

**LAW REFORM COMMITTEE**

**Inquiry into warrant powers and procedures**

Melbourne — 19 October 2004

Members

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Witnesses

Mr P. Chadwick, privacy commissioner; and  
Ms M. Fisher, manager, policy, Office of the Victorian Privacy Commissioner.

**The CHAIR** — I welcome Paul Chadwick, the privacy commissioner, and Michelle Fisher, the manager, policy, from the Office of the Victorian Privacy Commissioner. I have just a few introductory comments to make. These hearings and the work of the committee are covered by the Parliamentary Committees Act which means these proceedings are subject to parliamentary privilege. That means anything you say you can say with a certain degree of freedom knowing that it is covered by that privilege. You will have an opportunity, if you think it appropriate at any point, to give evidence in camera. We also give you an opportunity to review the transcript. You could indicate at that point if you prefer that some of your evidence not be made public.

Subject to that, after you have corrected the transcript, we make it available on our web site, so it then becomes a public document. Of course we, with your permission, seek to draw on it by way of our final report and in terms of quoting any aspects of your evidence which illuminate particular points. With that the mind, perhaps you could commence by speaking to your submission and the particular issues that concern you in relation to warrant powers and procedures.

**Mr CHADWICK** — Thank you, chair, and I thank the committee for the invitation to address it. I will not rehearse the written submission, in particular material which one also finds in the submission to you, for example, from the Criminal Bar Association of Victoria to you. Instead we have prepared answers to the specific questions the committee staff followed up with us after the receipt of our submission.

By way of introduction I thought I would place some emphasis on this fact, which I think is a growing one and one which a privacy commissioner — not just in this jurisdiction but in others — sees all the time, and that is that the idea of warrant powers goes wider than the idea of intruding into premises and belongings, which is, of course, its historical origin. Nowadays, because of technology, this committee is considering more complex issues about the proper powers of police and other authorities to intrude into people's lives more generally.

This can be usefully illustrated by reference to the five dimensions into which privacy is usually divided in the philosophical literature and to a lesser extent the legal literature: privacy of the body, which is of course implicated in your inquiry; privacy of the home and belongings, which one finds in all the standard international instruments that set out a right to privacy; privacy in the sense of freedom from surveillance and being watched; privacy in the sense of freedom from eavesdropping, being listened to in real time; and the last dimension of privacy is information privacy, the sense that as we live our lives we leave recorded information about us, and sometimes it is information intended only for us. A good example is a personal diary, but also we leave information about the way we live our lives: our phone bills, our credit card data, the patterns of our travel as they might be recorded on a tollway, all sorts of information now is gathered about people. It leaves what in the literature tends to be called a data trail. From that data trail certain knowledge about the way a person lives their life, the preferences that person exhibits, the relationships they have, whom they call, where they go, those sorts of things can be put together.

That information has all sorts of value, including value in the proper pursuit of law enforcement. So like other areas where privacy must be balanced against the public interest, privacy must be balanced against the public interest in law enforcement and in other proper purposes. When dealing with issues of access, those issues of access involve, in the case of warrants, all five of the dimensions of privacy that I have outlined. We can go to the detail as you choose in the course of our exchange.

I will stop there, Chair, and if you would like to indicate when you are ready I will go through our responses to the four questions the committee staff have put to us on your behalf.

**The CHAIR** — We might start with those and then come back to some more general questions after that. Perhaps you could talk about some of the legislative provisions that from your point of view hamper the work of the privacy commissioner in a way that you think is not particularly conducive to protecting privacy.

**Mr CHADWICK** — Some of this is prospective because the act is so young. It became enforceable in Victoria on 1 September 2002. The commonwealth Privacy Act, by contrast, has been in operation since January 1990, so there is a body of experience there. However, we can make some general observations in response to that question and we hope these observations are useful.

First, there is a cross-border implication to this inquiry which we see in many other areas. You would probably be aware from your work in the Parliament that we are attempting in Australia to harmonise several areas of law enforcement legislation and some of those have proceeded through the Parliament over the last year — surveillance devices, controlled operations et cetera.

