHAN: There is no doubt there is a continuing interest in it both by the Committee and the general public. I invite you to make a suggestion as to a reasonable time frame when you think you could add something informative.

Professor McMILLAN: The Committee would be aware of our view generally that in a longstanding contentious matter of this kind the preferable relationship for an office like ours is to report to the joint standing committee established by the Parliament.

The Hon. TREVOR KHAN: That is certainly the view expressed by your office.

The Hon. ADAM SEARLE: Notwithstanding resistance on other inquiries.

Professor McMILLAN: Yes, and so we are always happy to accommodate the interests and take the opportunity to inform the Parliament.

The Hon. TREVOR KHAN: It is no secret that both the Hon. Adam Searle and I are on the upper House inquiries and are active participants in those inquiries. The reality is that an effective flow of information between this Committee and yourselves is likely to mitigate the prospect of something happening in our House.

Professor McMILLAN: Yes.

The Hon. ADAM SEARLE: Anything could happen in our House.

The Hon. TREVOR KHAN: It does.

The Hon. ADAM SEARLE: You can be assured that a request from this Committee to you for a further update will be forthcoming.

Professor McMILLAN: Yes.

The Hon. ADAM SEARLE: The inquiry being conducted by your office under you and your predecessor was pursuant to a particular legislative arrangement. I think the last committee inquiring into this matter expressed a view as to the appropriateness of that jurisdiction.

The Hon. TREVOR KHAN: I do not think it was within the terms of reference, but I think there was a majority position adopted.

The Hon. ADAM SEARLE: The report contained a view held by a majority of the committee members that that jurisdiction is not compatible with the Office of the Ombudsman. Is that something you formed a view about as to the appropriateness or desirability of that kind of jurisdiction, or is it not a matter you have formed a view on?

Professor McMILLAN: The safe answer is to say that the Government has responded to that recommendation.

The Hon. ADAM SEARLE: I know what the Government response is, I am asking for your response.

Professor McMILLAN: I will respond. It is noted in the formation of the Law Enforcement Conduct Commission and removal of the Ombudsman's policing jurisdiction that it would be necessary to address those

jurisdictional provisions that support Operation Prospect. There will be legislative action on that. To express an individual Ombudsman view, I am a great believer in the flexibility of the Ombudsman model and the capacity of the office to undertake a range of investigations. I have always said, in academic and other pieces, that there are limitations on what the office can do. I am in support generally of a division of responsibility between complaint handling and corruption investigation bodies. I formerly headed a corruption investigation body, the Australian Commission for Law Enforcement Integrity, so I am of the view that the skills and procedures required for corruption investigation are different to those required for complaints investigation.

The other comment is that I think it is generally undesirable for an Ombudsman's office to be enmeshed in an investigation that can take up to four years and be highly controversial. If I were sitting in an Ombudsman position and I was asked to undertake such an investigation I would be having a long, hard discussion and analysis with staff and with government about what was likely to happen, and whether this was the suitable office to undertake the investigation. All of that said, I have unqualified confidence in the demonstrated ability of the staff of the office to undertake this investigation. In taking over the investigation I was struck by the dedication and excellence of the staff in the investigation. In regard to capacity I do not have queries; in regard to impact I would.

The Hon. TREVOR KHAN: Would you allow me to ask some questions on another matter?

The Hon. ADAM SEARLE: Certainly.

The Hon. TREVOR KHAN: In response to the Tink review the former Ombudsman made a submission that dealt with, amongst other things, the issue of critical incidents.

Professor McMILLAN: Yes.

The Hon. TREVOR KHAN: I think it is recommendations 43 and 44 of what I will call the Tink report that deals with critical incident handling. Have you had an opportunity of looking at those recommendations?

Professor McMILLAN: We have studied all of the recommendations. Can I call on my colleague Acting Deputy Ombudsman Gleeson?

Mr GLEESON: We were pleased that in the Tink report there was support for our recommendation that there is a gap in the current system. There needs to be civilian oversight of critical incident investigations which is currently restricted to those that are the subject of a complaint. That is a step forward. Obviously the new commissioner and the working party will be looking at legislation and it will be a challenge to make sure that the powers given to that agency for that role and resources are sufficient to perform that new role.

