

**SCRUTINY OF ACTS AND REGULATIONS COMMITTEE**  
**Information Privacy Subcommittee**  
**Inquiry into privacy code for members of Victorian Parliament**  
Melbourne – 30 August 2001

Members

Ms E. J. Beattie  
Mr C. Carli

Mr M. F. Dixon  
Ms M. T. Luckins

Chairman: Mr C. Carli

Staff

Executive Officer: Mr A. Homer  
Consultants: Mr N. Waters and Ms L. Smith

Witness

Mr R. R. C. Maclellan, Member of Parliament.

**The CHAIRMAN** — We have with us this morning the consultants who are assisting the work of the subcommittee. With your indulgence, after you have given your presentation and we have asked a few questions, if they need to ask any questions, rather than passing a note to me, they will ask the questions through the Chair.

**Mr MACLELLAN** — Absolutely. I do not mind if they do not even do it through the Chair. I am not going to be offended, and I am sure other members of the public who might be giving evidence will not be offended either.

I respond to your opening remarks, Mr Chairman, by saying thank you for the opportunity to meet with the committee and say something. I do not imagine that anything I say is going to be terribly profound, but I would make the judgment that it is unlikely that the work of the committee will be debated in any depth in Parliament, so we might as well accept that you are going to be making the decision. Therefore, if members of the public, or indeed members of Parliament, have anything to say, they had better say it here because it is not going to be said elsewhere. I was, for instance, a member of a similar committee which was dealing with the question of register of interests. We felt our work in establishing a register of interest would have dealt with a conflict of interest situation to the point where, so long as everybody disclosed whatever it was that had to be disclosed on the register of interest, that the whole issue would go away. Didn't we learn? The whole issue did not go away. If anything, the whole issue got worse. There are those who prowl through the register of interests with glee — bored media, and I think probably bored members of the Parliament — anxious to try to trip somebody up for forgetting to disclose something. I have always felt — and I felt at the time when I was on the committee — that a villain will get right through the whole system beautifully.

If I could draw your attention to my own register of interests, which you might check out some time, or get your consultants to do so, you will see how easily it is done. I disclosed, for instance, that I am a beneficiary and coexecutor of my late mother's estate and my late brother's estate. No-one in the world would have the faintest idea what either of those two estates are up to, doing or anything else; yet I have disclosed. A villain wishing to do something would not even bother to do that. But even somebody who was just slightly shady doing that would have enough cover for the purposes of the act. I felt perhaps on the basis of my having had experience both as a local member and a minister — a sort of insider's view, if I could put that for the committee — that I might meet with you and take up the invitation addressed to both members of the Parliament and the public to give evidence.

I was a Bachelor of Laws, a lawyer with a practising certificate, when I was first elected to Parliament. I did not renew my practising certificate, so for 30-odd years I have been a lawyer without a practising certificate. That did not mean that people who had dealt with me as a lawyer did not come to see me. We were spared the difficulty of having electorate offices at that stage, so they would come and see me at home, where they might have seen me before. The conversation were little different because I was a member of Parliament. As to the records I kept, if they wished to discuss something about the will I had prepared for them, or the advice I had given them in a previous life, so to speak, those conversations were as easily conducted after I was elected as they were before. Question mark: is the code going to have something to say about that? Is the code that you are asked to devise going to say that those become public conversations or that records kept of them become public?

I believe it is an area which is fraught with difficulty. It is not made easier by the fact that the Attorney-General has ruled that copies of letters are public documents. I do not know how any member of Parliament manages to clean the office. I would imagine that every time a member of Parliament approaches the shredder machine with a document, sensitive or not sensitive, they are probably already committing an offence under the Public Records Act, if the Attorney-General's view is right — that there are copies in the department, but that the further copies are in fact public documents, not in any sense to be regarded as the property of the member. We already have problems in respect of the public records issues, and I believe we may well have problems in other areas.

I will put it to you on the basis of my experience. I will start with a backbencher. I once, as it turns out foolishly, supported somebody for an honour. There was a community desire that this person's charitable and community work be recognised, and I wrote supporting it. I was innocent of the fact that the same person had at a much earlier time been convicted and named in the federal Parliament in the sort of honours list of tax evaders. Therefore, the application was not successful. What do I do with that record? Under your code, what are you going to suggest happens with that record? Do I destroy it? Do I keep it? Do I eventually pop it into some receptacle for public records like the one in North Melbourne so that the world can discover, not only my mistake — that does not matter — but the information about somebody who obviously so many years later should not be haunted by something like that, although in terms of honours, apparently they are.

I will mention to you my experience as a minister. Perhaps my experience was different to most ministers, or to some anyway. I used to attend my electorate office as minister. On my electorate day, as minister, I went to my electorate office and saw constituents who made appointments. But there were some people who felt the opportunity of my being in an office, out of the ministry, gave them the opportunity to book an appointment to see me, sort of broadly hinting that they were constituents or that it was about a constituency matter, only to find that they were anything but constituents, that they brought along other people with them, or used a local to get into my office to put to me things which perhaps would be not said in a minister's office where one would be protected by appropriate advisers and/or departmental officers. In other words, here was a chance to talk to the minister in a way which was not as disciplined as one might hope a minister's office might be. They are two small examples. I suppose they represent extremes.

The more likely is the continuing conversation. If I was a minister or a priest of some recognised religion, somebody might come to see me and continue to talk to me as they had talked to me before I was a member of Parliament. We have had such people in Parliament. If I was a lawyer — and we have numerous lawyers — or if I was a health worker, they might come and continue to talk to me about things, because they do not accept that simply because you have been elected to Parliament you have suddenly become some godlike figure that has to be addressed in a different way, as you as members of Parliament would know. They continued, while respecting the office of member of Parliament, to speak to you, to have confidence in you, to address you, to raise subjects with you in ways that are related to your previous life, your earlier existence, your earlier time, the networks, the contacts, the friendships, or the community groups with which you have had contact.

These are profoundly significant if you are to develop a code. If it is to be a code that guides people to do the right thing rather than provides traps for people so that we might highlight those handful of members of Parliament who over the years are going to be found to have not abided by the code, is the code going to have an overriding, 'So long as you have done the right thing in the circumstances, you are all right'? Is that override going to be there, or is it going to be a series of hurdles that one must leap in dealing with a sensitive and difficult issue? As members of Parliament, we are not all wise and we are not all sensible — I most of all. If I want to turn to someone for some advice, where do I turn? Your consultants presumably will have gone by then. Do I turn to the secretary of your committee with a ticklish issue about the code? Do I turn to the Chair of the committee or the acting Chair of the committee, or the whatever? Who helps me? Who guides me when a ticklish issue arises under the code, and who says, 'If you do this, it will be all right, but if you do what you were intending to do, it may be a difficulty'? Unless we offer opportunities for these things, the code may become little more than another way of tripping people up — well-intentioned and sincere people being tripped over what seem like technicalities of a code, rather than dealing with the real issue.

The real issue is best dealt with, as has often been the case in the past, where many records are removed because they would be embarrassing, because they have been given in confidence, because it was made clear by the constituent that 'What I am saying is confidential'. I do not know about your electorate officers. I do not know how many times I have faced the situation where the daughter is pregnant, where the out-of-work son-in-law is a substance abuser, where they are living in a caravan illegally in somebody's driveway, where they are about to be evicted, where the electricity has been cut off, and in some cases all these together. Naturally, in my office we make a record of that fact, but it is not a record we would ever publish. We would regard it as sacred, as if they were talking to their priest or their social worker, or somebody like that. We would simply not regard such a record as being appropriate for public display, despite the fact that as a member of Parliament I have the privilege; nor would it be appropriate for me to stand up in the Parliament and announce all this. If I did, I think I would be severely criticised from all sides of the house. We all know how that discipline works. It is the discipline of disapproval, not the discipline of a rule.

We have the privilege of doing the wrong thing, and we have the disapproval if we do it. I am not sure that a code is going to advance this so much more positively that we are going to get such value out of it, and that we are going to be able to cover all situations. Those few examples, I believe, illustrate some of the difficulties of which I am aware as a member of Parliament, of people coming to the electorate office to have conversations with a minister that are inappropriate. With my disapproval, or my saying, 'This is the constituents' time. I do not know why you are here. If you would like to make a time for the office, by all means do, but do not think I am going to talk about these sorts of things in my electorate. I need advice', they became aware of my strong disapproval and, I suppose, were searching to see whether there would be a reaction more sympathetic than that. There wasn't, but there could be. I do not think people are going to do that. I do not think ministers are going to fall for that. If they do, let us criticise them. If they do, let us show our disapproval of it. But let us not say, 'You have breached a code'. Let us not say to somebody, 'You can come and talk about constituency matters, but you cannot raise a professional matter'. The conversations do not allow for that sort of shutting people down and saying, 'You cannot continue to

talk to me about that'. That is wrong. I have had that difficulty as a minister of having perhaps called in a matter from the Administrative Appeals Tribunal, and people on social occasions or in constituency offices wish to talk to me about the merits of such a thing. I have had constituents wish to make an appointment to see me as a local member to talk to me about their case, which is before me as a substitute for the AAT, and I have had to say, 'How would you feel if I talked to the other side? How would you feel if I was having cosy conversations with the other people?' 'No', 'End', 'Stop', 'Can't' — they understood when you put it to them in that way— and I am sure any minister would do that.

I do not think a code is going to guide ministers to a better outcome, and I do not think having a code is going to necessarily detect a minister who perhaps unwisely has a conversation which puts him into an embarrassing position. I would give this advice: that if he does find himself in an embarrassing position like that, he can easily get an acting minister to take the matter on instead. That is exactly what I would have done if I had found myself entrapped by somebody. Those are a few examples. They are examples in which people trust you and rely on you. They are examples of when people are trying to take advantage. They are examples of when your previous life, connections and friendships cannot be disregarded in your work as a parliamentarian. We are members of Parliament above all else. We are human, and I think our humanity is important to our success as members of Parliament.

**The CHAIRMAN** — On the issue that records are private and sacrosanct, partly what the code is trying to define or do is to ensure that from this code you can have a codified practice in electorate offices to ensure that records and information are secure, are not leaked, files are not left in the open for people to have a look at or computer data not made available to volunteers to rummage through. Do you see a problem with that?

**Mr MACLELLAN** — Yes. If the code was to say, 'Do not have people in the office who cannot be trusted', fine; 'Do not leave confidential records in circumstances where people who cannot be trusted can get to them', fine. But is the code to say that somehow I have offended if I forget to lock the filing cabinet because some volunteers came in? What it says is you have a duty or perhaps responsibility to regard confidential information as confidential information. That is fine. That is a good thing for a code. But is the code then going to say, 'Lock the cupboard as if it is a firearms cupboard', or 'Do not have volunteers in the office'? We all have people coming into the office — volunteering, helping. I have Red Cross people coming in — and I had better confess— bringing their own paper, of course, and photocopying. And why not? It is meant to be an office which is helpful to the community. I do not want it to be a fortress.

**The CHAIRMAN** — The code might say that all computer records need to be password protected. We could go into that sort of level of practical detail.

**Mr MACLELLAN** — Again, I suppose experience gives us great teaching in this matter. When I was most recently a minister, I was Minister for Planning. I do not want to embarrass members of the committee, but it is a factual situation, so it should not embarrass anyone. The office of Minister for Planning had hosted the socialist left secretariat factional group within a political party, and most of the computers had been purged. I might add, when I arrived the computers had been physically moved, so it looked as if the staff was the regular staff. The extra 12 positions, which had actually been paid for and filled, were disguised by the fact that those positions were demolished and changed, but unfortunately somebody forgot to purge one of the master computer things, so we actually found, by accident, that it was possible to get from the master disk the entire output of one of the computers which had been used. People came to me and said, 'What do we do with this?'. I said, 'Since the whole lot was purged, that should be purged as well and no access taken of it'. It just arrived by accident.

My electorate office does not ask me, because I am not a computer expert. I shall certainly hope that I do not leave anything confidential behind or accessible. If that is what the code says, 'Remember, do not leave confidential information around or available to the disadvantage of the person who is to have their trust in you', I do not have a problem with that. But if you want to tell me exactly what I must do and then criticise me for forgetting to do it, I think that might be going too far.

**The CHAIRMAN** — I suppose one of the issues for parliamentarians is that in some of their activities they are covered by various privacy legislation; for example, anything to do with a health record will be covered by the Health Records Act.

**Mr MACLELLAN** — If you do not mind my saying it, Mr Chairman, that is a complication we did not need. What I am saying is, somebody comes into the office and has a conversation about the difficulties the family is having, and in the course of that some tiny segment of it relates to the fact that there is a health issue, and we

have suddenly made a whole distinction problem. Is this ‘a health record’ because it says, ‘Mother has dementia’, or ‘My brother has MS’, or something in the course of a housing discussion or an access to community services discussion? We have made a problem by that very piece of well-intentioned legislation. I suppose it is not inappropriate to remind the committee that the way to hell is paved with good intentions. We are well down the track.

