

INQUIRY INTO THE PRIVACY ACT 1988  
PUBLIC HEARING 19 MAY 2005

OFFICE OF THE PRIVACY COMMISSIONER

A. Questions taken on notice

**Question No. A1**

**Senator Stott-Despoja asked the following question at the hearing on 19 May 2005:**

**Mr Pilgrim**—In the financial year 2003-04, we closed three complaints on the basis that they were exempted by the political exemption. In regard to that seemingly being a very low number, if people ring in and inquire about whether they should lodge a complaint, if it sounds on the face of it over the phone and we can determine it, we would tell the individual that there is a political exemption and more than likely we would not be able to investigate. I have just done a quick look at the numbers, and we had about 20 phone inquiries in the current financial year in regard to the political exemption.

**Senator STOTT DESPOJA**—Can you tell us if any of those were sparked by the federal election campaign, in particular the use of people's telephone numbers for campaign purposes and the leaving of messages on answering machines?

**Mr Pilgrim**—I could not say on the basis of the information here that that was what prompted those calls. We could do some checking, but I am not sure that our system would have caught that information.

**Senator STOTT DESPOJA**—I would be curious to see if your system has caught it, given it is the recent financial year.

**The answer to the honourable senator's question is as follows:**

The Office's complaints management system is set up to record basic information about telephone calls, for example industry sector and a general enquiry type code. The Office is able to report that in the Financial year 2004–05 to date we have received 22 calls regarding the Political Exemption. However, we are unable to say if these related directly to the use of people's telephone numbers for campaign purposes and the leaving of messages on answering machines.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B1

**Senator Stott-Despoja asked the following question:**

Can you provide the amount of Government funding allocated to your office for each financial year from 1995 onwards?

**The answer to the honourable senator's question is as follows:**

**Revenue from Government**

Financial Year	Direct Appropriation	Government funding received from HREOC or from Other Govt Entity for the provision of goods and services	Total Revenue from Government
94/95		2,384,700 <sup>1</sup>	2,384,700
95/96		2,630,000 <sup>1</sup>	2,630,000
96/97		2,364,000 <sup>1</sup>	2,364,000
97/98		2,034,000 <sup>1</sup>	2,034,000
98/99		2,167,000 <sup>1</sup>	2,167,000
99/00	2,713,600	486,400	3,200,000
00/01	3,750,000	722,377	4,472,377
01/02	3,559,000	838,702	4,397,702
02/03	3,586,000	989,572	4,575,572
03/04	3,902,000	885,752	4,787,752
04/05	3,855,000	719,000 <sup>2</sup>	4,574,000

- 1 In the Financial years 94/94 to 99/00 the funds provided for the Privacy Commissioners functions formed part of the single annual allocation to the Human Rights and Equal Opportunity Commission (HREOC). These figures represent the Privacy Commissioners component of these funds plus \$334,700 from other Government sources less deductions by HREOC for provision of corporate support.
- 2 Estimated actual from Government and non Government Sources.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B2

**Senator Stott-Despoja asked the following question:**

Can you provide the number of staff employed by your office during each financial year from 1995 onwards?

**The answer to the honourable senator's question is as follows:**

Financial Year	Staff Numbers
94/95	35
95/96	35
96/97	35
97/98	25
98/99	28
99/00	35
00/01	33
01/02	41 <sup>1</sup>
02/03	39 <sup>1</sup>
03/04	35

- 1 The temporary increase in the number of staff in these years was for the purpose of developing and writing guidelines and other information for the commencement of the private sector provisions of the Privacy Act.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B3

**Senator Stott-Despoja asked the following question:**

Can you provide a breakdown of the expenditure of this funding for each financial year from 1995 onwards?

