



**Australian
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MEDIA RELEASE

“No-one home at Privacy Commissioner’s Office”

8 April 2005

Recent news has caused the Australian Privacy Foundation to ask: “is anybody home in the Privacy Commissioner’s Office?”

The part time Acting Privacy Commissioner Mr John Dickie has generally been very quiet about privacy law and policy. However this week he stated on record that he believes there are no privacy issues arising from the Photo Card Bill, now before the NSW Parliament.

The APF finds this view extraordinary. The Photo Card Bill has been criticised by privacy experts as proposing an ‘Australia Card’ style regime, with a comprehensive analysis of the Bill published two months ago by the Foundation.

If passed, the Bill will create a centralised database aimed at holding the personal records of every resident in NSW, and create an identity card with a unique identifier on it.

“That an Acting Privacy Commissioner cannot see or chooses to disregard the obvious privacy implications in this Bill is flabbergasting” said APF spokesperson Nigel Waters.

“This is a plan to introduce an all-purpose identity card and total population database in NSW, but the very person supposed to review such proposals seems to be asleep at the wheel.”

“As the Acting Privacy Commissioner seems to be either unwilling or unable to provide independent and expert advice on such a critical issue, we have lost faith in his ability to do this important job on behalf of the people of NSW.”

Government ‘running down’ of privacy protection

This situation is a product of two years of deliberate action by the NSW Government to marginalise and weaken the Privacy Commissioners’ Office, including ensuring the Acting Commissioner is denied the independence intended by Parliament.

“The Privacy Commissioner’s functions under the Act include reviewing government proposals and publicly commenting on matters of concern. But how can independence or expertise be assured when the acting commissioner is employed on short term contract and can be sacked at the Government’s whim?” said APF spokesman Nigel Waters.

“We suspect that the Government still plans to just abolish the Office outright, leaving the people of NSW without an effective privacy watchdog. They wouldn’t dare try this kind of stunt with other statutory positions like the Ombudsman or ICAC, but this Government doesn’t seem to care about people’s privacy anymore.”

For further comment: Nigel Waters, Board Member and Policy Co-ordinator, 0407 230342

FURTHER BACKGROUND INFORMATION

The running down of Privacy NSW

In the past two years the NSW Government has:

- left the position of Privacy Commissioner vacant since May 2003, with still no visible action to fill it permanently
- allowed a revolving door of Acting Commissioners, with three different people in the job to date, on part-time, short-term contracts which can be cancelled by the Attorney General at any time
- cut funding to the Office and imposed its own restructure of responsibilities
- abolished the four most senior staff positions
- failed to meet its statutory deadline in tabling its report into the review of the Privacy and Personal Information Protection Act 1998

The Government's attempt to abolish the Office outright in 2003 was thwarted by Parliament. But in all other respects, the Government's actions have ensured that Privacy NSW has become a hollow shell. The Government is now able to cynically use the mere existence of the office to re-assure the public that their privacy is being safeguarded, when in fact the legislation is full of holes and its enforcement is weak.

History of Privacy NSW

The Office of the Privacy Commissioner was created on 1 February 1999, when the Privacy and Personal Information Protection Act 1998 came into effect.

Privacy NSW, as the Office is known, took over the functions of the former Privacy Committee, which had led the way on privacy research and reform since 1975. Former Chair of the NSW Privacy Committee, Chris Puplick, was appointed as the inaugural Privacy Commissioner of NSW.

Mr Puplick resigned from the position on 2 May 2003. The Government has left the position of Privacy Commissioner vacant since then, with still no visible action to fill it permanently.

In late 2003 the Government attempted to abolish the Office by passing a Bill, but was thwarted by the combined efforts of the Opposition and cross-bench MPs in the Legislative Council.

In mid 2004 the Government starved the Office of funds and expertise, by abolishing the four most senior staff positions and dictating its own restructure of responsibilities. The result was a mass exodus of nine of the 12 staff within just a few months, leaving Privacy NSW with virtually no corporate memory or privacy experience.

The Government's report of its statutory five-year review of the Privacy and Personal Information Protection Act 1998 is now overdue; it was due to have been tabled by the Attorney General by 30 November 2004.

Independence cannot be assured

The role of Privacy Commissioner is supposed to be independent of the government of the day. But independence cannot be assured unless the person in that role has job security as envisaged in the Act: a fixed term of up to 5 years, appointed by the Governor, and only removable by the Governor for misconduct or incapacity.

Mr Dickie has no job security. His appointment was originally only for three months, and although he has now been in the job for more than 18 months, his contract has never been for more than a few months at a time. As an Acting Commissioner, he is appointed by – and can be removed at the whim of – the Attorney General.

Two years vacant and junior staff are left ‘home alone’

On 2 May it will be two years since the former Privacy Commissioner, Chris Puplick, resigned. How will this occasion be marked at Privacy NSW?

Acting Commissioner John Dickie will be overseas on a six week holiday. The APF has learned that no-one has been appointed in his place. Moreover, his absence coincides with that of the next most senior officer.

The APF understands that the only plan to deal with this vacuum of leadership is to ‘act up’ four relatively junior officers for a short period each into the role of Privacy Services Manager – including an administrative officer. This means the full responsibility of running the Office, and making important decisions about both the law and public policy, will rest on the shoulders of staff who did not ask for the job, some of whom have only been employed a short time in the Office, and two of whom are not legally trained.

This level of responsibility on junior officers is not only unfair, but the APF questions whether it is lawful.

About the Photo Card Bill

The following are available from our website, www.privacy.org.au, under “Hot Topic”:

- APF’s Analysis of the Bill
- 31 questions we asked Michael Costa about the Bill
- Our suggestions for exactly how to fix the Bill
- A link to the Bill and the debates in Parliament

About the Australian Privacy Foundation

The Australian Privacy Foundation is the main non-governmental organisation dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians.

Since 1987 the Foundation has led the defence of the rights of individuals to control their personal information and to be free of excessive intrusions. For further information see www.privacy.org.au

Since 2003 the Australian Privacy Foundation has also hosted the Australian *Big Brother Awards*, which are presented around the world to corporations, public officials and governments that have shown a blatant disregard for privacy, and those who have done the most to threaten personal privacy in their countries.