



Privacy Committee Members' Handbook

March 2014

Version 2.3

Members' Handbook

Produced by State Records of South Australia
Department of the Premier and Cabinet
September 2005, and updated November 2006, February 2007, December 2007,
October 2012, January 2013, March 2014

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This publication is available in its most recent version on the State Records of South Australia web site at:

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Acknowledgement goes to the State Supply Board Secretariat for the model for this handbook.



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Members' Handbook

Table of Contents

Introduction	4
History of Privacy in South Australia	4
Privacy in other jurisdictions	6
Role of the Privacy Committee of South Australia	7
Relationship to other approval and advisory bodies	9
Duties and obligations of Committee members	10
Meetings of the Committee	11
Committee delegations	12
Support to the Committee	12
Reporting requirements	12
Policies and guidelines, processes and procedures	12
Publications	13
Budget	13
Contact information	13
Appendix 1 – Information Privacy Principles	14
Appendix 2 – Proclamation of the Privacy Committee of South Australia	20
Appendix 3 – Honesty and Accountability	23
Appendix 4 – Complaint handling process	24

Members' Handbook

Introduction

This handbook has been prepared by State Records of South Australia as a guide for members of the Privacy Committee of South Australia. The handbook contains information on the role of the Committee, members' responsibilities and Committee processes and activities.

History of Privacy in South Australia

South Australia has a significant history of privacy law reform and in many cases has led the way in the consideration of legal mechanisms to address particular privacy problems faced by its citizens. A summary of some of the key reforms and policy debates is included below:

- 1969 - the then Leader of the Opposition, the Hon Don Dunstan, was inspired to introduce the *Right to Privacy Bill* into the South Australian Parliament. The Bill was to establish rights to privacy, to control the possession and use of aural and visual surveillance devices and to provide relief against acts of harassment.
- 1971, July - Law Reform Committee Report and Model Privacy Bill making recommendations that a general right of privacy be created by the State and that the use of surveillance techniques, computers, data banks and similar electronic inventions of the present day be regulated. The *Listening Devices Act 1972 (SA)* (now the *Listening and Surveillance Devices Act 1972*) was assented to, fulfilling part of the second recommendation of that report.
- 1974, September - Draft Privacy Bill (Attorney-General, Mr L J King, QC) – introduced into the House of Assembly. The Bill was primarily to create a right of privacy and a right of action for infringement of that right. It was debated but not passed.
- 1974, November - the Opposition introduced a Bill to establish the South Australian Privacy Commission. This Bill was debated but ultimately unsuccessful.
- 1980, February - Law Reform Committee Report – recommending the adoption of emerging developments in data protection.
- 1980, September - Introduction of OECD *Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data*, which established the basis for data protection regimes to follow.
- **1983, December - Appointment of first Privacy Committee of South Australia.**
- 1984 - the Committee published a Discussion Paper on “Proposals for reform”. Over 170 copies were distributed and 25 written responses received.
- 1987 - the Committee prepared its final report to the Attorney-General from the above discussion paper making 24 recommendations.
- 1988 – Commonwealth *Privacy Act 1988* enacted.
- 1988 - Cabinet approved the form and content of the Information Privacy Principles Instruction (IPPI) and approved the establishment of the Privacy Committee of South Australia.
- **1989, July - Operation of the IPPI and another Privacy Committee appointed.**
- 1990 - Draft Privacy Bill (Private Member's Bill - Mr T R Groom MP) The Government supported the Bill and its carriage was transferred to the Attorney-General, Mr Chris Sumner MP.

