LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP
Mr JJ McDonald MP
Mrs MF McMahon MP
Ms CP McMillan MP

Staff present:

Ms R Easten (Committee Secretary)
Ms K Longworth (Assistant Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC MEETING—OFFICE OF THE INFORMATION COMMISSIONER

TRANSCRIPT OF PROCEEDINGS

MONDAY, 30 APRIL 2018

Brisbane

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The committee met at 10.43 am.

CHAIR: Good morning. I declare this public meeting open. The purpose of the meeting today is to hear evidence from the Information Commissioner, the Right to Information Commissioner and the Privacy Commissioner as part of the committee's oversight of the Information Commissioner. I am Peter Russo, the member for Toohey and chair of the committee. With me here today are: James Lister MP, the member for Southern Downs and deputy chair; Stephen Andrew MP, the member for Mirani; Jim McDonald MP, the member for Lockyer; Melissa McMahon MP, the member for Macalister; and Corrine McMillan MP, the member for Mansfield.

Under section 88 of the Parliament of Queensland Act 2001 and schedule 6 of the standing orders, the committee has oversight responsibility for entities including the Information Commissioner. The Right to Information Act 2009 and the Information Privacy Act 2009 set out the functions of the committee under the Acts. These include: monitoring and reviewing the performance of the Information Commissioner against its functions; reporting to the Assembly on any matter concerning the commissioner; examining the annual reports tabled in the Legislative Assembly under the acts; and examining each report of a strategic review of the Office of the Information Commissioner.

Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind them that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the meeting at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website.

Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. I ask everyone present to turn mobile phones off or to silent mode.

GREEN, Mr Philip, Privacy Commissioner, Office of the Information Commissioner

LYNCH, Ms Louisa, Acting Right to Information Commissioner, Office of the Information Commissioner

RANGIHAEATA, Ms Rachael, Information Commissioner, Office of the Information Commissioner

CHAIR: I now welcome the Information Commissioner, the Acting Right to Information Commissioner and the Privacy Commissioner. I invite you to make a short opening statement after which committee members will have some questions for you.

Ms Rangihaeata: Good morning, Mr Chair and committee members. I appreciate the opportunity to make an opening statement. Appearing with me today are my two deputy commissioners: Mr Phil Green, the Privacy Commissioner; and Ms Louisa Lynch, the Acting Right to Information Commissioner. We intend that they both make very short opening remarks, if you permit.

CHAIR: Of course.

Ms Rangihaeata: As you outlined, this meeting is to examine the performance of the office and the annual report in 2016-17. I would also like to acknowledge the significant contribution of our inaugural RTI commissioners to the leadership of the office and in particular the external review function from 2010 to 2017 before retiring from the office. Ms Jenny Mead and Ms Clare Smith job-shared this role and modelled successful flexible work practices. Ms Lynch has been Acting Right to Information Commissioner since August 2017. A selection and appointment process is underway.

2016-17 was a significant year for a number of reasons. Firstly, the independent strategic review of the office was finalised and tabled in parliament. Importantly, the strategic review recommended that the office be given permanent, ongoing funding to meet the additional demand experienced since policy

changes on commencement of the Right to Information and Information Privacy Acts in 2009. For almost nine years since the legislation commenced, OIC has met this demand using temporary funds approved most years on an annual basis.

As reported in the 2016-17 annual report, we are experiencing record or very high demand across most of our services. This trend has continued in 2017-18. However, external review demand has continued to climb beyond our expectations, as Ms Lynch will outline shortly. Our inquiry service continues to experience significant demand from the community and agencies. The service provides assistance about the operation of the legislation and our highly skilled, professional and experienced staff also publish extensive online guidance and deliver training that is critical to help improve community awareness and agency compliance and good practices.

Our audit function also plays a key part in helping improve agency practices and provide assurance to parliament about agency compliance. We conduct different types of audits, from self-assessments across the sector to in-depth compliance audits of particular agencies. In 2016-17 we reported to parliament on a number of audits including the compliance audit of the Gold Coast Hospital and Health Service; desktop audits of hospital and health services, local governments and hospital foundations; and the 2016 self-assessed electronic audit of all agencies. We also conducted a privacy audit on mobile apps which was reported on to parliament in early 2017-18.

