

**REPORT OF PROCEEDINGS BEFORE**

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

**SECOND GENERAL MEETING WITH THE INFORMATION AND  
PRIVACY COMMISSION**

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**At Sydney on Friday 22 February 2013**

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**The Committee met at 12.00 p.m.**

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**PRESENT**

The Hon. C. Cusack (Chair)

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

**Legislative Assembly**  
Mr K. J. Anderson  
Mr L. J. Evans

**CHAIR:** I declare open the Committee's general meeting with the Information and Privacy Commission. In accordance with section 44 (1) of the Government Information (Information Commissioner) Act 2009 and section 44A (1) of the Privacy and Personal Information Protection Act 1998, the Committee monitors and reviews both the Information Commissioner's and the Privacy Commissioner's exercise of their functions, examines the annual reports and other reports made by the Information Commission and the Privacy Commission and reports to both Houses of Parliament.

On behalf of the Committee, I thank you, Commissioners, for appearing here today. Can I clarify this point? You have returned answers to questions on notice from the Committee. Are you happy for those answers to be published?

**Ms O'DONNELL:** I certainly am.

**Ms O'DONNELL:** Yes.

**CHAIR:** Can you please confirm that you have both received a copy of the Legislative Assembly standing orders that relate to the examination of witnesses?

**Dr COOMBS:** Yes, we have.

**Ms O'DONNELL:** Yes.

**DEIRDRE ANNE O'DONNELL**, Information Commissioner, Information and Privacy Commission NSW, and

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

**CHAIR:** Ms O'Donnell, do you wish to make an opening statement?

**Ms O'DONNELL:** If I may—just a very short one to set the scene. We are pleased to be here—we said this last year and we say it again. I appear as the Information Commissioner responsible for the administration of New South Wales right to information legislation and as the head of the Information and Privacy Commission—a small oversight agency of about 29 staff, which has now been in operation for two years. As for our first hearing before the Committee in May 2012, I am appearing beside my colleague Dr Elizabeth Coombs, New South Wales Privacy Commissioner.

To briefly summarise my role in the Information and Privacy Commission, apart from my legislative obligations under the Government Information (Public Access) Act [GIPA] and the Government Information (Information Commissioner) [GIIC] Act, I am also responsible, as CEO, for ensuring that the services provided by the IPC meet the Parliament's intentions of a one-stop shop that provides consistent information and advice for agencies and individuals, coordinated training and a common point of contact about the legislation we both administer.

The Committee has asked a series of questions about aspects of our annual report for the last financial year and I trust that our replies have been helpful. However, the most important aspect of my role, which I hope is evident in both the annual report and in answers to your questions, is that the focus of our office is on the quality of the services we offer to the citizens of New South Wales and to the agencies under our jurisdiction. So, speaking as CEO, to offer the best possible service I need to ensure that our resources are deployed as efficiently and as effectively as possible to service both our jurisdictions, that our business systems and processes are aligned with our service goals and that our relationships with key stakeholders are managed and maintained appropriately.

Both the privacy and the right to information jurisdictions have a proactive and a reactive component, and the Privacy Commissioner and I work actively to ensure that through our proactive engagement with stakeholders, agencies, the public and our peers in other jurisdictions we raise awareness of both of our functions as well as our individual independent champion roles. In our reactive work, which for GIPA is predominately manifest in reviews of agency decisions, complaints or investigations, we seek to ensure, through common business processes and the development of our staff skills, that our core business is conducted with a focus on quality and efficiency.

In response to the budget cuts of late last year, we focused our efforts and attentions on our core business functions, which largely represent our reactive work. Citizens and agencies look to the independent watchdog to ensure their rights are protected and independent oversight is available to provide them with redress where government processes have let them down. Our proactive work around promotion of rights and education about our legislation will now become much more targeted and will be enhanced by collaboration with key partners, such as our peers in other jurisdictions or other oversight agencies. So the 12 months ahead will see an approach that is sustainable in light of our resources and that is open to new and better ways of achieving our objectives through a strategic choice of key priorities. We now look forward to receiving and responding to the Committee's questions.

**CHAIR:** Dr Coombs, do you wish to make an opening statement?

**Dr COOMBS:** No. We will move directly to the questions after those opening remarks.

**CHAIR:** Thank you for the answers you have given us and the references you made in the opening statement to the challenging budget environment that is facing all agencies, particularly during the start-up work that you have been doing, the positive approach that has been taken to meeting those challenges, because obviously it has been a challenge. The way you have gone about it has a great outcome in tough circumstances. Clearly that is what you have done and we appreciate it. Thank you.

**The Hon. SARAH MITCHELL:** Echoing the Chair's comments, I also thank you for the comprehensive answers that you supplied to us on notice. They are very detailed and I certainly appreciated that—I am sure I speak for the other Committee members. So thanks to you and, I suspect, your staff as well for

their assistance. I was particularly interested in the Aboriginal action plan which you speak about in your answers to a couple of questions on notice. You say you hope to have that released at some point during this year. Is there any idea of when you think you might be in a position to publish that plan?