**The answer to the honourable senator's question is as follows:**

**Expenses**

Financial Year	Total Revenue	Employee	Suppliers	Depreciation	Asset Writedown	Total Expenses
94/95	2,384,700	1,500,000	750,000			2,250,000
95/96	2,630,000	2,002,000	586,000			2,588,000
96/97	2,364,000	1,951,000	482,000			2,433,000
97/98	2,034,000	2,643,000 <sup>1</sup>	374,000			3,017,000
98/99	2,167,000	1,513,000	428,000			1,941,000
99/00	3,200,000	800,000	1,100,000			1,900,000
00/01	4,472,377	2,375,312	1,671,038	32,117	25	4,078,492
01/02	4,397,702	3,075,039	2,040,189	68,733	12,313	5,196,274
02/03	4,575,572	2,878,689	1,564,211	92,496	2,019	4,537,415
03/04	4,787,752	2,707,174	2,046,467	51,615	4,138	4,809,394
04/05	4,574,000					

1 Includes redundancy payments of \$760,000

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B4

**Senator Stott-Despoja asked the following question:**

In his *Report on Review of Named Person Warrants and Other Matters*, Mr Tom Sherman AO, recommended that ASIO should publish in the public version of its Annual Report the total number of TI warrants and named person warrants applied for, refused and issued in the relevant reporting year.

- (a) Did your office express any views regarding this issue during its discussions with Mr Sherman as part of the review process?
- (b) What is your position on Mr Sherman's recommendation?
- (c) Did the Government consult with your office before deciding not to accept this recommendation?

**The answer to the honourable senator's question is as follows:**

- (a) In my Office's submission to the Review of Named Person Warrants and Other Matters (the Review), the Office expressed the view that consideration should be given to reporting mechanisms that enable a broad assessment of the privacy impact of named person warrants. The Office submitted that this could be addressed by the Ombudsman including consideration of privacy matters in the annual report to the Minister on the results of inspections conducted on records of interception warrants. The Ombudsman could be required to consult with the Privacy Commissioner before reporting to the Minister. The Office's submission also recommended that consideration be given to ensuring similar oversight by the Inspector General of Intelligence and Security for the interception warrants issued by ASIO, to the extent that it was not done already.
- (b) The Office agrees with this recommendation.
- (c) In March 2004, the Government wrote to my Office seeking comments on the recommendations made in the report to assist with the formulation of the Government response to the Review report.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B5

**Senator Stott-Despoja asked the following question:**

In your recent report, *Getting in on the Act: The Review of the Private Sector Provisions of the Privacy Act 1988* ("the Report"), you recommend that the Government should "consider undertaking a wider review of privacy laws in Australia to ensure that in the 21<sup>st</sup> century the legislation best serves the needs of Australia". What kind of review do you think would best serve this purpose?

**The answer to the honourable senator's question is as follows:**

In the report on the review of the private sector provisions of the Privacy Act, a range of topics were identified which could be part of a wider review. Given that range, any future review process would require appropriate resources, an adequate time frame, extensive consultation, an international perspective and the ability to draw upon a wide range of technical expertise to ensure comprehensive and workable recommendations.

There are a range of options for carrying out a wider review of the Privacy Act.

An option could be to follow the process used for the inquiry into the protection of genetic information undertaken by the Australian Law Reform Commission (ALRC) and the Australian Health Ethics Research Committee. Using this model, the wider review of privacy laws could be a joint project between the ALRC and my Office or the Attorney General's Department.

Other possible models include a specially convened committee with expertise in various aspects of privacy law which could oversight work carried out by independent consultants, or an inquiry by a former senior judicial officer with support from the Attorney General's Department.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B6

**Senator Stott-Despoja asked the following question:**

In the Report, you also recommend setting in place mechanisms to address inconsistencies that have resulted from exemptions in the Privacy Act, for example in the area of workplace surveillance. What do you think is the most appropriate way in which to ensure national, consistent protection against workplace surveillance?

**The answer to the honourable senator's question is as follows:**

The issues of privacy protection in the workplace and the employee exemption are matters that the Attorney-General's Department (AGD) and the Department of Employment and Workplace Relations (DEWR) are currently reviewing.

The Office's submission to the AGD and DEWR review in April 2004 supported the removal of the exemption from the Privacy Act. This would bring employee records under the jurisdiction of the Act, and more specifically the National Privacy Principles. Such an approach could provide greater consistency of coverage across public and private sector workplaces, and bring federal privacy legislation in line with other privacy law that protects private sector employee records (for example, the Victorian Health Records Act 2002). This step could bring greater clarity, particularly for employers, in relation to their information-handling obligations and the extent of protection for personal information in employee records.

The Office is awaiting the outcome of this review.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B7

**Senator Stott-Despoja asked the following question:**

Recommendation 26 of the Report focuses on consumer education and recommends that the Government provide specific funding to enable your office to undertake a systematic and comprehensive education program to raise community awareness of privacy rights and obligations. What kind of educative programs does your office currently run specifically for consumers rather than businesses?