The audits reported on and conducted during this period demonstrate a range of strategies that we use to audit and evaluate compliance. We also reviewed our audit planning framework and methodology during this period and entrenched a new structure with a dedicated director leading the audit function in accordance with the findings of the strategic review report. Audit findings and recommendations provide valuable insights into the strengths and weaknesses of individual agencies, sectors and systemic issues. Such insights inform our priorities for awareness, training and guidance and agency engagement.

Even where an audit report relates to one specific agency, we use the report to engage with other like agencies in particular. Media also tend to pick up on key findings and recommendations, as has recently occurred with the Townsville City Council compliance audit report in March. Media in Townsville and other regional areas ran stories about the report. Townsville City Council has responded positively to the report. We look forward to following up on progress against the recommendations within the next couple of years.

Similarly, the privacy and mobile apps report last year attracted local and national media attention. The findings are relevant broadly to all agencies and across jurisdictions. A central message arising from the report that we are promoting as part of Privacy Awareness Week next month is the need to conduct privacy impact assessments early to ensure privacy implications are identified and addressed in adopting and refreshing new technology.

Our key challenges, risks and priorities are addressed in our response to the questions on notice. However, I must also mention the impact of the report on the review of the Right to Information and Information Privacy Acts which was tabled in October 2017. We look forward to implementing the recommended amendments. However, I note there will be a significant amount of work to do for the office to ensure our internal and external stakeholders are ready and able to work with the new provisions. In a time of record demand for our services, particularly for our small team that will provide guidance and training, this will be a challenge. Fortunately our team is an exceptionally talented, professional, experienced group of colleagues committed to providing a high level of service as an independent integrity body critical to accountability and transparency in Queensland.

Ms Lynch would now like to provide some brief comments about external review, followed by Mr Green.

Ms Lynch: I would like to open by acknowledging the recent retirement of Jenny Mead and Clare Smith, Queensland’s inaugural Right to Information Commissioners. Over the years of their shared service at OIC they built a strong and adaptable external review team. I am now building on that strength and adaptability to meet the challenge of increasing demand for OIC’s external review service.

We conduct reviews of decisions fairly, independently and in a timely way about access to and amendment of information under the Right to Information Act 2009 and the Information Privacy Act 2009. The decisions we review are made by government agencies, ministers and public authorities including local governments and universities. In each review we undertake we stand in the shoes of the original decision-maker, assess the information in issue afresh and take into account the agency’s decision and relevant submissions made by parties to the review. An external review decision replaces the decision of the agency.

Under the legislation we are also tasked with encouraging early resolution of applications by identifying opportunities and processes for informal resolution. In 2016-17, 88 per cent of reviews were resolved informally compared to those resolved by written decision. Excellent communication is essential to achieving informal resolution. We address applicants' concerns through a variety of strategies, including for example inspection of documents, explanation of agency record-keeping practices or clear explanation about how the legislation applies to specific information and issues.

Over 2016-17 and indeed continuing into 2017-18 we are receiving high numbers of external review applications. There is no identifiable trend in the types of applications we receive or from whom we are receiving them. I want to highlight to the committee that access to additional temporary staff, continuous appraisal of our internal processes and support systems and our learnings from successful strategies that resolved reviews has ensured that in 2016-17 we had no reviews open for more than 12 months at the end of the financial year. Also, our median days to finalise a review was 86, with the target being 90 days.

Large numbers did have an impact, though. Having received 515 matters compared to 366 in the previous year, 2015-16, unsurprisingly we were unable to meet the 100 per cent target in relation to the percentage of reviews finalised to received.

There is uncertainty around whether OIC will receive permanent recurrent funding to enable us to engage additional staff on a permanent basis. OIC has sought this funding from government for the 2018-19 budget in accordance with the recommendation of the independent strategic review in 2017. Without it, our level of output will slip. If levels of demand remain at high levels or increase further, matching resources to demand with or without the permanent funding for additional staff will be challenging.