**The CHAIRMAN** — I take your point, but equally ministers and parliamentary secretaries are covered by information privacy legislation. If a member of Parliament is on a committee of, say, the local health centre, they are covered by the act in relation to data and information they may be privy to there. What do we give members of Parliament to ensure they are able to, if you like, take on board all these privacy implications that are coming from a whole lot of their activities around them?

**Mr MACLELLAN** — Chair, I suggest that rather than giving them a code and hoping they will all absorb it to the same degree, it might be a good idea to give them a course as part of their introductory course as members of Parliament, which is made available through the Clerks. There could be a more intense internship upon an election. But we are never going to absorb it to the same degree, are we? As I say, I think it is fraught with difficulties if it is simply something that a member is criticised for rather than something from which a member learns, because in my experience — which goes back 31 years now — no member of Parliament has been thrown out. So whatever else happens, members of Parliament who perhaps make a mistake are still going to be members of Parliament; let’s hope they learn, rather than merely get criticised.

**Ms LUCKINS** — Take the case of a member who loses his or her seat and all the constituent information is still held in the office — I know that in 30 years you have never faced this situation yourself.

**Mr MACLELLAN** — Take the situation of Peter McLellan, who died.

**Ms LUCKINS** — That is right. How do you think that information should be dealt with? It may be difficult if it is going from one party to another in any case, but do you think information held on constituents — much of which is photocopied while other documents cannot really be duplicated — should be destroyed, or do you think it should be kept under the terms of the Health Records Act?

**Mr MACLELLAN** — Under the rules of the Health Records Act, I am of an age and stage now where I shall simply say that there is nothing in my electorate office that has anything to do with health. I shall happily ignore that piece of legislation and somebody can try to catch me. It deserves to be ignored because it was an inappropriate piece of legislation to impose. If I have something that is a serious health record, I am perfectly happy to make it available to somebody who wants it, but I do not have those sorts of records. What I have are the ones that will trip you up — that is, the ones that are not really health records.

What happens to the records of a former member of Parliament? We have a wonderfully complicated situation now. The Attorney-General has said that, because they are on publicly funded paper, the copies are public documents; therefore, what has to happen to them is apparently what has to happen under the Public Records Act. There is an act that tells us what is to happen to them. I do not think there is one member of Parliament who has obeyed it — and I think that is probably a good thing.

**Ms LUCKINS** — In practical materials, when looking at a code and at how members must conduct themselves if they lose office and at what should happen if members pass away and their electorate officers are clearing out their offices, they are required to keep records for a certain period of time, whether that be seven years or, for example, until a child is aged 21 under the Health Records Act. Who do you think should be in the position of deciding how the records are to be dealt with?

**Mr MACLELLAN** — I probably have an unreconstructed and totally out-of-date view. I imagine that what happens to the records is determined by the persons who created the records or under whose authority the records were created in the first place. I look to them first. I look to the retiring doctor to determine what happens to the medical records. That has long since gone, apparently; the retiring doctor’s records are now the property of the various patients. Heaven knows what happens in the complicated case of one patient saying something about another patient. Obviously, like freedom of information, it will have a devastating effect on the sorts of records that doctors keep. Freedom of information has had a devastating effect on the sorts of records that public bodies keep — that is, ministers’ offices, departments and all the rest.

The little sticky label thing was never so popular as when FOI arrived on the scene. I shall give you an instance, which is a FOI instance, but nevertheless it is about the public record and the code. The Chief Commissioner of

Police wrote to me as Minister for Local Government a letter that was amazingly frank as to the progress and direction of an inquiry into possible corruption in a local municipality. Having received this letter, which went through the department and got appropriately stamped and everything else, I said, ‘Good grief, what do we do with this under FOI?’. The answer was that if any of those councillors who knew about the investigation had sought that letter under FOI, in the end they would have got it.

What do you do with it? You cannot shred it and you cannot deny you have it, even though it might seriously affect not only the character of people but also the outcome of a police inquiry. I found an answer to the problem: I sent the letter back to the chief commissioner. I sent the public record back to the person who had created it, with an acknowledgment note saying, ‘Dear Chief Commissioner, I have read your letter with great interest and I return it to you’, thinking that the likelihood of them having FOI on the Chief Commissioner of Police was perhaps less than the likelihood of them having FOI on me. That was the only way I could legally deal with it.

I take it that members of Parliament who suspect they are about to cease being a member of Parliament, for whatever reason, could actually send much of the material in their offices back to places like that so that it would be elsewhere, and they could do it quite legitimately. I suppose they could write to the archives and say, ‘Enclosed please find several boxes of material’.

**Mr WATERS**— It is very helpful, Mr Maclellan, to get the benefit of your long experience in these issues. One of the things we are keen to do is tease out the extent to which the sorts of problems you identified, and which I am sure a lot of other members would share, are unique to the position of members of Parliament. While quite a few of those issues are legitimate worries and concerns, they are ones that will be faced by a lot of other people who are subject to the act— that is, lawyers, counsellors and a whole range of people who are now subject to the Information Privacy Act. We need to distinguish between those concerns that are about practical implementation of the legislation and will have to be resolved one way or another — perhaps the answer is training, guidance and such like — and those that are, in a sense, special and unique to the position of elected representatives. Do you have any feeling for how different your operations are from those of other sorts of people in a counselling situation?

**Mr MACLELLAN** — With great respect, in a sense you have almost missed the point of what I was saying. We are no different; it is just another complication. When I got elected to Parliament I was still a lawyer — no different, but different. So, it is not because I am a member of Parliament that you can distinguish me. When I am in my electorate office and when I am meeting my constituents they do not forget that I was a member of the hospital committee; that I was on the technical school council, the school council, the hospital committee, the health service committee or the whatever; that I am a member of this organisation or that organisation; that I am a member of this political party or that I am now a member of Parliament. They take you as a bundle, and they would be very surprised to find that the record they thought you were making as a member of Parliament is in fact going to be treated as if it were a record made by some departmental officer.

**Mr WATERS**— With respect, it is not the intention of the code to — —

**Mr MACLELLAN** — They somehow give us the status — I do not know if it is above, but it is certainly different from departmental officers.

**Mr WATERS**— And rightly so. But the intention of the code, insofar as it reflects the principles, is not to open up records to any greater level of scrutiny. That may be a consequence of the records acts and the FOI act, but the privacy code is, as the Chairman said, working in the opposite direction by lending support to confidentiality and to your ability to protect that information, so it should not be inimical to that objective.

**Mr MACLELLAN** — Given that the Attorney-General has said that all copies of letters produced by you as a minister and/or as a local member of Parliament are public documents, there is not much for your code to cover. I do not think it will cover much more than the sticky notes stuck on the top. I think you want to get very good advice — probably from the government solicitor — on that issue, because if 99.9 per cent of what is in my electorate office is public documents, then I cannot see what the code can do. The code may say all sorts of warm and comforting things, but will those things have any practical and legal effect over and above the effect of the public records legislation or the health legislation? I have an idea that, in effect, the horse has bolted for your code. The only thing is that it will look comforting, and I suppose it will be of some assistance to members of Parliament if they are ever charged under the Public Records Act for destroying a public document.

**Mr WATERS**— My other question relates to the sanctions and remedies side of the code. You have already indicated that a concern for you would be the severity, if you like, or the level of intensity of being held to

account. The suggestion was made in the discussion paper that the Presiding Officers could play the role of an Ombudsman in relation to this code. How does that sit with you? Do you see a problem with having the Presiding Officers acting as umpires in relation to breaches of the code?

**Mr MACLELLAN** — I had the remarkably naïve view that parliamentary officers actually advise the Speaker and the President. I was not aware that they were the referees. Are you proposing or is your question suggesting that the parliamentary officers are going to be the bosses of the members of Parliament?

**Mr WATERS** — No, the suggestion is that the Presiding Officers themselves would be the umpires.

**Mr MACLELLAN** — That is what I meant — umpires; the ones who determine the tricky situations. I am taking up the word ‘umpire’; I take it a member would not then have a negotiation with the umpire about the umpire’s decision, would one?

**Mr WATERS** — That is the sort of issue that needs to be resolved.

**Mr MACLELLAN** — Were you thinking of a counsellor or an umpire?

**Mr WATERS** — That is precisely what needs to be resolved — what is the appropriate level of accountability? If there is to be a code, then if a constituent or anyone else alleges a breach of the code — —

**Mr MACLELLAN** — I took it that the question of there being a code has already been resolved. The committee is not being asked to devise a code by a public institution that is still open to the possibility of there not being one. I was assuming that was a closed question and that there will be a code. I was merely addressing some of my concerns about what might be in it. If you are asking for my reaction to the parliamentary officers being the umpires of the code, I am no more happy. If I have a tricky situation and I ring up the Clerk and say, ‘What do I do in this situation?’, I have no problem with the Clerk giving me a bit of advice; but I do have a problem with the Clerk determining the issue. I am not going to be told by the Clerk or his deputy what I am to do with the letter that advises me that my support for somebody for an honour has been rejected on the basis that that person has a tax evasion conviction from 20 years before. I am not going to say that the Clerks will determine that issue.

**Mr WATERS** — I am sorry, I may have misled you on that. The intention would be that the President or the Speaker would determine it, not the Clerks.

**Ms LUCKINS** — But they rely on the Clerks.

**Mr WATERS** — They obviously rely on advice from the Clerks, but it has been suggested that the umpire should be the Speaker or the President.

**Ms LUCKINS** — At the moment, members are encouraged to ring the Clerks if they have anything they would like clarified about the register of members interests. At times when a member has sought advice the advice provided has been a little less than you would expect. The Clerks are very hesitant to provide advice on what you should and should not do. If your conscience is clear and you think you have done the right thing, they will not provide any guidance at all. As members, we are working in that environment now and the fact is that the Speaker and the President will make their own determinations, but they really do rely on the advice of the Clerks.

**Mr MACLELLAN** — I can go to the Speaker and ask for advice and have a very useful discussion, but the Speaker saying what he or she thinks would be the right thing does not protect me.

**Ms LUCKINS** — No.

**Mr MACLELLAN** — I can jump up in the house when I come under attack and say, ‘I went to the Speaker’, as though I had been to the prefect and been told it would be all right. That does not answer the question. The question is, is that action all right under the act, and the Parliament has been left as the judge of that; it has not been left to anyone else to be the judge of it in the end. It might be useful if the code took over from these other pieces of legislation which, as I say, are going to seriously affect the sorts of records that are kept. If we had an all-encompassing code and the Parliament or the appropriate house were the judge of anything asserted to have been improper, that would be fine. Leave it to the house, because I know what the house will do — the house will hear the circumstances and say that in the circumstances that was a perfectly sensible decision.

Those few members — as I say, it would be a handful of members over the next 100 years — who do the wrong thing will be subject to the discipline of the disapproval of what they have done from all sides. Members of

Parliament are acutely aware of that. I appeal to the members of the committee and say that I think we are all acutely aware of that sort of universal disapproval and the discipline it brings. I suppose I will be able to skip around the code by not keeping records, just as I can skip around freedom of information by not recording something.

**The CHAIRMAN** — One of the reasons for it becoming a big issue is the security based around computer records, in particular the very large databases that are maintained and what is put into them. Do you have any insights into that?

**Mr MACLELLAN** — No, Chair, I do not have any insights into those because I do not regard them as being any more monstrous or significant than what is in my filing cabinet on pieces of paper. It is the information that is the important thing, not the means by which it is recorded. Let us disregard the means by which information is recorded and say, ‘What of the information?’. There is a lot of information kept.

**The CHAIRMAN** — We want to ensure that it is as securely maintained as possible and that individuals have access to information held about them in appropriate situations. It seems to me you have argued that a good parliamentarian knows that and knows to do those things.

**Mr MACLELLAN** — The work of a parliamentarian could be severely inhibited. I will not mention a name, but I have a constituent from a very complicated and difficult family whose main preoccupation is to threaten to commit suicide in the office. Yes, we have an extensive file about this family, including information about the substance-abusing child; the mother, who threatens to commit suicide unless she gets her way in a hospital placement or in a situation where she wants to have her child treated in this place and not that place; the grandfather, who is armed to the teeth; and the police, who will not go to the caravan at the back of the place where the 16-year-old is because the grandfather has guns. Even the police will not go there; they will get the SWAT squad or whatever it is, but they will not go themselves. This is an atypical — fortunately — but chaotic family. We have an extensive file on that matter. If you imagine that I am going to make any of that file available to any member of that family, let alone allow them to know what each has passed on about the others, you are wrong as I am not about to do it. If there is a rule that says I must, then the file will not exist. I will not create it in the first place.

