

REPORT OF PROCEEDINGS BEFORE

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

**GENERAL MEETING WITH THE INFORMATION COMMISSIONER AND PRIVACY
COMMISSIONER, INFORMATION AND PRIVACY COMMISSION NSW**

At Sydney on Monday 21 May 2012

The Committee met at 2.00 p.m.

PRESENT

The Hon. C. Cusack (Chair)

Legislative Council
The Hon. S. Mitchell

Legislative Assembly
Mr K. J. Anderson
Mr L. J. Evans (Deputy Chair)
Mr P. G. Lynch

CHAIR: Before the proceedings commence, may I remind everyone to switch off their mobile phones as they can interfere with Hansard recording equipment. If your phone is on silent, please switch it off completely. I now declare open the hearing in relation to the review of the Office of the Information Commissioner Annual Report 2009-2010 and the Information Privacy Commissioner Annual Report 2010-11. It is a function of the Committee on the Office of Ombudsman and the Police Integrity to examine each Annual Report and other Reports of the Privacy Commissioner and Information Commissioner and report to both Houses of Parliament in accordance with section 44A (1) (c) of the Privacy and Personal Information Protection Act 1998 and section 44 (1) (c) of the Government Information Commissioner Act 2009. The Committee welcomes the Information Commissioner and the Privacy Commissioner.

DEIRDRE ANNE O'DONNELL, Information Commissioner, Information and Privacy Commission New South Wales, level 11, 1 Castlereagh Street, Sydney, 2000, and

ELIZABETH MARY COOMBS, Privacy Commissioner, Information and Privacy Commission New South Wales, level 11, 1 Castlereagh Street, Sydney, 2000, sworn and examined:

CHAIR: Commissioners, the Committee has received the detailed responses from both of you in relation to its questions on notice relating to the Office of the Information Commissioner Annual Report 2009-2010 and the Information Privacy Commission Annual Report 2010-2011. Do you wish these responses to form part of your evidence today and to be made public?

Ms O'DONNELL: Yes please.

Dr COOMBS: Yes.

CHAIR: Commissioner O'Donnell, would you like to make an opening statement before the commencement of questions?

Ms O'DONNELL: If I may, thank you. It is a very short one. Commissioner Coombs, the Privacy Commissioner and I have decided to give a short one page statement each. We are here as members of the Information and Privacy Commission as well as separate champions. I will commence and then I will hand over to Dr Coombs. I wanted to say I am really pleased to be here wearing my two hats, the Information Commissioner with responsibility for the administration of the New South Wales right to information legislation and as the head of the Information and Privacy Commission, which is a new merged entity from 1 January last year. I am very pleased to be here beside my colleague, Dr Elizabeth Coombs.

Our joint appearance is an important visible symbol of the fact that the merging of our two offices into the Information and Privacy Commission is a shared and collaborative arrangement in which the two champions have equal rights and responsibilities in respect of their specific legislation. The setting up of the Information and Privacy Commission was in response to a review by the New South Wales Law Reform Commission. The merged office was decided upon in recognition of the fact that issues around privacy and access to information naturally overlap and that they both have a bearing on the way government deals with information. Our two jurisdictions are both concerned with transparency and holding government accountable, and our remits may be in tension and we may at times need to strike a balance between competing interests. That is why we are here today.

That leads me to the other dimension of my role, that of the head of the Information and Privacy Commission and I just wanted to recap what the Parliament decided that the Information and Privacy Commission should deliver, to reaffirm that at the start. The Parliament made very clear what the Information and Privacy Commission was meant to be and to do. We were meant to be and we are meant to deliver a single office to administer legislation relating to privacy and access to information, in effect, a one stop shop and as a one stop shop we are meant to provide consistent information and advice for agencies and individuals, co-ordinated training for agencies and individuals, a common point of contact to help reduce referral fatigue—a very important benefit to the public—and administrative and operational efficiencies through shared corporate services.

The Parliament has made clear it wants us to be a pro-active independent agency. It wants us to make managing government information easier for the public. It wants us to promote cultural change within agencies and it wants us to work collaboratively with agencies to have a policy development role. This is our first

hearing. I really look forward to hearing from you, the Committee, the sort of information you would like me to provide as Information Commissioner or as the head of the Information and Privacy Commission and I look forward to building a constructive and open relationship for the future. My fellow Commissioner, Dr Coombs, will now deliver her opening statement.

Dr COOMBS: The statement that Deirdre has made is the approach of the two of us Commissioners. We really do appreciate this opportunity to meet with you, to listen to the issues that you need us to be conscious of and to address those. Just by way of background, as you heard, we were established as the Information and Privacy Commission in January 2011 bringing together those two roles. We have in common the fact that we both advocate for the public's right to information or for protection of personal information. We also have the responsibility to ensure compliance and I will speak further about the actual scope about who we are speaking about when we say who is to ensure compliance. We also investigate, conciliate and conduct inquiries into information access and privacy complaints. One of the things that people do not tend to know about our roles is that we both function independently were set up as champions, so we cannot act in each other's role. We remain both separately responsible for our pieces of legislation.