Members' Handbook

- 1990, December – A select Committee of the House of Assembly was formed to consider deficiencies or otherwise in the laws relating to privacy.
- 1991, September – The draft Privacy Bill was reintroduced and passed the House of Assembly. In addition to establishing a right of privacy as a tort actionable by the person whose right was infringed, the Bill also provided for standards for the appropriate handling and storage of personal information, and extended the definition of an invasion of privacy to include invasions by electronic data processing and information technology. The Bill was later shelved during second reading debate in the Legislative Council.
- **1992, January – Following four years of an established administrative access regime, the *Freedom of Information Act 1991* was enacted, providing a legislative scheme for access to government information.**
- 1997, November – An independent consultant provided a report that made recommendations for a strategy for privacy and data protection. One of the recommendations was to commission a short term report for the Minister on the best strategy and approach for SA (see “Inquiry” below).
- 1998, October – The Privacy Committee launched its Report Inquiry into how privacy may best be managed in South Australia.
- 2001, July – Code of Fair Information Practice approved for use by the Department of Human Services.
- 2001, December – The protection of personal information held by the private sector was addressed in the Commonwealth Government’s Commonwealth *Privacy Amendment (Private Sector) Act 2000*. It applied to large businesses in South Australia as well as all private health providers and some small businesses. Government agencies are excluded from the scope of the Act.
- 2009, May – IPPI amended to apply to organisations providing services under contract to a South Australian Government agency. Proclamation establishing the Privacy Committee amended to remove out-dated references to legislation and to establish provisions to ensure gender balance.
- 2012, Nov – the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*, passed Commonwealth Parliament on 29 November 2012. Due to come into effect in March 2014, these reforms will mean that the same privacy principles will apply to Commonwealth Government agencies and the private sector.

General laws affecting Privacy in SA

Whilst there is currently no set of principles designated as privacy law in SA, there are a number of legislative provisions that affect personal privacy. They either incorporate secrecy provisions, direct access rules, provide for disclosure of information or mandatory collection of information, or establish public registers. For example: *Freedom of Information Act 1991*, *State Records Act 1997*, *Children’s Protection Act 1993*, *Summary Offences Act 1953*, *Motor Vehicles Act 1959*, *Births, Deaths and Marriages Registration Act 1996*, *Electoral Act 1985*, *Listening and Surveillance Devices Act 1972*, *Real Property Act 1886* etc.

Members' Handbook

Self-regulation - voluntary codes

Privacy is managed in different ways across the public sector. Whilst the Information Privacy Principles (IPPs) apply across Government, various forms of self-regulation exist, in which agencies establish codes of practice and undertake self-regulation. For example:

- A Code of Fair Information Practice was developed for health and related services.
- A guideline for information sharing for people who promote the protection of young people and their families has also been developed.

Codes of practice established by an agency may be endorsed by the Privacy Committee (the Committee) but approval is not necessary unless an exemption is required from the IPPs.

Privacy in other jurisdictions

Privacy laws and regimes vary between Australian States and Territories. Those with legislative regimes include the Commonwealth, Australian Capital Territory, New South Wales, Victoria, the Northern Territory, Tasmania, and most recently, Queensland. South Australia is now the only jurisdiction with an administrative regime for regulating information privacy. Western Australia has no formal information privacy regime. Government agencies are covered by various confidentiality provisions and some privacy principles are provided for in the *Freedom of Information Act 1992 (WA)*.

The Commonwealth *Privacy Act 1988* protects personal information held by the federal public sector and tax file numbers wherever held, and regulates the collection, use and disclosure of consumer credit information by private sector organisations. The Act contains eleven Information Privacy Principles based on those in the OECD Guidelines, which apply to Commonwealth and ACT government agencies. Rules about handling of consumer credit information were added in 1989. In April 2000 the legislation was amended to incorporate ten National Privacy Principles to apply to parts of the private sector and all health service providers.

On 30 January 2006 the Commonwealth Attorney-General commissioned the Australia Law Reform Commission (ALRC) to conduct a review of privacy. While the review was primarily focussed on Commonwealth law, the terms of reference included consideration of relevant existing and proposed Commonwealth, State and Territory laws and practices. The ALRC's Report was tabled in Parliament in August 2008 and included 295 recommendations for improving privacy laws in Australia. These recommendations included amendments to the *Privacy Act 1988* to update Credit Reporting Provisions and unify the National Privacy Principles and the Information Privacy Principles. It also recommended a range of actions aimed at achieving national consistency of privacy laws. The Commonwealth Government's first stage response to the ALRC's report was released in October 2009 and included an exposure draft of an amended Privacy Act to be released in early 2010. In its response the Commonwealth committed to working with Australian States and Territories towards achieving national consistency of Australian privacy laws.