In 2016-17 timeliness was kept in check through hard work, a case-by-case approach to each review and a continued focus on informal resolution. This will continue, as will our rolling program of process appraisal. The fairness and independence of the external review function cannot be comprised. In the face of increased demand, it is timeliness that is most at risk. However, by careful management of those issues that are within our control we will remain flexible, energetic and collaborative as we strive to ensure that the successes of 2016-17 continue. Thank you very much for the opportunity to address you today.

Mr Green: Thank you for the opportunity to make a statement as well. The times are very interesting in privacy and data security at the moment. You cannot open a paper without seeing some new challenge or some new issue. I think the Facebook and the Cambridge Analytica issues will have rippling effects around the world around government use of data and data analytics. Although they are in the federal jurisdiction, my colleagues are looking at that very closely and participating to some level. Government does use Facebook. I think law enforcement particularly use social media very effectively. That is certainly going to be of interest.

The other big thing that has happened federally this year is that the mandatory data breach legislation has taken hold. That has been going along quite well since early May or late April. Again, this is federal legislation but worldwide that issue is being looked at. Europe will be adopting mandatory data breach notification. The UK and Canada have already enacted legislation. Throughout the US it is mostly in place. We have a voluntary scheme for state agencies. We have seen increased activity in that area already from our enquiries. It is generally good practice. From the federal survey into privacy awareness and practices it was found that 96 per cent of people expect to be notified if their data is breached. It is good practice in general.

The other big thing happening worldwide is the commencement of the general data protection regulations regime in Europe and in the UK, in the first instance, before they exit. That is probably the gold standard worldwide in data protection and privacy. We will be looking to that. At the federal level Australia was, two years prior, looking at enacting the mandatory data breach scheme. We will implement that in the European context. Again, Australia and the Queensland jurisdiction are going to be heavily influenced by those things. Data has no borders. These issues, as we have seen from Facebook and some other high-profile breaches, go across the world very quickly, particularly in the cybersecurity arena.

Our biggest function in privacy has been, as the Information Commissioner foreshadowed, in the app area in terms of privacy by design and doing privacy impact assessments early. I was fortunate enough to appear before the committee earlier this year on the biometrics legislation. The enabling legislation at the federal level is still being debated in the federal parliament. It is one of the big issues and one of the big areas we have given advice on through 2016-17, and prior to that we had been involved in initial discussions. It is really important that we have robust debate on those sorts of things,

that there is consideration and that we get in early. Fortunately in that area we have had some success. There are ongoing privacy impact assessments for access to that. The law enforcement access and the transport access are the first cabs off the rank, of course. Others are interested in getting their hands on that system. Australia Post has made some moves in that regard. Hopefully we will continue to brief on that through 2018 and progress.

Another big area through 2016-17 has been NAPLAN in terms of having a national system to record and do live testing of students in the NAPLAN testing area. The Queensland education department led Australia's work on impact assessment. It was the first jurisdiction to do a privacy impact assessment. That all went very well. It was very thoroughly done. We have no concerns other than the usual ongoing ones in terms of the privacy impacts of that system. The security seems to have done very well.

Another area is the My Health account—again, a federal project but the states have been particularly involved in that. That has taken quite a bit of work. You can see from our annual report that we have done over 200 advices. A lot were done for government departments—over 79, I think. That will be a big area of focus in the next year. It is important to get these things right, and that at least alleviates complaints down the track.

Privacy Awareness Week last year was a roaring success. We are hoping 2018 will be as well. It is only two weeks away. The Attorney-General will be hopefully opening again for us. We have a great line-up of speakers. Last year we had the UK Information Commissioner, who was a former privacy commissioner in Canada. She was a fantastic speaker, raising awareness about international implications which I think are important for the Queensland jurisdiction to be aware of.