**Ms O'DONNELL:** We have a draft. It has been consulted and it has gone up through the organisation. We are at the last stage in refining it. We have had to, as you would expect, recalibrate it, given that when we embarked on it last year the world was a little more optimistic and now, as I indicated in my opening statement, we just want to make sure that what we are targeting is sustainable and achievable and what we cannot do immediately—we might have thought we could do some stuff in year one—that we do not lose that. So the engagement strategy, we had a community liaison officer and a lot of involvement through our staff, raised internal awareness of those issues and the importance of being as accessible as possible to Indigenous people who may need privacy or access to information advice from us. We want to keep that at the forefront. So I would hope, definitely before the end of this financial year but hopefully in the next two months it will be on our website and launched. Then we will be held accountable against it.

**The Hon. SARAH MITCHELL:** This question might be better asked after it is made public, but in your answer to question 10 you speak about the objectives that you would like to get from the plan. Are you comfortable with the stage that you are at now that you have actions that in a practical sense as part of that plan will help you meet those objectives? Do you think that by the time it is released it will, as you say, give you a proper framework to operate in and not to set targets that are unrealistic?

**Ms O'DONNELL:** I do personally, having done that work in other jurisdictions as well, being mindful of our resources but also of the capabilities of our staff and our commitments to be truly a service-focussed organisation. The opportunities through explicitly looking at the issues for indigenous communities, Aboriginal communities, and accessing our services apply across the board. If we do that sort of access well, then we serve everyone better. It is seen as a foundation activity for us and it happens both for right to information and the privacy issues.

**The Hon. ADAM SEARLE:** What would you say have been the most significant challenges in your time as Information Commissioner—I guess I direct this to both of you—and how have you addressed that within the challenging budget environment?

**CHAIR:** You have answered your own question.

**The Hon. ADAM SEARLE:** No, I do not think I have.

**Ms O'DONNELL:** There are both internal and external challenges. There are inward focussing challenges. I would rather talk about the external focussed challenges except that the inward facing challenges are also significant so I thought it was worth naming that. In terms of getting our own organisation in a good position in the reality of the current environment to deliver the best services we can, of necessity we have had to be more inwardly focussed than I would have hoped. That has been something that I was not expecting to spend so much time on as a chief executive officer. Nevertheless you can make of every crisis an opportunity to revisit how you are delivering your business and how you are delivering services. Again, if we look at the opportunities in the challenging environment, it means cutting your cloth to suit what services you have to deliver; it means being more open to new ways of doing business; and it means being prepared to take a few risks. You do not have to launch a perfect product or a perfect strategy; you can engage better with stakeholders and improve it on the way through. I think that is in accordance with the way public administration is evolving in the twenty-first century and therefore it is a good experience for us to go through.

You can talk with more authority as a watchdog if you have experienced the pain of the agencies you oversight. I think you have less credibility if you live an ivory tower untouched by the realities of the budget environment. So there have been those challenges. Working with the Privacy Commissioner, we have been focussed on the IPC, a one-stop shop—what is the optimum delivery of our resources? In the external environment, speaking as Information Commissioner, it is interesting to compare my New South Wales experience with my peers in the Commonwealth and other States. And we do that a lot to benchmark ourselves. Some of the challenges that are in New South Wales have been less than my peers and that has been because of things like the State Plan, goal 31, which promotes and puts on the agenda compliance with the Government Information (Public Access) Act, the ICT strategy, which names open government and open data. So there are other levers that enhance the work of the Information Commissioner; they reinforce that. Then the challenges of being—and I have said all along that we do not collectively have as good administrative record-keeping and

information management systems across the sector as we should to give people the information they want in good time in the form that they need it. So those foundation issues remain challenges for all of us. Is that okay?

**The Hon. ADAM SEARLE:** I was looking for more specifics like: What have been the key precise challenges that you have found in rolling out your organisation or building it up in the time you have held the position?

**Ms O'DONNELL:** In an inward sense, focussed on getting the business systems and processes in place. I mentioned in the annual report the challenge of actually buying a software program. Another very concrete challenge is that there is a significant level of compliance for a chief executive officer of a small agency, equating to the level of compliance of large agencies, and ensuring that you reach a proportional approach to compliance which ensures people can be confident in your integrity and transparency and that you still deliver good business services. That is a significant challenge.

**The Hon. ADAM SEARLE:** What about in the external environment?

**Ms O'DONNELL:** In the external environment we have been fortunate. We have a practitioner network which whom we can communicate who are actively, if you like, our many ambassadors out in the agencies. So to maintain a good and responsive line of communication to the right to information and privacy practitioners is a challenge but an important one. At a practical level, getting our own systems and processes in place to respond in a timely way to complaints, to make sure that our writing is targeted and helps agencies improve their practices, learning from every complaint or review that the Information Commissioner does. I think the doors have been open to us in terms of our own speech giving or participating in agencies' professional development. I have not found any doors closed. If I have asked for access to an agency, I have been granted it, as I would expect. Are they more general than you are thinking? Does that give you a flavour?

**The Hon. ADAM SEARLE:** It does. Is it your impression that agencies are embracing the spirit of the Government Information (Public Access) Act and engaging with it, or are you finding there are any particular sources of cultural resistance?

**Ms O'DONNELL:** Given that it is a sample of one and the cases are in the hundreds, not the thousands, this is what I see as a watchdog. As a watchdog you will always see what goes wrong and on the whole what goes wrong does not terrify me. On the whole what goes wrong are things that I think can be rectified by either better recordkeeping processes, better internal training and more targeted resources from us, so on the whole I am not seeing anything that concerns me or worries me greatly. Where we do encounter individual issues that are of concern, what we are comfortable to do is to immediately escalate those. If there was a problem with a particular agency I have no hesitation in contacting the head of the agency, and I have never found an agency head who said, "Get lost". The door has always been open.