**The CHAIRMAN** — But the code allows for that, and you would not release information in those circumstances. We all have those people in our offices.

**Mr MACLELLAN** — Absolutely. We are already well down the sticky trail, because I do not doubt that if somebody knew what was in the file they could make a very elegant argument that it is a health record and that I am already legally bound. I do not doubt that the Attorney-General could make a very elegant argument that it is a public record and that I am not entitled to remove or destroy it. Already we are on that sticky paper. I am just saying that in our day-to-day lives we exercise judgments, and I do not doubt that we break the law daily in the removal of records from our offices by the deletion of this, the shredding of that or merely the putting of something out in the recycle bin. I will bet that we all make a few decisions about what should go into the recycle bin and what should go into the shredder because it is not suitable to be in a recycle bin in case it were to turn up somewhere. We are all making those decisions about records every day of the week and we are probably all defying the public records legislation, if the Attorney-General is right, and we are probably defying this piece of new health legislation if a record contains something about health.

Let me tell you that the underlying issue in the chaotic family in your electorate, just as it is in the chaotic family in mine, is a health issue. All right, we are not health experts, but we have made our comments about it. Do not tell me that if somebody comes to see me about school dental services, it is to be regarded as a health file and treated differently from when they come to talk to me about a housing problem, a loans problem or something like that. How many angels can dance on a pin? This was the stuff of those Middle Ages clerics and academics — are we about to start the same sort of game?

**The CHAIRMAN** — You earlier suggested that it would be fair that parliamentarians have a practical guide to how you protect data in offices and ensure that it is secure.

**Mr MACLELLAN** — A training course. Frankly, I would rather have had the training course when I started off as a member of Parliament than have your code.

**The CHAIRMAN** — Of course a training course needs to be underpinned by a code or some sort of principles.

**Mr MACLELLAN** — I disagree with you, Chair, but that is the whole point of it, isn't it? That is why you have to use your valuable time listening to people like me. There are different views, right? You feel that it is impossible to teach unless there is a syllabus?

**The CHAIRMAN** — Yes.

**Mr MACLELLAN** — My view is that good teachers can teach and do not need a syllabus to tell them what to teach. What they are trying to teach the new member of Parliament is how to respect people and the constituents who come to them. Now, with the greatest respect to you, I do not know of people who have such literary talents that they are able to write the bible for members of Parliament. I was left with the belief—probably from my childhood and early instruction — that the Bible was in fact inspired, so that even the people who wrote it were not actually to be credited with its contents — that it was beyond them. So I presume unless there is somebody inspiring the code we can only look for it to have some human frailty exhibited in it. That human frailty will be the very thing that traps the sincere, honest and earnest member of Parliament — trips them up and holds them up to the ridicule and contempt of the media and possibly the public — because in attempting to do the right thing they did not do what the code told them, because the code did not have sufficient in it to deal with the situation they faced.

**The CHAIRMAN** — Mr Maclellan, thank you very much for your time and for your valuable information.

**Witness withdrew.**

**SCRUTINY OF ACTS AND REGULATIONS COMMITTEE**  
**Information Privacy Subcommittee**  
**Inquiry into privacy code for members of Victorian Parliament**  
Melbourne – 30 August 2001

Members

Ms E. J. Beattie  
Mr C. Carli

Mr M. F. Dixon  
Ms M. T. Luckins

Chairman: Mr C. Carli

Staff

Executive Officer: Mr A. Homer  
Consultants: Mr N. Waters and Ms L. Smith

Witness

Mr R. H. Bowden, Member of Parliament.

**The CHAIRMAN** — Mr Bowden, I do not need to introduce you to the subcommittee, but I would like to introduce you to Ms Lindy Smith and Mr Nigel Waters, two consultants who are assisting the work of the subcommittee. If it is acceptable to you, when we get to questions after your submission we are seeking permission for them to ask questions as well, through the Chair. It seems to be okay.

**Mr BOWDEN** — Sure.

**The CHAIRMAN** — First of all, I would like to thank you for making your time available and for having written a submission to the working group. Obviously there is a lot of interest amongst members of Parliament, but so far not many have come forward to speak directly to the subcommittee.

**Mr BOWDEN** — I am not one of the shy ones. May I begin?

**The CHAIRMAN** — Yes.

**Mr BOWDEN** — I consider it very important to make a submission as a member of Parliament to this particular subcommittee. First of all, I am not a lawyer; I am an engineer. I am not going to go into the semantics of shades of meaning in a legalistic way — I cannot because I am not a lawyer. But I do have some views which I think should be brought to the attention of the committee for your consideration. Those views have been developed since my initial election to the Legislative Council in October 1992 and through being a member who was re-elected in 1999 — so I am still a serving member with some years yet to contribute. I have a large electorate or province and I have approximately 149 000 citizens of Victoria as enrolled voters.

Having read the document, a thought that crossed my mind is that it is important to contribute some views because the Legislative Council, in addition to being a chamber of the Parliament of Victoria, is also a house of review. As a member of the Legislative Council it could be claimed that there are extra responsibilities that as members of the house of review we must be aware of. It is the normal circumstance and very proper that legislation goes through the Legislative Assembly, as it must and does, and there is a requirement that that same legislation must be considered by the Legislative Council. But we in the Legislative Council have the ability to reject it, through the provisions of the constitution. As I see it, if anything comes forward that inhibits, restricts or in any way implies a regulation of the ability of a member of the Legislative Council, that is extremely important and doubly important for the citizens of this state. Because if those regulations, that act or the requirement is such of the member of Parliament, either in the Legislative Assembly but particularly in the Legislative Council, as to inhibit the honest and professional performance of the execution of those duties, then it is extremely serious in terms of our constitutional and democratic practice and the ability of the member of the Legislative Council to represent his or her constituency. That is a fundamental that I am concerned about.

Leading on from that, I take the view — and it is my view only — that the legislature sitting in the Parliament is the supreme body that will develop and define public policy. If there are constraints that are unreasonable or if there are overly technical limitations on the members of the legislature, then we are going down a very dangerous path. So the Parliament is supreme. I hold that view, I will hold that view and I will not change that view — it is my personal view that the Parliament is supreme. When there are proposals to make changes to the ways that members of Parliament perform their duties, I am concerned to make sure that those changes are not only acceptable to the community at large but they are indeed practical. That is the way I look at it.

The other thing, too, is that as a member of Parliament I believe there are certain privileges granted through the constitution and through the practice of the Parliament and the regulations as they apply. Those privileges — we often call it privilege because in Parliament we are free to speak within the standing orders — belong to the members of Parliament, not to parties and not to the executive. The ability to contribute in the interests of the people whom we represent are the privileges given to the individual members of Parliament. There is no standing for parties and there is no standing for organisations. The rights given to a member of Parliament are rights given specifically to the individual member as he or she makes his or her contribution. Anything that impinges on the rights of the member has to be very closely considered and examined.

I also think there should be nothing put in the way to prevent a member who is genuinely concerned about interference from taking that through the proper channels so that that interference can be properly assessed. It may be ultimately by the Parliament itself and indeed on rare occasions may even be considered to be contempt of the Parliament. So anything that constricts unreasonably or restricts the performance of a member to conscientiously perform his or her duties in relation to their constituency should not be taken lightly at all.

Another point that I feel should be stated for the consideration of this committee is that members of Parliament are not public servants. There is no way that I will accept a direction by a member of the public service when I am carrying out what I believe to be, within the privileges and rules of the Parliament, representation on behalf of my constituency or an individual constituent. I will not be and I will not recognise in any shape or form that I am a member of the public service. I am a representative of the people who under the constitution voted for me to represent them in the Parliament. If it is determined that members of Parliament are public servants, then a whole Pandora's box opens up. There are laws, regulations and a never-ending stream of obligations that would restrict and constrict the operation of the Parliament and the members themselves. So my personal view is that I am not a public servant; I am a representative of those people who under the constitution elected me lawfully to represent them in the Legislative Council chamber of the Parliament of Victoria.

I am concerned that freedom of information will inappropriately apply to confidential aspects of the relationship and discussions between a member and constituents or an individual constituent. Just as other members have suggested, I would like to say that to my honest knowledge and belief there is nothing in my office — in my files or records — that I have any concern about. I believe by being professional there is no documentation that I have generated and provided in the course of the normal things that have come my way that I have concerns about.

What I do have difficulties with is that from time to time, as happens to all members, there are occasions where the sensitivity and confidentiality of the information that is provided by the constituent to me as the member simply has to be respected. If it is a given that if a member of the public comes into your office seeking your help as a member of Parliament and you cannot protect the confidential information that at times is required to be asked and given, then there is just no hope. There are situations where there are dysfunctional family circumstances — and sometimes they are horrendous. We all have them. There is no way that that should be required to be declared as a public document.

Secondly, there are child molestation issues that often arise. When documentation is given to me in confidence as a member of Parliament by a constituent seeking to have child molestation issues handled discreetly, properly and by the correct authorities, there is no way that that document should be required to be released to the press or the public. That is absolutely bizarre. I believe if this were put to the public at large as, 'Would they want their confidential information provided to the press just because they went to see an MP', you would get a very clear message from the people of Victoria, 'Don't do that, because one of us may be the next person who wants to see our MP in confidence and seek their professional help'.

So I think the release and the handling of any sensitive information is extraordinarily important and cannot be compromised. Again, I think the mere knowledge that it is possible for this information between the constituent and the MP to be able to be used as a mechanism to harass or intimidate an MP so that they cannot carry out their duties leads also to the ability of individuals, be they in a dysfunctional family or a vindictive organisation or indeed a certain press situation that could arise, to do so.

With the greatest respect, Mr Chairman, to you and the other members, this committee runs the risk of opening a Pandora's box because if it is indeed codified that all and any documentation or information provided to an MP should be made publicly available, that would enable all sorts of malevolent situations to arise and for MPs to be harassed or intimidated. I just think that is not the intention of the constitution and certainly it is not the intention, will or wish of the 149 000 voters whom I represent. So I have trouble accepting the nature of that premise.

I give you one example. Sometime ago I presented a simple petition signed by almost 2000 constituents. There was, by my simply presenting that petition, a situation where I had to take legal action against an organisation whose members disagreed with my carrying out my simple parliamentary duty of presenting a petition. That legal action did take place. So I think we have to be very careful about the possibility of what is intimidation and pressure and unreasonable interference in the relationship between constituents and the member of Parliament. Too often we see articles in the media that state, 'MP says this', 'MP does this', 'MP this', and 'MP that'. The denigration of MPs has put the suggestion unfairly in the minds of many people that there is something wrong with MPs. I think, with respect to you and your committee, Mr Chairman, you have an opportunity — if indeed we are to have a code — to consider some of the harassment and intimidation of MPs by external sources.

There is some danger of too much legal emphasis being brought forward under such a code. My view is that all the MPs that I meet and mix with, regardless of party and other affiliation, are honest, sincere and professional people in the Parliament genuinely working hard in the interests of their constituents. I do not know of any individual MP in the state Parliament of Victoria who is not conscientious — and I have been around now since October 1992.

With your permission, Mr Chairman, I would like to read into the record word for word the submission that I made to the committee, if that is acceptable to you. It will take only 3 or 4 minutes.

**The CHAIRMAN** — I do not know if it is necessary. It could be just tabled.

**Mr BOWDEN** — It might help.

**The CHAIRMAN** — If you want to, in terms of putting your case.

**Mr BOWDEN** — I suggest it may help the general appreciation of where I am coming from.

**The CHAIRMAN** — I have no problem with that.

**Mr BOWDEN** — I think the letter, as brief as it is, distils the comments I have made in the last few minutes. My letter dated 9 July states:

Dear Mr Carli and members of the information privacy subcommittee:

With reference to the privacy code for members of Parliament, I would like to make the following submission.

I believe that members of Parliament should continue to remain entirely exempt from the provisions of the Information Privacy Act which will apply to members of the Victorian Public Service from September 1, 2001.

The first point I wish to make is that I am of the opinion that members of the Parliament are not public servants.

Restrictions and interference to the confidentiality arrangements which may affect members of Parliament will diminish the level of confidentiality which constituents expect.

It would be in my opinion a significant attack on the ability of members of Parliament to discuss concerns affecting constituents if the present basis of confidentiality is reduced.

I would also like to have the parliamentary privilege provisions extended to cover confidential discussions where constituents seek information from members of Parliament.

Private conversations where constituents seek assistance from members of the Parliament should be protected by parliamentary privilege, provided the basis of the discussion is lawful and not unlawful in its intent.

Confidential issues of concern to constituents as discussed with constituents within the electorate offices or at arranged appropriate locations should be covered by privilege.

Constituents and members should not be placed in any position where the members can be intimidated by either non-involved third parties or other outside persons.