The complaints area has been relatively steady, unlike the external review numbers. There was an increase of a couple more. The legislative amendments that we have suggested about getting better hold of the complaints that are dealt with in agencies themselves will help us look at trends within agencies. We are a little bit blind on that. I think the lower level of complaints is a sign of healthy activity in agencies in terms of doing complaint resolution internally in the agencies. Hopefully privacy awareness is on the increase from all of the increased media attention and the incidents. Again, it would be good to get data there if we could.

Our timeliness has suffered somewhat in the complaints area mainly because of increasing complexity but also a number of factors in the complaints resolution process are not in our hands. If complainants do not want to prosecute their complaints quickly, unless they are extremely scary or difficult issues in agencies we do not tend to push them that hard if they have, say, health issues. Key priorities for us will be the legislative review and the strategic review implementation. We are looking forward to perhaps boosting some activity in the privacy arena, subject to cabinet and parliament.

Mr LISTER: Thank you very much for your appearance today, Information Commissioner and your staff. It is good to see you again. I note that you took time out of your program to come and brief the new members of the parliament after our election, and we appreciated that. My question is to you, Ms Lynch, regarding external reviews. In your observation have there been any orchestrated or systematic attempts to deprive an applicant of information by a breach of process or something like that?

Ms Lynch: No, I have not observed that at all. Our numbers are up but there is really no identifiable trend. We are seeing more of everything across-the-board. That is more from applicants who make multiple applications and more from individual applicants on an issue of significant public interest that arises from time to time.

Mr LISTER: That is what I am most interested in.

Ms Lynch: No, we have not. With agencies where external reviews are coming from, there is no particular trend there. The issues are typically refusal of access and issues to do with record keeping and the sufficiency of an agency's searches for information. We collaborate well with agencies and applicants alike on external review. We only see about three to four per cent of all matters that are made across the state. It is hard to have a really good eye on what is happening in every agency out there.

Mr LISTER: My question goes to your experience and that of the staff that you oversee. When an investigation is made, or there is an external review as you call it, do you see instances where—obviously this is the sexy part that people hear about—some big organisation or some big department is denying someone information? Have you seen examples where an applicant has been wrongfully denied information and it appears that there has been an orchestrated or deliberate attempt to do that, as opposed to it being an oversight or a misunderstanding?

Ms Lynch: No, I have not. That is the short answer.

Ms McMILLAN: If it is appropriate to do so, could you please informs us of any reports you are planning to table in the parliament in the near future?

Ms Rangihaeata: As I said, we have recently tabled the audit report about the Townsville City Council compliance review. We are currently towards the end of a compliance audit about the Ipswich City Council. I envisage that we will be presenting that report to you, Mr Chair, for tabling in parliament in the coming weeks. That is our next report that we expect. We are also working on an audit of the follow-up of the implementation of recommendations about the Gold Coast City Council. We conducted that audit in 2015-16—or it may have been in 2014-15. We are towards the end of that process. We expect to table that report in this financial year as well. They are the next two reports that I envisage would come to the committee.

Mr ANDREW: Mr Green, I am not sure whether this pertains directly to you. You have noted that the OIC would like to see modernisation of Queensland privacy laws given the challenge posed by the digital age in protecting personal information. Can you outline some specific examples of the aspects of the relevant legislation that require modernisation?

Mr Green: Certainly I am happy to address that. We have made a public submission to the Attorney on this that the committee may be aware of. There are a number of matters. The technological change in pace is the one big pressure point—all the new technologies that agencies are rightly pursuing and looking at and the pace of information exchange and data exchange. One of the first points in the European law that I mentioned earlier, the GDPR, is mandatory data breach, because if people are not aware of it they cannot complain necessarily. Europe pushed that, and internationally that was pushed as one area of amendment. We suggested that Queensland adopt that perhaps in a staged approach because it helps drive good practice. Agencies become aware of their weaknesses. They can mitigate them and put in place proper controls. If people are told about it, they can take steps to protect themselves. One of our speakers this year in Privacy Awareness Week will be talking about identity theft and what you do after you have been hacked or after you have had your identity stolen. It is much better to take proactive steps if there has been a data leak or something like that to protect yourself and maybe take preventative action.