The *Privacy Amendment (Enhancing Privacy Protection) Bill 2012* was introduced to Parliament on 23 May 2012 and passed on 29 November 2012. The Bill replaces the current privacy principles for the public and private sectors with a single set of privacy principles called the Australian Privacy Principles (APPs); amends credit reporting provisions, clarifies the functions and powers of the Information Commissioner and

Members' Handbook

increases the Commissioner's ability to resolve complaints, conduct investigations and promote compliance. The reforms will come into effect in March 2014.

Role of the Privacy Committee of South Australia

The functions of the Committee are described in the Proclamation by which it was established. Further detail about the powers of the Committee is found in *Cabinet Administrative Instruction 1/89*. The Instruction is also referred to as *Premier and Cabinet Circular No. 12*, but it is more commonly known as "The Information Privacy Principles" (IPPs). Both of these documents form Appendices to this Handbook.

The Committee has the following functions:

- to advise the Minister as to the need for, or desirability of, legislation or administrative action to protect individual privacy and for that purpose to keep itself informed as to developments in relation to the protection of individual privacy in other jurisdictions
- to make recommendations to the Government or to any person or body as to the measures that should be taken by the Government or that person or body to improve its protection of individual privacy
- to make publicly available information as to methods of protecting individual privacy and measures that can be taken to improve existing protection
- to keep itself informed as to the extent to which the Administrative Scheme of Information Privacy Principles are being implemented
- to refer written complaints concerning violations of individual privacy received by it (other than complaints from employees of the Crown, or agencies or instrumentalities of the Crown, in relation to their employment) to the appropriate authority
- such other functions as are determined by the Minister.

The powers conferred on the Committee are:

- it may exempt a person or body from one or more of the Information Privacy Principles on such conditions as the Committee thinks fit (details of any exemptions must be included in the annual report)
- it may at any time on its own initiative appoint a person (whether or not that person is a public employee) or the Commissioner for Public Employment (now the Commissioner for Public Sector Employment operating within the Department of the Premier and Cabinet) to investigate or assist in the investigation of the nature and extent of compliance of an agency with the Principles and to furnish a report to the Committee accordingly
- it may require each principal officer to furnish to the Committee such information as the Committee requires; and that principal officer shall comply with any requirements determined by the Committee concerning the furnishings of that information including:
 - (a) the action taken to ensure that the Principles are implemented, maintained and observed in the agency for which he or she is responsible;
 - (b) the name and designation of each officer with authority to ensure that the Principles are so implemented, maintained and observed;

Members' Handbook

- (c) the result of any investigation and report [as requested by the Committee above] in relation to the agency for which he or she is responsible and, where applicable, any remedial action taken or proposed to be taken in consequence.

Membership appointment

Terms of membership of the Committee are described in Clause 1 of the Proclamation establishing the Privacy Committee.

Disclosure of information about members

Details of members appointed to Government Boards and Committees, where at least one member receives a fee, are entered on the Boards and Committees Information System (BCIS). BCIS is managed by the Department of Premier and Cabinet and details recorded include full name, honorifics, gender, position on board, who nominated by, term of membership, entitlement to fees and employment status (ie public sector, private citizen etc). A record of the Committee's gender balance is also submitted to the BCIS.

The information is used to manage reviews and re-appointments and to establish gender balance in accordance with Government policy. Reports from BCIS are made to Parliament each year as of 30 June, as part of the Government's commitment to corporate governance, transparency and accountability.

Members' names and a brief description of their qualification for the position are posted on the State Records website at <http://www.archives.sa.gov.au/privacy/committee.html>, and in the Annual Report.