One of the issues that privacy commissioners and ombudsmen around the country are discussing is the fact that as we harmonise the powers of law enforcement we are yet seriously to consider the harmonisation of police accountability to go with it. There can be occasions where a police force is exercising powers and as the investigation, for proper purposes of course, travels across borders, so might the data, but the accountability measures that apply in one jurisdiction do not follow as well — for example, there may be limitations on how much a privacy commissioner is able to refer to his or her counterpart in another jurisdiction. There may be secrecy provisions that prevent the appropriate sharing of information where there is an accountability issue to be considered. We would flag that issue as one that is nascent rather than one that produces a lot of evidence yet, and that is because these harmonisation bills are relatively recent. But we are doing some thinking about it.

When information travels across borders in a law enforcement context it can travel to the organisation Crim Trac, which has been established for some time. There are issues about appropriate accountability in relation to personal information held by Crim Trac. The best way to describe it, I think, and I stand corrected on the detail by my colleague Michelle Fisher, is that Crim Trac acts as a kind of sheep run. Data goes through there from the different data stores of different participating law enforcement agencies, but it does not necessarily reside there. If, for example, Victoria has some standards over what should happen to information that has been gathered under warrant — it does not matter what kind of warrant for the purposes of this illustration — the question for the committee is: are those standards able to travel with the data when it is in the hands of another law enforcement agency, because for proper purposes Victoria Police believes that data needs to be shared with that other law enforcement agency across a Victorian border?

I have touched on the issue of whether there is express legislative authority for the different accountability bodies, of which the privacy commissioner is only one, properly to refer matters to others. Under the Information Privacy Act there is express permission for the Victorian commissioner to refer matters to the federal privacy commissioner, the health services commissioner and the Victorian Ombudsman. It may be in this harmonisation process we need to revisit that to ensure there is clear authority for the privacy commissioner to refer a matter to some other regulatory or oversight body.

The committee asked whether there were other legislative provisions that might hamper the privacy commissioner in compliance investigations. One really is just this fact: the Victorian act deals only with recorded personal information. There are good public policy reasons for that. You could imagine the difficulty of dealing with complaints about personal information that has not been recorded, so one can see the public policy underlying that definition. But that means that where surveillance activity by one or another authority does not lead to the recording of any information, the citizenry has no recourse under the Victorian Information Privacy Act and the privacy commissioner no power to act.

**Mr LUPTON** — Can you give us an example of how, if it were not recorded, it could cause a problem?

**Mr CHADWICK** — Only that there is an act of surveillance going on. As I set out, there are five dimensions of privacy. One that is well known to everyone intuitively is the idea of not being watched without your knowledge or in circumstances where you can reasonably expect not to be watched. Surveillance necessarily occurs; do not misunderstand me, I understand it is a significant part of proper law enforcement activity. My point is, were it to occur and not be appropriate there would not be recourse under the current Victorian Information Privacy Act that the commissioner could not act under the different powers that are given to the commissioner under that act.

However, and this is the setting for these hearings, Victoria is in the process of changing police accountability through the creation of a police integrity office, and I am sure that is a matter you could pursue with the Ombudsman, who is simultaneously the holder of that office. It is not that there is no accountability; we are simply pointing out to the committee where the accountability under the Information Privacy Act might fall away.

**The CHAIR** — On that you seem to have made some reference to the Surveillance Devices Act in relation to the questions of accountability, and you also made reference to the criminal bar association's submission. It referred to the desirability of inserting section 77 from the Telecommunications (Interception) Act, something of that nature, into the Surveillance Devices Act in Victoria. Is that something that would provide the kind of safeguards you are looking for?

**Mr CHADWICK** — Yes, it would, and it will also advance the harmonisation point, which I think is a very interesting and overarching issue for committees such as this in all the different state and territory jurisdictions to reflect on. Can I ask Michelle Fisher to give some detail on that?

**Ms FISHER** — Just to amplify some of the safeguards that can improve the Victorian Surveillance Devices Act, one of the things raised in the submission is a proposal to provide notice to the subject of the surveillance after the surveillance is completed. I mention for the committee's reference that two of the jurisdictions with surveillance devices legislation have notice provisions which require that notice be given to a target of surveillance after the fact unless there is reason not to. One is the New South Wales Listening Devices Act in section 20 and the other is the Tasmanian act, again section 20. That in a way acts as a safeguard where if the surveillance is unjustified and an unnecessary intrusion on a person's privacy, there is a deterrent to it being engaged in in the first place because it will out.