The Hon. TREVOR KHAN: I suspect that this is going to lead to another series of questions. If we deal with the question of the committee, is that the correct term?

The Hon. ADAM SEARLE: The implementation committee.

The Hon. TREVOR KHAN: Have you got any involvement in the implementation committee?

Mr GLEESON: We have had some initial meetings. Late last year we had an initial meeting of what we call a working party that has members of the Justice Department and DPC and other agencies.

The Hon. ADAM SEARLE: Treasury.

Mr GLEESON: That is correct.

The Hon. SCOTT FARLOW: Are you part of that working party?

Mr GLEESON: We are invited to meetings as required. They are looking at a range of issues to set up the agency.

The Hon. TREVOR KHAN: They are communicating with you?

Mr GLEESON: We are not formally a member but there is consultation. We have had further meetings this year. For example, we had a meeting to talk about IT systems the agency may need to set up. We provide as much information as we can about how we currently do business to assist the working committee to start looking at how that agency will be established and structures it will need to work.

The Hon. TREVOR KHAN: Have you been asked questions with regard to Mr Tink's recommendations, such as how this is going to flow into legislation and whether it is adequate?

Mr GLEESON: No, it has been at an introductory level so far. We have suggested our expertise and feedback on any bill and decisions. We are keen to help it succeed and we understand that we will be given an opportunity to contribute and we are essentially waiting to get more details about those initial plans.

The Hon. TREVOR KHAN: The final matter I will ask about relates to the definition of critical incidents. Have you a view as to whether the current understanding of what is a critical incident or the declaration of a critical incident is adequate?

Mr GLEESON: Going back a fair way we have had the opportunity to give feedback on what were the internal police guidelines for critical incidents, and a lot of our suggestions were taken up. That was not one of the pivotal issues for us, although over time police have looked at that definition and changed the scope. It is certainly a relevant consideration and one that I think Mr Tink recommended should be part of the legislation. We would be keen to be part of any discussion.

The Hon. TREVOR KHAN: It seems to me that some incidents occur that would not fall within the seriousness definition that is contained currently in the understanding of a critical incident, nevertheless they are incidents that are so notorious, for one reason or another, that they require a degree of external oversight. Would you agree with that proposition?

Mr GLEESON: I am not sure what you have in mind as an example.

The Hon. TREVOR KHAN: I will give you an example that remains topical and is topical at this time of year. A couple of years ago at the Mardi Gras a young man was, on one view, given a pretty reasonable hiding and it gained an enormous amount of public attention and yet clearly it would not fall within the definition of a critical incident.

The Hon. ADAM SEARLE: No firearm.

The Hon. TREVOR KHAN: There was no firearm, there was no death.

Mr GLEESON: Yes.

The Hon. TREVOR KHAN: But it could be considered notorious.

Mr GLEESON: I agree that there are cases but for the fact that a complaint has not been made to us or police that there is no oversight, and that is a limitation. The Ombudsman does have an own motion investigation power but we use those in very exceptional circumstances. One of the recommendations we have made to the review of the Police Act is that the Act could be strengthened to deal with such matters as you described. In the absence of a complaint the Ombudsman could require the police to do an investigation in the same manner as they did one if there was a complaint, without having to compel us to do a full investigation ourselves and commit the resources. Some of those matters may be appropriate for police to investigate themselves with our oversight, but we have the dilemma that we can only deal with them if we use all of our extraordinary powers

The Hon. TREVOR KHAN: But even if you are able to force an investigation on the police you would not have real-time oversight of that investigation.

Mr GLEESON: We can under the Police Act, under part 8A.

Ms ELENi PETINOS: Have you had any discussions about how work will transition to the new commission in practice? In handing over an ongoing investigation do you have any instructions or have you had any discussions around how that will happen?

Mr GLEESON: In the initial meetings we flagged that as obviously an issue that we will need to deal with. We have made suggestions that obviously the new Act will have to have appropriate provisions for us to provide information to the new agency without breaching our current secrecy provisions, for example. But, no, we have not really got into that level of detail yet of how the work will be transferred.