Remuneration

Premier & Cabinet Circular 16 (PC016) specifies the conditions under which members of the Privacy Committee may be paid. Fees may not be paid, in general, to Government employees. Therefore only non-government members of the Privacy Committee receive payment. Remuneration is made by payment of a sessional fee, which includes a loading of up to three hours preparation or reading time per meeting. For more details about the payment of fees, see *Premier & Cabinet Circular No. 16*, available at http://dpc.sa.gov.au/sites/default/files/pubimages/Circulars/PC016_Remuneration_1.pdf.

Quorum

Under Clause 1 (5) (c) of the Proclamation four members constitute a quorum for a meeting of the Committee. If a meeting is found in advance to have less than four members attending, it will be cancelled (see also *Apologies for non-attendance* below).

Proxy members

Under Clause 1 (5) (e) of the Proclamation establishing the Privacy Committee, a member who is unable to attend a meeting of the Committee may, with the approval of the presiding member, be represented for voting and all other purposes at the meeting by his or her nominee.

Members' Handbook

Apologies for non-attendance

Apologies may be communicated to the Executive Officer by telephone or e-mail (see contact details in this Handbook). In order to cancel a meeting that will not have a quorum, it is preferred that apologies be made at least 48 hours in advance of the meeting.

Relationship to other approval and advisory bodies

Governor

The Governor made the Proclamation establishing the Privacy Committee of South Australia. Therefore, to effect any amendment to the Proclamation, such as membership criteria, the approval of the Governor must be sought.

Cabinet

Cabinet approved the Cabinet Administrative Instruction 1/89, also referred to as Premier and Cabinet Circular No. 12, but more commonly known as the "Information Privacy Principles" (IPPs). Cabinet approval would be required in any review of the IPPs.

Minister for the Public Sector

The Privacy Committee reports directly to the Minister for the Public Sector. The Committee provides advice to the Minister on issues affecting the protection of personal information. The Committee provides a formal annual report of its business to the Minister for tabling in Parliament on or before 30 September each year. The Minister may nominate three members to the Committee, and appoints all six.

The Minister is kept informed of significant business of the Committee. The Committee may recommend to the Minister that submissions be made on various issues, when required.

South Australian Ombudsman

Any person, group of people, body or organisation, which is directly affected by a decision or failure to act by an agency within the Ombudsman's jurisdiction, may make a complaint to the Ombudsman. This includes the administrative actions of a State government agency or authority, local government council or a public hospital or health service. Therefore members of the public who are unsatisfied with the Committee's response to their complaint are referred to the SA Ombudsman for further investigation of the situation within the relevant agency. (Source: www.ombudsman.sa.gov.au)

Office of the Australian Information Commissioner

The *Privacy Act 1988* (Cth) is administered by the Office of the Australian Information Commissioner. The Office of the Australian Information Commissioner is headed by the Australian Information Commissioner who works in conjunction with the Privacy Commissioner and the Freedom of Information Commissioner.

The Act applies to Commonwealth Government agencies and, since December 2001, has applied to large businesses in South Australia as well as all private health providers and some small businesses.

Members' Handbook

Some complaints are referred to the Privacy Commissioner if the subject of the complaint falls under the jurisdiction of the Privacy Act.

Human Research Ethics Committees

There are currently five Human Research Ethics Committees (HRECs) within the in South Australian public health system. They exist within the Department for Health and Ageing and the Department for Communities and Social Inclusion. HRECs are established to protect the welfare of people involved in research. The committees will receive and examine research and evaluation proposals. These proposals are assessed in accordance with the *National Statement on Ethical Conduct in Human Research (2007 – Updated 2009)*, the *Australian Code for Responsible Conduct of Research (2007)* and the *Code of Fair Information Practice (2004)*.

Asia Pacific Privacy Authorities (APPA)

Asia Pacific Privacy Authorities (APPA) is the principal forum for privacy authorities in the Asia Pacific Region to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints.

APPA convenes twice a year, discussing permanent agenda items like jurisdictional reports from each delegation and an initiative-sharing roundtable. Topical issues canvassed by forums have included privacy and security, a World Anti-Doping Code, cross-jurisdictional law enforcement in the Pacific Rim, privacy legislation amendments, cryptography and personal data privacy.