The other aspect is looking beyond what the telecommunications interception legislation does and having accountability at the back end to doing what Queensland does at the front end in actually having some involvement by someone to monitor the application process to ensure the balance is struck at the start. Apparently that proposal, which in Queensland takes the form of the public interest monitor, had its origin in the Barrett review of the telecommunications interception legislation back in the late 1980s, I believe, but it was not an option that was taken up by the commonwealth government. So there is a way to improve accountability at the front end and during the course and at the back end, which does not exist in the current legislation.

**The CHAIR** — Just to pursue that notice after the event, what happens if it is deemed necessary to undertake episodes of surveillance at different points depending on the nature of the associations that have formed? I suppose I am thinking of one particular case, that of Bandali Debs, where at various points conversations were recorded and in fact there was a whole ruse established to insert devices both in the house and I believe in the car in relation to the murder of police officers Silk and Miller. The communications between them were over a period of time and sporadic and they became crucial pieces of evidence in relation to their conviction for the murder of those two officers. How would a notice provision after the fact work in those circumstances, where it is not a continuous surveillance but it was conducted, if I recall, over almost a year? How do those kinds of provisions work from your perspective?

**Ms FISHER** — In most jurisdictions that have a notice provision, such as New South Wales, and overseas in the USA, in relation to its stored communications legislation, which is a type of wire tap — —

**The CHAIR** — A wire tap?

**Ms FISHER** — Wire tap legislation, but instead of interception during travelling it is when a communication is actually stored, when it is resting. They have a notice provision that allows for, first of all, a delayed notice so that the court has the discretion to defer notice to a later time where there is a risk that personal safety or an investigation might be compromised. The other aspect, I suppose too, is that surveillance is usually authorised for a set period, and in many cases the applicant police have to return to court to seek an extension or to wind it up, and that is always an opportunity for the court to consider exercising its discretion, and it always has a discretion not to require notice.

A related aspect is when you have charges laid at the end of the day. The notice provision provides not only a deterrent for unnecessary surveillance but also gives a person who is charged notice that there might be surveillance material that has exculpatory material in it as well as inculpatory material. So it is a very strong safeguard and it allows a fair balancing of justice interests as well.

**Mr CHADWICK** — Can I just add briefly to that. I take the committee to paragraphs 29 to 31 of the submission. There is no doubt that a nuanced approach by the courts and the other authorising bodies is necessary in this area, in particular where a notice provision is contemplated. There is no doubt about that. Michelle has set out some of the practical tests, some of the models the committee might look to, but I think there is an overarching point. When state power can be exercised covertly and remain a secret it is at greater risk of being abused. I think that is a fair general statement. So in striving to balance liberty with the power of the authorities to obtain information necessary to uphold the law one of the mechanisms that has been developed in this area of law is the idea of notice where it would not of course undercut the very purpose of the surveillance. Those models do exist, and we would urge the committee to look carefully at them.

**The CHAIR** — While we are on that particular area, I refer to the use of covert warrant powers. We have had put to us both here and in New South Wales that in certain circumstances it is necessary for the police to be issued with a covert warrant without notice because, for example, there is a drug manufacturing plant being set up and established so at various points it is obviously neither operable nor does it provide sufficient material evidence to demonstrate it is a drug manufacturing plant, so it is therefore necessary to go in at various points in order to establish whether or not it is both set up and operable prior to actually executing an ordinary warrant to both search and seize property on the premises. So what are the views of the privacy commission in relation to the use of covert warrants?

**Mr CHADWICK** — On the operational side I think the committee would recognise that it will have access to many who will give you the detail of the operational exigencies that different law enforcement agencies face. Coming at it from a general perspective, you would say that where the law of the land authorises covert surveillance or intrusion into private space or private lives, a higher standard of safeguard may be required. Then you ask yourself what that might be. There are some models for that sort of thing — in camera, ex parte hearings perhaps in front of an authorising officer more senior than the ordinary, a requirement to report back in some shape or form and a requirement perhaps for reporting how many warrants are sought over a given period, how many are granted, how many are not granted, or how many are granted conditionally.

You would be familiar with the machine that operates federally with telecommunications intercepts. Those are a kind of compromise by the legislature to ensure some degree of openness, a check or balance that allows the Parliament to notice the increase, perhaps an unusual increase in the number — not the detail underlying each warrant, but in the number — enough to put yourselves, as representatives of the public, on notice that further questions may need to be asked

about the extent of the covert activities that have taken place. I think there are models that will allow the exigencies of law enforcement in the modern environment with the threats faced to coexist with appropriate safeguards.