**The CHAIRMAN** — It would be fair to say the subcommittee shares your concerns about confidentiality. The intent of the code is to ensure electorate officers maintain confidentiality in their record keeping, filing, collection of information on computers and so on, and that confidential information is not leaked or in some way lessened. Equally, it is important that members of Parliament do not use the information inappropriately. That is what the code is seeking to do. You said that you have a professional electorate office and professional officers who ensure the confidentiality of information and documents. What in the code would affect the functions of your office or your interaction with your constituents other than in giving them the protection of confidentiality?

**Mr BOWDEN** — In the final analysis I am particularly concerned about the public perception of what a code may finally be, because the public expects that those items or pieces of information given to members of Parliament deemed to be confidential stay confidential. I would not like to see the overriding right of the code taking the information to the public domain. If the constituent says that he or she is providing information on the basis of its confidentiality — ‘I am giving it to you so that it helps me’ — it has to remain that way, even to the extent that if a member of Parliament may meet an untimely demise or there is some loss of continuity between the member and the constituent — the documents are not necessarily then released either. There are sensitive situations we all meet. The answer to your question, as I respond, is that there has to be an understanding that if the constituent says, ‘This is confidential information’ it remains confidential.

**The CHAIRMAN** — There is no dispute with that. Do we need to be more explicit in what we are giving to you and your office about what we intend to do with the issue of security, that documents are filed, that passwords are on computers so that outsiders or unauthorised people are not given access to the information? Would those practical steps alleviate your concerns? Would you be satisfied if the code had a practical step-by-step procedure to ensure confidential information is not leaked in your office? If you have sensitive information on your office computer and if there is no password and an unauthorised volunteer accesses that information, you have no

control over confidentiality. Would not your concerns be alleviated if the code had a list of steps, including password protection and so on?

**Mr BOWDEN** — There is an attraction to the proposal you are making. My reaction is that it sounds reasonable. However, it may be a little impractical, because sometimes we are distracted and are running here and there; or there may be a change of staff and so on. I am not sure that a checklist or system could be put together that would be followed in a practical way. If the code was developed and accepted I would have trouble supporting it, but that is my personal view. If the code was put in place I would like to see horrendous penalties, really horrendous penalties, put in place for deliberately breaking the code. I am talking about a jail sentence, with no possibility of avoiding a jail sentence the first time. That is what I am saying. There are malicious people, people who unfortunately are overemotional about their politics. If the system breaks down I would like it in black and white terms that penalties are horrendous before I could support it. I am not sure a system could be devised to meet the requirement both from the practicality aspect and the imposition of appropriate penalties. The impact of an unauthorised leak on the constituent could be enormous. I do not think the price outweighs the risk.

**Mr DIXON** — The risk is there now under the current system.

**Mr BOWDEN** — It is, and that is a good point. While the risk is there now it is a requirement of the community, the electorate and Parliament that the member behaves responsibly. I could think of no worse penalty for a serving member of Parliament than to be condemned in the Parliament for acting inappropriately or capriciously. That could happen today, and I hope it does not happen to any member. I think the greatest safeguard we have today is the moral understanding that unacceptable conduct by a member would be condemned by his peers in Parliament.

**Mr DIXON** — Mr Maclellan described it as the discipline of disapproval.

**Mr BOWDEN** — I have used the word ‘condemnation’ as the discipline.

**The CHAIRMAN** — You have suggested that members of Parliament should be exempt from the data protection requirements. The reality is that under the Health Records Act members of Parliament have to protect information concerning health records. A member of Parliament may be a member of the board of management of a health committee or institution that is covered by the act. Ministers, parliamentary secretaries and others who have roles in the government are covered by information privacy legislation. There cannot be a blanket exemption for parliamentarians. Is it not easier to have some areas of a politician’s life covered and some areas not covered, or trying to provide a basis by which we can ensure everyone is aware of the requirements in terms of data protection, particularly for the management of their electorate offices?

**Mr BOWDEN** — In a perfect world this would be easy to implement. I really feel the more prescriptive you get, the more people you go to for information and advice; more time is involved and the approach will be more regulatory. Fundamentally, at the end of the day, the responsibility of being able to assure the community that the member is acting properly remains with the member. I am not sure in my mind there is much need for change. It may be there is a provision of the Health Act requiring that documentation is produced. With few exceptions, I cannot remember a member of Parliament who springs to mind who is medically qualified or able to give a definitive statement about a medical issue. It may be that such and such happened or you are recording certain facts put to you by a constituent. I know there are members who are qualified veterinarians, but I am not sure there is a medical doctor who is a member of the house.

**The CHAIRMAN** — Under the act if someone comes in with an issue relating to workers compensation and provides medical records — a common event in an electorate Office — there is an obligation that the data is protected and not made available; that the file does not drop into someone’s hands or is leaked to the newspapers. Mr Maclellan suggested that there could be some training for members of Parliament or electorate officers so that they know what their requirements are. When you came into the room earlier the banter between the committee and Mr Maclellan was whether we needed a syllabus.

**Mr BOWDEN** — You can never have too much training to make you more effective and able to do your duty, so no-one can object to that. I support that strongly. I come back to the fundamental principle: the confidentiality between the constituent and the member must be maintained. It cannot be broken by legislative measures because if you do that you have to consider the possibility of legislating exactly the same thing for discussions between a medical doctor and his patient or a lawyer and his client, because they are similar, to my mind. I am not a lawyer so I do not know the fine legal principles or the semantics, but what I am saying as a

member of Parliament of several years experience is that I do not want a diminution of confidentiality between the constituent and a member of Parliament, and I would not support any diminution.

**The CHAIRMAN** — We accept that. That is what the code is trying to do; to ensure that the database in electorate offices is maintained and is confidential and that every safeguard is taken. What concerns me is that on a day-to-day basis in your office, unless the protocols are strict, what will stop information leaking out? We do not want to stop information becoming available or leaking out or a staff member inappropriately allowing the wrong person to look at the file or accessing the computer.

**Mr BOWDEN** — I do not have the answer. All I can say is that I would be a strong supporter of massive penalties for proven inappropriate behaviour. You may want to consider a mechanism, but I am making my point clear.

**The CHAIRMAN** — Yes, you are. How do we protect the information? Do we need to codify the practice? I accept what you are saying, that you respect people's confidentiality and that you ensure your electorate officers act professionally, that information is secured, up-to-date and all that. What I am saying is: can we say that is true of the other 121 electorate officers?

**Mr BOWDEN** — I have no idea. I repeat the point I made earlier on that outside third parties, the media, should not have carte blanche to the sensitive information that comes before members of Parliament. That is extremely important. Any extension of freedom of information legislation in this precise circumstance where there is a suggestion that FOI could be used in some way to obtain confidential private information and, frankly, overemotional information would be totally unacceptable to the large community that I represent, and that is my point.

**Mr WATERS** — In considering sanctions and remedies, you say there should be severe penalties for unauthorised breaches of confidentiality. The code would be consistent with that, but to do that you must have some mechanism for investigation and someone sitting in judgment. You also say that you are worried about the effect of the code with leaked information possibly being used for the intimidation or harassment of members of Parliament. Do you have a concern about accountability mechanisms, perhaps with the Privileges Committee or Presiding Officers opening up the possibility of that harassment? Are you comfortable with some complaint mechanism within the Parliament?

**Mr BOWDEN** — I would like to see any judgment of a member by his or her peers. I do not believe any member of another category is capable of making that judgment. If there is disciplinary action against a member, members of Parliament should sit on the process and make the decisions. I would like a codified situation where it is easier for a breach to be reported and actioned by a member if we go down that route. I would like the member to have the ability to initiate and take action that can lead to a successful hearing and, if necessary, the imposition of severe penalties. I am not sure that is in place now. At the present time in the opinion of the electorate the mechanism works; if the member has disappointed his constituents or has not performed his duties properly then he may not get re-elected. Apart from that there is the moral question of procedure and so forth. In order to maintain the separation of responsibilities between members and the bureaucracy I would like to see the judgment of members only carried out by members.

**The CHAIRMAN** — Thank you for giving us your time and insights.

**Mr BOWDEN** — Thank you for giving me the opportunity to appear before the subcommittee.

**Witness withdrew.**

**SCRUTINY OF ACTS AND REGULATIONS COMMITTEE**  
**Information Privacy Subcommittee**  
**Inquiry into privacy code for members of Victorian Parliament**  
Melbourne – 30 August 2001

Members

Ms E. J. Beattie  
Mr C. Carli

Mr M. F. Dixon  
Ms M. T. Luckins

Chairman: Mr C. Carli

Staff

Executive Officer: Mr A. Homer  
Consultants: Mr N. Waters and Ms L. Smith

Witness

Mr C. Barry, Electoral Commissioner.

**The CHAIRMAN** — Mr Barry, thank you for giving us a written submission and for giving us your time today.

**Mr BARRY** — I made a submission to the committee on this matter because indeed as the keeper of the electoral roll in Victoria I regard the use made of the electoral roll information as being very important. Members of Parliament receive electoral roll information pursuant to an act of Parliament — section 61 of the Constitution Act Amendment Act. I will not elaborate on the actual information you all get; I am sure you are all well aware of it. I am sure members of Parliament are aware of the very sensitive nature of that information and I am sure they are also aware of the privileged situation they are in to receive the personal information of some 3.2 million Victorian citizens.

I emphasise three points I made in my submission. If there is to be a code of conduct it should include three things, firstly, that an elector's personal enrolment information is used only in relation to an election for the monitoring of the enrolment register for members to be able to carry out their duties as the elected representative and in relation to their constituents. I believe that is an important tenet of privacy principle no. 2 and that members should subject themselves to that principle. Secondly, I also believe members of Parliament and their staff should not pass enrolment information on to any other individual or organisation, other than perhaps a mail house for the purposes of mailing out to electors information about their campaign or about electoral matters in their area. Thirdly, that members of Parliament should ensure that the electoral roll information is maintained under high security.

Having said that and having reiterated what was in my written submission, I would like to support a number of the principles proposed in the draft code — for example, I strongly support the statement on page 7 of the draft that members of Parliament should be very sensitive to the community's expectations regarding the handling of their private information. That is absolutely fundamental. In this day and age the number of complaints we at the commission receive about the misuse of electoral information is steadily increasing. May I say I am not suggesting that that has come or been derived from members of Parliament.

I strongly support the comments on page 8 of the draft that members should treat as confidential all personal information they hold on individuals, whether it comes from or is used for political or representative purposes. I also agree that it would be very difficult for members of Parliament to distinguish between the sources of that information. I therefore believe the proposed approach in the draft is an appropriate way forward. I support the view on page 10 of the draft that members of Parliament and their staff should be required to take responsibility for their staff members, including volunteer staff, being given access to electoral enrolment information. I put forward the proposal that members of Parliament might request their staff to sign an undertaking about that. If you like, I can provide to the committee a simple one-page document recently initiated at the Victorian Electoral Commission for our staff, because many of our staff have access to 3.2 million electors' enrolment information. It is not appropriate for people in our organisation to use the enrolment information to look at other people's particulars — people who may be in the public domain, for example. It is not appropriate for people in our organisation to look up the roll to see when someone's birthday is to wish them a happy birthday. We have imposed that code of practice on our staff, and it could be a guide or help to your committee if you are interested. I would be happy to make that available.

I was not quite sure what was meant by the statement on page 11 of the draft that the electoral roll information is fairly and lawfully obtained and in any case is arguably partially exempt. I raise that as something you might want to elaborate on. The security of electors' enrolment information, mentioned on page 15 of the draft, is absolutely paramount. I have heard other people comment on that and I totally support it. Members of Parliament should be responsible for the proper security of enrolment information, whether in electronic form or in paper form. I certainly believe electors' enrolment information should never be published on web sites — even a roll of electors. I have had that battle with a municipal council and at the moment I am winning, but publishing the electoral roll on the web site is in my view simply inappropriate.

I might decline to comment on the issue of sanctions. I heard the previous speaker comment on that. All I can say is that presently under the Commonwealth Electoral Act federal members of Parliament are required to comply with the privacy information for the non-disclosure of that information, and there is a penalty. The committee needs to consider that.

Mr Chairman, that is what I wanted to say. Thank you very much for the opportunity to make a submission today.

**The CHAIRMAN** — Thank you for that, and thank you for being supportive of the code. Also at issue is the nature of the electoral roll over time. Is it ever envisaged that persons can opt out of the public — in as much as

it can be public — restricted public roll; for example, so they can opt out at your level from direct mail and other canvassing or campaigning techniques that are being used today?

**Mr BARRY** — The answer to that is no. There has been no contemplation that people would be able to enrol with a restriction that they do not want to receive any further communication from a member of Parliament, if that was the nature of your question.