In the complaints area we suggested having an own-motion power so that if we hear about something that is not just complaint driven we could take action to investigate earlier, rather than do an audit or a performance evaluation which is a softer approach at times—or if it is more systemic we could look at specific complaint. For instance, I did receive inquiries about the Moreton Council's use of audio recording in their council where they were using CCTV but they were also implementing audio recording and not necessarily letting people know about it or recording conversations that might have been in breach of other legislation like the Invasion of Privacy Act. We think those two areas particularly would be enhancements.

We suggested possibly a simplification of our principles. Australia has moved ahead in the privacy area. The federal government has enacted Australian Privacy Principles. We still have a hybrid of the national privacy principles, which were the former Australian laws that apply to health data, and information privacy principles that apply to everyone else. That is somewhat confusing in the public arena as to which principles apply, and we have duplicate sets of guidance on that. Even the tribunal is faced with knowing two different laws. I suggested that we consolidate ours and update them somewhat and base them on the Australian Privacy Principles.

In terms of the private sector, which we do not regulate—we regulate in the context that if states are providing services through companies they get caught by our legislation—it would be better for them in a corporate sense if we had a consistent law with the federal jurisdiction. The federal jurisdiction has brought that mandatory data breach in now as well.

Another area where our Act is probably deficient is transfer of data overseas. There is an outright prohibition on the transfer of data, with people not having knowledge of that. In the internet digital age that is quite difficult to manage and our Act was not drafted for that circumstance.

Those are a few areas. I am happy to table the suggested amendments, if we have not yet tabled them. There is a bit more detail in that. Those are a few matters that we would suggest.

CHAIR: Do you wish to table them?

Mr Green: I believe we may have provided them.

Ms Rangihaeata: We have provided them previously to questions on notice in 2017 or 2016. By all means, we can table them for the current committee.

CHAIR: No. We will be able to locate them.

Mrs McMAHON: In response to one of the questions on notice in relation to the external reviews, you stated that permanent funding has still not been allocated to meet the ongoing demand from the community for external review applications and without permanent funding the timeliness of attending to those is impacted. For the benefit of the committee, could you explain specifically the external review applications and what that involves?

Ms Rangihaeata: Do you mean in general how it works?

Mrs McMAHON: Yes.

Ms Lynch: I can answer that, if you like. From the outset we make preliminary inquiries upon receipt of an application to determine if we have jurisdiction to accept it. That kicks off very quickly. We have a small team based structure within the office. There is an early assessment and resolution team. Their job is to assess jurisdiction and accept them if we can. Most are accepted. Then it is a matter of receiving the information at issue, considering the agency's decision and looking to see whether we can find a way to resolve it informally. Often, as I mentioned in my statement, it is by providing a quick preliminary view once we have assessed that information, considered the agency's decision and think, 'Is this ballpark correct or not?' If we think some more information can be released then we advise the agency of that. We need to afford procedural fairness to all parties. If we form a view that is adverse to someone, we give them an opportunity to provide submissions to us and take those into account before we reach a final view.

We find there is a window. If you can get into matters quickly and early, people are open to resolution, especially on the phone. We do a combination of oral and written work. We will have people come and inspect documents if that will address their concern—if an agency is concerned about release because of copyright issues, quite validly.

If it is not able to be resolved in that 90-day window, it will be allocated to one of our two review teams. A longer external review can sometimes involve hundreds and hundreds of documents and parties who are very entrenched in their position and are unwilling to consider informal resolution—to let some issues go and concentrate on a particular issue or a set of documents, for example. They will provide voluminous submissions. We sometimes find months in—particularly with regard to the sufficiency of an agency's search for documents and if we look into that—hundreds more might be located. There is a lot of to-and-fro and that is where timeliness comes in, because we have to ensure that we are affording people procedural fairness. Ultimately, matters may still resolve informally but it might be at month 9 or month 10, or they go to a written decision because people do not accept the views we have given. We will provide them a written determination which they can appeal to QCAT if they wish on an error of law. That is the review process in a nutshell.