The Hon. ADAM SEARLE: What about how many of your staff of the office are likely to be impacted by the change? For example, is it proposed that those staff would necessarily be transitioned to the new commission or would it simply be that the functions they currently discharge would be transitioned and the staff would otherwise remain with your office, for example, or some intermediate point?

Professor McMILLAN: It is an open question that we are addressing with Government. The answers to all of these questions will be affected to some extent by the provisions in the bill. It would be common for a bill establishing a new body based on the work of existing bodies to contain a transitional provision for transfer of work and possibly for transfer of staff, but without a bill we cannot address it. But certainly that is an issue uppermost in our discussions with the working party within government that we need clarity for. There is up to 35 staff in the policing division.

The Hon. ADAM SEARLE: You see a bill as a starting point for realistic assessments about the impacts on your office?

Professor McMILLAN: Yes.

The Hon. ADAM SEARLE: Have you been given any indication as to when your agency might be able to see a bill, at least in draft form?

Professor McMILLAN: There has been talk about March as the date. That will focus the discussions quite a bit.

The Hon. ADAM SEARLE: Obviously the report of Mr Tink and the proposal at least intends for the new commission to be a new body. This Committee heard some evidence from the Commissioner of the Police Integrity Commission [PIC]. It is not a concluded view because there is no bill but it is possible that this exercise may simply lead to a rebadging of existing functions of the PIC and of your office rather than a new chapter, as it were, in police oversight. Do you have a view about which outcome is more likely based on what you know?

Professor McMILLAN: It is entirely speculative, but I would see it as more than a rebadging exercise. For example, the proposal is that the new commission will be headed by a commissioner who is a current or former judge and two deputy commissioners with responsibility, broadly speaking, for the corruption and complaint areas. It is quite possible that the three leaders of the new organisation will be completely new to the organisation. They will necessarily pick up the existing workload that is transferred over and discharge many of the same functions.

The Hon. ADAM SEARLE: And the existing staff?

Professor McMILLAN: Yes, that is possible. As I say, it is speculative but normally in this kind of exercise you would expect that the people newly appointed to head an organisation would be interested in very much a refreshing rather than a rebadging exercise.

Mr PAUL LYNCH: But you could achieve that by simply replacing the heads of the currently existing units that are being merged, or not merged, as the case may be.

Professor McMILLAN: Yes. As to replacing them within their existing organisation, change in leaders always brings some other change but I think if you start a new organisation with a completely new leadership group you can expect a more marked change than you would otherwise get. I would be surprised—looking at the lead-up to this and the Government's statements and the proposals—if this change was not significant.

Mr PAUL LYNCH: But if you follow the Government's announcements about it, that seems to be inconsistent with the structure where each of the two divisions have their own budget, their own management and their own separate reporting.

Professor McMILLAN: Yes, and I think there will be some interesting management challenges within the organisation for the new commissioner and the two deputy commissioners but that is for the new leadership team to grapple with. I had the experience when I established the Australian Commission for Law Enforcement Integrity that I was appointed a week before the commission commenced and there was a team that had been working away for six months. There was no existing function to transfer so everything was in place, but we very quickly set about defining a new organisation. Indeed, I was only there for seven months and that process of redefinition went on apace afterwards. I think this will be a new chapter in law enforcement oversight. That is a private view.

Mr PAUL LYNCH: I have some questions on another topic. I suspect Mr Lester might be answering these. Child sexual assault is still a massive problem in some Aboriginal communities. Would you agree with that?

Mr LESTER: Is that a question to me?

Mr PAUL LYNCH: Yes.

Mr LESTER: It is a work in progress.

Mr PAUL LYNCH: You are not disputing that it is a massive problem in some communities?

Mr LESTER: In terms of the communities that fall under my part 3B, that is, within OCHRE and OCHRE has six specific initiatives. What you are describing does not fall within my jurisdiction.