Privacy Authorities of Australia

The Privacy Authorities of Australia (PAA) was formed in 2008 as a way to share information between state and federal privacy authorities. The forum meets twice a year.

The formation of the group occurred as a result of the growth of APPA. Since APPA now has an international brief the PAA was formed to assist Australian privacy authorities discuss and promote cooperation on Australian privacy matters. The Privacy Committee is represented on the PAA.

Duties and obligations of Committee members

Clause 3 (2) of the Proclamation establishing the Privacy Committee, states:

A member of the Committee must not disclose any information acquired by the member by virtue of his or her membership of the Committee except:

- (a) in the course of performing duties and functions as a member of the Committee;*
- or*
- (b) as required or authorized by law.*

The legal duties and obligations of Committee Members are also outlined in the guideline *Honesty and Accountability for Members of Government Boards, March 2011* (attached).

Members' Handbook

The document can be found at

http://dpc.sa.gov.au/sites/default/files/pubimages/documents/boards-committees/BC_honesty-accountability.pdf

The Department of the Premier and Cabinet has also published the *Government Boards and Committees: Guidelines for Agencies and Board Members (2000)* (attached). This document covers general responsibilities of boards and members. It can be found at http://dpc.sa.gov.au/sites/default/files/pubimages/documents/boards-committees/BC_guidelines.pdf.

More broadly, the *Code of Ethics for the South Australian Public Sector* is the code of conduct for the purposes of the *Public Sector Act 2009*. All public sector employees must comply with the Code.

The Code of Ethics seeks to:

- Guide and support public sector employees in all of their professional activities
- Strengthen public confidence in the public sector
- Earn respect from citizens, government and employees for the public sector as an institution which is critical to good government in South Australia
- Set out standards of professional conduct expected of every public sector employee.

Meetings of the Committee

Regular meetings

Meetings are scheduled to take place six-weekly on a Wednesday morning. If an alternative time is found to be mutually convenient, the membership may agree to amend the schedule.

A schedule of meetings for the calendar year will be provided to Members at the beginning of each year by the Executive Officer.

Extra-ordinary meetings

Extra-ordinary meetings may be called when urgent business arises that requires approval of members in session.

Urgent business may be discussed out of session (ie if it is of a minor nature and requiring advice rather than approval). Any agreements will be then verified at the next meeting and recorded in the minutes.

Management of papers

Permanent copies of Privacy Committee meeting papers are stored at State Records. Members may retain their copies for as long as necessary for their own reference. When current reference is no longer required the papers must be securely destroyed.

If the facilities for security destruction (ie shredding) of Committee papers are not available members should contact the Executive Officer who will arrange for their collection and subsequent secure destruction.

Members' Handbook

Members destroying their own papers should be particularly aware of the confidentiality of matters relating to complaints, Cabinet submissions, briefings to the Minister and liaison with public or private sector agencies.

The *Freedom of Information Act 1991* applies to documents held by State Records of South Australia. Access to papers will be given unless an appropriate exemption applies.

govdex – PCSA Community

Govdex is a secure, private web-based space managed by the Australian Government that helps government agencies to manage projects, and share documents and information.

The Privacy Committee of South Australia has been registered as a 'Community' on govdex. Committee Members are invited to the Privacy Committee Community on govdex where they can sign up as a user. Committee meeting papers are made available on govdex for members to access or download prior to each meeting. Papers relating to out-of-session business will also be made available via govdex. Committee members will be notified via email when the meeting papers or other papers relating to Committee business have been uploaded. Members who wish to receive hard copies of Committee papers should notify the Executive Officer of the Committee.

Committee delegations

Under Clause 1 (6) of the Proclamation establishing the Committee, the Committee may, in performing its functions, consult any person and may establish subcommittees of at least two of its members to assist and advise it.

Support to the Committee

Resources from State Records of South Australia within the Department of the Premier and Cabinet (DPC) support the Committee.