The agencies about whom our complaints or our reviews are greatest are obviously agencies like Police, and you would expect that to be the case. People want personal information or they want information from Police. If I talk about that, we spend a lot of our time working with Police constructively but also bringing to their attention concerns and issues that we have. The dialogue remains robust, it is ongoing and we see incremental improvements. Sometimes we step back two steps rather than one but we will reengage, so that sort of interaction is good. Other agencies in the clusters, for example, have brought me in to speak to their executive and say that I am here as the CEO and GIPA is important. That sort of thing is just invaluable because if the director general of the cluster is supporting you that raises your profile.

**CHAIR:** Are there any lessons for Government to learn arising from your experiences over the past 12 months?

**Ms O'DONNELL:** There is nothing new in the message that I have as Information Commissioner. That is why I try to embody that myself and in the way I help the Privacy Commissioner through provision of resources. This is about good services to the citizens of New South Wales. If agencies are genuinely open and have good lines of communication and listen to the citizens it is more likely they will give them what they need in terms of government information. It is more likely that they will put that information on their website. It is more likely that they will respond in a timely and service-focused way. That is a constant message. I think it is often a challenge for us as bureaucrats to think "service", but that lesson is just reinforced by all of my experiences.

**CHAIR:** In addition to enhancing the experience of the citizen who is trying to interact, it can also be administratively efficient just to give them what they want rather than have people going in circles for months.

**Ms O'DONNELL:** Exactly, and you are a happier person at the end of it, you have more confidence in government processes. To admit that there is no document is a good thing rather than to have someone believe they have not given it to me, it must exist and then the question gets completely distorted.

**CHAIR:** Often the person who the citizen has contacted is not the CEO of the agency; it is an officer. In relation to recordkeeping often that can be quite a junior person and they do not want to make a mistake. It seems to me that one of the major blockages to the release of information is a quite understandable concern that a person may be acting beyond their authority to release the information, or it may be something that might get them into trouble in some way. They think that their job is to protect the agency therefore the default position is going to be no. Would you say that is a common problem?

**Ms O'DONNELL:** No. There are pockets of that and when we see those patterns—and my staff will bring that to our attention—then we will contact the agency. Sometimes we might need to make an example of a particular issue. We will do that and publish it, for example, if there are pockets in local government. It is not always easy. It is very case by case there and it is person dependent—exactly as you have said. That is why I am a great believer in getting your administrative systems good and your communications people responsive and proactively releasing information so that the issues are reduced.

I may have said this to you last time, but Dr Coombs and I have actively chosen to give our time to the practitioners. We actually have now set up a meeting. We have our four annual meetings with the practitioners here in Parliament House and then between that we now have a reference group of practitioners. So we have a personal commitment to dealing with the people who are on the front line because, as you said, they are the people with whom the citizen interacts and they can be the front door that is open or that is closed. Same with our office, we are judged by our front door. We have invested a lot of our time and effort in reaching out to those people, making sure they know the commissioners care about them and we get good feedback that they are happy. We go and participate and get their feedback and make sure they know that we support them. We also make a point of that when we do our public speaking to the CEOs. I replay a line: Love your records managers. Adore them and cherish them. They are really valuable. If they do well GIPA goes well. We try to do it that way to encourage that.

**CHAIR:** Further on that quality of the initial interaction, I can imagine that often it can be a very emotional experience for consumers seeking information. The matter that they want to find out about or pursue may, for whatever reason, be an emotional issue. Is it possible that sometimes the citizen's own behaviour can make it more difficult for them to get a positive outcome in those interactions?

**Ms O'DONNELL:** Without a doubt.

**CHAIR:** Is there some way that we can assist the public to know what their rights and entitlements are and what is a good way to maximise their opportunity of getting what they want?

**Ms O'DONNELL:** That is the perfect opportunity for all of us as oversight agencies to have a common approach. I know you have previously asked for information about our approach to how we deal with difficult complainant behaviour, as it is called, or unreasonable complainant behaviour. As recently as this morning I gave advice to someone from the courts about potential stalkers and angry and violent complainants. The more we can approach a common methodology for dealing with people and not become part of the problem ourselves—it is a whole-of-sector approach. It is not just watchdogs; I think it is anyone in the health sector, anyone offering services to human beings, really, in my experience. I will always promote the New South Wales Ombudsman's unreasonable complainant conduct manual and the principles there because that is, for mine, the best available. We try to embody them ourselves in our service charter and in the way we deal with individuals.

To give the Committee an example, I have an individual who probably has now emailed me individually over 40,000 times distressed and angry about a matter. I think that is right. I have tried to address that but there are some people you just cannot satisfy. There it is. We have a spectrum of complainants that we deal with but we try to give good advice and assistance and to model the behaviour that will deal with 90 per cent of the issues and not become part of the problem or exacerbate the problem. It means our front-line staff have to have good skills. They have to be very well supported by their managers. If something goes wrong you need escalation processes. It is quite a complex art.