Mr PAUL LYNCH: Okay. Perhaps we might ask the Ombudsman if it is not within your jurisdiction. The Ombudsman issued a report in December 2012 entitled "Auditing the implementation of the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities", which had 93 recommendations. I am interested in knowing from the Office of the Ombudsman whether they think any of those recommendations have been adopted or pursued. You can take it on notice.

Mr KINMOND: I am happy to take it on notice but I can make a general comment that there has been substantial action taken in response to that report. If you take one example, there was the addition of 30 extra police officers. We then tracked the results of that and it led to a 60 per cent increase in the number of charges that were laid by the Joint Investigation Response Team [JIRT] in the following either 12 months or two years. I know I am on oath so I will qualify it.

Mr PAUL LYNCH: I am happy to have it on notice.

Mr KINMOND: We also made recommendations relating to police better tracking the efficiency of the child abuse squad. They have done that. They are looking much more closely at performance across various child abuse squads and there has been a very good return on investment in that regard. There have been recent initiatives in relation to enhancing the number of counselling services that are available. There have been some initiatives in relation to place-based service delivery. There has been a stronger focus on tracking educational outcomes of Aboriginal children. I would be very pleased to provide the Committee with an update as to various steps that have been taken post the report which are consistent with the recommendations.

Mr PAUL LYNCH: I am also particularly interested in NSW Health and the data capture and the recording of forensic examinations of children. You probably do not know off the top of your head whether that has been implemented or not. My own inquiries by way of questions on notice suggest it has not been, but I would be particularly interested in knowing what the Ombudsman's office thinks about it.

Mr KINMOND: Yes, I think there have been some initiatives taken in that regard, but it is a very specific issue so we will make sure we provide a very specific response on that issue.

Mr PAUL LYNCH: Without getting that issue right, prosecutions are incredibly difficult.

Mr KINMOND: It is a significant issue, is it not? If a child is abused in western New South Wales and has to travel long distances in order to receive a medical examination, that can constitute further abuse. I agree with your concern.

Mr PAUL LYNCH: You will see the recommendations and I will be interested in what the Ombudsman's office thinks about them.

The Hon. SCOTT FARLOW: Professor, I am interested in some of the opening remarks you made and some of the things in the annual report relating to the increase in local government complaints that the Ombudsman's office has been receiving. You were saying originally that you have been having discussions with the Office of Local Government and councils about their complaint handling processes. Is there a certain deficiency at the moment in council complaint handling processes?

Professor McMILLAN: I will make a brief remark and then Deputy Ombudsman, Chris Wheeler, who is in charge of that area, I am sure will supplement it. I think it is probably like all the areas; there will be people who are dissatisfied with action taken. The local government area can be quite intense, and it is probably a feature of local government complaints that people can invest an enormous amount of time in advocating on a particular issue. Often they are people with considerable management, community and leadership experience who can make strong, compelling and lengthy submissions.

Our experience increasingly is that our resources can be exhausted if we spend a great deal of time on local government matters. Given that local councils are democratic institutions within their own area and given that there is an Office of Local Government, we have placed a great deal of emphasis on saying there is a strong responsibility within those areas to develop their complaint handling capacity. We can add expertise, but for us just to reinvestigate a matter that has been dealt with at the council that can be taken up through other representative ways is neither productive nor efficient.

Mr WHEELER: Over the years we have had limited resources available that we could direct into local government complaints. As the numbers have grown we have had to increase the number that we have had to decline. So we have put a lot of emphasis on trying to improve complaint handling within local government. We try to undertake audits every number of years; we have had, I think, four or five over the past, say, 20 years, looking at government as a whole, and that includes local government. Arising out of the most recent audit we have developed a fact sheet that we have sent around to all councils and to the Office of Local Government, calling on the councils to improve their complaint handling.

I would not say that local government is necessarily worse than the State Government, looking at complaint handling generally, but the recognition of the importance of complaint handling as a whole is growing across the public sector. What we are trying to do is to build on that to ensure that councils deal with these matters properly in the first instance so they do not come to us. That is the only area that we can try to influence our workload.