My position is part time, with the Information Commissioner being a full time position and it takes on the responsibilities as being Chief Executive Officer, so managing the budget and the human resources parts of the Information and Privacy Commission and as you know, of course we report to the Committee here. We are both appointed and removed in the same manner and we both have a right of appearance in proceedings before the Administrative Decisions Tribunal. The legislation that the Information and Privacy Commission is responsible for is the Government Information Public Access Act 2009, the regulations which go with that Act, as well as the second piece of legislation, the Government Information (Information Commissioner) Act 2009. I have responsibility for two main pieces of legislation which are the Privacy and Personal Information Protection Act 1998 and the regulations which sit underneath that, as well as Privacy Codes of Practice and the Health Records and Information Privacy Act 2002 and the regulations which sit underneath that, and the Code of Practice 2005 that accompanies that piece of legislation.

Our legislation applies to bodies whose accounts are subject to the New South Wales Auditor-General, such as obviously New South Wales government agencies but also and in addition local councils and universities. The Government Information (Public Access) Act in addition applies also to Ministers and their staff whereas the Health Records and Information Privacy Act governs the handling of health information in both New South Wales public and private hospitals and the private sector as well, doctors and healthcare organisations as well as those other organisations who have any type of health information such as universities that undertake research or gymnasiums that record information about people's health or injuries. There is a financial cut-off to ensure it is complementary to the Federal legislation. One of the important things which we would like to speak to you about is that the legislation also provides for an information and privacy advisory committee, which advises the two Commissioners on matters relevant to their role, functions and their legislation. Thank you.

CHAIR: Thank you very much. That is much appreciated. We will now move to questions.

Mr LEE EVANS: The Committee notes that the bill before Parliament seeks to amend the Health Records and Information Privacy Act 2002 with respect to disclosure of genetic information to relevant individuals. The Committee understands that you have been tasked to providing the guidelines. What process will you undertake to prepare these guidelines?

Dr COOMBS: The guidelines very much need to be based upon consultation with the agencies affected and that is a process which we will be setting in place over the coming months to actually ensure that the guideline reflects those issues. We have been consulted by NSW Health on that legislation prior to it going through, so we are familiar with it. Guidelines tend to be somewhat slow in the production but that is because of the consultation that you need to ensure that you do it correctly and fulsomely to make sure that you have the best information on matters which can be quite sensitive to some parts of the community, but also to ensure that they are written in a way that actually assist people to really understand the purpose and the aims and what is expected of them. We will take some time to actually produce those.

Ms O'DONNELL: I have no role in that as the Information Commissioner but we have a shared policy team so part of my role as the Chief Executive Officer is it would be appropriate to make sure that I give Dr Coombs access to the policy team and to have that as a priority. Another thing that we have actually jointly set up recently that may or may not be of assistance is we have a very important stakeholder group in the State

Government, which are the practitioners, the right to information and privacy practitioners, and we deal with that group every quarter. We come here to Parliament and meet maybe 60 to 100 of them and we talk about current issues. Within that group we have actually now set up, in fact informing both of us, a consultative group of key practitioners and they are available to assist us road test significant issues on which we need to have consultative processes. I would imagine that would also be one of the groups that we could call on as necessary to assist in the development of these guidelines. As Elizabeth said, we are very concerned to make sure that our mini-champions if you like in government agencies are as well supported as possible by the practitioners, by the practitioners group and by the Commissioners themselves.

Dr COOMBS: Those guidelines will become publicly available via our website and as many means as we have to make them available to people so in terms of the work that we do representing the Information and Privacy Commission we make a very strong effort to get out to agencies to actually discuss the materials and the issues that they have. So with the actual preparation of the guidelines, there will be a corresponding communication strategy to ensure that we actually distribute it in a way and communicate what is in it as well as we can.

Mr LEE EVANS: Has a time line been placed on this?

Dr COOMBS: Not that I am conscious of at the moment. I am very happy to take that aspect on notice.

Mr PAUL LYNCH: Commissioner O'Donnell, in both the Annual Report and your answers to questions you talked about agencies still dealing with freedom of information rather than Government Information (Public Access) Act?

Ms O'DONNELL: Yes.

Mr PAUL LYNCH: I guess there are two parts to my question. Has that perhaps improved over time and how do you get them to actually work out what the new legislation actually says?

Ms O'DONNELL: It is such an important aspect of my role and there are still people who apply the freedom of information language, particularly the language of exemptions and the freedom of information mentality. One of the things with Elizabeth joining is that as Commissioners we have actually instituted a round of addressing executives of large cluster agencies about our respective roles and responsibilities to try and refresh at the top level of the organisation the fact that this is a new regime in New South Wales and this is a new mode of operating and that we both take very seriously our verb of assist. We have an assist role, both of us, in our legislation. We talk about the cultural dimensions and how important they are from the Government Information (Public Access) Act. The key word in Government Information (Public Access) Act is proactive release so it is not, "Let me tell you how many ways I can't do it", it is "This is how I'm going to do it proactively" and that I think is going to probably be the key challenge for me in my term as Information Commissioner, to keep having that conversation and focus on proactive.

In terms of the agencies that still cling to their cherished freedom of information regime, we have to find—and I particularly have to find—new and innovative ways of changing that conversation and assisting them. One thing that I think we have done quite well is our outreach program through our education and promotion where we have done some good training. I do not know whether anyone here came. Recently we were here in Parliament House for some staff members, where we talk about the public interest test and we try and help people understand that the public interest test is the centre of Government Information (Public Access) Act and that is your default. Your default is that the information is available and there have to be very strong public interest reasons why the information should not be. We will continue trying to change and innovate in our training. We will continue our high level approach to Chief Executive Officers and Directors-General. We are also talking at a governance level. We have communicated a risk-type message to agency heads—perhaps Elizabeth might want to add to that.