**Dr COOMBS:** Did you want me to give my response to that question?

**The Hon. ADAM SEARLE:** I would very much appreciate it, Dr Coombs.

**Dr COOMBS:** My memory is that the question was about the challenges of the last 12 months and how we addressed them.

**The Hon. ADAM SEARLE:** Yes.

**Dr COOMBS:** I had the advantage of making a few notes while Ms O'Donnell went first. I have listed them under four headings. One, of course, is growing demand. The second is the balance between individual complaints but more strategic and systemic issues, and this is an issue of quite significant difference between Ms O'Donnell's responsibility in information management and my own, that policy advice. The next is engagement with government, councils and universities. Then also the issues which people think you as a Privacy Commissioner will be able to assist them with and those that the legislation actually allows us to have a direct involvement with. Also I would just like to thank Ms O'Donnell as the CEO. I think the way that she has been the IPC's CEO is very even-handed both to information access and privacy. I would like to acknowledge that very publicly because I think sometimes people think there will be tension and a fight for resources. It has been very harmonious and we are making good progress, despite not being easy.

Just on the growing demand, over the four years we have had a 300 per cent increase in matters concerning privacy arising from people in the community. You will see that there are individual matters raised by people outside of government wanting to have either information or particular matters investigated. For us when we oversight internal reviews, and that is the oversight role of what agencies have done, it is a very important part of our function so we apply the customer service principles that Ms O'Donnell was outlining. But one of the very important areas that I believe that we have to increase our reach and strength in is that strategic policy advice to government or councils and universities.

If we can get the framework right, you may have fewer individuals who, in the medium to longer term, will need to come forward with particular problems. We have been looking to involve ourselves when government is developing initiatives, policies or legislation, trying to ensure that the principles that concern privacy and the practices which are to be captured are respectful of the Health Records and Information Privacy Act 2002 (NSW) [HRIPA] or the Privacy and Personal Information Protection Act 1998 [PPIPA].

As you would have heard from us last time, we have been working well with the Government's Information and Communications Technology [ICT] strategy. The staff has had a significant involvement, with policies on, for example, Cloud Computing giving advice, the open data policy and a range of other issues. The important initiative, Service NSW, forms an important part of NSW 2021. We have been speaking to agencies about their governance, because the position that Deidre and I take is that we are two aspects of good information management: Access to information; and privacy and the protection of personal information. We want agencies to take that up as part of their corporate governance, so that their audit and risk committees look at it. Agencies need to do it when people come on board, they actually build in privacy training in the induction, staff maintenance, looking at performance agreements, so that those issues are brought to the fore in a way that applies everywhere, not just when someone knows about a possible breach or makes a complaint. These things are important.

Going to the issues about what people come to us and what the legislation provides. As you would be aware, the PPIP Act is concerned with the New South Wales public sector: NSW Government agencies, with the exception of state-owned corporations; councils—all of them in New South Wales; and universities. We are limited as to resources but we should not be seen solely as an integrity agency or regarded as a watchdog agency. Privacy is seen by some as not our issue. It is the issue of the people who provide services, it is how they do their business. We seek ways to get input there. In my case, in giving speeches to the National Disability Service because of the significant changes occurring there in terms of the service provision which will occur for people with disabilities, both in terms of the movement to the non-government sector but also the change occurring at the Federal level, where the money will go to the person with disabilities and not to the service provider. We are trying to work with them at the start of that process to provide resources which will help them to get out the message to service providers and to people with disabilities.

We seek to address these issues, particularly the cyber technology one, through events such as Privacy Awareness Week, where we can draw upon the resources of the Asia Pacific Privacy Authorities, where we have a range of bodies, because they are all small and have all been struggling with changing environments and the need to make savings to return to government. We find that, if we pool resources, we can do better through the various websites that have been set up on, for example, Privacy Awareness Week. We have a range of materials that can address the needs of people who come from an indigenous background or culturally and linguistically diverse communities. So that we have resources in many languages.

The issue is—and you will have seen it in our annual report—that the things that people want to speak to us about, such as surveillance, are not necessarily addressed by the legislation. They are concerned about the CCTV camera that may be on their neighbour's property that is overlooking their property or into their backyard where they have a pool and young children are swimming. There are a lot of concerns there. In that way we seek to provide information and advice as to what they can do and how to go about it. For example, it is surprising that many people will come to us directly, because they feel a reticence or difficulty about raising matters of that nature with the neighbours. The issue of drones has come up but there is nothing in the legislation that enables us to do anything, unless a drone is being operated by a New South Wales public sector agency.

**CHAIR:** Does any organisation have oversight of drones? Is there any legislation relating to drones?

**Dr COOMBS:** No, not specifically, that is my understanding. Some of the arrangements we have in place to best use resources is that the running has been taken on that by the Federal Privacy Commissioner because there are some issues that he is better placed to take up, because his legislation gives greater coverage of the private sector than does the New South Wales legislation. It also has implications for aviation and compliance there. That is Federal legislation, so that has been the rough allocation of responsibility.

**CHAIR:** Have you had complaints about drones?

**Dr COOMBS:** We have had some queries about drones, yes. Our response has been to explain the situation as it applies in New South Wales and then to refer them to the Federal Privacy Commissioner. Again, if people do not know where the drones are coming from, it is hard for them to know what to do. If it is your neighbour, you may have someone you can identify that you can raise your concern with. But the ones reported to us and that have come up in the press indicate it is not necessarily known. You will be familiar with the one that was outside a woman's bedroom window that was reported in the paper. She was not aware what it was or where it was coming from.

