



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 HEARING—OVERSIGHT OF THE OFFICE OF THE INFORMATION COMMISSIONER

TRANSCRIPT OF PROCEEDINGS

MONDAY, 25 FEBRUARY 2019

Brisbane

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The committee met at 9.59 am.

CHAIR: I declare open this public hearing. I am Peter Russo, the member for Toohey and chair of the committee. With me here today are James Lister, the member for Southern Downs and deputy chair; Stephen Andrew, the member for Mirani; Jim McDonald, the member for Lockyer; Melissa McMahon, the member for Macalister; and Corrine McMillan, the member for Mansfield.

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. Under the Parliament of Queensland Act 2001 and the standing rules and orders of the Legislative Assembly, 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 commission and examining the annual reports tabled in the Legislative Assembly under the acts.

Only the committee and invited witnesses may participate in the proceedings. As parliamentary proceedings, any person may be excluded from the hearing at my discretion. I remind witnesses that intentionally misleading the committee is a serious offence. The proceedings are being recorded by Hansard and broadcast live on the parliamentary 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 may 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, Right to Information Commissioner, Office of the Information Commissioner

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

CHAIR: I invite you to make a short opening statement, after which the committee members will have some questions.

Ms Rangihaeata: Thank you, Mr Chair and committee members, for the opportunity to make an opening statement. Firstly, I acknowledge that Ms Louisa Lynch was appointed Right to Information Commissioner from July 2018 to June 2023, since we last met. In December 2018 Mr Phil Green was reappointed Privacy Commissioner for a further three years. This oversight inquiry relates to our 2017-18 performance, as set out in our annual report.

2017-18 was an important year for the Office of the Information Commissioner during which we implemented the strategic review report recommendations. We have finalised our responsibilities, with only those recommendations requiring legislation or further funding now outstanding. We reported on a year of record demand in 2017-18. We continue to experience significant demand for our services, with increasing record demand for external review in 2018-19. We will continue to monitor our capability to service such record external review demand over the next couple of years.

Despite the high demand and complexity of applications, our exceptional team, led by the Right to Information Commissioner, also finalised a record number of review applications, resulting in a high 95 per cent received to finalised rate in 2017-18. Our support and audit functions are critical to improvements in agency practices, which not only lead to better government and service delivery outcomes but also can exert downward pressure on demand for our oversight, external review and privacy complaint functions.

We reported on three local government audits and the mobile apps and privacy audit in 2017-18. Audits of Townsville City Council and Ipswich City Council identified a number of different areas for improvement. We will follow up on the implementation of recommendations made and report in Brisbane

2019-20. The mobile apps and privacy audit had relevant recommendations for all agencies about conducting privacy impact assessments before adopting and refreshing technology. We asked all agencies questions about privacy impact assessments and the use of mobile apps in our recent self-assessment electronic audit, along with questions about camera surveillance, including body worn cameras and drones.

The year 2017-18 included events that drew significant attention to how personal information is collected, used and disclosed by organisations. Community expectations have changed as a result and government agencies seeking to take advantage of opportunities and challenges associated with technology must ensure they have appropriate safeguards in place, as set out in our audit reports and resources. The Privacy Commissioner will discuss this further.

I would like to close by noting a significant milestone this year. 1 July 2019 will mark 10 years of right to information and information privacy legislation in Queensland. Our office has also changed significantly in this time, evolving from a single external review function to take on privacy, audit and support functions for the sector and the community. This milestone presents an opportunity to showcase Queensland's journey towards a more open, transparent and accountable government that protects and respects personal information. To celebrate this milestone, our office will be running several campaigns and events throughout 2019, between Privacy Awareness Week in May and Right to Information Day in September. We hope you can join us in celebrating 10 years of right to information and information privacy in Queensland.

Ms Lynch: Good morning, Chair and committee members. Thank you for the opportunity to very briefly address you. When I reported to you in April 2018 I noted that if the OIC did not receive the additional permanent funding for four review officers recommended by the independent strategic review into the office, keeping pace with the ongoing upswing and external review applications would be difficult. The government did support that request and in just over two months from receipt we had completed the recruitment processes that allowed us to settle many years of arrangements supported by temporary funding, but it has not meant an increase in real terms to officers available to undertake the greater workload.