The Hon. SCOTT FARLOW: Picking up on a certain theme from your responses, it seems like people are going to councils and are dissatisfied. From looking at it I think there is one formal investigation. Effectively, is it just people exhausting their avenues and coming to you, do you think, and they are not necessarily legitimate complaints, or is it just that you have a limited amount of resources so one formal investigation is all that really can be warranted in local government?

Mr WHEELER: The number of investigations does not necessarily correspond with the impact of the work of the office. We deal with a lot of matters through informal means—it might be phone calls, it might be emails; it would be a range of things where we try to identify whether there is a problem and can we get it fixed. We do this across the work of the Public Administration Division. I have been in the office for a number of years and have noted that there has been a significant change in the impact of the work of the office over that time. Originally we would need to do a lot of formal investigations across the public sector to achieve the outcomes that we thought were necessary. That, by and large, is no longer necessary.

When we get involved in a matter, we ring up and we talk to the organisation. We are getting far better cooperation, far more positive responses and matters get addressed without the need for formal investigation. When you have limited resources it is far better to focus on getting things fixed than necessarily going through a whole formal process which takes a lot of time and effort. So we have seen a change over that time to a very

responsive public sector and local government sector. The fact that there is only one formal investigation does not indicate that we are not achieving a range of particularly good results.

The fact that people complain about local government—I used to work in local government—is just a fact of life that is never going to go away. You will always have issues arising in councils. I would not say that the complaints that come to us that are declined have no merit. We have to have a threshold of the issues that we will look at it: it needs to be a significant matter in the public interest or a significant impact on the individuals concerned. That does not say that there is no issue; it is just whether we are able to direct resources at looking at it.

The Hon. SCOTT FARLOW: I am not saying that they do not have any merit but are you feeling that they have already been dealt with either by the Office of Local Government or by individual councils themselves and then people are coming to you, effectively, as an appeals tribunal in that sense?

Mr WHEELER: Part of the role is basically to review how matters have been dealt with. One of the things that Ombudsmen around the world do is to say, "You should take this matter to the organisation first, then come to us." So in a way it is a review-type role. We coordinate very closely with the Office of Local Government; they have certain statutory roles under the Local Government Act to investigate certain issues, pecuniary interests, for example, code of conduct matters, et cetera. So we make sure we divide up the work between us based on our particular interests and our statutory priorities.

If a matter has been dealt with by the Office of Local Government we would be very unlikely to take it up unless we could see that there was some fundamental flaw in the way it was dealt with by that office. As to matters from councils that have been dealt with by councils, again it depends on how they were dealt with, and there is a varying level of expertise and commitment to appropriate complaint handling across local government. Sometimes that is influenced by the size and the resources of the council—some councils are particularly small—and other times it is influenced by the culture of the particular organisation.

The Hon. SCOTT FARLOW: Do you find that the larger councils deal with these matters more efficiently than the smaller ones or do they have a function that is equipped in order to do that?

Mr WHEELER: Certainly the larger councils have the capacity to have people who are trained and skilled in complaint handling.

The Hon. ADAM SEARLE: That is no guarantee, is it?

Mr WHEELER: It is no guarantee. Then, of course, politics intrude quite often on these issues, personal animosities—a whole range of factors can impact in local government that do not impact on State government as directly.

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of the evidence given today. Would you be happy to provide written replies to any further questions?

Professor McMILLAN: Yes.

CHAIR: Thank you very much, gentlemen, for taking some time out of your very busy schedules.

(The witnesses withdrew)

(Short adjournment)

JOHN DENISON McMILLAN, Convenor, NSW Child Death Review Team, on former oath:

JONATHAN GILLIS, Deputy Convenor, NSW Child Death Review Team, sworn and examined:

MONICA KATHLEEN WOLF, Director, Reviews and Inquiries, NSW Child Death Review Team, affirmed and examined:

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

Professor McMILLAN: No, Chair.

CHAIR: Thank you for joining us. Would you like to make an opening statement before we commence with questions?

Professor McMILLAN: I will make an opening statement. The NSW Child Death Review Team transferred to the Office of the NSW Ombudsman in 2010. This is the fourth general meeting between this Committee and the Child Death Review Team [CDRT] and my first occasion.