**CHAIR:** I believe this will be a huge area in the future.

**Dr COOMBS:** Technology is imposing challenges which were not thought of in 1998 when the PPIP Act was passed. In the same way, from some of these technologies, out of the challenges you get accepted norms of behaviour so that you get either direct intervention through legislation or you get voluntary codes which come in, not necessarily in the area of drones but in the area of technology generally. We should also be saying to the technology industry that if they are so capable of making this intrusive technology, it must also be capable of providing privacy security measures. That is the discussion we have been having with the industry, both through ICT strategy and separately with the Australian industry body, to try and get that sort of awareness.

The issues we are talking about are about privacy by design. At my last appearance before you, I spoke about the Canadian Commissioner who coined the term "privacy by design". One does not do a retrospective, "Let us try to make privacy apply now" where you have to go back and people say, "Oh, the technology has all been written and programmed and it is too expensive to change" but we have to think about it from the beginning. For example, when developing databases, you build that proposal in so that there is less likelihood that, for example, an attachment will be linked to an email that goes out that contains confidential client information. If you look at the Accident Compensation Corporation NZ breach that occurred in 2011, that was massive in its impact. That is what occurred—an email went out with an attachment that provided incredibly sensitive information.

**CHAIR:** On the issue of drones—you may wish to take this on notice—have you any thoughts on how this can be regulated? I am not optimistic about asking the IT industry to help us on this matter in the sense that so much technology now, irrespective of what the local industry wished to do, anyone is getting whatever they want all over the world. It is unlikely, in my view, that just the IT industry's actions alone—

**Dr COOMBS:** I agree.

**CHAIR:** While I accept that they can play a positive role, particularly in advising what can be done, I am really interested at this point in the regulatory framework. In my view it needs to be clear what the responsibilities are and this issue of drones in going to explode. We are going to experience problems with people who have an argument with somebody else or people wanting to know, "Is my wife or husband cheating on me?" or "Are my kids doing drugs?". We may have people putting drones over schools and public buildings and all sorts of things—not in a few years but I predict in the next 12 months. We are going to have massive problems that we are not prepared to deal with. What steps should we take to prepare?

**Dr COOMBS:** I think it is going to increase. The price of devices like that have dropped significantly. It is not in the order of thousands of dollars now, it is down in the hundreds and those with shorter range—

**CHAIR:** Broadcast quality footage.

**Dr COOMBS:** —can go straight to your mobile. It is an issue. I would like to take that on notice because it will require liaison with the Federal Privacy Commissioner and some thought-gathering from other jurisdictions on the subject.

**CHAIR:** It is a matter about which our Committee may wish to write to the Premier. If you can, give us any suggestions, because there is going to be a major incident. Why wait until we start thinking about how this can be managed?

**Dr COOMBS:** That is exactly the issue—privacy by design. Build it in now. Do not try to retrofit it in later.

**CHAIR:** Yes. I appreciate that. Just on that issue you raise in relation to policy, which of course is of intense interest to all of us, and realising that you are very constrained by what is coming through the door, as you have said, I think you have previously given evidence to this Committee that the exciting part about your position is that opportunity to make a difference. Clearly, that is going to be through policy. In relation to the information technology [IT] strategy, you said that you are working with the Government. Can you describe the nature that you are playing in relation to information technology strategy? For example, are you on a committee?

**Dr COOMBS:** Both Deirdre and I sit on a committee.

**CHAIR:** Can you tell me the name of that?

**Ms O'DONNELL:** Enabling Information Sharing.

**CHAIR:** In your report, I could not quite work it out. Do you have a list of committees in which you are engaged in your annual report?

**Dr COOMBS:** That is something that we can provide to you.

**CHAIR:** I would really appreciate that because will help us to understand.

**Dr COOMBS:** This is certainly at the moment the major one. My role, as you know and may I just remind you, is part time.

**CHAIR:** I get that, yes.

**Dr COOMBS:** So I am very careful about the resourcing issue. We are on the committee but we also have meetings with them directly in between meetings. So the drafts of the policies come through to us first so that we get input prior to them being further developed and fleshed out. They have found that we are able to give advice which is very much in the areas that they are looking at now, which concerns information management. I think that has been working very well.

**Ms O'DONNELL:** It has been good. The cloud issue was significant for the Privacy Commissioner, less so for me. The open government and open data policies have been important from my perspective, so it is

almost privacy by design and the Government Information (Public Access) Act [GIPA] by design in our relationship with the Department of Finance and Services, which is very encouraging. The working group we are both on is the Enabling Information Sharing one, which really is the optimum one for us both to be part of because everyone assumes that I want everything to be open and everyone assumes that Dr Coombs wants everything to be off the table. So we are myth busters, really. We are doing a bit of myth busting there.

**Dr COOMBS:** I also point out that our executive director, Meredith Claremont, is on some other working parties in the information, communication and technology [ICT] strategies. We are using the staff of the Information and Privacy Commission [IPC] in many ways. Jonny Ayres has also attended some of their enabling information workshops too. We are finding, or I am particularly finding because of the greater policy involvement that you get on the privacy side, that a lot of the initiatives people are now hearing about is to recognise our wish to be involved. I think the fact is too that we try to be supportive and to give people good information, which is useful and to the point, about how they can design their processes.

As I mentioned earlier, in discussions with Service NSW, a lot of agencies do not have to advise us; there are not any mandatory breach notifications in the Privacy and Personal Information Protection Act [PPIP] or the Health Records and Information Privacy Act [HRIP], but people are coming forward because they find that there is assistance that we can provide to them about how to manage this and some of the strategies they can put in place to actually mitigate any adverse impacts which have occurred.