**The CHAIRMAN** — Yes.

**Mr BARRY** — There is a subcategory of enrolment known as silent electoral enrolment. People who for various reasons believe it could be a threat to life or limb if address information is published on the roll can be enrolled under that category. But there has been no suggestion to me that there be another subcategory where people elect not to receive information from a member of Parliament. Off the top of my head, I must say that I think that would be inappropriate because people's views change over time.

**Mr DIXON** — You spoke of the increasing number of complaints you have received — is that one of them? Are people saying, 'I am getting this information sent to me unsolicited'?

**Mr BARRY** — At election time we often get complaints about letters that have gone out from the Premier or something like that where there are fairly large-scale mail-outs. I would not say that is an area that concerns me. What concerns me greatly is when I get complaints from people saying, 'I have just got this letter from the real estate agent and when I asked the agent where did they get my name from, the answer was, "From the electoral roll"'. When I asked, 'Where did you get the electoral roll from?' the agent said, "Such-and-such municipal council sold it to me". That is an area that I have concern with. You would probably be aware that we provide information from the electoral roll for various medical research in a very limited area, mainly in the area of breast screens. We get people who object to receiving the information, and we flag on the roll that they are not to get any further information regarding breast screens. But I would have to say those complaints are very few. The complaints are more from people who receive unsolicited mail and the source of that information has come from the electoral roll.

**Ms LUCKINS** — I do not want you to disclose anything, but are you aware of any instances where members of Parliament in Victoria have acted inappropriately with the electoral roll?

**Mr BARRY** — No, I am not. I am aware of one instance a couple of years ago, and I think it falls into the category of lack of understanding, where a member of Parliament was approached by a not-for-profit organisation in his or her electorate and had the good sense to ring our office to ask, 'Is it okay if I do this, if I provide the roll?'. The answer from us was, 'No, it is not appropriate'. It took a little bit of convincing, but at the end of the day the member of Parliament understood — well, did not pass the information on. What might be very helpful is to explain to a member of Parliament as part of the induction process the sensitive nature of the electoral roll, why they are being provided with the roll — in other words, to undertake an education and training program, because I do not think we can expect 132 people to all come to the important position of member of Parliament with necessarily the same understanding.

**Mr WATERS** — One question I have which I guess is intended to broaden out the context a bit is to what extent are your concerns shared by colleagues in other states? I am interested in the general public reaction to the limited use of electoral roll information; is it something that is consistent across Australia?

**Mr BARRY** — It is. It is a widespread concern and it is increasing.

**Mr WATERS** — And you would say it is primarily about commercial uses rather than either the volume or the nature of political communication?

**Mr BARRY** — Yes, it is the commercial use of the enrolment information. The number of complaints that I receive about members of Parliament writing to people is very few and far between. As I said before, the only time I get complaints is typically at election time when there is a large-scale mail-out.

**Mr WATERS** — Has the concern started to reach the point where in your view it is affecting the integrity of the electoral roll?

**Mr BARRY** — I believe that is the case — the number of people who would ring up and say, 'The only solution then for me is not to enrol'. The concern of all electoral authorities in Australia is that once the electoral roll starts to be used for commercial purposes, people in the community will say, 'The only opening for me then is that I am not going to enrol', and we do not want that.

**The CHAIRMAN** — The other concern would also be that as databases get merged with other databases, there is a certain point where it might not even look like an electoral roll any more, even though that underpins a whole lot of the information. Have you any thoughts about that? Is there a point where the electoral roll no longer becomes the electoral roll?

**Mr BARRY** — It is an interesting issue because one of the things we have been wrestling with for a number of years are some definitions. What I maintain on a daily basis on a computer system is in fact more accurately described as a register of 3.2 million voters. When we have an election, we produce a roll for an election out of that register. I would like to see the time when we start to get some definitions and clarity into what we are talking about. I believe the roll is a printed document, a snapshot of the register for an electoral event. The roll has been purchased, not from my organisation, but there is nothing to stop people as we are speaking from purchasing copies of the electoral roll from Information Victoria. They can send them overseas or they can even do it here now because they can be scanned electronically and they can be matched with phone books.

One of my recommendations to Parliament — I think it was in my report on the last state election but it may be in last year's annual report — is that we need legislation to clarify what should be on public display, what is in the public interest of having the electoral roll available for purchase. In my view I have to say I do not think any public interest is being served in people being able to purchase the electoral roll. Many of these concepts go back two centuries where the electoral roll was kept by quill and paper and people could only have their names added and deleted from the roll by physically going along and getting something from the post office or going to an office and somebody taking their name off the roll. With computerisation and our modern way of life times have changed and some of our laws in this regard have not. I have a real concern about the roll being available as it presently is on a wide-scale basis.

**The CHAIRMAN** — I am wondering if, for example, you added somebody's Fly Buys card details to an electoral roll and you got the *White Pages* you could create an extraordinary database, but would it still be the electoral roll that underpins some of the information on it?

**Mr BARRY** — This is a very important issue. There is a company at the moment that uses the electoral roll, matches it with the *White Pages* and with some other databases, and for a fee you can purchase particulars about people. It is available. They claim from the very argument that you put, Mr Chairman, that, 'We have purchased the electoral roll legally, we have scanned it, massaged it. It is now no longer the electoral roll'.

**The CHAIRMAN** — And your view?

**Mr BARRY** — In my view it has the potential to seriously undermine the democratic health of our state when people suddenly decide, 'I do not want this stuff in the mail and I'm not going to enrol'.

**Ms LUCKINS** — Other than the list provided to members of Parliament, is any other roll produced available with the agent salutation details on it?

**Mr BARRY** — Not for public display, not for sale. Registered political parties receive the entire enrolment data, which is another issue. Every registered political party gets the full story — 3.2 million voters — which has all the details on it.

**Mr DIXON** — Who else has the roll? There are members of Parliament, municipal councils, political parties — is there anyone else?

**Mr BARRY** — We provide it to the State Revenue Office, Victoria Police and the health department for adoption purposes. But we have cut back on the agencies that we used to provide the roll to.

**Mr WATERS** — Are limits placed on the ability of political parties to use the register information for any purpose, or is it carte blanche?

**Mr BARRY** — No. Unfortunately, the law is silent on that.

**Mr WATERS** — And under federal law all political parties are exempt?

**Mr BARRY** — Yes, so it is a little bit of a — —

**Mr WATERS** — Black hole?

**Mr BARRY** — Yes.

**The CHAIRMAN** — Thank you for that; it was extremely helpful.

**Mr BARRY** — Would you like a copy of that document?

**The CHAIRMAN** — Yes. Thank you for giving up your time as well.

**Mr BARRY** — It was a pleasure.

**Witness withdrew.**

**SCRUTINY OF ACTS AND REGULATIONS COMMITTEE**

**Information Privacy Subcommittee**

**Inquiry into privacy code for members of Victorian Parliament**

Melbourne – 30 August 2001

Members

Ms E. J. Beattie  
Mr C. Carli

Mr M. F. Dixon  
Ms M. T. Luckins

Chairman: Mr C. Carli

Staff

Executive Officer: Mr A. Homer  
Consultants: Mr N. Waters and Ms L. Smith

Witness

Mr P. Chadwick, Privacy Commissioner.

**The CHAIRMAN** — Firstly, congratulations on your appointment as Victorian Privacy Commissioner, and thank you for making your time available to the committee today. Two consultants are assisting the work of the committee, Ms Lindy Smith and Mr Nigel Waters. I suppose this hearing seems quite formal because we have Hansard reporters here, but we are trying to make it as informal as possible. I invite to make a presentation and then committee members will ask a few questions. That would be the most appropriate way to proceed.

**Mr CHADWICK** — Thank you for your congratulations and for the invitation to address the committee today. I thought it best to give you the absolute basics of my role. I have been appointed from 30 July this year under the Information Privacy Act, with which you are all too familiar, and it is a five-year term. You will be familiar with the functions under that act for the Privacy Commissioner. They include: to inform, advise, issue guidelines and receive representations from members of the public. It is the last point that I will return to in a moment.

I noted, too, that Parliament saw fit to interrelate your committee with the Office of the Privacy Commissioner to the extent that the Subordinate Legislation Act will add to the committee's scope proposals that unduly require or authorise acts or practices that may adversely affect personal privacy. I just put on record my appreciation of that because it seems to me that, privacy being so all-pervasive and information being, as it were, the molecules of public administration, the need for that kind of parliamentary sieve for proposals that might range across public administration in Victoria is undoubted, and I look forward to liaising with the committee in the future. I think there will be, too, liaison in particular matters. If section 58(q) of the Information Privacy Act turns out to be popular with the public of Victoria, I think there will be a need for me to make referrals to whatever body this committee or, more broadly, the Parliament establishes to enforce any privacy code.

Lastly, of course, I extend through this committee a general openness to you and to your staffs to approach the Office of the Privacy Commissioner — which is clearly in set-up phase at the moment, but the act begins on 1 September, that is, this Saturday — to seek specialist advice in this area.

I begin by saying I am in the broad agreement with the conclusions in the committee's *Report on an Interim Privacy Code for Members of the Victorian Parliament* of May 2001. For example, the suggestions for dealing with the petitions issue strike me as eminently sensible. Of course I am open to discussion about that later.

I shall make a few generalised comments, which I hope will draw out the key themes. It is worth in this context to focus on the role of an MP as a representative, not as an administrator. I think people have a reasonable expectation of closer and more particular personal contact with individuals, leading to collection of more personal information — including sensitive information — when they are dealing with their MP. I do not know what day you hold them now, but they are not called 'electorate clinics' for nothing — I think that term has come to have a special meaning for serving MPs. It certainly was the case in the time that I reported the Victorian Parliament and for a short time the federal one.

MPs represent constituents to the Executive, and in that role they provide personal information to agencies — that is, MPs in some ways are the conduit for personal information into the bureaucracy which the bureaucracy would not otherwise acquire through, for example, its statutory powers to compel or its normal work at a task of administering a particular piece of legislation.

While agencies must be conscious of information privacy principles and collect only for necessary purposes, it seems to me MPs must be conscious that they provide too only for necessary purposes, and with consent. As law-makers and potential ministers, MPs receive briefings from the Executive, and I am sure that what comes with that at times is personal information — that is, information drawn from the Executive, not directly from the constituent.

Representatives tend to seek re-election. As the committee's report notes, information is collected and used for mixed purposes. The trade-off for tolerating that in the interests of a vibrant, participatory democracy is access and correction. This will put a premium first on careful consideration of what to record. Not only with the Parliament but with the bureaucracy. We have been around this track when freedom of information law was introduced into Victoria in 1982–83.

MPs will inevitably collect personal information about political opponents. Collection and use of this category of personal and often sensitive information is also part of the stuff of politics. We, and you, tolerate it. The preparation of any privacy code for MPs should have one eye on this fact of life.

I shall make a detailed point about the reference in the report to the principle dealing with trans-border data flows. You will, I hope, see why I make this comment later, but I think it is more orderly to make it now. At page 17 your report suggests that MPs “consult with” the Privacy Commissioner, but the code says that MPs send information across borders “only in accordance with advice issued by” the Privacy Commissioner. There is something a little stronger about the way the reference in the report appeared in the code. With all proper respect, I would prefer that the words in the code be along the lines of ‘after consultation with the Privacy Commissioner’. I think that is more consistent with your conclusion about separation of powers. I would certainly be happy to help. I would prefer that it be clear it be a consultative role. The code as currently drafted might be read as requiring an MP to seek the Privacy Commissioner’s sign-off, as it were. In my opinion, that ought to be avoided, for reasons of consistency, in view of the committee having made the more general conclusion about the separation of powers.

The concepts of privacy and reputation are related. The unifying factor in practice is often items of personal information. There is developed law on parliamentary privilege that gives MPs significant rights and responsibilities. There are recent cases such as *O’Chee v. Rowley*, and I shall give the citation for Hansard’s benefit: (1997) 150 ALR 199. Recent cases such as *O’Chee* have reaffirmed the breadth of parliamentary privilege and the term ‘proceedings in Parliament’. The long tradition associated with liberty of speech in Parliament can help to inform treatment of personal information in the privacy context just as it has in the reputation context. Notions of checking accuracy, of proportionality and of rights of reply, which are familiar in the reputation or the defamation context, find their expression in the Information Privacy Principles (IPPs) as, for example, data quality, necessity, and in rights of access and correction. But there is a key distinction. When reputation is unfairly harmed, it is possible for some repair, for a retraction, correction and apology. But privacy, once lost, can never be regained. This fact increases the responsibility of members of Parliament and their staff to make a code work. It also has implications for enforcement, to which I shall refer later.

I note that in its *Report of the Inquiry into the Status and Correspondence of Members* of November 2000, in particular in paragraphs 2.62 to 2.69 and associated references to those paragraphs, the House of Representatives Standing Committee of Privileges deals with the importance of the confidential and careful handling of information by MPs because of the exclusion of MPs from the federal Privacy Act. It also makes reference to the draft framework of ethical principles for members and senators. I think that dates from 1995.