Mrs McMAHON: It was indicated in the annual report that you are at the highest number of external reviews that you have had for quite some time. Is your office still experiencing a high—

Ms Lynch: Yes, it is. I think to 30 April we are at about 525 matters, so we have already exceeded last year's total of 515.

Mrs McMAHON: It is still on an upward trend?

Ms Lynch: Yes.

Mrs McMAHON: One of the issues raised was permanent funding. Do you have any comments or suggestions on what is required to address those issues, particularly relating to processing external review applications?

Ms Rangihaeata: In terms of funding?

Mrs McMAHON: Yes. You made reference to permanent funding issues for external review applications. Is there a suggested way forward?

Ms Rangihaeata: Yes. At the moment what we have proposed to government is consistent with the recommendations of the strategic review. As we highlighted briefly in the response to questions on notice, we are monitoring the further increase in demand that we are seeing. However, the current request for funding is consistent with what we have been receiving on a temporary basis as access to accrued cash reserves. That has been four review officers on an annual basis as temporary staffing, and we have been receiving that as an annual approval for a number of years with the exception of one year. That is what we are proposing as recurrent funding going forward.

As Ms Lynch has said, we are already past the demand that we experienced last year. The highest level of demand we have had in the last nine years was 533, so we expect to exceed that. Given there is an upward trend over the last few years, we are not expecting it to go down. We are now nine years in from the commencement of the legislation, so it is not an implementation surge of testing the new legislation or uncertainty either. It is something we are going to have to monitor carefully.

In addition to seeking permanent funding, we are doing whatever we can internally, not just looking at what we can do within the external review function. We have a number of functions across right to information, and right to information is far broader than the application process. It is all about the push model of proactive release of information, administrative access and informal requests under schemes, in particular, where the formal application process is intended to be a last resort, as it says in the legislation. Our guidance, awareness and training and audit functions in terms of improving practices and guiding the agencies to push the information out to the community, to improve the flow of that information so people do not need to come to the last resort and preferably are also satisfied when they do come to that and do not need to come to us. We are doing everything we can to have downward pressure on that demand ourselves.

Mrs McMAHON: With the training and audit function that you have with various departments, it is in their best interests as well as yours to see that reduction and be proactive. Are you able to track a correlation between when you assist a department and go through a proactive process with them and a decrease in some of these external reviews that have to occur, or is it still too—

Ms Rangihaeata: With the data we have we cannot track correlation as such. We can look at what we think is the experience, particularly in a particular program if they have implemented an administrative access scheme. In some agencies we have seen a big drop. You can see that in the annual data reported on by the Attorney-General about applications across a sector that are received. For example in the education sector, when they implemented administrative access there was a marked drop in formal access applications some years ago. In some cases it is very objective; in other cases it is less objective. However, we can see where we have been concerned about the quality of decision-making, for example, in a particular agency or a sector and we have reached out and engaged in decision-making training. We have a particular course in that regard. We have engaged and tried to ensure that they have greater resources there. We can sometimes see that flow through and either we do not receive applications or when we do the reasons are better, the structure of the decision is better and that means sometimes people will be satisfied with those reasons and will not need to come to us.

CHAIR: I have a question but, unfortunately, it is three pronged so I will outline each of them and come back to them in turn. In your response to question on notice 11 at page 8 you note the need to amalgamate the information privacy principles in Queensland law with the national privacy principles under the Commonwealth law. I think you touched on that earlier in either your brief statement or in answer to a question, but I am trying to step it out. My first question is: what steps would need to be taken to achieve this goal? My second question is: how soon do you feel this needs to happen? My third question is: what time frames do you think are realistic to achieve this goal? I do not mind if you combine your answer, but I think you can get the gist of where I am going with the question.