On just one point, Deirdre made mention of the way that we seek to work with the practitioners in the field. That is very important. It is their arms and legs that do a lot of privacy work in agencies where we sometimes struggle to get the input. But from a privacy perspective—I use a health term—that is at the curative end. This is where people have made a complaint and the privacy contact officer is investigating that allegation of a breach of privacy. It is important that they do that well because then you can actually address the person's concern, which may be for an apology or whatever else. But for me it is very important that I get into the field operations where the breaches occur. I do not want to be there just pulling people out of the river—that is the analogy I frequently use. I want to be stopping them falling into the river. So I really want to make sure through the governance that the agency has in place and the people who are working and dealing with the service users' personal information on a daily or whatever basis, they know that the principles of the Privacy and Personal Information Protection Act and they act accordingly within that; and, if they do not know, they know where to go to get this information. We did this very extensive exercise last year when we looked at the privacy management plans of the New South Wales Government agencies. We did not get into the 152 local councils. I will speak separately about that if you wish.

**The Hon. ADAM SEARLE:** I do. I have a deep interest in that.

**Dr COOMBS:** I will be very quick then. Under the Privacy and Personal Information Protection Act, it is a requirement that for New South Wales public sector agencies to have a privacy management plan. We went through to see how many of the agencies did have that and we are in the process of writing up that report. It has been somewhat difficult and labour intensive because you have to go onto their websites and search around. I am just moving very quickly to local councils. In 2009, they started a process of preparing a draft model privacy management plan for councils. That process was quite protracted for a variety of reasons—resources on both sides, changes, and various reasons. That was released just at the beginning of this year.

So we finally got it done and it is out there. Obviously many councils share things in common. They should not each have to struggle to write with limited resources their own individual privacy management plan. There is a model one which provides information, for example, on public registers and the like or minutes of council meetings. It gives them the basics and then they make some variations according to the processes and procedures of their own council. I have done some work with the Local Government Managers Association to try to get privacy awareness to the management level. I have been speaking to them and giving talks. Deirdre I know has had a lot of contact previously through the Local Government Managers Association.

**The Hon. ADAM SEARLE:** Are you finding that there is an increase in difficulties involving councils—that is, people wanting more information from councils, or councils having difficulty in managing those requests?

**Ms O'DONNELL:** I talk about local councils being at the bleeding edge of service delivery. There is no doubt the interaction is very immediate and very strong. There are some who have good practices and have good information management or records management systems and who are able to deal competently and

smoothly with requests; and there are others where, for example, personnel may change and the front-line person may not know. So it is a very varied mosaic. On the whole we engage significantly with the peak bodies, the Local Government Managers Association and the governance associations and the practitioners to try to assist them.

I think it is a daily challenge for them to do it well. One of the big problems that has emerged out of the legislative regime is the conflict between the Copyright Act and the Government Information (Public Access) Act. That has really caused enormous problems for local councils. We have not been able to resolve it because there is a real conflict between what you are meant to put on your website versus what development applications and the Copyright Act say you can. We made a small submission to the recent Law Reform Commission review of copyright legislation nationally, bringing the perspective of the local government voice that had been raised with us. We thought that was really important, and the policy team did that for us. At least we have put on the table that this is a big problem and how do we get to a solution? We do not yet have a solution. That has been probably one of the most notable from mine—local government.

Another big issue is around local government and internal audits and the publication of those reports, what should be in the public domain, the accountability tensions between fixing up your problems versus being proactive and open about the problems you are fixing up. So we have worked quite closely with the Institute of Internal Auditors and the local government internal auditors on that to help them get to a place where they have got policy guidance that is useful. They have been my focuses.

**The Hon. ADAM SEARLE:** Are you each finding local government to be a significant area of your work? And is it growing?

**Dr COOMBS:** I cannot give you quantitative numbers on that, but there is a sense that it is a very important part of it.

**Mr KEVIN ANDERSON:** Madam Chair, we will run out of time.

**CHAIR:** We are getting short on time and there are lots more questions we would like to ask you. I just draw that to your attention.

**Ms O'DONNELL:** That is fine. We will take that on notice.

**Dr COOMBS:** We will take that on notice.

**The Hon. ADAM SEARLE:** Thank you.

**Mr KEVIN ANDERSON:** Ladies, thank you for our time. In relation to NSW Health, the Ministry for Health, pushing with Telehealth and using the internet a lot more frequently with clinicians comparing notes and someone in remote New South Wales being consulted and advised from someone, say, in the John Hunter Hospital or even the Westmead Children's Hospital, or whatever, and in terms of the privacy information that is being transmitted between patients, have you found any instances where areas of concern have red flagged areas for you?

**Dr COOMBS:** No, not in terms of the written correspondence or the internal reviews which we have been undertaking. I am not saying it is not an issue, but in terms of having a high presence in the matters which we receive, no. If I could just very quickly explain: As you know, NSW Health has had three projects on e-Health for about a decade. They have been linked quite closely to the Health Records and Information Privacy Act and at the Federal level the personally controlled electronic record. I think the title has changed. Those projects will become part of that initiative. In New South Wales, if you were involved, you had to choose to opt out if you did not want to be a part of it. The Federal initiative will be an opt-in arrangement. At the Federal level they have received some complaints—I do not know the exact number; I am happy to take that on notice and get back to you—under the personally controlled electronic health record legislation.