Still on the theme of the distinction between the representative and the administrator, representatives make the law for the Executive and for the public. The legislators ought to live up to the rules they impose on others, appropriately adapted to unique issues, such as the need for robust participatory democracy and for acknowledgment of parliamentary privilege and its deep traditions. In this sense the privacy code will join the register of interests, email policy, right-of-reply procedures, anti-discrimination protocols and other like initiatives adopted voluntarily by Parliament to mirror standards it has legislated for the Executive and for the community.

I think this has implications for the enforcement model as well, and I turn now to the issue of enforcement. The interim report leaves for further consideration the issue of enforcement of a code, including sanctions and remedies. I understand the view that an enforcement role for the Office of the Privacy Commissioner and for the Victorian Civil and Administrative Tribunal could be seen as inconsistent with the doctrine of separation of powers. I will assume for present purposes that Parliament decides to handle enforcement ‘in house’.

It would appear appropriate for any enforcement model to match natural justice or procedural fairness standards commonly applied in administrative law. They are, very, very crudely: that a person gets a hearing, that the decision-makers not be biased, and that the decision be based on logically probative evidence. Of these, the requirement that the decision-maker not be biased poses special issues if the privacy code were to be enforced by a committee of MPs. It is for others, not me, to judge whether the officers of Parliament will have sufficient resources to take on the role of enforcing a privacy code. I raise for consideration a broader approach.

It may be that the piecemeal and incremental adoption by the Parliament of the various codes and protocols that I listed earlier has now reached a point where the Parliament of Victoria should establish and equip an Office of Parliamentary Standards. Such an office may alleviate pressures on existing officers and allow the Parliament to develop in an efficient, orderly and appropriately adapted way the necessary independent capabilities for investigation, conciliation and adjudication of complaints made under various codes adopted by MPs to cover themselves and their staff. Such a specialised office would be a purpose-built replica of some of the specialised statutory offices that the Parliament has created over the years. I am thinking, obviously, of the Office of the Privacy Commissioner, and there are also equal opportunity and many others.

I finish with a couple of remarks on the question of sanctions — clearly a matter for you and your colleagues. Of all the potential sanctions that might be voluntarily — I emphasise ‘voluntarily’ — adopted by MPs, perhaps the most severe would be the sanction of publicity. Assuming appropriate procedural fairness in the enforcement model, where an MP is found to have breached or not to have breached the privacy code, it may be appropriate to order that the finding be incorporated in *Hansard* and distributed in the MP’s electorate. Naturally, any publication of findings ought to occur in such a way as to protect, so far as practicable, the privacy of complainants and third parties.

**The CHAIRMAN** — Thank you for that very thorough presentation. I suppose one of the big issues we are grappling with is the access and correction part of it. I wonder whether you have any ideas of where refusal to allow access would be justifiable — in a politician’s life, rather than just in a vexatious or frivolous sense— given that they are dealing with sensitive information and that they are involved in the cut and thrust of politics. Do you have any ideas around that?

**Mr CHADWICK** — Naturally the broad guidance is already in both the Freedom of Information Act and in Information Privacy Principle 6 (IPP6), about access and the exclusions from it. I cannot speak in any detail about the life of a politician as you live it. I mean, there is something quite special about the role that you play in the community; and, as I have said a couple of times, there is a deep tradition associated with it. But I would make one point. The federal Parliament has excluded political organisations — I think that is the term in the commonwealth legislation. MPs are not just representatives alone; they are representatives of parties on the whole — leaving aside for the moment Independents. The sharing of data with parties by individual MPs raises issues for constituents. It is one thing for a constituent to seek an MP’s intervention in an issue that the constituent has with a particular arm of, say, the state government. It is another for details about that constituent to find their way into a more broadly based database which may, for example, be extremely useful for a party that is going to confront a by-election or a federal election in the same geographic area. To be consistent there will need to be some consideration about the primary and legitimate secondary purposes that MPs might have for sharing information.

The second response I make on the question of legitimate exemptions is that I think the report quite wisely leaves that to the discretion of MPs rather than trying to fix the categories really strongly. It may be that there is a middle ground — that is, to leave it in the broad might simply be an invitation to very inconsistent application of the access and correction principle. To the extent that one cannot seek a correction until one has had access, the access and correction principle relies on access. It may be that something in the middle, between a broad and very individual discretion for the MP on the one hand and really tight and restrictive exemptions on the other, is an appropriate way to go.

We have enough knowledge and experience now of the broad areas for exemption to make that sensible. There is a trade-off, and the report makes the point. To the extent that an MP refuses access, he or she will have an obligation to give reasons. That is also a fundamental procedural fairness principle. The giving of reasons, as I understand the report, would be something that could be assessed then by a more independent decision-maker. I do not think it is stated firmly in the interim report that that independent decision-maker would be a particular officer of the Parliament. I do not think the interim report took it that far, but one would assume that if you were willing to grant, as it were, a right of appeal to the person who is a disappointed requestor for access, then you are implicitly saying that you will accept the decision of whoever is that independent decision-maker. That is one of the reasons I turn my mind to the question of an Office of Parliamentary Standards. Maybe we in Victoria have come to that stage.

**The CHAIRMAN** — Do you know of any similar officer? Somebody mentioned an advertisement by the Scottish Parliament for a position of that type. Do you know of either the Scottish experience or other parliaments?

**Mr CHADWICK** — None in detail. All I suggest is that it reminds me of other things. As public administration evolves (and anybody with an interesting political history has seen this) there are quaint ways of how certain issues for the citizen were resolved in history. We have captured and kept the language of a more simple Parliament from a more simple age, so one will see references to ‘and this will become the task of one of the officers of the Parliament’. But there are limits to what he or she can do. As I looked at the list of what the Parliament has voluntarily imposed on itself, I thought this is really the start, but there are many others, such as the right of reply procedure in the Senate. Some of these things require a degree of specialisation beyond a knowledge of Parliament. I wondered whether it was a useful suggestion and something that the committee might turn its mind to, or more broadly the Parliament of Victoria.

**Ms LUCKINS** — In the police context they have an ethical standards committee, I think it is called, and we have a Privileges Committee which deals with misleading the House on issues like that. Under your model

would it envisage that the office still be fundamentally made up of a committee of MPs but with administrative support or with an independent head of the office?

**Mr CHADWICK** — To the extent that you appoint an independent head of the office, he or she would have to be akin to the Auditor-General. It is a considerable role that might be created. May I say, not disrespectfully or facetiously, that it is not a model, it is a sketch, a suggestion that I am sure better minds and more experienced hands would turn their attention to if they saw virtue in it. There is an incremental development going on. It is recognition, in an age of accountability, as it has been called, that MPs are under a certain pressure — let us not call it obligation yet — to replicate for themselves the standards of accountability that they are legislating for others.

**Ms LUCKINS** — Other witnesses who have appeared during the course of the public hearings today have alluded to their concern about who would be the Ombudsman, who would police it and who would determine the sanctions. That is something we are grappling with.

**Mr CHADWICK** — I think Parliament should determine the sanctions in the theoretical sense, and that is why I stress the word ‘voluntarily’ — it is essential. There are good reasons for the doctrines of parliamentary privilege that have grown up over many years. We must recognise that their genius is that they have adapted, and perhaps they have to adapt to the age of accountability.

**Ms LUCKINS** — By nature of our jobs we are up for election, and if you lose the election, or you pass away during the election period, which we have had on a couple of occasions, or if you decide to retire, generally the information kept in your office is destroyed. I am sure there are varying degrees on how successful that is done to protect the privacy of individuals. The Health Services Commissioner will be giving evidence shortly, but under the Information Privacy Act my memory is that there are guidelines on how long to keep records, which is the case also under the Public Records Act, but in the case of an MP leaving office and destroying the records, how would that marry up with the access and correction issue, and how does the destruction of those documents work in practice. Do you have any idea about how we should police that?

**Mr CHADWICK** — One must remember that we are discussing this in a digital age, not a paper-based age. Information has a fantastic capacity to replicate. That is one of the key distinctions about the introduction of freedom of information in Victoria and the introduction of the Information Privacy Act, one that is not properly understood. On the one hand we are in a different age for the potential for information to spread, to spread with harmful consequences, and to replicate itself in ways that make the retrieval and correction difficult. On the other hand technology facilitates rapid correction because of the spread with which exactly the same email, for example, can be chased by the correcting email. If the decision is that an MP upon retirement shall gather together and destroy constituents’ records containing personal information — there are all sorts of ways you can hedge that — then if they are destroyed the access and correction question disappears.

**Ms LUCKINS** — This is practice; this is what MPs do. It is not a guideline or even advice from political parties. I guess in practice the information has gone beyond the office. If the constituent requires that information to be returned if it has been provided and you have the only copy that has subsequently been destroyed, is that then an issue for your office?

**Mr CHADWICK** — Not in the case of MPs. I believe their exclusion is clear. One difficulty with destruction is whether you have retrieved and destroyed, or just destroyed what you have. There is some emphasis on proper records management and some emphasis on guidelines to ensure that where information is shared records are kept by the sharer about with whom it has been shared. That may be an appropriate guideline for MPs to follow for their term in office. I can understand there are special elements. I am sure some constituents trust their MP in the way they trust their doctor. In a personal sense they grow up with them, they work together in that area, whatever it is, but in other cases an MP, relatively fresh, particularly with a large age difference between certain constituents and the MP, it takes time to build up that trust. One can imagine that the reasonable expectations, to use a term that is found in the law, are different.

**The CHAIRMAN** — With regard to the digital age and the interest in co-privacy between governments in e-democracy and e-government, do you have any ideas about where privacy fits into e-democracy?

**Mr CHADWICK** — It is an essential companion. Australians are pragmatic people. I do not think they will participate with gusto in e-government or e-democracy, which I believe are different things, or e-commerce unless they are assured or more assured that their privacy will be respected.

Recent useful research by the Office of the Federal Privacy Commissioner, which was carried out by the Roy Morgan organisation and published in July this year, showed high percentages of respondents insisting on respect for privacy. This is the way I can put the findings in a lozenge: — they insist on respect for privacy; they are wary and withhold cooperation from commercial or governmental-type activities where they are not sure. I do not think we should neglect that strong message, which is sound in principle, sound in intuition and appears to be sound on polling grounds. We should adapt to it because there are many potential benefits in these technologies for better public administration, for the lubrication of commerce and an information economy, and for e-democracy, which I regard as a different concept to e-government.

**Mr WATERS** — You referred earlier to the use principle and the way that you could see a distinction between a primary and a secondary purpose in relation to constituency case matters and their potential use for campaigning purposes. Currently the draft code does not attempt to make any distinction. It basically says that it is all right to use the information for the purposes of performing the functions of MPs. With respect to the particular example you gave, and the more general issue of political direct marketing, would it be your view that there should be some greater degree of rule making in that area about what is the legitimate primary and secondary purpose?

**Mr CHADWICK** — In the same way that I say I believe Australians are pragmatic, I think they are pragmatic about electioneering. This country has a great tradition of democratic behaviour, although people would find your leafleting and the candidates who stand against you and their leafleting as an irritant sometimes. But they acknowledge that that is the way we do things. It is healthy and it has stood us in good stead. I make a distinction between a letterbox drop and something that is mailed directly to the person with name and address accurate. Those lists concern people, which is what the anecdotal and the polling evidence shows. That concern must be listened to. One way to do so is to seek consent. Or, if in the political context we acknowledge there is a higher order of need to reach people and to allow contending voices to reach people, and if we find that then maybe it is something less than consent, maybe it is informing people that the MP has obtained their name and address from a particular list seller, that this is how they are getting the unsolicited mail. One of the strong phrases one sees in the research is, ‘How did they get my details?’. If somebody knows that their MP or an aspiring MP got their details from a particular source, it allows people to feel more empowered. It allows them to think, ‘I do not want that list seller to sell any more without my consent’. That would marry not only with public expectation but with the scheme that is in its nascent form in the private sector.

**The CHAIRMAN** — With regard to email and how email addresses are gathered — this is hypothetical — we are involved in the political process and one could set up web sites on one particular issue drawing on many users and getting their email or IP addresses and collecting that and using it for other political purposes. How do you feel about that procedure?

**Mr CHADWICK** — Tell them you are doing it — tell them straight-up when they visit the site that you are doing it and ask if they do not want that to happen — that is, give people the opportunity to opt out. These are the standards. What I am recounting here are not personal predispositions — they are the standards that have been nussed out over a long period. What is inherent in them is, firstly, the idea that people want to know, and secondly, that they want the chance not to receive. It may be that when we think about the strong public interest in a robust participatory democracy, the standards we are proposing to apply in the private sector or that we apply to public sector agencies are not appropriate for MPs. My reaction is consistent with those basic standards. We must ask ourselves the other question: why are we reluctant to tell people?