Dr COOMBS: I will just take up that point about the approach we are taking with agencies. Agencies tend to see whether it is access to information or privacy in the past at least anyway as something that is over there that the practitioners deal with. The line and the approach which Deirdre and I are advocating, particularly when we go out to the agencies—and we have done such a lot of it since I joined in November—is that this is very much about corporate governance and corporate integrity, that it is the responsibility of agencies to take these two issues, the right to information and the protection of people's personal information, very seriously.

They need to be looking at how they do that in terms of their own governance arrangements. We want to ensure that there is a proactive preventive approach rather than that sort of reactive style that you sometimes see.

Once someone has complained you could be in for quite a long process, which takes a lot of administrative time and resources and generally it can drag on, particularly if it goes before the Administrative Decisions Tribunal, so agencies can have those issues going on for quite some months and possibly even longer. We are saying to agencies and we are establishing strategic alliances with bodies such as the State Records Authority, the Public Service Commission, the Department of Premier and Cabinet that this is an aspect of proper information management where people look after the access to information as well as the protection of personal data, as I said earlier. We are saying to agencies: You might want to consider what you are doing in terms of induction programs, when new staff join you or when you are actually having refresher programs with staff inside your agencies.

But in addition, have you thought about your internal audit program. What is the work plan there? Are there aspects of how you are managing your databases that should be looked through and put on a schedule for an internal audit program and to try to get those matters on their agenda because particularly from my side of the Information Privacy Commission, privacy, I need to be able to ensure that we are getting to the operators, the people who collect the information, who are in a position where they disclose it, not the practitioners who undertake, for example, internal reviews to see whether a complaint is legitimate or not. We are trying to get agencies to take up this issue and we are encouraging them to look at their mechanisms. What are their policies, codes of conduct and guides for staff?

Are they speaking about these privacy management matters at executive meetings and do senior staff talk to staff throughout the agency to ensure that it becomes live and not simply something that is nodded to. It must become part of the fabric and processes of an organisation. Having worked in administrative positions in the New South Wales public sector for about 25 years, I know how important it is to get things into policies, procedure manuals and guidelines. It is also very important that heads of agencies, executives and senior managers all demonstrate those behaviours and when something comes up in written advice or discussion that they flag that information. Information should be or could be put on the website for proactive release when people do presentations. We are talking about sharing data. Of course, we must establish whether we have consent and appropriate security mechanisms to ensure that data is shared appropriately.

Ms O'DONNELL: It is a big question.

Mr PAUL LYNCH: It is an existential question.

Ms O'DONNELL: Yes, it is.

Mr PAUL LYNCH: You talked about some agencies being more difficult than others or being mired in the past. Which agencies are recalcitrant?

Ms O'DONNELL: Our website has information about a review we did of the Police Force. We have four big customers with regard to freedom of information complaints and feedback to my staff. They include the Police Force, Transport NSW—anything to do with main roads —NSW Health and the Department of Education and Training. They are the big four groups and we need to ensure that we target them strategically and work with them because we want to minimise complaints to our office. We want the first point of contact with the agency to be the point at which the issue is resolved, as we do with all good customer service in government. With the Police Force we analysed a pattern of complaints over time, we did a compliance audit and we then conducted a targeted training program that addressed the specific shortcomings we observed in the volume of complaints we received. We got feedback and did an interactive training session that was at least useful. It was helpful, but it has not changed things.

One of the realities when you are a watchdog is that staff change but the manual stays the same. That tells me I must ensure I have a ceremonial burning of the old manual or create a replacement. I need to do something for those people who love their manual. So far we have taken a more proactive approach, but that is a genuine question for me now and I will take advice from my staff. How do we help those people? As Dr Coombs said, it involves the frontline people who must deal with these things every day. We want to make their lives as easy as possible. If the old freedom of information manual is perceived as making their lives easy, I need to do something to replace that. I think that is where I have come to in my thinking. It is all well and good to engage Chief Executive Officers—all Chief Executive Officers want open, transparent and accountable

agencies—but it is up to us to help those on the frontline who are being bombarded with administrative challenges.

CHAIR: Did you just say that all Chief Executive Officers want open and transparent government?

Ms O'DONNELL: I did, because I believe it.

Mr PAUL LYNCH: You still think you are in Opposition.

Ms O'DONNELL: I honestly believe that. I cannot say whether it happens, but it is what I believe.

CHAIR: Your clients are the general community, but often people inside government cannot get information.

Ms O'DONNELL: Yes.

CHAIR: Do you deal with internal issues?

Ms O'DONNELL: We do. To be honest, it shocked me when I first came to New South Wales and did my initial road show to find what was happening with certain agencies. For example, a local council that needed information from a regulator to fulfil a reporting obligation in law said, "Great, we can use GIPA." That is not an ideal position; in fact, it is awful. I have not heard that for the past 12 months, but I heard it a lot in my very early days. The obvious question I asked is, "What is wrong with this picture?" We are all government, we are all public servants and we are all meant to be serving the public. The information and communications technology strategy and the open government plan at least give us a framework and a commitment to some of those key deliverables that will promote openness, transparency and good information management, which are the two sides of our coin. That is what I am hoping to see.