External review has a longstanding practice of continuous improvement, and that culture put us in good stead as we came to terms with a 21 per cent increase in workload over 2017-18. Three small tight-knit teams, with comprehensive management, progressed 624 external review applications and finalised 595, with a high of 87 per cent being resolved without the need for a formal decision. Every review throws up its own complexities and challenges and many factors, sometimes outside our control, contribute to some reviews taking much longer to resolve than others. This impacts our median day performance target of 90 days. In 2017-18 we were 12 days beyond that, at 102, although the percentage of applications finalised within nine, six and three months remains largely consistent with previous reporting periods.

I must commend to you the work of my small team over 2017-18, and their continuing commitment to our statutory obligations under the right to information and information privacy acts. At the end of 2017-18, external review had no review over 12 months old and we are in that same position eight months into this current financial year. At 31 January 2019, of the matters on hand only eight per cent were older than nine months. Strategies and work undertaken to manage the increased demand, while ensuring the welfare of our officers and the integrity of the external review process, have focused on maximising our use of technology where we can, reviewing work-flow issues in our case management system to ensure we are being as efficient as possible and expending our energy where it counts most, while also giving better oversight to my assistant commissioners and me of the increased work on hand.

There is no standout theme or concerning increase in terms of type of information sought or agencies to whom applications are being made that then come to us for external review. However, it is noteworthy that the greatest increase in applicant type from 2015-16 to now has been individuals. It is projected that at the close of 2018-19 applications from individuals will have doubled across those three years. This indicates a growing awareness among the community of their information access rights, which I consider is largely driving demand.

Overall, in 2017-18 a close but flexible approach to the management of each matter, along with the strategies just outlined, has allowed us to keep pace with the 21 per cent increase in demand and also currently, as we track at around a 15 per cent increase on last year. Based on current half-year figures, the increase is forecast to represent receipt of around 700 external review applications and finalisation in advance of 600 matters this year. I assure the committee that, as the workload grows, we continue our efforts to undertake external reviews independently and fairly while working very hard to communicate with all our stakeholders as effectively as we can. Thank you, Chair and committee members.

Mr Green: Thank you, Mr Chair and committee members. I am really pleased to be here and to be reappointed. I believe that there was much unfinished business. It is still really exciting times in privacy. Last year I thought we could not top it, but already this year it seems that there are amazing things happening and a lot of pressure worldwide. On the radio this morning I heard there was another Facebook scandal. 2017-18 really kicked off with the big Facebook Cambridge Analytica data matter. That has rippled through the world. It has been talked about in terms of influencing elections. I think we need to stand up and take notice of things such as that, particularly as government agencies are using those services as well, and see how that will impact on our democracies.

I will outline some other big things. Europe introduced and commenced their General Data Protection Regulation, which has massive implications in terms of corporates and the kinds of fines. The French have already fined Google in their jurisdiction €50 million. It has big teeth and companies are taking notice. That will impact, I think, down to the state level in Australia ultimately, particularly as state entities do engage in Europe, such as Trade and Investment Queensland and the education people who export education services.

The other big one in our national jurisdiction was that the federal government introduced the mandatory data breach notification scheme. That also commenced in 2017-18. There is a general raising of awareness in the public about privacy and concern about it. That is rippling from the primary schools, the eSafety Commissioner federally that deals with electronic safety and internet safety, all the way up to the highest levels of government and into the corporate sector that have been impacted by cybersecurity breaches.

That is translated into our work, particularly at the OIC in 2017—not so much in complaints; they have remained quite stable over 2017-18. I think that is a reflection that generally the bigger agencies in particular do deal with privacy quite well and do placate or deal with complaints prior to them ever getting to us, so we do not see a majority of the complaints. Also, the practices obviously are reasonably good, because we think we would see more complaints coming our way if there were woeful practices, particularly in the bigger agencies.