**Mr KEVIN ANDERSON:** What about at the State level?

**Dr COOMBS:** I am happy to have a closer look and get back to you on that as well.

**CHAIR:** Commissioner O'Donnell, have you been out to the State Records office at Kingswood?

**Ms O'DONNELL:** No, I have not.

**CHAIR:** Can I recommend that you make that visit because it is obviously a huge repository of physical government information?

**Ms O'DONNELL:** Okay.

**CHAIR:** Do you have any thoughts on the digital strategy making more of that existing information available? As I understand it the strategy is looking quite properly at information that is being created now and in the future, but could you look at the opportunity and the cost of these records and which records are prioritised? Members of the public go in and do a lot of work creating digital copies of records. Could that be harnessed? Finally, there is a major budget issue for the State Archives and in the event that the funding for that were to fall below what is viable, as Information Commissioner could you take an interest in that matter and give us any thoughts you may have?

**Ms O'DONNELL:** I was formerly State Records Commissioner and Chair of the State Records Commission in Western Australia and I have always had a very strong interest in that area as well and see that it complements my role here. We have a very good and vibrant relationship with State Records now and the digital archives project, and Cassie has come and spoken to our practitioners. We are working together. As you know, Publications NSW, which is now OpenGov NSW, is part of Goal 31, as I am, so there is a lot of collaboration. I am remiss in not having gone to Kingswood. I know from history how badly served State Records can be at a State level, so thank you for that.

**CHAIR:** Absolutely, and that is why if you took an interest it would certainly reassure me. In my view, and I could be mistaken, there are some very significant issues that are going right under the radar out there and they need a champion.

**Mr LEE EVANS:** I congratulate you both on your enthusiasm. It is very refreshing. The Committee notes that the new IPC website has provided an improved online presence for the Office of the Privacy Commissioner. Can you provide any data in relation to trends in usage since the merger of the Privacy Commission with the Information Commissioner?

**Dr COOMBS:** Quantitatively, I will take that on notice. We set up an initiative called "Ask the Commissioner", with Deirdre's picture and my picture, to personalise internet contact from the community. We get a variety of requests. We have people who really just want to raise a query. I will not identify anybody but one request came in where they wanted to take photographs of their schoolchildren in a group setting and were seeking some guidelines about best practice and what they should do with regard to privacy. Did they need to seek the authority and approval of other parents for other children to be photographed? You get an enormous number that come through in this way and it is really good to see. That has been a good initiative. The numbers have died off in recent weeks.

**Ms O'DONNELL:** They have. We were novel for a bit, weren't we?

**Dr COOMBS:** We got quite a number through. There is still a lot more we could do on the website. With fewer resources it is important to use it as a way of getting out information as well as finding out what people's problems are. Recently the communications area took the initiative of putting out some information sheets which concerned CCTV surveillance and ID theft and what you can do about that. We are now looking at getting up a fact sheet on tips for parents, children, teenagers and schoolteachers about how to protect their communications online—just some very practical things. We think that is what is required—to be practical and short and use plain English in those communications. We are still exploring that.

**Ms O'DONNELL:** And learning. I can let you know about the website hits because I have my dashboard for the end of January. Our combined website hits were just over 140,000 and the OIC and Privacy hits seem to be quite even, at least in the last financial year. I will get you a more comparative analysis so you can see how things have grown.

**Dr COOMBS:** Specifically since the new website?

**Mr LEE EVANS:** Yes. The Privacy Commissioner can decline to investigate a complaint if it is considered frivolous, vexatious, trivial, lacking in substance, or not made in good faith. Do you keep data on the number of complaints that your office declines to investigate, and how many are referred to other agencies?

**Dr COOMBS:** We most certainly do. I was having a conversation with one of our officers just prior to coming here about how we communicate to people our decision that we think either it is not a complaint I can deal with or that their best option may be to seek an internal review from an agency. If I investigate they do not then have recourse to the Administrative Decisions Tribunal. If they go the internal review route through the agency and they are not happy with the outcome or the agency takes more than 60 days to do the internal review, they get access to the Administrative Decisions Tribunal. It has determinative powers that I do not have and there is also some monetary compensation that possibly can be given in some cases.

**CHAIR:** Commissioner O'Donnell, does the Government have any policy in relation to the sale of government information?

**Ms O'DONNELL:** Not to my knowledge. It is an issue that comes up whenever we have workshops as a possible barrier to government information public access [GIPA]. We have intellectual property in this data but I think it has been pretty comprehensively addressed through the ICT strategy and through recent hackathons. For example, there was a health one last month where health data was made available to the general public, apps were developed and new and better outcomes for citizens came from using that government data well. We have a lot to learn from what has happened at the Commonwealth level where traditionally the Australian Bureau of Statistics used to charge a lot of money for its data and all the work it did. It was one of the very early adopters of open government and set the data free to the benefit, I think unquestionably, of the whole economy.

**CHAIR:** Absolutely.

**Ms O'DONNELL:** That is always a case study. One of the stakeholders with whom I collaborate closely is the Chief Scientist, Professor Mary O'Kane, who is a great advocate of setting government data free in the interests of the wealth of the State. She spoke on 20 February at a conference in Brisbane. She will always make reference to GIPA and to the positive benefits that using open government data can yield to the whole economy. Keeping it to create a return on my precious investment as a public servant should become less and less of an issue and we should be more and more focused on the benefits to the whole economy and our wealth.