CHAIR: Many of us have been hoping to get access to the resource allocation formula in NSW Health, which is the basis upon which people will move to activity-based funding. I come from an area in which the perception is that we are massively underfunded in the health arena. We are looking forward to transparency from the Government and the release of that information. However, much of the correspondence requesting that information seems to get lost. This has been going on for a very long time. The Government's commitment to transparency was very strong; it said that the fact that something was embarrassing was no excuse not to release it. We need to have a good information policy to have credibility.

Ms O'DONNELL: We do; it is foundational.

CHAIR: This issue is very foundational and no-one seems to be able to access the information.

Mr PAUL LYNCH: I tried 15 years ago.

Ms O'DONNELL: You can be a small voice or more, like the integrity arm of government. I alluded to that in my answers. There are opportunities for us to have strategic conversations with the Audit Office and the Ombudsman's Office, where people are doing other sorts of reviews of administrative processes or accountability systems and frameworks. That is an opportunity for us. If I can call it as I see it after two years, we do not seem to have our foundation in place or a good records management framework that allows us to find what we need when we need it. I am not confident that that is anywhere near the standard we should have in a bureaucracy as important and as large as the public service of New South Wales. That is an issue for me. Then there is the information technology infrastructure and whether that facilitates ready and easy access. I have a big focus in my early days to get the foundations right so that we can really test some of those things.

CHAIR: I now draw your attention to the information technology framework. It seems to me that the Government collects an enormous amount of data that is a valuable taxpayer-funded asset. If it is not being managed properly, we will end up duplicating it and wasting money by not making it properly accessible for any reason other than parochialism in an agency. I stumbled across a website that contains extensive government data. I cannot recall the name, but it astonished me. It contains things like population data, some State development data—

Ms O'DONNELL: It is *data.nsw.gov*.

CHAIR: That is it. Is that the website you would support containing more data? Should it not be publicised more extensively?

Ms O'DONNELL: Exactly, we should know about it. That is a huge challenge. The information and communications technology strategy has named better information sharing as one of the deliverables that it wants to implement and the State Plan makes that very clear. As watchdogs we are very much about saying that government will be accountable against these deliverables and it is our role to hold the Government to account. There is enormous potential for improvement because our baseline is awful.

CHAIR: That is good news.

Ms O'DONNELL: Dr Coombs and I were lucky enough to be part of the extraordinary activity that occurred before Christmas and over Christmas in the development of the information and communications technology strategy. We were consulted on citizen-centric services and better information sharing. That was really helpful because the better information sharing people would say, "Privacy? No!" A big issue for me is a citizen-centric approach because we need to provide the people of New South Wales with what they need, not what we think they need. That is about being open and engaged as a government. We were able to talk about some of the shortcomings that exist and there are clearly buckets of data that exist for exactly the reasons you mentioned—that is, historical and parochial reasons—and the door has never been opened and their glory has never been displayed to the world.

The information and communication [ICT] strategy is now making it accountable. There will be a plan for the release of data. The thing that I take comfort from is that technology is moving so rapidly that if a bureaucrat says, "I do not want you to" or "Maybe I will if I feel in a good mood today", technology is making that irrelevant. To use an analogy, in the early days of my role as Information Commissioner I found that people would say to me, "It is alright, you will get over it, just calm down", and then WikiLeaks happened. Suddenly the world saw a game changer. Suddenly everyone saw that cyberspace is uncontrollable. We have had all the excitement around privacy awareness week, which is completely analogous around Facebook, and people are seeing that technology is the game changer. No matter how hard you try to protect, that is the reality.

CHAIR: So you have been consulted. Is the Government making full use of this opportunity, do you believe?

Ms O'DONNELL: I suspect it is. I have informed my colleagues across the country. Nobody is doing what New South Wales is doing at the moment, so all the other information access commissioners are looking at us with a great deal of interest. No-one has taken it quite as far or quite as bravely as New South Wales, so for that reason I am encouraged, and I will really use it as an accountability mechanism. It seems to be an opportunity that is quite a precious one and we should not squander it.

CHAIR: The public can then question the data as well, because the data might not be correct.

Ms O'DONNELL: Exactly.

CHAIR: That has always been an excuse as to why it cannot be released—it might not be right.

Ms O'DONNELL: That is right.

Mr KEVIN ANDERSON: Why have it?

CHAIR: Exactly, and I can tell you four different agencies in New South Wales give four different population projections for the North Coast, and that information is very important because resource allocation is based around it.

Dr COOMBS: Could I ask what data you saw was not there that you were interested in?

CHAIR: I find the health population data very difficult to access. I would like to be able to compare dental outcomes in unfluoridated and other areas. I have spent days looking for that data. The areas keep their information separately from the health department. Transport information is hopeless. I do not want to be down

on it because I was very excited to find information that I did not know existed, and it was very valuable, but I saw it as the beginning of something that could have greater potential.