In my opening remarks I will comment on four reports to the Parliament that we have tabled in the two years since we last met and on other changes in our data capture and legislative reporting obligations. I will start with the changes in our reporting obligations that follow amendments last year to the Community Services (Complaints, Reviews and Monitoring) Act. There are three changes. This year we present our last annual report on the Child Death Review data. We move to reporting on a biennial basis from 2018. We will still report, as requested by this Committee, annually on the other activities and recommendations of the team. That is likely to be done as part of the Ombudsman's annual report. There will be an annual report later this year on all our activities and functions.

Secondly, the reports must now be tabled as soon as practicable after June, rather than by the end of October. That was changed to give us more flexibility, for example, in obtaining and analysing information that goes into the report and also to align the reporting obligation with that applying to reviewable deaths. The third change is that the biennial report on the child death review function will relate to child deaths that occur in a given year, rather than are registered that year. That is to align the CDRT report with the reviewable child deaths report.

In previous meetings with the Committee we noted the poor state of the data system that we inherited when taking on the CDRT in 2010. I am pleased to report that we now have a new, fully operational child death review data system. The New South Wales Child Death Register is now a stable and comprehensive database that will support improved reporting of trends in child deaths and the database that we administer integrates the register of reviewable deaths and the New South Wales register of child deaths. The system went live in late 2014 and the big task ahead is to migrate 17 years of data from the former CDRT register.

A specific project we have underway on data capture and trend analysis relates to the deaths of Aboriginal and Torres Strait Islander children. The team has been concerned about its ability to report accurately on trends because of inconsistent methods that have been used for identifying the Indigenous status of children. Again, we have instituted a new approach after receiving advice from the Australian Institute of Health and Welfare and the team is now reporting trends in the deaths of Aboriginal and Torres Strait Islander children from 2005. The reporting is limited to Indigenous status as identified by the Registry of Births, Deaths and Marriages. However, we are applying a more comprehensive process to identifying Indigenous status, drawing on a range of records and in time this will become another valuable dataset on which the team can report.

I will now summarise some of the key trends and issues that were identified in our last two annual reports that covered the January to December periods for 2013 and 2014. I will mention five separate statistical points. There has been a continual and significant decline in child mortality rates over the 15 years to 2014. In 2014 the rate of child deaths was 28.41 deaths per 100,000 children. That is the second lowest annual rate since 2000. The lowest was in 2012, but only marginally lower. Secondly, infant mortality rates in New South Wales have declined considerably over the past 15 years to a low of 2.95 infant mortality deaths per 1,000 live births in 2014. Thirdly, by contrast, the decline in rates of sudden unexpected deaths in infancy appears to have plateaued from the figures in 2009-10. The plateau reflects a rise in the mortality rate of neonates, that is, babies aged up

to 28 days, which for 2010 to 2014 has returned to the rates that applied in 2003. Fourthly, while mortality rates for male children have been consistently higher than for female children over time, since 2011 the female mortality rates have plateaued while the male mortality rates have continued to decline. Lastly, over the past 15 years mortality rates for Aboriginal and Torres Strait Islander children have varied considerably from year to year. However, the mortality rate has still been consistently higher than the rate for non-Indigenous children—for example, 2.6 times higher in 2014.

The annual reports also contain the team's recommendations to prevent or reduce the likelihood of child deaths and the reports discuss the action taken in response to those recommendations. I will give some examples. The recent reports include: discussion on improving guidance for the NSW Community Services and Health study on preventing the sudden and unexpected deaths of infants; discussion on public education and other strategies to reduce low-speed vehicle run-over fatalities; and discussion on improving processes in government and non-government schools, to better identify and respond to children with asthma.

I will now mention two special reports we tabled in 2014 and 2015. In April 2014 we tabled a report on the causes of death for children with a child protection history. The report was commissioned from the Australian Institute of Health and Welfare. It used 10 years of data from the child deaths register and the institute compared the causes of death for children with a child protection history, compared to those without a child protection history. The report found overall, children with a child protection history have an overall higher mortality rate, 1.4 times higher than the mortality rate for children without such a history.