**Ms FISHER** — If I could just add to that, the search warrants power in Victoria under the Crimes Act — I think it is section 465 — does not expressly address whether covert warrants can be issued, so there is no express clear legislative authority for covert search warrants in Victoria. The only area where there has been legislative change in that regard is in the terrorism legislation, the Terrorism (Community Protection) Act, which expressly authorises covert searches and implements some of the accountability measures that Paul just referred to. The Queensland public interest monitor who is involved in applications from the start and monitoring during the course of and after the event is involved not only in surveillance device applications but also covert search warrants, so that is a safeguard in addition to the reporting accountability measures that can be implemented.

**Mr CHADWICK** — Is it convenient for us to say a little more about the Queensland public interest monitor model, because one of the committee's four questions asked us to say more.

**The CHAIR** — Sure.

**Mr CHADWICK** — I will ask Michelle to give the detail. We have had a very limited amount of time and that office is limited in its longevity, but it is still a useful model and it is one that you will see in my submission to the parliamentary Scrutiny of Acts and Regulations Committee in relation to the counter-terrorism legislation.

**Ms FISHER** — The public interest monitor, from my understanding of the situation in Queensland, was established in 1998 under the police powers and responsibilities legislation which was re-enacted in 1998 as well. The body there — as I mentioned — which is involved in the application for surveillance warrants and covert search warrants, gets to attend the hearing in which the police seek the warrant and to make submissions about whether it would be appropriate to grant the warrant or the covert search warrant, and to test the evidence that the police might have.

What the public interest monitor does underneath that is engage in discussions with police before it even gets to the court, so most of that can be sorted out and does not necessarily need to be tested before the judge. Where it cannot be sorted out they can do that before the court. After the application process, the public interest monitor has some oversight during the execution of the warrant and is able, either under the current legislation or under the proposed amendments which were put to the parliamentary committee earlier this year, to return to the court to seek orders and directions, for instance, about what to do with seized material — whether it should be destroyed or whether surveillance should cease, that type of thing.

The other advantage that the public interest monitor has is that it relieves the court, firstly, of having to advocate the public interest on its own; and secondly, from being drawn further into a police investigation by having to scrutinise all the underlying material, the conduct of the warrant and its effectiveness after the fact. That role is taken over by the public interest monitor, not the court.

The court has asked in this recent parliamentary review of the corruption legislation in Queensland to be relieved of a report-back mechanism after a warrant is completed, saying that it does not want to be drawn further into an investigation, that the public interest monitor has that type of role and it would be more appropriate for them to assume that role and then come to court and seek orders where necessary. It also has that accountability reporting function so it can look at the extent and the effectiveness of warrants and report to Parliament and to the community, so there is some oversight.

**The CHAIR** — Are you suggesting that that happened in relation to particular types of warrants or a level of seriousness in terms of an offence? Presumably the public interest monitor does not have the capacity to make those representations to the court in relation to every offence.

**Ms FISHER** — No, it is usually in the covert situation, because there is no one to argue the countervailing interest. It is usually *ex parte*, in camera, secret after the fact, so the only opportunity would be for a public interest monitor to make the case. Other areas where it might be appropriate would again be where it is *ex parte*, such as forensic procedures orders, where there is no right for a person whose DNA is being sought to make submissions to the court. There might be a role there for a public interest monitor to make submissions on behalf of the public interest.

**Mr CHADWICK** — I would not limit it to the covert, Chair. I suggest that there would be a graded approach to safeguards and that you would want to ensure that this safeguard, particularly just from an efficiency point of view if you set it up and you had a body of knowledge and experience that the court would find valuable, was being applied in a requisite way and that that would go beyond simple applications, which hopefully by their nature are rare, for covert operations. The other point to make is that the seniority of the court — —

**The CHAIR** — In Queensland it relates to surveillance warrants and covert search warrants, so is that what you have in mind?

**Ms FISHER** — Also, they are looking at it for telecommunications interception as well. Queensland is one of the few jurisdictions that do not have access to that regime with the legislation that has been accepted by the commonwealth to allow their agencies to conduct telecommunications interception. What they have been pressing for is that their public interest monitor regime be recognised by the commonwealth, or at least to be tolerated constitutionally so they do not lose that accountability mechanism that they see from the front end because the telecommunications interception legislation does not have it at that front end. It is a back end, auditing type accountability.