The advice work has been really huge, and I am sure the committee accepts this as well. From your workload I have seen a number of things with either privacy or personal safety and getting the balance right on legislation for surveillance. The biometrics legislation the federal government is yet to finalise with the national driver's licence scheme that we introduced in Queensland. There are other federal developments where we have had a strong advisory and submission role, particularly on My Health this year and last year. That has been an ongoing project, as has Queensland Health's rollout of their electronic records management system in their jurisdiction. Our advice work, I think, was around 300 or 299 in that period.

There is some substantially complex legislation federally and at the state level that we have dealt with, particularly as we look at appropriate information flows between agencies to get information that flows in the public interest optimised, and to do that responsibly and ethically as well. That is going to be a challenge.

I think 2019-20 will be even bigger, frankly. That is what is shaping up, as we see some of the things that have been implemented and introduced in our own jurisdiction. Particularly next year the human rights act potentially will have a beneficial impact in the privacy jurisdiction and it will be interesting to see that. We have already been working with the Anti-Discrimination Commissioner on how we work together to optimise outcomes. That is pre-empting parliament in some ways, but certainly the public debate and public consultation on the human rights act seems very positive to date.

The other big impacts for us, obviously, are the legislative reviews. No doubt you have been briefed on where we are at with our legislative reviews and if they have been paused for the Law Reform Commission inquiries into surveillance and into workplace surveillance. The continuing impacts on privacy and human rights generally through surveillance are an issue that I think bears more public scrutiny. We made a public submission and we will make a submission on the workplace as gaps in the privacy framework. It is quite a complex framework because it has national, international and state aspects to it.

One of the state aspects that was dealt with—and I think quite successfully, it seems—was the Criminal Code amendments to address revenge based porn, or image based abuse. I believe that will be positive. Even though that is not part of our jurisdiction, when the public get incensed about breaches of their privacy they do not care where the laws are written or who enforces it; they just want redress schemes. I believe that the Law Reform Commission inquiry will be very positive in terms of the public debate about surveillance.

I am looking forward to next year. I think we have plenty of work on. I am happy to answer questions. I do not know how we can top Privacy Awareness Week last year, but the 10-year anniversary gives us an opportunity to further celebrate the 10 years. Last year we had the Attorney-General and Mr David Lacy of IDCARE who contributed to the debate about ID theft and abuse and what the public can do to prevent it as well as recover from it. We had a public event for the community on cyber defence to work out, if your reputation has been burned online, how you can fix up that mess. I think those are really important skills for our youth as well as the general members of the public. Last year's event was really well attended. I think it really contributed to public debate. This year, hopefully, we will be able to top it for the 10-year celebration. Thank you for the committee's attention.

Mr LISTER: Welcome, commissioners. Thank you for coming today. For those of you who have extensions to your tenure or positions, congratulations. Mr Green, could I speak to you about the privacy of citizens as they go about their day-to-day business? Recently, a local government authority in my electorate was embroiled in public controversy when it was revealed through an RTI process that copious file notes, often tawdry in their detail, were being taken on the movements of individual ratepayers—where they were, who they spoke with, the expression on their face at a certain particular time—all in public places. What is your view on that kind of accumulation of notes, particularly if the purpose of those notes is to potentially exonerate future complaints or pre-emptively discredit complainants?

Mr Green: It is a complex question. It is interesting to show the juxtaposition of the right to information, where people can learn of these practices and they are not going on behind closed doors and being undiscovered, which is even more concerning. I believe there are legitimate law enforcement purposes of councils. I am not aware of the individual circumstances of your matter. Certainly, if people are concerned they can firstly complain to the council. They now have a new mechanism with the Independent Assessor as a means of redress and the Integrity Commissioner as well. Depending on who is the instigator, there are some other avenues.

From our perspective, if there were concerns about privacy they could be raised with the council and then raised with us. I am not aware of these ones specifically being raised with us, or which council it is, but, in general terms, if it is consistent with law enforcement and evidence gathering in public places—and this will be subject to their policies and their own by-laws as well—potentially it could be legitimate.