**The CHAIRMAN** — The one that is similar to that is signed petitions. The assumption of a parliamentarian is that they have been signed and therefore those who have signed have publicly indicated their address in their information, and when tabled in Parliament they remain public documents, but nowhere in a petition is there a disclaimer that the information it will be used on a database or some other form of collection. Should the practice be to put in those disclaimers or do we accept that petitions are public documents and once people sign them they should know that the names and addresses could be used for other purposes?

**Mr CHADWICK** — On the disclaimer in the context of petitions, I do not know about you, but my experience of people asking me for my name and address for a petition is when I have a child on a hip and I am carrying shopping or I am thinking that some shop is going to close shortly and I have to get there. Petitions typically occur in the hurly-burly of something else. A disclaimer, however carefully worded and highlighted on a sheet of paper that has a million scribbles on it, a few raindrops and everything that happens with petitions, may not be the appropriate way. The proper way might be to say, ‘What is the purpose of the citizenry petitioning the Parliament?’.

Ordinarily the purpose of a petition is to seek change in law or policy, particularly policy in the case of the legislature. If that is right, then the purpose of signing and adding one's name and address is authenticity for the citizen. To say, 'Yes it is me who is asking, I add my name to this list and I am willing to put my address on the petition because I am saying yes, I am this person'. That is a way of authenticating, as with signature. In that case they are certainly not bearing in mind that that list might find its way to some kind of enormous list of names and addresses that will then be used to facilitate direct marketing. That is not what people typically perceive a petition to Parliament to mean. If that strikes people as correct, then the types of treatment of petitions that are proposed in the interim report are sound to me. They seem to accord with the way that citizenry down the street doing the shopping approach a petition, and it seems also to me to be a more respectful way for Parliament to treat the citizenry by saying, 'You have communicated with us this list about this particular matter asking or joining in the call for change, which we respect, but we will not be disclosing your particular details, only the number of names and addresses and signatures on the petition'.

**Witness withdrew.**

**SCRUTINY OF ACTS AND REGULATIONS COMMITTEE**  
**Information Privacy Subcommittee**  
**Inquiry into privacy code for members of Victorian Parliament**  
Melbourne – 30 August 2001

Members

Ms E. J. Beattie  
Mr C. Carli

Mr M. F. Dixon  
Ms M. T. Luckins

Chairman: Mr C. Carli

Staff

Executive Officer: Mr A. Homer  
Consultants: Mr N. Waters and Ms L. Smith

Witnesses

Ms B. Wilson, Health Services Commissioner; and  
Ms A. Mullins, Health Records Act Education Officer; Health Services Commissioner.

**The CHAIRMAN** — Some witnesses today have mentioned the Health Records Act a number of times and the differences in interpretations and implications. It is of added importance because while parliamentarians are exempt from the Information Privacy Act they are not exempt from the Health Records Act. It will be useful to hear your comments on the Health Records Act and its implications. I invite you to give a presentation.

**Ms WILSON** — Thank you for the opportunity to present. Apart from anything else, it has given us the opportunity to make sure we read this document properly. It had some surprises in it for me as an ordinary citizen rather than as the Commissioner, and I might address those a little later. I thought I would tell the Committee a little bit about what the Health Services Commissioner does from the perspective of its approach to complaints handling, because that will be relevant to members of Parliament. I will talk briefly about the Act and how it affects parliamentarians and political parties and express some concerns I have about the draft code in its present structure; is that okay?

**The CHAIRMAN** — Yes.

**Ms WILSON** — The Health Services Commissioner is an independent statutory authority set up to receive complaints from users of health services about health service providers. It is not an advocacy body for consumers. It is independent and therefore impartial, and we place a strong emphasis on conciliation. My view of my job is that it provides people with an opportunity to get their complaints resolved so that they can move on. We will be using exactly that approach with regard to complaints about breaches of privacy of health information.

The Health Records Act, as the Committee has correctly stated, is binding on parliamentarians and political parties. On reading the report and the draft code I had some concerns that that may not be emphasised strongly enough. In some parts there is an almost casual tone to the code and if people were mistakenly led into thinking that that also applied to health information they might get themselves into bother. I will expand on that a little if I may.

When I read this report I was surprised at some of the information politicians and parliamentarians keep about people, especially the kind of information that you refer to in the report as “intelligence” on “cases”. This morning I did my own little straw poll in the park among the dog-walking fraternity. I asked people what their reaction would be if politicians were keeping intelligence about them that had things listed such as anti or pro-abortionist, known greenie, or whatever, and frankly they were horrified. People were really surprised that such information might be kept about them and somewhat aghast. So from my reading of the report and the way that was handled I formed the opinion that reasonable community expectations are in fact very different from what political parties think is fair. I might be wrong, but that is the impression I gained. I also gained the impression that the report almost approves that kind of information gathering, and if you extrapolate that into the health context that would be very risky indeed for MPs.

I found some problematic use of language in the report — for example, the report acknowledges that there are obligations under the Health Records Act. I did not feel that was strong enough, given that it is a legally binding document. I think it needs to be stated a little more firmly than that. Clause 10 of the draft code states that:

Health information will be handled in accordance with the provisions of the Health Records Act 2001, to which MPs are subject.

That is okay, but it really should be saying that health information must be handled in that way rather than “will be” because it is a legal obligation.

I found the report to be very MP focused, and the Committee may say that is logical because that is the reason for the report. However, I detected a tone of ‘How much can MPs get away with?’ rather than a tone of ‘How can we make sure that we respect the rights of individuals?’. Similarly the report focuses really on what the MP needs or desires in collecting and using information rather than individual rights and expectations. So it is a focus thing, I guess. For example, there is a lot of discussion about the various roles of MPs as potential candidates for election as opposed to being advocates for constituents. I certainly agree with Paul Chadwick about the different information that you collect in your different roles, but from the point of view of the Health Records Act it does not really matter in what capacity you are gathering it, your obligations are the same, so those distinctions become less important.

I was surprised that paragraph 1.1 of the code, compared with the health privacy principles, does not even mention consent, which is very important and needs to be emphasised. I realise that the code is voluntary. However, the Health Records Act is law. This is very different in terms of the obligations and must be made clear to all parliamentarians so they will be able to comply with their obligations and will not breach a person’s privacy and therefore be the subject of a complaint to me. I do not want to have to be dealing with complaints, so I will be

placing a lot of emphasis on helping people to comply with the Health Records Act on the understanding that if people understand their obligations they are less likely to breach them and therefore I am less likely to be handling complaints at the end of that process.

Guidelines are mentioned. We will be producing guidelines to do with health information gathered for research and for disposal of records. Under the Act I have an obligation to do that. I have the power to produce other guidelines in consultation with people and I will be looking at that, but I will be looking at it very cautiously because in my experience the further you move away from the actual language of an Act and start interpreting it into other lesser documents, the more likely you are to forget the real obligations. I would much rather see people coming to terms with and learning about the principles in the act than watered-down versions of them. Guidelines can be very helpful in interpreting Acts, but the principles are the guides and the people you are dealing with should be going back to the source. I have dealt with a lot legislation in jobs where even experienced legal members start talking about what they think is in the Act and they inadvertently change words and meanings because they are not going back to the source.

Our role will be to help you and to help all organisations that have to comply with the Health Records Act. We would like to have a member of Parliament on our reference group and maybe the Committee could help me by recommending somebody we could invite to join and who could give us advice. Obviously there is a lot of expertise here, not that I am asking anyone to volunteer. Have I got the volunteer?

**Ms LUCKINS** — I am the one who has been talking about it the most on the Committee.

**Ms WILSON** — Thank you for that; that will be invaluable. Parliamentarians will have to come to terms with the fact that from the constituent's point of view parts of their records will be protected by the Health Records Act and parts of their information will not; it will come under the code. This will be somewhat onerous but it is no different from the challenges that the Government has given to all organisations in the public and private sectors that handle health information. As the Committee knows, the Government has decided that health information is very different from other kinds of information. It is the most sensitive information and the Government has decided that it should have its own health-specific legislation.

Currently I receive quite a few complaints from MPs about users of health services. Generally a covering letter will state, 'My constituent has approached me with a problem', with the letter attached. I will then deal with the person and get their consent. I have been assuming that members of Parliament have sought consent from their constituents before sending that letter on to me. I do not know whether my assumption is universally correct or not, but that is the kind of area the Committee should warn people about. Before you send on a letter that contains health information to any other authority, do not just assume you have implied consent, ask the person. Go back to them and say, 'Can I send this to Beth Wilson?'.

Consent is very important and I would have liked a little more about it in the report. There are some assumptions about implied consent that could be risky from the point of view of parliamentarians and politicians — for example, page 11 talks about expectations of constituents. They may be very different from yours. That is all I really wanted to say.

**The CHAIRMAN** — I am curious about the consent issue. Which part of it are you concerned about specifically in terms of the draft code?

**Ms WILSON** — It was reading the part of the report where you were mooting the idea that maybe you could get consent and maybe not. I cannot remember exactly which paragraph it was.

**Mr WATERS** — It is at the bottom of page 12 on the casework issue.

**Ms WILSON** — Yes, I have that all underlined.

**Ms LUCKINS** — It comes back to what is express consent — for example, where a constituent has approached and asked for assistance. We have sent the information on with their verbal consent and then they may, particularly in a case where someone is mentally ill or has no memory — and this has happened to me — or a grave concern about the information being passed on. Do you think we should get written consent?

**Ms WILSON** — We always say to doctors and other health service providers that good record keeping is their best friend for dealing with situations such as that. If you have a particular reason to think that a person is perhaps distressed or disturbed and may not be as coherent as they should be, cover yourself by making notes.

Since the Government was good enough to give us the responsibility of administering this legislation I have been really surprised and worried about the number of questions, particularly from health providers, about how they should be keeping records. There is a lot of confusion out there, and these are issues that really should have been dealt with years ago. They are not actually part of the obligations under the Health Records Act, but people are thinking about these obligations because they are now turning their minds to them— for example, psychologists who do family therapy and have notes on the whole family; psychologists who have records on the husband and wife when they are good friends, but end up in the Family Court. It is poor record keeping to just lump them all in together.

I have been looking for sources and guidance on record keeping for doctors in particular and there is very little around. With the President of the medical board and Professor Freckleton we have decided to write our own book. There may well be some scope in such a publication to include parliamentarians now that you are included under the Health Records Act.

**The CHAIRMAN** — That might be useful. I assume most parliamentarians would get consent to send a letter to someone else, but I do not know, and the reality is that the 132 offices are really like 132 small self-managed autonomous beings, and at the moment there are no protocols as such and there is no training specifically on this matter. How do you think we can alleviate that? How do you achieve best practice when you are dealing with 132 different offices?

**Ms WILSON** — Do you ever have gatherings where they come together and where people like me can come and amuse them with an address?

**Ms LUCKINS** — Only within the party situation. The party is really responsible for education and freedom of information (FOI) and all our obligations. It is up to the individual party. You have to have someone motivated to get everybody together. As an MP I have a lot of concerns — which I expressed during the debate on the bill — about how this will affect us; not for us, but how we interact with our constituents. You have touched on some of those areas. One is training and information about members' obligations, but there are also staff obligations and how to keep the records.

This morning a couple of MPs gave evidence to the committee about records they have that relate to the whole of a dysfunctional family, and if they relate to health and if these records are made after the commencement of the act then they will be required to be handed over as is unless there is very good reason, which could be quite difficult. Also, there is the assessment to be made on whether it would endanger someone's life, which I think was the term used in the act. It is difficult for us to make those judgments ourselves. As part of this review the committee is looking at how to ensure consistency but also a carrot-and-stick approach to the conduct of MPs with regard to the information that they release or how they deal with it.

**Ms WILSON** — 'Very good reasons' is a bit loose for when you hand it over. There are some exceptions in the Act, and the Act is quite specific not only about when you do not hand information over but when you must not. If you or one of your staff forms the view, or if you come to a reasonable belief that giving access to the information would present a serious threat to the life or safety of the person, or of another person, not only do you not give it, you must not give it. So that really is quite onerous, but that is what the Act says. There is a need for a lot of education.

**Ms LUCKINS** — In that case do they go to you?

**Ms WILSON** — If you do not hand it over and they think you should, they can complain to me and I will mediate that complaint with you and will decide what is reasonable in the circumstances.

**Ms LUCKINS** — That is fine in health but we have other areas that are covered by information privacy. The obligations for us as MPs, and everybody who deals with health information, even kindergartens, are quite onerous, but we have the inconsistency between how we deal with different information as well.