**The answer to the honourable senator's question is as follows:**

The Office's main source of information for consumers is its web site, which includes detailed information about its complaints processes in eleven community languages as well as an interactive tool that a consumer can use to work out whether the Office is likely to be able to handle a complaint. The site also includes a range of information specifically targeted to consumers about the Privacy Act and their rights. Information for consumers is also available in hard copy brochures. The Office also has a poster that has been widely distributed to consumer organisations and which has information in eleven community languages that directs people to the Office's privacy information 1300 hotline number and its website. The Office regularly receives requests for this consumer information from a range of community organisations. The Office also holds meetings and round tables with consumer representatives, and makes presentations at consumer forums.



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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B8

**Senator Stott-Despoja asked the following question:**

In your view, what would be the best way to ensure protection of the genetic privacy of Australians?

**The answer to the honourable senator's question is as follows:**

The most effective form of privacy protection for genetic information is within a nationally consistent and flexible regulatory scheme for the protection of personal information, including all forms of genetic information. The basis for a national scheme could be the *Privacy Act 1988*.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B9

**Senator Stott-Despoja asked the following question:**

What is your view of the current exemption in the Privacy Act for Members of Parliament?

**The answer to the honourable senator's question is as follows:**

Option 1.

There are significant arguments that could be made both in favour of and against the exemption. Parliament has made a decision to provide for an exemption and it is the function of the Office to administer the law as passed by parliament. The Office has had relatively few complaints and inquiries that relate to this exemption since the private sector provisions of the Privacy Act came into effect in 2001.

Written enquiries received since 21 December 2001	2
Telephone Enquiries since 21 December 2001	36
Complaints received since 21 December 2001	5

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B10

**Senator Stott-Despoja asked the following question:**

The appendices to the Report set out some helpful statistics relating to the types of complaints received by your offices and the level of complainant and respondent satisfaction regarding the handling of those complaints. Are you also able to provide information on:

- (a) The average time it has taken for complaints relating to the private sector provisions to be resolved or closed?
- (b) How many complaints relating to the private sector provisions have taken more than 12 months to resolve and what percentage of all private sector complaints is this?

**The answer to the honourable senator's question is as follows:**

- (a) In the financial year to date, the average time it has taken for complaints relating to the private sector provisions to be resolved or closed is 88 working days or 4.5 months.
- (b) In the financial year to date, 99 complaints relating to the private sector provisions have taken more than 12 months to resolve; this represents 12% of all private sector complaints closed in this period.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B11

**Senator Stott-Despoja asked the following question:**

Can you also provide a percentage breakdown on how much time is spent on, and the amount of resources allocated to, the various types of work undertaken by your office? For example, what percentage of the office's time would be spent on handling complaints and what percentage on educative functions?

**The answer to the honourable senator's question is as follows:**

The following break up is based on the Office's 2004–05 Financial resource allocation.

Area	Staff numbers	% of total staffing	% of total financial resources
Compliance	19	50%	24%
Policy	10	26%	18%
Corporate and Public Affairs	6	15%	12%
Executive	3	7%	35% <sup>1</sup>

1 The Executive area's financial budget includes all administrative costs such as property operating expenses, payments to HREOC for corporate services, IT etc.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B12

**Senator Stott-Despoja asked the following question:**

Is it accurate to say that the introduction of new technologies has increased the range of potential privacy issues within the community and, if so, has there been a corresponding increase in the workload of your office?

**The answer to the honourable senator's question is as follows:**

The introduction of new technologies has increased the range of potential privacy issues within the community.

As with all issues that arise in relation to privacy, the Office assesses these issues and prioritises them within the resources available. For example, the Office has given a high priority to creating Office expertise in, and giving advice on, the area of new technologies and identity management.

In the 2005-2006 financial year the Office will receive additional funding to allow it to provide advice on, and to monitor developments in, biometrics and identity management initiatives being undertaken by several Australian Government Agencies.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B13

**Senator Stott-Despoja asked the following question:**

Has your office been consulted in relation to the introduction of the proposed HealthConnect card? If so, did your office express any concerns regarding the proposal, or provide any guidance regarding privacy issues and what was the substance of any concerns expressed or guidance provided?