Mr LISTER: Who might decide where the line is crossed between legitimate evidence gathering for a legitimate law enforcement or investigative purpose and the operations of the Stasi?

Mr Green: There are probably a few mechanisms in determining that. One would be if that evidence were sought to be produced in any prosecution. The legitimacy of the evidence could be challenged, and whether it was lawfully gathered could be put at issue in any prosecution if it were to be used in a prosecution or civil proceedings. Again, there is a mechanism, I believe, for us to consider it if it is raised with the council and thought to be illegitimate and a breach of privacy because it is contained in documents.

If it is just observations being made by someone and it is not contained in documents, the Information Privacy Act would not come into play necessarily but, again, if there is some policy behind it and the council is saying why they are doing it and for what purpose, or it is to enforce a specific law, the power should be set out in the by-laws about how they can go about gathering the evidence.

If it is going beyond what is proportionate—and there were councils talking about using audio and video recording for monitoring rubbish disposal, for instance—the video aspect is okay, but the audio aspect I think will be looked at by the Law Reform Commission. That, in my view, goes beyond what is lawful currently under the Invasion of Privacy Act. Certainly, my office and the OIC could be a complaints mechanism for that sort of complaint. They have to go to the council first and get their explanation for it and then we can assess that and assess whether, in fact, privacy has been breached. If we cannot mediate it, the tribunal—QCAT—would be the final arbiter.

Mr LISTER: Thank you.

Ms McMILLAN: Thank you very much, Mr Green and your team, for your work. What is the area in which you have seen the greatest percentage growth in terms of external review applications received by the OIC?

Ms Rangihaeata: In terms of application time?

Ms McMILLAN: Type did you say—or time?

Ms Rangihaeata: Ms Lynch said that, in terms of the type of applicants, it is individuals in general. In terms of the nature of their issues that we deal with, it is probably complaints—

Ms Lynch: I can answer that for you, if you like. The four most common types of information sought are largely consistent over previous years. Complaint information remains No. 1. No. 2 is employment/workplace information and investigation type of material, No. 3 is police records and No. 4 is medical records. The numbers go up and down a little bit, but those categories remain constant. I think that is why you are seeing individuals applying for that sort of information. The most common issues on review have remained largely the same as well.

Mr ANDREW: Mr Green, you mentioned the human rights act and the fact that, if it is implemented, it will help your standing. We had a public hearing recently where a policy adviser talked about the fact that some of that act could be soaked up in the law that we have at the moment. I know it is not in law yet, but could you explain to me the gaps that you think it is going to fill?

Mr Green: Certainly. Thank you for the question. The way our act is currently framed, it is about information in a document. With personal space privacy—say you are a hospital room and a doctor is speaking loudly with a patient but could be overheard by other patients—if that is not being recorded in some way, or videoed or put down in documents, that would be a gap where there would not currently be redress. There might be some ethical action taken against the doctor, or disciplinary action or something like that, but there is not a privacy breach under our legislation in that instance.

We have mentioned in the review of our legislation a few of the other gaps. I do not think the human rights act will be a panacea for all of those. I still believe that there is further consideration for a civil tort of action for serious breaches of privacy. The things that will be on the fringe would be implementing a policy. If, say, in the case that the member for Southern Downs mentioned of a council passing and implementing a policy to do that sort of surveillance but they do not start doing it and there is no live complainant, we do not have a complaint on foot and, currently, I do not have an own-motion ability to tap them on the shoulder and ask, 'What's going on there?' It does not stop me necessarily, but if someone says, 'No, take off,' I may have an issue. That sort of instance where there is a policy put in place that maybe is a breach of a right to privacy and particularly may be objectionable to a wider class of people, I think perhaps the human rights commissioner could step in there as well as ourselves. That could be remedied with some changes in our laws as well. That will be a matter for the Attorney-General and for the parliament, hopefully, when our review is digested and considered.