**Mr CHADWICK** — And it is something WA appears to have become interested in, subsequent to its royal commission into its police force. Is that accurate, Michelle?

**Ms FISHER** — That is right. The corruption legislation recommended adopting the Queensland model, but apparently it was not amendable to the current legislation when they were looking at it, but that would be subjected to the three-yearly review of the act, which I think came into operation in January this year; so three years hence they will again be looking at the public interest monitor for the corruption commission.

**Mr CHADWICK** — There is an analogy which I am sure other witnesses before the committee will be able to elaborate on for you. The change in the nature of the role of the Ombudsman's office to empower that office, rename it and give it simultaneous jurisdiction in relation to police integrity. It has had a statutory monitor established as an accountability mechanism to accompany it. So analogous activities are occurring in the Victorian legislative context. I would not say they are exactly analogous, but they are analogous enough for this committee to explore usefully with other witnesses.

**The CHAIR** — In relation to the other safeguards that are in section 74 of the Queensland Police Powers and Responsibilities Act, which relates to covert search warrants, do you have any comments on those, are they adequate from your point of view in relation to covert warrants?

**Ms FISHER** — I would have to refer to earlier submissions. I have not looked at it in detail recently. I could take it on notice if the committee is interested.

**The CHAIR** — Yes, we would be. I think there are similar provisions in WA.

**Mr DALLA-RIVA** — I want to raise points 22 and 23 in your submission. You are talking about the current legislative regime for a number of intrusive powers, and you talk about the Terrorism (Community Protection) Act and the other one which is my pet interest — and it will always be — where you say that there should be a legislative authority over discarded material that is not subsequently used. Is that what you are saying, with the fingerprint that you have left on that glass there I would need to go get some form of legislative warrant to — —

**Mr CHADWICK** — Not the fingerprint — the saliva, the tissue.

**Mr DALLA-RIVA** — What is the difference between a fingerprint and saliva? I do not understand why this has been identified as an issue.

**Mr CHADWICK** — Because the way I have characterised privacy is in those five dimensions — one of which is the privacy of the body. So if the state is to intrude into the body, given our knowledge of genetics now, a question arises about the accountability that the different parts of the state might have in handling a piece of my body, or your body, and what proper purposes a different agency of the state might have in acquiring it. Where it is law enforcement there are clear public interests in the use of DNA knowledge to advance not only the pursuit of conviction but the pursuit of exculpation where that is appropriate. There is no doubt about that. But it would seem that in Victoria we have established quite a detailed regime for the collection and handling of forensic samples, except in this area; and that is an area that I am drawing to the attention of this committee, an area that I think does require Parliament's attention. That is also something that the Australian Law Reform Commission has drawn attention to in its very substantive study of human genetic data published last year. It is a gap in the law and one worth looking at.

**Mr DALLA-RIVA** — In terms of the Terrorism (Community Protection) Act, what are you saying specifically about it in terms of the warrants in particular?

**Mr CHADWICK** — The Terrorism (Community Protection) Act 2003 clearly authorises covert search and seizure, without a doubt. What we are suggesting for the committee's attention is that there does not appear to be clear authorisation under the law for covert search and seizure other than in that context. It is something that is worth attention because I am sure from a law enforcement point of view there will be appropriate exercises of covert search and seizure, but what we are drawing the committee's attention to is that there appears to be a gap. It is only in the context of that quite recent legislation that it appears to be quite clearly authorised.

**The CHAIR** — One of the areas we were particularly interested in was the area of complaints and what sorts of complaints the privacy commissioner receives in relation to the use of warrant powers and the provisions within warrants. Are you able to give us any information in relation to the type and nature and level of complaints that you received?

**Mr CHADWICK** — I can in general terms, and I would ask the committee to consider these two preliminary comments. The first point is that there is big difference under the Victorian Information Privacy Act between, if you like, a small-c complaint and a large-C complaint. The Parliament has created quite a fine sieve to try to prevent inquiries and small-c complaints becoming large-C complaints that then grant enforceable rights and obligations all the way through to VCAT, and you can imagine why. Privacy is a very subjective area and the Parliament appears to have tried carefully to limit the number of complaints, requiring the commissioner, for example, to exercise a fine sieve and then to attempt conciliation. So when I use the word 'complaint' here it has a special meaning under the act. I will prefer to call them enquiries, if you do not mind, to differentiate them.