Mr Green: The steps, interestingly enough, are not that difficult, I do not think. Obviously the government has to accept that recommendation in a policy sense. That is a matter for the government. I have given advice that I think it would be beneficial. I believe that was the subject of consultation by the Attorney-General's department and I do believe it was fairly well supported across agencies that were consulted. I am not sure that the government is ready to accept that yet. They have in their response to our submission indicated that they would like to do further work on that and further consultation. That, of course, is a matter for government but I do not think that much more consultation is needed. There is already a model at the federal level. The corporate sector, which is regulated by the federal commissioner, and all Commonwealth government agencies are already familiar with that model.

There are some implementation concerns. The agencies that have new principles would have to implement that in their agencies, so there would be an initial rewrite of some policies and procedures and perhaps a thrust on training of the new principles. There are ways of managing that. There could be staged implementation. The actual drafting of the clauses as Australian principles has already been done in the ACT, so it is a matter for Parliamentary Counsel to adopt that into the Queensland legislative framework but it should not be a monumental task. I would suggest that the optimal practice is to have it as consistent as possible, and therefore the materials, the training and the familiarity by the lawyers and the courts ultimately will have more of a jurisprudence to draw on.

We already share materials across the world, in fact, with colleagues through Asia-Pacific privacy authorities and nationally we have a network. Where we have consistency we can beg, borrow and steal, so borrow from each other and share the workload. Again, the time frame of implementing into legislation is a matter for the government and for parliament. I believe that the bills would not be particularly lengthy to draft but, again, it is a matter for government.

We would hope—but we are not holding our breath—that they might be passed in the next year so we might have a discussion about how far we have gone. I do believe it would be opportune to do it now rather than do a lengthy and a further consultation process, because our Act has not been substantially amended since 2009. At the time our Act was enacted it was based on the 1990s—1998 legislation—so it was out of date at the time it was enacted, really. Europe, like I say, and the world have massively moved on. That, to our jurisdictional benefit, would aid our industry, I think. The flow-on impacts would be beyond just government agencies because the companies that interact with government will be expected, if they are marketing into Europe or the US, to have a higher level of safeguards and awareness, and more modern legislation governing them.

Mr McDONALD: Here we are at the end of April. I note, Rachael, that you mentioned in your opening address the great work that was done by those who came before you. Jenny Mead and Clare Smith both had three years left on their terms of employment. Would you like to make a comment about their resignations and how that might have affected the office? Your response to question 14 notes that the lack of certainty around increased permanent funding resulted in a high turnover of staff, but losing the commissioner and the part-time Right to Information Commissioner must have had a big impact.

Ms Rangihaeata: Both right to information commissioners have retired. They have left for personal reasons, but over the seven years they were there they have really had a huge impact. They have left a great legacy in external review which has stood us in great stead for the future. While it has certainly had an impact and we were all extremely sad to see them go—I think we can say that is true for everybody—we really do feel confident that, while we have this very high demand and it is challenging times, the team structure they have put in place, the efficiencies that have been gained over the last several years and the processes that have been put in place by Ms Mead and Ms Smith have really placed us well to meet those challenges.

We regularly receive visits from all the other jurisdictions across Australia and New Zealand to come and speak with us for sometimes up to two days at a time to study those processes. We give out all our procedures, templates and everything and share those with the jurisdictions. I think we have a lot to be proud of in terms of the work that we have done under their leadership in the external review area. We do feel confident. Ms Lynch, who is currently at the helm, is a very experienced Assistant Commissioner who has led not only our informal resolution area where we have our intake but also one of our teams that deals with our really complex external reviews that go on and require that detailed consideration and decision-making. We have very experienced Assistant Commissioners who lead the individual teams along with our staff. We do feel confident, despite how sad we are that they have left.

Ms Lynch: I think that is right. While on a personal level we miss them, they really did set external review up very well. The tight, small team structure works really nicely. It is an extremely collaborative group and a resilient group. I think sometimes it needs to be when you are doing this sort of work. That is really continuing, and that rolling program of process appraisal has really helped us cope with the increase in demand and to not reinvent the wheel but just to tweak things. That continues. So far so good.