There are some gaps. There are gaps in the federal legislation. I do not think even federally they will be filled. Small business continues to be exempt. I do not think that will change with the human rights act, because it is not going to apply to many small businesses. Individuals are not caught by the federal or state regimes. Businesses are caught only if they are providing state or federal government services and have been bound as providers.

Another one that, interestingly enough, the Palmer party has highlighted recently in its SMS regime has been the exemption for political parties. That is being debated and it is not for me to comment on but, again, there is a gap there. I do not think the human rights act will override the exemptions, but it might continue public debate on that.

Ms McMILLAN: Are you able to comment on whether the increase in the median days to finalise reviews is related directly to an increase in the number of external review applications?

Ms Lynch: Yes, I can. Median days is a difficult measure, because we have a lot of reviews that settle down here. It does not take too many at the further end to drag up the median with the volume on hand. Some of them are increasingly complex. It does not take too much to push you up. We are very conscious of it. The sorts of factors that are in play as to why some reviews take longer are that they deal with large volumes of documents, the challenging behaviour of applicants and the sufficiency of search issues at an agency level. It can take a lot of to-and-fro for us to be satisfied that all reasonable steps have been taken to find the information someone is seeking. Sometimes agencies seek multiple extensions of time to do those searches, for example, or to provide submissions to us if we are of the view that we do not accept their grounds for refusal at face value on the information to hand or we want more information about it. That can take some time. We try to regulate and control that as best we can.

We are required to afford all parties procedural fairness and give applicants and agencies alike due chance to put their case before us and provide information. Unfortunately, that can sometimes take several months. The longer a review goes on, the harder it is to resolve informally. You are more likely to be talking about a formal written decision that is required to complete that matter. Again, that takes a little bit of drafting work. It is just the sheer volume and those sorts of issues that are pushing it, but we are very conscious of it.

Ms McMILLAN: Are you seeing an increase in the number of requests that involve a number of our departments?

Ms Lynch: Yes. The agencies whose decisions are coming to us from an external review have remained relatively constant in terms of a top 3 or 4 and they are those agencies that really touch the lives of a lot of Queenslanders such as the Queensland Police Service, the hospital and health services, the Department of Education and the Department of Justice and Attorney-General, which incorporates Queensland Corrective Services. They swap between each other to some extent, but they remain relatively constant; there is just more of them.

Mr LISTER: Ms Lynch, I am sure my electorate contributes to the growing number of cases that you are dealing with, and I can understand that you and your staff are very busy. I have been approached by constituents from time to time who have gone to you for an external review, and a common theme that they bring to me is that they say, 'I've got this document here. Some unnamed person has happily slipped it my way, so I know it exists and it's very clearly able to be identified as something which ought to have been supplied to me. I've done an RTI request and that document hasn't appeared.' There might be a few documents that they are aware of, which casts doubt on the agency's thoroughness and, as some of these people tell me, their acceptance of their role in searching for the truth. When you say that it is the challenging behaviours of applicants which tend to extend you, could it also be that the challenging behaviours or the obstruction of some of the agencies involved can contribute, because in my short time as a member of parliament I have seen some examples where that is clearly happening on the part of the agency involved?

Ms Lynch: Thank you for the question. I have not seen evidence of agency obstruction in that sense. One of the factors I outlined earlier was sufficiency of search, and I think the sorts of issues that constituents might raise with you are definitely sufficiency of search—that is, 'I've found something here but it hasn't been released to me in my access application with the agency.' Not all of those matters come to us for external review, but sufficiency of search is very difficult on external review to nail down. That is why it takes time, because we end up constantly going back. If an applicant raises with us that example and says, 'Here's a document here. Why hasn't it been raised?', we would put that to the agency and seek their explanation because it is a clear indication that you would think more information should have been found.

Mr LISTER: I am thinking of examples—one in particular springs to mind; obviously I cannot disclose it—where the material that was missed in the search was also part of the material that was very heavily redacted or they shared common elements in some of the material that was provided. Obviously when people are unhappy they come to their local member and talk about these things. I am of the view that there are in some cases agencies that are trying to protect themselves or conceal things. Why—

CHAIR: Just—

Mr LISTER: Why interrupt my question?