The second point is that of the thousands of enquiries that the office gets not all are matters that people follow up in a formal way requiring investigation. So the examples I will give — and I will certainly ask any of the press who may be present to take note of this in any reports they make —

are examples that have not necessarily been investigated and had their veracity tested. They are things that have come through on the enquiry line or on the email enquiry line from the people of Victoria since the office began its work.

Generally speaking, concerns have been expressed about police disclosure or use of information obtained during an investigation under warrant or by consent — for example, there was an inquiry about fingerprints that were given to police for the purpose of eliminating someone from an inquiry with an assurance of their return at the end of the investigation. Five years later the person who provided those fingerprints discovered that the police still had them and had used them in another investigation. That is all that I am able to tell the committee about that example. It is an illustration of this question of retention of data for use in other circumstances. Another example —

**Mr DALLA-RIVA** — The police have my fingerprints as an ex-policeman, and they may be using those right now. I am not worried about it.

**Mr CHADWICK** — Mr Dalla-Riva, I am summarising for you an inquiry received by my office.

**Mr DALLA-RIVA** — Yes, but I am probing why that is an issue. I do not see it as an issue for me, that my fingerprints are still retained by Victoria Police. Anyway, I just raise it.

**The CHAIR** — I suppose it is similar to the issues we considered in looking at the DNA regime.

**Mr LUPTON** — Is it a matter of consent for the purposes for which they are used?

**The CHAIR** — Is it provided by consent?

**Mr DALLA-RIVA** — I had to give it to them, being a member of the police force; and when I resigned they still held them, and what they do with them now I do not know.

**The CHAIR** — They are probably using them on an elimination database.

**Mr DALLA-RIVA** — They probably are.

**Mr CHADWICK** — Can I backtrack a bit? I have been asked to illustrate what people are inquiring about. This is what someone inquired about. I do not mean to go to the substantive issues.

The second one was a case where a partner's suicide note was given to police, who later disclosed it to other family members. The third illustration was a caller who was concerned about police investigation of a complaint made by a company. Police obtained the caller's phone records, and they were concerned that the police disclosed those to others.

These are the sorts of things that might come in. They are just the flavour of the enquiries my office received, and I again emphasise that they were enquiries and did not of course lead to the thorough investigation that would test their veracity. It is an attempt to illustrate the point, in response to the committee's question of what kind of enquiries I get. One of them is concerns expressed about police disclosure of information obtained under warrant or by consent.

The second general area of enquiries is concerns about the manner of execution of warrants. For example, a female caller says she was awakened at 7:30 by police. She asserted in her enquiry that they pointed guns at her. She did not object to the search warrant that police produced but to the way it was carried out. She had taken up her matter with the Ombudsman, she told my office.

Another enquiry was from persons whose daughter was convicted of a serious crime but did not go to jail. The daughter received a letter from police requiring a DNA sample — something that

our provisions allow for, and I want to emphasise that. There is no suggestion of improper behaviour by police at all. My point here is that they are the kinds of enquiries people make.

A third category of enquiry we can discern is concerns about covert surveillance. I want to emphasise here — and I am sure the committee will be aware of this in their work as members of Parliament — that there are some people in the community with what you might call complex needs; so the types of complaints or enquires the Privacy Commissioner receives have to be taken in context.

**The CHAIR** — As they do in the offices of individual members of Parliament.

**Mr CHADWICK** — About the concerns expressed, there is a concern about the treatment of a woman who said that she believed she was under surveillance because she was Muslim, and because of the nature of her dress. These are issues that would have arisen over the last few years for you as MPs, I am sure. They include people who suspect video surveillance being undertaken by their neighbours on behalf of authorities, people who query telephone tapping powers, that idea of eavesdropping, they call my office to see whether that is within the law and so on

The last broad category of enquiries is concerns about police requests for third party details. An example was police investigating an offence in relation to stolen goods. The caller asserted that there was a request by police of the local library for the list of members and their addresses. I emphasise again, and again for the press, that these matters have not been investigated to test their veracity; they are raised to illustrate the kinds of enquiries that might come to a Privacy Commissioner's office in relation to this issue of intrusion into home, into information and so on.

**The CHAIR** — They are interesting. What it does not give us, of course, is whether you are receiving a particular volume of complaints in relation to the issuing and execution of particular types of warrants. It is interesting qualitative information which, as you say, is untested; but in terms of systematic problems with the way in which warrants might be executed or issued under Victorian law it does not go to that point for us.