**Ms WILSON** — It is onerous, but on the other hand it is actually definite. You know more or less what you have to do under this, and in some ways it has brought some certainty into what has been a difficult area. You talked before about what happens to records when a parliamentarian leaves. Under this Act it is quite clear:

An organisation other than a health service provider—

so that is you —

must take reasonable steps to destroy or permanently de-identify health information if it is no longer needed for the purpose for which it was collected or any other purpose authorised by this Act, the regulations made under this Act or any other law.

So it gives you permission to do exactly what you are doing.

**Ms LUCKINS** — Also, it is a matter of how you destroy it, whether it is thrown in the bin or shredded.

**Ms WILSON** — We do not want to see it turning up at the tip.

**Ms LUCKINS** — That is right and it is part of what this code is about — how to deal with that kind of information, the destruction, the storage, the whole works — and that is where we need some consistency across the board.

**Ms MULLINS** — There is obviously an opportunity there for how it will work within your structure and your culture. As you said, how do you develop best practice and standards? Our organisation or the privacy organisation obviously works with you to comment on things you develop, but it would be a great relief to those 132 colleagues to have a suggested standard. The record-keeping issue in terms of health information and other types of information is something that is facing other record-keepers as well. It will be a challenge for medical people and for health service providers as to how they mark records, for example, that contain information given to them confidentially by a third party, or a family member.

The act gives a specific ‘You are not to reveal that information to that person’. When they ask, ‘How do we order our records to ensure that we are doing that?’, I think public agencies have had experience managing those kinds of things with FOI, and there is some expertise that you can draw from as to how you manage it. It is a new frontier for those people as well. It is certainly not impossible, but it takes a little bit of creative thinking to think about how we practically handle our records, how we mark this as confidential, as being provided by someone else, as dealing with another party, so that if there is an access issue we are able easily to remove it and to say it is exempt because of a particular part of the law. They are challenges faced by others.

**Ms WILSON** — And in recruiting staff for my office to implement this information I have the services of Anne Mullins, for which I am grateful, but I also have Susan Joseph on board, who is an expert on records handling. She has been in that career path all of her professional life, in both the public and private sectors, so she is going to be a great resource for my office and for helping other people in complying with the Act in understanding what record keeping is all about. She understands not only good practices but poor practices as well. Often when you are looking at records, what is important in medical records can be what is not there as much as what is.

**The CHAIRMAN** — I wanted to pick up on the community expectations being different to Parliament — your survey in the park. While it sounds like we are being Big Brother, and all that, from our reality, because Victorians and Australians cannot opt out of voting, part of being a member of Parliament means you have access to the roll to assist in constituency work and also obviously in future election campaigns. It is really common to have that as a base source — for example, common issues that arise, like environmental issues along the Merri Creek, for me, or traffic management issues, where you note who those people are — for no other reason than you want to correspond with them as you have announcements, as projects develop or there is some funding coming, and that sort of thing. So it is not really Big Brother-ish from our end, but I can understand from the other end it looks that way. I am wondering what you think are the genuine parameters, or the parameters we can all accept? I think it is incumbent upon us to inform constituents about, for example, funding for the Merri Creek.

**Ms WILSON** — Of course.

**The CHAIRMAN** — Or tree plantings, and that sort of thing.

**Ms WILSON** — I guess the sort of thing that really disturbs me is the fact that it is completely non-validated. People do not know it is there for a start, so they do not know what you have said about their beliefs. You may have got it wrong, for one thing, so that could be a real problem. A few years back — and I cannot remember all the details — a political party targeted women who had been on a breast screen register. Do you remember that?

**Ms LUCKINS** — It was not political. It was when we were in government, before the last election and, if I may — not that I am trying to justify it, I am trying to explain it — the electoral roll was used to determine the age at risk and to advise them of the fact that they were at risk, that this was a funded program, and ‘this is how you access that’. It was not actually during an election campaign.

**Ms WILSON** — No, it was not.

**Mr DIXON** — And it completely backfired.

**Ms LUCKINS** — But it was not in the election campaign.

**Ms WILSON** — It did backfire.

**Ms LUCKINS** — It did.

**Ms WILSON** — And there were some wrong assumptions. But it does highlight the sensitivity with which people regard their health information, and we have to be aware of that. I understand your need to get information to people, but I think that most people reading that would be surprised, and I think it is really important that you are aware of that. It depends how you keep it, too. We have doctors who write things in reports like, ‘This plain, unhappy looking girl of 38 might have been much more attractive once when she was younger, in a slimmer sort of way’. If you are going to keep that kind of record and people get to see it, you will have to wear the consequences.

**Ms LUCKINS** — I think in a way having these obligations is a good thing because in the past where you would have put a comment like ‘nutter’ on a file — —

**Ms WILSON** — I rest my case.

**Ms LUCKINS** — Certainly we will be more aware of how we keep records in the future. But we are looking for consistency across the board.

**Ms WILSON** — Of course.

**Ms LUCKINS** — And for members to know, not only how to protect themselves, but how to protect the person or represent the interests of the person that has come to them in the first instance.

**Ms WILSON** — If you are representing the community and respecting their rights, you are protecting yourselves as well.

**Ms LUCKINS** — That is right.

**Ms WILSON** — We are working very closely with the Privacy Commissioner at the commonwealth level and also with Paul Chadwick to try to ensure we keep things as consistent as possible.

**Ms MULLINS** — Where you have the case of the potential inconsistency because of the nature of the information you are handling, in relation to the commissioner’s comments earlier about some of the language in the code itself — I do not have to go into detail here — I think it can be useful. Even though you are not obliged to comply with the IPPs, as you are for the HPPs, if there are phrases or uses of language there that are not going to be too onerous in terms of your non-health information but emphasise things that come out of the legislation, like consent or use for the purpose to which it is given, where that is appropriate, given your deliberations, I think it can be useful. That is not because you want to raise everything to the standard that has been given to you in terms of health information, but if it can assist you in forming your code I think it can be helpful.

There are a couple of instances where the language is similar, but it is not the same. Would it be easier to have it pretty much the same as long as it is not going to create an additional burden? But I think the issue about consent is a real one. As the Privacy Commissioner said, it is about a relationship you have with the individual, the lines of communication there. People may well welcome being able to know what is going on about a particular issue in their electorate. But when they tell you originally that they are very crook on something, you say, ‘Okay. Can I send you some stuff when things happen?’. I say sure, but you would be surprised that people might say, ‘No, I don’t want anything sent to me’. There may be a sensitivity there. You just need to be generally aware about building that sense of the relationship into the daily transactions.

**Ms WILSON** — Of course, the people that you are dealing with vary enormously. I am one of those people who refuses to go into a house to see it if the real estate agent insists on taking my name and address. I have a lot of, ‘Excuse me, madam’ as I march in, and I just leave when they insist.

**The CHAIRMAN** — I would not use a Fly Buys card for the same reason. I think the important distinction in Victoria, or in Australia, is there is no opt out in terms of voting, if you are an Australian citizen, whereas in the Irish cases that we have been looking at there is an opt out. So if 20 per cent of the electorate or potential electorate does not decide to get on the roll, therefore they will not be written to — they make that choice. I suppose it means we have at least one major part of our work where people cannot just opt out, and it is a question of how we utilise that information in a way that does recognise privacy and where you do build a genuine relationship, so it is used correctly, not incorrectly. That is what we are trying to grapple with. I suppose that is why in the discussion paper it was considered the most difficult area in terms of soft intelligence.

**Ms WILSON** — That was a term with which I was not familiar. It did not sound all that soft from my point of view.

**Mr DIXON** — I think people are more comfortable in that context when you correspond with them again on that topic.

**Ms WILSON** — Sure.

**Mr DIXON** — The most basic example is they have signed a petition about something, and you send them a letter saying, ‘You signed a petition, and this is the result of it’. They are quite rapt with that, but then you know they are interested in the environment, and you get away with sending those sorts of things. I think the next big step is when you start soliciting them for other information.

**Ms WILSON** — That is when you are going to be in bother.

**Ms MULLINS** — It is getting back to what is in the IPPs and HPPs, whether it is generally personal information or health. That is what our commissioner here talked about, and also the Privacy Commissioner. What are they assuming they are giving the information for? That is the focus the commissioner was pointing out that is perhaps lacking a little in the code at the moment. The focus tends to be on ‘only use it for the purpose for which you have collected it’. Is that the purpose for which the person giving it knows that it is being used? It is that connection. I think that is what is important in terms of that.

**Ms LUCKINS** — With the informed consent or express consent, or whatever term you are going to use for it, in the case of a third party — and I deal a lot with families or carers of the mentally ill; I just seem to have become a beacon — when you have a third party making representations on behalf of someone who can be unstable, can be very good or very bad, they can be in voluntary treatment, or whatever, it is very difficult for any MP to make a determination about how we proceed with that information because we cannot get consent from the adult who is affected; you are getting it from a third party who is wanting to look after them. On the flip side of that, you have issues of access to information for this third party, loved one, carer, parent, about the treatment or even the whereabouts of their mentally ill child, grandchild, or whatever.

**Ms WILSON** — I get a lot of those calls, too.

**Ms LUCKINS** — It is very difficult for us to know how to proceed on that basis and even how to either make representations for that person or to make representations to, say, a hospital to try to gain information about whether the patient is there, or whatever, and treatment associated with that.

**Ms WILSON** — When I was president of the Mental Health Review Board, I was one of the people who made submissions to change the Mental Health Act in 1996. There was an amendment, section 120A, which made some exceptions to the strict confidentiality that had applied up until then, so that now health service providers can give information to the primary carer of the person provided the information is relevant to the ongoing care of the person. So it is a little bit of a concession to the terrible situation that these parents often find themselves in. It is a real dilemma. If you have, say, a person who is over the age of 16 years, who has maybe a personality disorder, plus co-morbidities who suddenly does not want to know their parents at all, but the parents are desperately afraid because they are out on the streets or living with a drug dealer, or whatever, the health team will not give that person any information. The health provider is doing the right thing, but it does not address the terrible dilemma that the family finds itself in. And the law’s answer is, ‘If you think that your daughter or son is incompetent, you go and get a guardianship order’. But if they do that, it might sever that last bit of hope and trust that they have got that the person may come back to them, because the parents are often the best chance that they have got of having some kind of viable future. It is not uncommon for people with those presentations to turn against their parents and carers. I talk sympathetically to those people, but there is not a lot else I can really do; consent issues and

confidentiality issues have overridden other interests because it is so important that these people trust their health service providers.

**Ms LUCKINS** — I am always hesitant as an MP to get involved in a third-party situation when I know every intimate detail of the person, but I have not got consent. That is another thing that we grapple with on a weekly basis, probably, in our offices.

**Mr WATERS** — Ms Wilson, does the complaint-handling process in your act provide for a role for internal dispute resolution before you handle the case?

**Ms WILSON** — Yes. Our legislation assumes that the person will have tried to have sorted it out with the health service provider first. The first question we will ask is, ‘Did you go back to the doctor and ask them?’ — or the dentist. But if it was a sexual case, for example, you would not say, ‘Go back and ask the doctor why he had sex with you?’. That would be pretty silly. I would fast-track that one straight into assessment.

**Mr WATERS** — That is up to your discretion as to whether you take it straight on or refer them back?

**Ms WILSON** — Yes. Sometimes it is impractical for the person to go back because the relationship has deteriorated so much. But it is empowering for people to try to resolve their own disputes first, and it is fairer to the provider as well.

**Mr WATERS** — The reason I ask is that I was wondering whether you would see a role for any internal processes that were set up to administer the code within the context of your act as well, so that whether it was the Presiding Officers or the Privileges Committee that handle complaints under the information privacy code — —

**Ms WILSON** — As long as their roles are not too blurred. I am not quite clear what role they are going to play, but it is very common for all sorts of organisations, like the Australian Dental Association, or whatever, to have their own complaint-handling internally. In all of our public hospitals, there are 150 complaints liaison officers, who deal with complaints at the hospital level, at the quarry face, and have a very good success rate getting in there quickly. I handle the ones that are funnelled through, and I provide training and support for all of those complaints liaison officers at the hospital level. I do not see why there should not be some sort of similar model here.

**Mr WATERS** — That might help to reassure MPs about the way the Health Records Act will work, if they knew that they had a chance to sort it out in a peer group situation.

**Ms LUCKINS** — I think we desperately need to hear, other than looking at the act, which I went through in some detail. I do not think we have any information on the application of that at all.

**Ms WILSON** — If you would join our reference group — —

**Ms LUCKINS** — I would love to.

**Ms WILSON** — You can give us advice on how we can get that information out there.

**Ms LUCKINS** — Terrific.

**The CHAIRMAN** — I think we are all done.

**Ms WILSON** — That was of mutual benefit.

**The CHAIRMAN** — You have given us a lot more work to do. Thank you for that.

**Committee adjourned.**