CHAIR: No, but just let me say that I am concerned that we are going into an area where it may not be appropriate—

Mr LISTER: If I finish my question—

CHAIR: If you just let me finish first—but I will leave that to you. I am just conscious of the particular suggestion that agencies are behaving in a certain manner. It may not be something that can be commented on by your office, but I will leave that decision to you.

Ms Lynch: Thank you, Chair. I think I can provide you with some information that might assist. I have talked about sufficiency of search. The provision in the Act that we have to comply with is whether we are satisfied on a reasonable basis that all information pertinent to a matter has been found. We do that based on the case precedent around that area and the department's knowledge of its record-keeping systems and the locations where material sought may be found. It is a finding of fact on our part in those matters. You mentioned that someone might have a complete copy of a document and then at the end of an application they receive a redacted version. That is something that is harder to comment on because, in considering access to information, regardless of how it might have been received by someone before, we have to apply a public interest balancing test and there can be a number of factors for and against which may result in someone not receiving a complete document.

Mr LISTER: That is what I was going to go to, yes—that is, how do you judge where to draw the line in the information that is pertinent to their request and that which is not in the public interest that it be disclosed and therefore would be redacted on that document?

Ms Lynch: That is the application of the RTI Act or the Information Privacy Act. If information is contrary to the public interest to release, it may fall into an exemption ground—for example, it is legal professionally privileged or it would be contempt of parliament to release it, and there is case law in the provisions in the Act around what, by definition, that means. If it is not exempt, you fall into considering whether information is contrary to the public interest, and the Act provides a balancing test which agency decision-makers apply. If an applicant is not satisfied with how it has been applied, they can seek internal review or come to us for external review. On external review we stand in the shoes of the decision-maker and start afresh, so it is factors for and against and weighing that up, which is a matter of fact on the information before us.

Mrs McMAHON: In the annual report on page 3, with the snapshot referring to the number of applicants who were satisfied with the conduct of the review, I note that the most recent rate was that 66 per cent of applicants were satisfied as opposed to the previous year of 73 per cent. I was wondering if you could make comment on the lower satisfaction rate and, for the understanding of the committee, how that satisfaction rate is arrived at and the process or methodology in how an applicant's satisfaction is assessed.

Ms Rangihaeata: Thank you for the question. At the conclusion of the external review we issue a survey to applicants that has a number of questions—I think there are about 10 questions—that survey a range of issues that we are interested in, not just about our process but also about their satisfaction with the outcome, which does not go to this one here. We are also interested in that connection between how that may or may not affect this satisfaction. I note that on page 11 we have a note under the table that we had 35 surveys returned against 595 finished in that year and 11 out of those 35 expressed dissatisfaction. We were quite concerned with the lower level—

Mrs McMAHON: Return rate.

Ms Rangihaeata: Lower return and lower level of satisfaction, so we went back and looked at the comments and we looked at which particular factors they rated lower and led to that result. We saw a clear pattern of lower satisfaction with the outcome where they had expressed dissatisfaction overall with our service. There seems to be a clear pattern in this particular year that people were unable to disassociate the two. As every single survey comes in it is considered by Ms Lynch, because we are very keen to look at any particular issues that may be associated with our service and any opportunities for improvement. We are very keen to, as they come in, identify those and then of course as we look back on the year we reflect as well, but there does seem to be that pattern that people—

Mrs McMAHON: Are unhappy.

Ms Rangihaeata: Yes, people associate both together. I do not know whether Louisa wants to add any comments.

Ms Lynch: It is something that we have given a lot of thought to. We try to manage the expectations of applicants from the get-go in terms of what to expect in the review process, time frames and the limits on our jurisdiction, which is obviously something we need to explain to people a lot, and we do that always with respect and empathy. We are constantly receiving feedback throughout an external review as it progresses, as we are explaining things to people and as we are receiving their submissions and addressing those in reply in affording procedural fairness. I do consider that sometimes at the conclusion of a review, which might be months down the track, people feel like they have spoken to us over months and given feedback, which we deal with. When you look at the comments, there is a very clear conflation of dissatisfaction with the jurisdiction of our limits and our view about disclosure in some matters which has equated to dissatisfaction with us as a whole, which is frustrating and something we continue to consider in terms of how we communicate our messages to people.