Mr McDONALD: Thank you very much for the answer to that. I recognise the challenge that you would have had to face. You have done a great job to be here only eight months out. We met with the Ombudsman's office this morning. The Ombudsman outlined to us some of the HR strategies that they have to put in place in order to meet the inability to fully fund their 63 full-time-equivalent staff. They are probably operating at about 95 per cent to be able to get through. Are you having to put any HR management practices in place to be able to achieve the outcomes you are in light of that funding shortfall?

Ms Rangihaeata: The difficulty for us is that for a number of years—for nine years—we have had to temporarily staff a considerable chunk of our external review function. Because of that, we cannot permanently retain our key experienced staff. We have had quite a bit of churn, which was acknowledged in the strategic review report—I think it was 33 per cent that they calculated on figures we gave them in that period they looked at—and that really has an impact on the office. While we have had approval to access cash reserves in most years, a lot of years we have been underspent on that figure because we simply cannot fill all of those positions because people leave to gain greater job security and it is very hard to retain people and fill positions. It also has an impact on the more senior staff in terms of supervising new staff, bringing people up to speed and so on. At the moment we have one of those positions we cannot fill. While we have that level of demand, we are without a review officer and that has been the case since early this year. That has been a very common predicament for us over a number of years. At times we have been two down. It has been quite difficult.

Ms Lynch: I can add that it has made us look very carefully at the way we do things and our processes. We are trying to manage induction and training as strongly and efficiently as we can so that our senior officers are not tied up in training incoming officers more than they need to be. Our systems and review officer manuals are very comprehensive and plainly written and have been a really great tool for assisting us with the temporary nature of a lot of staff as people come and go.

Ms Rangihaeata: We have a really strong knowledge management base to support that which we also made available many years ago to external stakeholders because we recognised that decision-makers in agencies could benefit from that as well. There are a number of resources, from role plays and podcasts that I think we did at one point—just role playing informal resolution strategies and so on just to help new officers and so on.

Mrs McMAHON: Speaking of filling vacancies, and notwithstanding the work of Ms Lynch, could you tell the committee the current progress on the selection of the new Right to Information Commissioner? Where are we at with that?

Ms Rangihaeata: That is a matter for the Attorney-General—the appointment process. A selection process was undertaken. It was advertised in October 2017. The selection process has been completed and the appointment process is back with the Attorney-General.

CHAIR: In relation to vexatious complaints—I am assuming that you do get them. If you do not, it will be a short answer to this question. Do you receive matters that you would regard as vexatious?

Ms Rangihaeata: Yes, we do receive a range of applications through our external review and privacy complaints that people raise issues and concerns about that are vexatious. Whether they are vexatious applications or they are concerned that the applicant themselves is being vexatious, we have mechanisms in our Act to deal with that, particularly in external review. We can make decisions that an application itself is vexatious, whether in full or in part. We can determine that part of an application is vexatious and then proceed with the balance. We also have a provision in our Act to declare an applicant vexatious and apply conditions for a period as to whether or not they can make applications to an agency, to ourselves and so on.

We also have a number of tools in our Act to deal with unreasonable behaviour or voluminous applications. It really is about dealing with it a long time before that. We conduct training and have guidance and really promote the effective use of those tools in the legislation. That is something that we had a focus on a couple of years back in terms of dealing with unreasonable diversion of resources, because we could see that we were receiving some rather large applications. We could see some situations where we thought perhaps agencies were using the tools incorrectly or could have used the tools more often. We ran some workshops and updated our resources around that.

It is our responsibility to proactively get out there and ensure people know how to use these tools and use them at the right time and in the right place. However, of course on external review we make decisions about that as well. There is a process within the legislation, right back at when an application is received, for an agency to consult with the applicant about the scope of the application and try to bring it back to something that is manageable so they can actually proceed. If they cannot, they can make a decision that they do not proceed with that application. There are a number of tools within the Act that they can use before they actually get to that point.

CHAIR: We thank you for your time this morning. That concludes our meeting. We thank you very much for your participation. I would like to thank Hansard. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare this public meeting closed.

The committee adjourned at 11.38 am.