Ms O'DONNELL: Exactly, because there is *data.gov* at a national level, and New South Wales has copied that. We have also got Publications NSW which, under the State Plan, has special accountability. State Records is leading that and they are consulting with me as the Information Commissioner on Publications New South Wales. That is one of the deliverables under Goal 31 of the State Plan. They are looking at a way in which all the GIPAA information that agencies put out can be harvested, for example, and somehow linked to Publications NSW, so if you want to know what is the GIPAA information for the health department, Publications NSW should be able to show you this year's work. That should be a later this year thing. That is happening at the Commonwealth level, it is happening in Queensland, so it is starting across the country.

CHAIR: The other issue is integration of information. When the United States did its stimulus package for capital works it put out an iTunes application that integrates on map every project—local, State and Federal—and it is so effective that when council workers have to repair a pipe they rely on this application to know what other public work is going on in that street or area. It is astounding.

Mr KEVIN ANDERSON: In addition, the other day I stumbled across a United States site that gave residential street addresses and how they voted.

CHAIR: That is a privacy question, but it is because they have to register for the primaries. The point I am making is that you get your information to a tipping point where it becomes very cost effective and you are reaping benefits. I understand that while you are going through the development process and putting data in it can be expensive.

Dr COOMBS: Could I pick up on something that Ms O'Donnell said earlier about people saying, "We cannot do that because of the Privacy Act"? Data sites like these do not necessarily—and I will come back on that other issue—raise issues about privacy when data is at a sufficiently aggregated level. The point that we often discuss is that many of the access requests that agencies receive are from people seeking their own personal information because they want to know what is held about them, and they want to ensure that it is accurate and up to date. There are certain times when Ms O'Donnell and I come from different perspectives, and the way we work through that is what is in the public interest, so that is the tipping point. Generally, people expect that privacy will have concerns about data going out. The point that I keep making is that, if it is at aggregated level, it is very valuable for planning and is not necessarily a privacy concern. When you start getting into personal information such as name, address, signature and voting—that most certainly would be something we would have some issues with.

CHAIR: Patrons trying to enter hotels and clubs may be asked to provide fingerprints and drivers licences for scanning.

Dr COOMBS: Fingerprints?

CHAIR: Yes, and I am going out of the Annual Report now. Patrons of the Coogee Bay Hotel complained about having to provide their fingerprints before being allowed into the venue, and when I go to the Ballina RSL club I have to hand over my driver's licence to be scanned. I do not understand why they need all that information and I do not understand what the security of that data is.

Dr COOMBS: I would love it if everybody asked the same questions as you.

CHAIR: There is no use asking questions because they are not going to let me in unless I let them scan my driver's licence.

Dr COOMBS: We always say, when people come to us with those questions, ask them why do the clubs need it, how will it be destroyed and when will it be destroyed. Ask them, "When I leave, can I actually see it being destroyed?" We also point out that it is a private facility and, if that is a condition of entry, you have to make a choice. My legislation does not extend into the private sector in that way. I do not have capacity under the Privacy and Personal Information Protection [PPIP] Act to say that is inappropriate.

CHAIR: Does anyone have the capacity? Is it governed by any privacy legislation?

Dr COOMBS: I am wondering here about the federal privacy legislation. That would depend upon it being of a certain nature, over 3 million dollars. I am not necessarily sure that it would be covered. I can take it on notice to check with the Federal Privacy Commissioner and provide a response, but in terms of the Privacy and Personal Information Protection Act, that applies to public sector agencies, it does not apply to those in the private sector.

CHAIR: Drivers licences are provided by government agencies and they are necessary in order to drive on the road and, it seems, to access the Ballina RSL club—

Dr COOMBS: And some hotels as well, when you travel.

CHAIR: There are thousands and thousands of people who go through Ballina RSL club. These clubs are enormous places.

Dr COOMBS: They are.

CHAIR: I would have thought the Government has an interest in protecting the data that is being collected in very large quantities by these clubs.

Dr COOMBS: We do tell people they can request that certain aspects or parts of their licence are screened so that that information, when it is photocopied, is not there, and to ask, "What is it that you need to know? Is it because you want to see the vehicle? What is it that you are actually after?" Sometimes that has assisted people in that predicament as to what is provided. In terms of the issue about the Government having an interest in protecting it, I would be very interested to see the response from the Government on that.

CHAIR: Is that something we should perhaps ask the relevant Minister as well?

Dr COOMBS: I think the issue is that when the Privacy Act came into existence it was a very different world. In 1998 we barely had email. I can remember back in 1996 email was coming and people were talking about it, but not everybody had access to it—not everybody had access to the internet. The analogy I am drawing here is that everything has moved on in a way that has seen exponential growth in technology and also too in people's expectations of what data they can ask of you and what you will provide. Sometimes you will be surprised what even people who are privacy conscious will hand over. If I could just take a step to the side and just talk about Privacy Awareness Week, that was very much the message that we were giving to people. In this occasion it was very much focussed on social media and internet use but it was also about in a general sense be conscious. It is a valuable asset in the information economy, it is the lubricant to keep it going and you have to protect it. You do not hand over the keys to your house; you do not hand over your personal information willy-nilly. So to bring back to people, why do they need it, what rights do they have and what are your choices is something that we encourage people to do.

Mr KEVIN ANDERSON: I believe there has been a little turn. A few years ago, as you rightly point out, in 1998 there was this breakout and people were in on it, Facebook, Twitter, the whole train smash and people were willingly giving their identification and doing the whole thing. I think given what we are seeing on the social front now, and the implications of identity theft and cyber bullying and everything else, there is now this reluctance to, okay, who am I giving this information to? Why are you requesting it?