Mrs McMAHON: Some 35 returns out of 590 is hardly even a valid measure, really. Is there any consideration of the method in which satisfaction is rated or gauged, given such a low return rate?

Ms Rangihaeata: We had hoped that moving to electronic surveying would increase the rate. It has not had a huge impact. We do note that we have a number of applicants that use our service numerous times in one year.

Mrs McMAHON: Frequent flyers.

Ms Rangihaeata: Often those people will only respond once in a year, and by numerous times sometimes it can be dozens and dozens—maybe 40 times a year. That can definitely have an impact, and there can be a number of people in that category. As Ms Lynch said, many people express feedback during the process—and we have definitely had that in our privacy complaints service, too. When we have looked back we have had emails from people giving us feedback and then those people

have not gone on to return a survey, so when we have reflected on the low return rate on the privacy complaints we have thought that perhaps people felt, 'We've already told them what we thought.' I think that has an impact too. When you think about external review, we are on the phone with all participants in a review all the time—and email. We are communicating continuously throughout the review process, so there are many opportunities to give us feedback, whether it is good, bad or otherwise. As Louisa said, we respond to that feedback at the time, and I think timely response to feedback is actually the most important.

Mrs McMAHON: A better metric. Thank you.

Mr McDONALD: Thanks very much for being here this morning. My question regards some of the measures that you have in place, and earlier Ms Lynch mentioned the problems with medium time frames and what have you. The three particular ones were the issue of review and the time that it has taken. I note that there is a larger volume—I understand that there might be some resourcing issues—but also the acceptance of the privacy complaints in terms of the 14 days and some which are quite longer than that as well as the finalisation of those privacy complaints at 90 days and 157 days. I would be interested to know if there are some underlying issues in that as to why those delays are there, but also do you have any initiatives that you are working on to try to address those delays?

Ms Rangihaeata: We conducted a review of our performance measures, other than external review, and made some changes going into 2018-19. Our 2018-19 Service Delivery Statements has some new measures and also our strategic plan for 2018 through to 2022. In relation to the measures that you mention for privacy in terms of the timeliness measure for accepting a privacy complaint, we have discontinued that one because we found that it had severe limitations. With regard to looking back over five years of data, the review found that, because we can influence but not control a lot of the issues that relate to that timeliness of deciding whether to accept a complaint—primarily because we do not really have the necessary information a lot of the time to make the decision and there often were substantial delays in obtaining it from the agency or the complainant—it was not really a meaningful measure on which to base this. Because it is a very small number of complaints—typically between 45 and 60 complaints a year—a small number can significantly skew the outcome. That has happened every year over those last few years. For example, 25 per cent of the complaints we received in 2017-18 took over 100 days for us to make a decision on whether to accept the complaint which led to the result in 2017-18 of 67 days. We considered that and we discussed it with the Department of the Premier and Cabinet and others and decided to discontinue that in our Service Delivery Statements.

With the other privacy measure you referred to, the mean average days to finalise an accepted privacy complaint in the Service Delivery Statements has increased from 90 to 140 days. Again, that was on the basis of reviewing the data from the previous five years. In terms of a similar situation, we are in the position of mediating an outcome there, so we have limited bases on which to pull the participants along, if you like, in that mediation. We really need to provide sufficient time for them to mediate an outcome where that is possible, and we had a number that were over 200 days. That definitely had an impact on the outcome in 2017-18. In 2017-18 it was 157 days, so it still exceeded that 140 and we would look to try and move towards the 140-day new target. Again, we do not have complete control over many of the factors that lead to that so it is a difficult one to manage.

CHAIR: Thank you. Our time has expired. Thank you for your time this morning. Thank you to the secretariat and our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare this public hearing closed.

The committee adjourned at 10.46 am.