**CHAIR:** In the case of something like the land records office—I think it is fantastic you can get all that information online—is there any limit to what they can charge for that, because every agency is under the pump on the budget side?

**Ms O'DONNELL:** Under GIPA, no. That does not touch on that. It is just that if you request information there may be reasonable administrative costs.

**CHAIR:** But it is a commercial operation; it has been contracted out and there obviously is a public interest that the fees being charged are not too excessive.

**Ms O'DONNELL:** Yes, to continue to provide the service adequately.

**CHAIR:** And that are reasonable in relation to the sale of information which, by the way, has been collected at public expense.

**Ms O'DONNELL:** I think there are a lot of philosophical issues that are really just beginning to emerge across the nation under our more open government data. The Commonwealth Information Commissioner did a study late last year on the value of public sector information to try to quantify economic benefits of making the data free. We cannot, and we have not replicated that in New South Wales, but we certainly draw on that sort of analogy and that will inform policy.

**CHAIR:** If I can give you a particular area of concern and it is of very high public interest—convict records—of which there is a finite number left in existence. They are spread across different agencies and unable to be resourced in order to digitalise those. Yet there is a huge demand from people wanting to do family research or whatever to access that information. They are out on the old microform thing from the 1970s and some of that is distributed. Ideally they need to be digitalised. In the event that the Government does not

undertake that project itself, it has private organisations wanting to do that work for their databases. At that point we lose control of some of our most precious information and another organisation can charge and profit from our information. I find that whole situation very troubling.

**Ms O'DONNELL:** I hear what you say. It seems to vary case by case. Bus data is different from convict record data. There are different public interest and different costs.

**CHAIR:** The information belongs to the people of New South Wales.

**Ms O'DONNELL:** I agree with you. Yes, I agree.

**CHAIR:** If people are signing contracts to get private organisations to come in—and I understand why they are doing it, because the alternative is the information is not available at all—they are feeling under pressure to make it available through this means. I do not criticise them for that. I am just saying we need to keep control of our own unique and precious information and it needs to be made available. There is quite a lot of philosophy around the decisions being taken.

**Ms O'DONNELL:** If I may look into that and compare it with my peers and what their approaches are and what trends they are seeing themselves. Again, it is a little bit of policy research. It is really interesting and very important.

**CHAIR:** I think the biggest website is ancestor.com, which has been set up by a church group I believe. Nobody can tell me who ancestor.com is. It needs to be publicly available and if they want to make it available that is probably a good thing as long as it can be made available in other forums, at which point they might decide it is not commercially viable to do it. Can you see what I am saying? We need some strong governance arrangements.

**Ms O'DONNELL:** And the costs and benefits and how you make those decisions and what the public interest determinants are.

**CHAIR:** Maybe we should wait two years and completely retain our own copyright over our own information? I appreciate you looking into that.

**Ms O'DONNELL:** It is a very interesting topic, thank you.

**CHAIR:** If there are further questions, are you happy for us to put them to you on notice?

**Ms O'DONNELL:** Of course.

**Mr KEVIN ANDERSON:** I notice in your annual report the fact that your recommendations are not enforceable is a key feature of the right to information adopted by New South Wales. Other jurisdictions differ. You say it is an issue that will doubtless be considered in the fullness of time. What is your view on that?

**Ms O'DONNELL:** Speaking as Information Commissioner, because I am an ex-Ombudsman, I am very comfortable with that. I think there are other ways of making sure that your recommendations are enforced. However, and I am being very open about this, everyone else has gone for a different model so New South Wales should take stock in five years' time when it reviews my Act to see whether the benefits to citizens have been curtailed by the fact that we have taken a different approach. My bias is clearly there: I think you can deliver administrative justice whether you have enforceable powers or not. I think taking the philosophical approach Dr Coombs talked about allows you to say to the agency: This is your problem, you have to solve it. If you make a binding decision they will just say it is a one-off, the commissioner decided and it does not become entrenched in their business processes or their business thinking and it is easier for them to divorce enforceable decisions. Whereas, if I am able to push it back to them and say: look to yourself, here are your guiding principles, this is a just outcome, I think that is a better longer term solution. But it is a very personal view.

**Mr KEVIN ANDERSON:** Dr Coombs?

**Dr COOMBS:** The Federal Privacy Commissioner does have determinative powers. It has been a significant issue. Some of the people in the community feel they have not been used enough, advocates for privacy, and others feel it makes it difficult to have a relationship where you come and seek advice because you

know more draconian measures can be put on you. I think in New South Wales the backup from the Administrative Decisions Tribunal for people who are unhappy with the outcomes, for example, of internal reviews works well. If we were to have that sort of determinative power we would need very much more significant resourcing to undertake it satisfactorily. Rather than change things around at this point I think it would be better to review it in the light of the suggestion made by Ms O'Donnell.

**Mr KEVIN ANDERSON:** Only 15 per cent said they were unhappy with the reviews. Maybe that is an indication that it is tracking okay?

**Ms O'DONNELL:** Could be.

**Dr COOMBS:** Hope so.

**Ms O'DONNELL:** And getting better because we are committed to learning all the time, but thanks for that question.

**(The witnesses withdrew)**

**The Committee adjourned at 1.05 p.m.**