Dr COOMBS: In terms of the calls that we get, we would certainly like to see more action in that area because people are concerned. They do ask, why do I have to give it? What recourse do I have? With the internet, when I was doing some research recently I found a Neilson's poll from February of this year saying that something like 75 per cent or 68 per cent of Australians aged two years and above are active online users. So this whole issue has just become much more on people's minds and our numbers of calls are growing incredibly. When I just do a two-year comparison from April 2010, the percentage of calls has gone up something like 224 per cent just over two years just looking at the month of April, and that has nothing to do with Privacy Awareness Week because that is in May.

But if you look at other months they are up to sort of the same level as well—154 per cent, 115 per cent. So we are seeing growth in people's concerns in areas such as surveillance, internet, calls have gone up, I want to get these calls down, do they have the right to ask me for this information when I go into clubs or wherever else? I think one of the things which we can do at this stage is very much work on people's responsible behaviour and that is some of the approaches which we can do. In terms of what we do with agencies, obviously

once again is to go back to them to say, it is about what information do you need; it is not about it is nice to have.

CHAIR: We have responsible service of alcohol laws, and scanning someone's licence is unregulated and is potentially going to cost them their whole identity. Do you see what I am saying? So collecting somebody's details can have consequences. Is identity theft a crime in New South Wales?

Dr COOMBS: Yes. I think Col Dyson, who spoke at Privacy Awareness Week—I am not sure of the particular Act it falls under.

Mr PAUL LYNCH: There is a lot of Federal legislation that would cover New South Wales. Often what happens is it is not so much the stealing of the identity; it is what you do with the identity.

Dr COOMBS: That is right.

CHAIR: I guess that is my question. It is the theft of the identity, because I had understood that was a grey area. Misuse of someone else's identity is definitely a crime.

Mr KEVIN ANDERSON: Credit card fraud.

Mr PAUL LYNCH: It is very difficult and it depends how you get it. If you physically steal something from someone and the information is contained in it, that is clearly a criminal offence, although it is the theft of the drivers licence rather than the information in it that is the offence. Simply having someone else's information if you have obtained it legally by itself I would have thought it is probably not an offence but misusing it is.

Dr COOMBS: Yes. By a public sector agency it certainly is.

Mr LEE EVANS: As far as the internet goes and Facebook and such like, the genie is out of the bottle though, is it not?

Dr COOMBS: Not in terms of how people use it, I believe. I think the technology most certainly is out there and you will not be able to put it back in the bottle, as you so rightly said. But people's behaviour and how they use it is something which we can address. I use social media but I am a very limited user. I use it more in terms of my work than in terms of communicating my doings and social events across the internet. When I was part of some of the research I was doing on social media I had a friend show me her Facebook and the settings which are there. You can, for example, make your page limited just to your friends, which you have nominated, or their friends, so friends of friends, or then the whole world can see it. They are some of the privacy settings which I think are important to encourage people to use.

I am not saying not to read privacy policies. However, I will say that there has been some research which shows that if you read every privacy policy on every website that you visited in a year you need something like 250 hours a year just to do that. But some of them are extremely difficult to read. They do not necessarily tell you things. With Facebook, for example, to understand its privacy and application settings you had to be an account holder to get in to see what was in it. So you might get some general information but the more detailed information is only subject to you having established an account in which you have provided information about your identity.

Mr LEE EVANS: I had a circumstance where a young lady came into my office and she did not get a job because of her activities on Facebook.

Dr COOMBS: Young school-aged students do not necessarily have a common sense of the consequences of their behaviour. I think probably I was one of those when I think back in terms of my youth many years ago. It is just a very different way of communicating—in fact, I was speaking to a CEO recently who said that his daughter has photographs up there of her and he said, "Yes, they're fun but in years to come you'll be applying for jobs and they will still be there." Digital eternity.

Mr LEE EVANS: That is the sort of circumstance this young lady found herself in. When I was a kid two cans and a piece of string was the communication medium. My 16-year-old or my 18-year-old now, he has more electronics than Apollo had.

Dr COOMBS: And their capacity.

Mr LEE EVANS: We are getting into a discussion.

CHAIR: Have you reviewed any guidelines that the Police might have in relation to the use of CCTV cameras?

Dr COOMBS: That is a very topical question at the moment. Not guidelines of the Police Service but I was looking at some guidelines produced for local councils, produced in 1999, I assume in the run-up to the Olympics, which was advocating the role of councils in the prevention of crime and saying that CCTV cameras were a valuable aid in that. There is a lot of conflicting research out there about how much these tapes are useful—are the cameras actually turned on? Number two, are the tapes actually used? We do get quite a number of calls about surveillance—surveillance at work, surveillance by neighbours, but surveillance in public places. I think that the issue is one which we will be dealing with more.

CHAIR: There was some question with the student who died in Pitt Street, that Police had used the CCTV cameras which were, I think, positioned to the public as being an anti-terrorism measure and seen as being part of a strategy for major crime. It was not envisaged I think by many people that someone stealing a packet of biscuits would be tracked all the way down Pitt Street using that infrastructure. Hence my question: Are there any guidelines or restrictions or would it appropriate to have any in place for the Police use of that facility?