As to specific causes, children with a child protection history had almost 10 times the mortality rate for sudden unexpected deaths in infancy, and 2.8 times the mortality rate for external or natural causes of death. For example, accidental poisoning was 5.5 times higher, suicide was 4.1 times higher; and accidental drowning was 2.7 times higher. Children with a child protection history also had a higher mortality rate for certain natural causes of death, such as cerebral palsy, which was 3.5 times higher, meningococcal infection was 3.4 times, and influenza and pneumonia was 2.2 times higher.

The second special report that was tabled in October 2015 concerned childhood injury and disease prevention infrastructure in New South Wales. The team's focus on preventing child deaths necessarily requires consideration of injury and prevention strategies and options. The purpose of the report was to provide an initial overview of the structures, initiatives and coordinating mechanisms that work to prevent childhood injury and disease in New South Wales. This is an initial report that will assist the team in further work in identifying gaps in prevention efforts and response strategies. Overall, the report demonstrates that while there are many highly effective stakeholders working to reduce the impact of childhood injury and disease and the range of datasets, there is still, unfortunately, no formal coordination mechanism in New South Wales to bring the prevention strategies together.

Finally, I will note the work of the team in undertaking the specific cohort reviews since 2014. The cohort reviews look at deaths from specific causes over a period of time, generally 10 years. I will give three examples of those cohort reviews. First, the 2013 annual report examined deaths from asthma from the period 2004-13. We have been advised that steps have been taken in both government and non-government schools to better identify and support children with asthma and chronic health problems.

Second, the team in 2015 commenced a review of deaths of children from infectious disease with a focus on vaccine preventable disease. This work is being undertaken for the team by the National Centre for Immunisation Research and Surveillance. That illustrates the collaborative work the team does with other specialist bodies.

The third example is that in 2015, in the context of a New South Wales government review of swimming pool barrier requirements, we conducted a comprehensive examination of swimming pool drowning deaths of children in New South Wales. It examined, for example, the circumstances in which 54 children in New South Wales drowned in private swimming pools in the eight years from 2007 to 2014, and our analysis was fed into the government review.

That concludes my introductory remarks. We look forward to discussion with and questions from the Committee. I invite my two specialist colleagues to join me in that discussion.

The Hon. ADAM SEARLE: Can you tell the Committee where NSW Health and Community Services are up to in implementing your recommendations about preventing the sudden and unexplained death of infants?

Professor McMILLAN: On many of these questions I may see whether my colleagues have a response and then I may add something.

Ms WOLF: We are about to monitor the current status of those recommendations, but our understanding is that they are quite well progressed. Community Services, for instance, has developed a training package for its caseworkers to alert them to families that may need safe sleeping advice. We are really clear it is happening but we are about to monitor that more closely for the next report, which will be later this year.

Ms ELENI PETINOS: In the opening remarks you touched on swimming pool drownings and the fact that some of the recommendations have been considered. I suppose there was a review into swimming pool legislation by the Government, which was announced in July 2015. Can you update the Committee on the progress with the review and what elements have been adopted from your recommendations?

Professor McMILLAN: My understanding is that the report is with Government but has not yet been released, so we have no official notice of the recommendations in that report. Have you anything to add?

Ms WOLF: That is correct.

The Hon. SCOTT FARLOW: I want to pick up on some of the rates of suicide. In 2015 the highest rate since 2000 was recorded, with 22 deaths. I am interested in your views on what we can do to address some of these problems. You also noted the Mental Health Commission's work on that. How do you feel that is being implemented and the success or otherwise of it?

Ms WOLF: That remains to be seen. A lot of the work has been work generated through the Mental Health Commission and it is a strategic plan for mental health in New South Wales. One thing we will be looking at closely is how that is rolled out, particularly for young people. There are a range of activities and the Mental Health Commission can bring together an understanding of how it is all impacting together. We will be doing that as well.

The Hon. SCOTT FARLOW: Do you think they are best placed to do that work?