**Mr CHADWICK** — I understand, and I asked the staff whether I could give the committee numbers, and one of the responses from the two inquiry staff who deal with these matters was that a lot of people's concerns will be mixed. There will be a mix of issues, and so they have not sorted them in that way; but in light of the committee's interest and having regard to the fact that the Ombudsman has, for 30 years now, had a role in thinking about accountability of government generally, I will institute a system in the office of trying to delineate the kinds of enquiries that go to the concerns you have, the questions you have asked, so that you will have a body of evidence in the future.

The office, of course, is quite new and I have also made that important qualification that my staff deal with people with complex needs on a reasonably regular basis, so I would be concerned to provide you with numbers under which there were certain assumptions that may not hold for you or for those who may be asked to respond to those numbers.

**Mr LUPTON** — Is it more useful to deal ultimately with the 'C' complaints to provide some more qualitative material?

**Mr CHADWICK** — It is very early days, but — yes. The 'C' complaints, for the reasons I have outlined, are not numerous. It is running at about 45 to 47 in the last year, and they are the ones with the capacity to go right through to VCAT. From memory, none dealt with a complaint that was based on the issues this committee is considering here — the execution of a warrant, the handling of the information derived from that warrant.

**Mr DALLA-RIVA** — From your experience, where would they ordinarily go? Would it be the Ombudsman or ethical standards or just to the court?

**Mr CHADWICK** — I would imagine, quite properly, that once people had complained to the police, the ethical standards department would look at it, and you would imagine the Ombudsman in the former police ombudsman role would have a look, and now the one that has now been redesigned — that is, Police Integrity [Office of] — would also have a role there, and the courts too, to the extent that those issues are raised.

We should also note that issues about warrants may emerge later when the evidence is tested and there is an assertion about admissibility or the exercise of a judicial discretion. It may be that the evidence this committee seeks is available later in the law enforcement, investigation, prosecution process.

**The CHAIR** — We are running short of time. Is there anything else you would like to say in conclusion?

**Mr CHADWICK** — I will ask Michelle if I have missed any of the answers we prepared for the committee. We moved to different topics in response to your questions.

**Ms FISHER** — Just the second question.

**Mr CHADWICK** — Yes. The committee asked me how effectively did I consider the Privacy Commissioner and Ombudsman function as alternatives or additions to the courts as accountability mechanisms for the use of warrant powers or procedures. I would say it works quite well. There is a power to refer to each other and we do that. There is a strong attempt to avoid duplication, so one regulator in the field per matter is a useful approach, and with rare exception that is necessary. Where someone avails themselves of a legal right, then I have a statutory duty to respond to that.

We cooperate on education awareness and other functions as appropriate. The Ombudsman can refer complaints where appropriate; the police integrity role will be stronger there. We can work together in compliance matters.

One difference I would point out for the committee's reflection is that the Information Privacy Act provides redress. It has provisions for complaints which can lead to redress, and provision for the commissioner to institute an 'Own motion' inquiry, which can lead to a compliance notice, whereas the Ombudsman's function is investigatory and advisory in the Ombudsman role. I do not want to foreclose the other role.

As a general point the Ombudsman, as traditionally conceived, is a generalist about the dealings with complaints made by citizens about government, and as one sees increasingly in many jurisdictions around the world, the privacy commissioner or data protection commissioner, as he or she is called in other jurisdictions, is a specialist, and that is happening in other areas too, as I am sure you are aware.

**Ms FISHER** — I was just going to add, to pick up part of the question that was put about the role of the Privacy Commissioner as an alternative or addition to the courts, that there are a number of areas in which the Privacy Commissioner's office can offer an alternative that is speedier and less adversarial because it is based on conciliation, and potentially more effective in the sense that it allows somebody who is already sensitive about a privacy breach to come to a forum where confidentiality is assured. It is not open court.

It also allows the organisation that might be alleged to have breached their privacy to sit at the table and work out an agreement without necessarily being outed in public about that, and it also provides very clear grounds in the act and avenues for redress for someone which the courts, as far as emerging tort of privacy or other actions, do not seem to be providing — that type of clear avenue for complainants.

**The CHAIR** — Thank you both very much for your time and for allowing us to draw on your expertise and knowledge. We appreciate it.

**Witnesses withdrew.**