Dr COOMBS: I am very interested in the appropriate use of surveillance wherever it is. The workplace surveillance is not a piece of legislation that falls within my responsibilities with the Attorney General.

CHAIR: This is now an expensive infrastructure which covers the whole city.

Dr COOMBS: Yes. It is like any screening device; it depends upon the use to which it is put and how well it is actually used and whether it is used appropriately. In terms of do I know of any guidelines which restrict or define how it is best used from the Police side, no, I do not but I am happy to look into that.

CHAIR: Thank you.

Dr COOMBS: I am very happy to.

Mr KEVIN ANDERSON: It could also lead back to where we were talking about earlier where it is not a crime to have someone's identity but it is a crime to use it. In terms of someone having closed circuit television footage of a street, wherever it may be, that is okay, and then you need to apply to use that in a lawful sense.

Ms O'DONNELL: We will do some research.

CHAIR: In Victoria the cameras are used to detect people dropping cigarette butts out of cars because the numberplate can be identified.

Dr COOMBS: Some people view it as using a bulldozer to crack a walnut and others see it as a really powerful preventive tool, whether it is for terrorism or smaller or petty crimes.

Mr LEE EVANS: And public safety.

Dr COOMBS: And whether to provide a record that can then be used in hindsight to say that a person was in a particular public place even though they said they were somewhere else. It is how it is used, who has access to it, and how it is disclosed. They are the issues. We would be taking that perspective in terms of the information protection principles.

CHAIR: Hopefully you will be consulted.

The Hon. SARAH MITCHELL: My question relates to staffing and it comes from some comments that I think you made, Dr Coombs, but I am happy for both of you to answer it. From what I have read it seems you feel your staffing is a bit insufficient but you manage it by being sensible in your resources allocation. In relation to staff resources, is it just a case of there not being enough people to cover the work or is it because of the changing dynamic, such as the increased social media presence, and you need different skill sets than were perhaps needed five or 10 years ago? Would you like to comment on that?

Dr COOMBS: Thank you for that question. Yes, there are. I will make a number of points so just bear with me. First, we recognise it is a fiscally tight environment so jumping up and down and asking for more resources is not necessarily going to be very effective. We are approaching that by trying to get agencies to realise that this is their issue as well as mine as a regulator. However, I am a regulator but I am more at the back end of the chain of events rather than at the front, so I think it is important that they prevent matters so it will reduce their workload as well as mine. In our written response we spoke about how we work to prioritise matters. The requirement to keep dealing with complaints has meant that we have probably done less policy work and less guideline updating and writing and research work, which we would dearly love to get into. I am delighted to say that through Deirdre and I looking at how the IPC is structured and our business planning processes we have had the opportunity—and have taken it up—to identify where further resources will be made available to Privacy. That will be an incredible boon to us. There are two positions that we looking to recruit.

Ms O'DONNELL: I have an explicit deliverable as head of the IPC. The Parliament has said to me very clearly, long before Elizabeth joined us, that "The effect of this merger will be to increase significantly the resources available to Privacy NSW under current arrangements". I am really mindful of that. In my first year, before Elizabeth joined us, we repositioned our communications team and our community liaison focus. We are progressively repositioning policy and our corporate services area. Those are four business streams, if you like, which we share. We have a business mandate—I hope it is not pretentious to say it, but our plan is to move to blue. We want to show that we are no longer green or orange; we are moving to blue.

Dr COOMBS: I am orange, she is green.

Ms O'DONNELL: So the whole of the office is focused on how we can maximise our resources to ensure that we deliver the best service as the Information and Privacy Commission. That is why we emphasise coordinated assistance and advice, one-stop shop, training and overlap issues, because that is where we are going to deliver the best value to agencies and the people of New South Wales. We will have the two new positions. We are in the middle of a frenzy of recruitment, which takes an enormous amount of time, but the outcome will be good. We will shortly have a shared executive director and we will have our first senior officer in the office, which will provide Elizabeth and me with some important support at a strategic level and will also allow us time off for good behaviour, because at the moment neither of us can act for the other. It gives us a bit of flexibility. That is the resources side.

In moving to blue, we have a group who are our engine room people, our review and investigation officers, and we have a program to multiskill them so that they have the flexibility to mobilise should there be a particular issue for New South Wales in respect of, for example, CCTV. Then we can redeploy and we will re-prioritise. That is what we are trying to deliver this year, which is year two of the IPC—the flexibility of resources. I need to deliver—this is something I have not yet delivered—appropriate business systems to allow us to work effectively. That is a very high priority for me as well. So there are a number of administrative things that I need to deliver as well as getting the people to ensure that Privacy NSW, as the Parliament said, should look, feel and punch well above its previous weight when it was submerged in the Department of the Attorney General and Justice. I am really committed to that. We will get there.

Dr COOMBS: One of the things that it is very important for us to demonstrate both the workload and the demand out there, because at the moment we are just meeting the needs of people who come to us rather than necessarily meeting what might be unmet demand, is a means to quantify the work we are doing and the calls that we receive. We will continue to quantify that. It will become very important to us. At the moment we are not in a position to accurately specify the workload and what the gap is. We anticipate the workload will continue to increase for the reasons that we have all touched upon. Also, through the Council of Australian Governments and the Reform Council there are a number of initiatives occurring at the Federal level in the privacy area which we think potentially are likely to cause some increased demand.