**The answer to the honourable senator's question is as follows:**

The Office was consulted in June 2004 by the HIC on the possibility of a Medicare smartcard. The Office understands that this smartcard may be used in conjunction with HealthConnect. The Office advised that appropriate privacy protections are essential to gaining the trust of the community in the proposal. The Office also advised that any revised Medicare card should be built from a foundation that affords individuals control and choice over the handling of their personal information, including by offering assurances concerning the security of that information. In addition, the Office advised that protections against, and restrictions on, "function creep", including a clear articulation of the purpose of the card, will be necessary in gaining community and stakeholder confidence.

The Office's submission on the HealthConnect Business Architecture Version 1.9 in February 2005 noted that Medicare smartcards are intended to be voluntary and individuals without them should not be disadvantaged in accessing HealthConnect. The Office also encouraged the earliest possible consideration and clarification of HealthConnect processes to allow individuals without Medicare smartcards to interact easily with HealthConnect.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B14

**Senator Stott-Despoja asked the following question:**

Has your office been consulted in relation to the recent suggestion by the Minister Hockey, that the HealthConnect card could be linked to welfare information? If so, did your office express any concerns regarding the proposal, or provide any guidance regarding privacy issues and what was the substance of any concerns expressed or guidance provided?

**The answer to the honourable senator's question is as follows:**

The Office has provided comments regarding privacy issues on this specific matter. The substance of these comments is subject to cabinet-in-confidence.

OFFICE OF THE PRIVACY COMMISSIONER

B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B15

**Senator Stott-Despoja asked the following question:**

Is it your view that the issue of bundled consent is consistent with the spirit and letter of the National Privacy Principles?

**The answer to the honourable senator's question is as follows:**

The National Privacy Principles aim to give individuals control of how personal information about them is handled by privacy sector organisations. They do this, for example, by requiring organisations to inform individuals about their information handling practices so that in the first instance, individuals can choose whether or not to interact with the organisation. The NPPs also place limits on the purposes for which an organisation can use or disclose such information. This includes requiring an organisation to gain an individual's consent in most circumstances if the organisation is planning to use the information for a purpose unrelated to the original purpose of collection.

Bundled consent is a practice by which organisations bundle together consent to a wide range of uses and disclosures of personal information without giving the individual a chance to choose which uses and disclosures they agree to and which they do not, often sought as part of the terms and conditions of a service.

This practice was a matter raised in the Office's review of the private sector provisions of the Privacy Act and was commented on by both consumers and business. Consumers were concerned that the practice reduces control that individuals have in their relationship with a business. Business outlined reasons why it may be necessary to bundle consent. The Office concluded that bundled consent is a practice that may confuse customers and may derogate from their rights under the Privacy Act. It also concluded that the issue also confuses many organisations. It recommended that the Office develop guidance on bundled consent.



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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B16

**Senator Stott-Despoja asked the following question:**

Has your office received complaints relating to the issue of bundled consent?

**The answer to the honourable senator's question is as follows:**

The Office has received 33 complaints relating to the issue of bundled consent since 21 December 2001.

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B. Additional Questions on Notice for the Privacy Commissioner from Senator Stott-Despoja

Question No. B17

**Senator Stott-Despoja asked the following question:**

Recommendation 22 of the Report states that your Office “will develop guidance on bundled consent, noting the possible tension between the desirability of short form privacy notices and the desirability of lessening the incidence of bundled consent”. Are there any current initiatives to address this issue? What kind of guidance do you envisage in this regard and will both businesses and consumer groups have the opportunity to provide input into the development process?

**The answer to the honourable senator’s question is as follows:**

The Office is currently prioritising recommendations from the review report that relate to Office activities. This includes recommendation 22 relating to guidance on bundled consent. The specific nature of the guidance to be given would be determined once the project begins. However, in general term the guidance is likely to include:

- Clearing up any misconceptions about how the NPPs apply that may be contributing to unnecessary bundling of consent
- Giving practical guidance on how to give individuals choice where it is most likely to be required by the NPPs and wanted by consumers.

The Office has not yet determined what consultation processes might be involved in developing this guidance. The consultation process would be determined once the project is properly scoped and the possible impacts on consumers and business assessed. Certainly any consultation process the Office would conduct would include both consumers as well as business.