Ms WOLF: The work? They have done the strategic plan.

The Hon. SCOTT FARLOW: The assessment work.

Ms WOLF: Yes.

The Hon. SCOTT FARLOW: Do you think they are best placed to do the assessment work?

Ms WOLF: We will look at that separately. That would be our role as well.

The Hon. ADAM SEARLE: Can you update the Committee on the review being undertaken by the National Centre for Immunisation Research and Surveillance on child deaths from infectious diseases?

Ms WOLF: Yes. That review is due to be finalised by June. The institute has looked at all of the deaths that we have on our register that may have an infectious cause and it has tried to identify those that are potentially vaccine preventable. My understanding is that it has identified around 48 deaths. It is looking at a whole lot of variables around that and the factors. There has also been data linkage with the immunisation register. We are hoping to get a broader understanding of the link between vaccination and deaths from infectious diseases and what can be done about that.

The Hon. ADAM SEARLE: And whether or not those who died were in fact vaccinated?

Ms WOLF: That is right.

CHAIR: Are there any legislative amendments that would assist you in your work that we could look at?

Professor McMILLAN: We were very pleased to get the changes to the reporting requirements because that enables us to spend more time analysing data and to identify trends over a period. We have discussions within the committee, for example, about the membership of the committee. We already have a large membership, so at an administrative level we seem to be resolving all of those issues and working within the legislative constraints. We have a good structure.

CHAIR: There is nothing in the legislation that blocks you from—

Professor McMILLAN: No, we are not suffering; nothing is impeding us in this area.

Ms ELENI PETINOS: Broadly speaking, over the reporting period what would you consider to have been your focus in respect of research and how does it compare to years gone by?

Ms WOLF: Sorry, our research?

Ms ELENI PETINOS: Yes. What would you consider your focus would have been over the last reporting period and how does that focus compare to the last reporting period?

Ms WOLF: I think the team has different focuses across the board. Broadly speaking, there has been quite a focus by the team on injury prevention and the team's role in that area, so the team reviews child deaths that have a clear link to serious injury, and that has been a topic of discussion. Other areas such as the causes of death of children with a child protection history has generated a lot of further interest for the team and how we can look at some of those findings in detail, so where children with that history have a much higher rate of dying, what can be done in that space to prevent those deaths. I think they are two of the areas of research.

Professor McMILLAN: As a person newly appointed as convenor of the team, what has struck me is that the membership of the team is diverse and large, with up to 20 members representing many different interests. There are paediatricians and people with experience in legal aid services, policing, child care and regular medical practice. What strikes me is that at every meeting any issue related to child deaths captures the interest and the strong advocacy of somebody in the team. I think the product of that is the diverse and comprehensive analysis you get in the team reports.

In my opening remarks I spoke of how, variously, the team has been working on swimming pool deaths and trends in relation to Aboriginal and Torres Strait Islander children, unexplained deaths in infancy, and children who are in at-risk families. While there are certainly strong points of focus in research, I am struck by how the work of the committee draws in almost every perspective that seems to me is relevant to child death review.

Dr GILLIS: It is a very successful team. It is one of the very few places where almost every aspect of child death is represented. I should make a general comment. One should remember that child death is rare, but each death may represent a lot of severe injuries. A child may drown and die, but that might represent—and I am just making up the number now—another 10 that almost drowned. The committee is often obsessed with the fact that although the death may be rare it may indicate a lot of serious injuries that are impacting on the whole health system.

It is like car accidents. We try to bring down the road fatalities but there are a huge number of severely injured people from car accidents. One of the things the committee is very conscious of is that—like the canary in the coalmine—we have to think about a death and what that indicates about all the children who might be being injured in some way.

CHAIR: Thank you very much for appearing today. The Committee may wish to send through some additional questions in writing, the replies of which will be taken as part of the evidence made in the public hearing today. Would you be happy to provide a written reply to any further questions?

Professor McMILLAN: Yes, we would.

CHAIR: Thank you very much for joining us today. We appreciate your candid evidence.

(The witnesses withdrew)

(The Committee adjourned at 12.52 p.m.)