The personally controlled electronic health records, which will start on 1 July, have the potential to create greater demand coming to us. We are still trying to work through with the Commonwealth exactly how

that system will work and what our role will be. I learnt a very valuable lesson many years ago when I was in NSW Health, standing in the middle of a trauma centre for brain injury patients. I had invited the head of Treasury because it was very important for us to get more money for it and he said, "Liz, if you can't put demand on a 2 x 2 table with figures, Treasury isn't going to notice." I really learnt that lesson.

CHAIR: Is there any opportunity for cost recovery from agencies that you are working with?

Dr COOMBS: There is very little room for cost recovery. There is some capacity if they ask us to undertake matters on their behalf but that would only be covering our costs; it is not a revenue producer. We are just keen to get our publications out there. We do not charge people. We also use the internet as much as possible so people can download it, which is cheaper for them and certainly cheaper for us as well.

CHAIR: I cannot help but comment that the Annual Report cost \$20,000 for 100 copies.

Ms O'DONNELL: That is my fault.

CHAIR: Is that an area where you might be able to reduce the cost?

Ms O'DONNELL: Definitely. The question from the Committee was a very good one. There were some good reasons and some not-so-good reasons for it. One of the reasons outside our control was that we had prepared a year's worth of financials and at the death knell the Audit Office changed its requirements of us and we had to work 12-hour days to change all our financials and we were going to miss the deadline for reporting. We invested in bound copies and that really was the big cost driver. Our senior communications person, when you asked these terrific questions, came back to me proactively saying, "Deirdre, I can save us an enormous amount this year." It will be well under double figures and probably under \$5,000. So, thank you for your question because I can use that money more constructively elsewhere.

CHAIR: I note that it goes on the website so the 100 copies are not the extent of the publication.

Ms O'DONNELL: No, but it was a bit of a timing problem. It was not beautiful, it was my fault and it will not happen again.

CHAIR: I am also sure there is artwork here that can be utilised in other publications.

Ms O'DONNELL: That is right. We invested in the photos.

Mr KEVIN ANDERSON: Hold an exhibition here in Parliament and put the photos up. It can be a public relations exercise.

Ms O'DONNELL: That is a fair comment.

CHAIR: Is there any way in which our Committee can be of assistance to your organisation or do you have any advice for us?

Ms O'DONNELL: I reiterate how valuable the questions were that you gave us. We did not have strong corporate memory and we still do not have very good records management so this really gave us a good focus. I really valued the scrutiny of our Annual Reports. It showed us that, even though we are a small office, everything we write matters and needs to be justified. In terms of accountability it was a terrific exhibition of your interest in us. Thanks for the pain, but thanks also for the questions. It was really useful. We are very keen to get feedback from the Committee. You may see, as I gather you saw, common issues across, for example, dealing with difficult complainant behaviour. We would like to be part of those sorts of proactive things because I can see all of us watchdog integrity bodies benefiting from a common approach and you will have the perspective that we might not have. I am mired in the day-to-day anyway. I welcome any questions from you at any time relating to my Chief Executive Officer role as the Information Commissioner.

Dr COOMBS: I endorse those statements but I would also like to add that I would very much like to use the Committee as a sounding board for future directions, particularly in my case in the privacy area, because there is a very substantive body of work which I would like to see done in my term in office as the Privacy Commissioner. In full time equivalent terms I have been there four months; I am three days a week but throughout this year, my focus is very much upon actually identifying the issues, working out those ones which

can be addressed and then trying to put a strategy behind those to ensure that we in that period get very productive changes for the people of New South Wales in either our approach or in the legislation policies. So I would very much appreciate your input.

CHAIR: It seems to me that the state of our laws and systems are very undeveloped at the moment and so it could almost be a question of a capital investment to get things up to scratch.

Dr COOMBS: That is why this injection of resources has been so critical for us, because we are always running to catch up with complaint handling. We are not putting as much as we would like into this. I have to say that the office under John McAteer has done an amazing job in the two and a half years that he was acting Privacy Commissioner. They really, in terms of their size, put out high quality products and advice. Their work was really exemplary. In terms of where we go now with more resources, I really would like to focus not just upon doing what we need to do on the complaint handling side but also on strategic work, and actual suggestions and recommendations to government as to where we should take this area.

Mr KEVIN ANDERSON: Given the offer there, I think there may be an opportunity further down the track in terms of using us as a sounding board for strategic planning et cetera, not necessarily the planning aspect of it, but the directions to ensure that they are heading in the right direction would be a great opportunity that we should take up.

CHAIR: Thank you very much for that; intense interest from the Committee. We might schedule something to make that happen. Commissioners, thank you very much on behalf of our Committee for your appearance here today and for the openness and the offers of a positive working relationship in the future. There is great interest in this developing area and we are very pleased to be part of it. Should we have any further questions, or is it in order for us to put them on notice to you and to ask for responses?

Ms O'DONNELL: Certainly.

CHAIR: Before the hearing concludes, I ask Members to agree to a motion to publish the transcript of the witness' evidence on the Committee's website after making corrections to inaccuracies and the answers to any questions taken on notice in the course of today's hearings?

Motion agreed to.

(The witnesses withdrew)

The Committee adjourned at 3.04 p.m.