The Presiding Member is the Director of State Records. The Executive Officer is the Senior Privacy Officer within Freedom of Information and Privacy in State Records of South Australia. The Manager, Freedom of Information and Privacy is also involved in providing support to the Committee.

Reporting requirements

The Committee is required by Clause 4A of the Proclamation of the Privacy Committee of South Australia to prepare a report of its activities annually and must submit the report to the Minister on or before 30 September each year.

Policies and guidelines, processes and procedures

Guidelines developed by the Privacy Committee include:

- Privacy Guidelines for SA Government Websites
- Contracting and the Information Privacy Principles
- Model Terms and Conditions for the IPPs

Members' Handbook

- Photographic Images and Privacy.

Processes and procedures for the administration of the Committee's meetings and functions are recorded as necessary by the Executive Officer, in documents held by State Records of South Australia.

The process for handling complaints is included as Appendix 4 of this handbook.

Publications

Annual reports of the Privacy Committee and other relevant publications are available on the State Records web site at <http://www.archives.sa.gov.au/privacy/publicat.html>.

Budget

The Committee does not administer a budget. Expenditure is absorbed by State Records.

Session fees are paid for non-public sector members, in accordance with Premier and Cabinet Circular No. 16 *Remuneration for Government Appointed Part-time Boards and Committees* (see also *Remuneration under Role of the Privacy Committee of South Australia*).

Contact information

The Executive Officer of the Committee can provide advice and assistance on matters associated with the Committee's role and business. The Presiding Member of the Committee is also available for consultation on matters related to the Committee's role and business.

The Committee, the Presiding Member or the Executive Officer can be contacted as follows:

Privacy Committee of South Australia
c/- State Records of South Australia
Department of the Premier and Cabinet
GPO Box 464
ADELAIDE SA 5001

DX 336
Telephone (08) 8204 8786
Fax (08) 8204 8777
Email privacy@sa.gov.au
Website www.archives.sa.gov.au

Members' Handbook

Appendix 1 – Information Privacy Principles

CABINET ADMINISTRATIVE INSTRUCTION 1/89, ALSO KNOWN AS THE INFORMATION PRIVACY PRINCIPLES (IPPS) INSTRUCTION, AND PREMIER AND CABINET CIRCULAR 12, AS AMENDED BY CABINET 16 SEPTEMBER 2013

Government of South Australia

Cabinet Administrative Instruction No.1 of 1989

(Re-issued 30 July 1992, 18 May 2009, 4 February 2013, 5 August 2013 and 16 September 2013)

**PART 1
PRELIMINARY**

Short Title

1. This Instruction may be called the "Information Privacy Principles Instruction".

Commencement and Application

2.
 - (1) This Instruction will come into effect on 16 September 2013.
 - (2) Subject to any contrary determination by Cabinet, this Instruction shall apply to "the public sector agencies" as that expression is defined in Section 3(1) of the *Public Sector Act 2009*.
 - (3) This Instruction shall not apply to an agency that appears in the attached schedule.

Interpretation

3.
 - (1) In this Instruction-
 - "agency" means a public sector agency that falls within the scope of application of this Instruction pursuant to the provisions of Clause 2(2).
 - "the Committee" means the Privacy Committee of South Australia constituted by Proclamation.
 - "contracted service provider" means a third party that enters into a contract with an agency to provide goods or services required by an agency for its operations.
 - "contract for service" means that contract between the contracted service provider and the agency.
 - "Minister" means the Minister who is, for the time being, responsible for the Instruction.
 - "personal information" means information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Members' Handbook

"principal officer" means in relation to an agency:

- (a) the person holding, or performing duties of, the Office of Chief Executive Officer of the agency;
- (b) if the Commissioner for Public Employment declares an office to be the principal office in respect of the agency - the person holding, or performing the duties of, that office; or
- (c) in any other case - the person who constitutes that agency or, if the agency is constituted by two or more persons, the person who is entitled to preside at any meeting of the agency at which the person is present.

"the Principles" means the Information Privacy Principles established under Clause 4 of this Instruction.

"record-subject" means a person to whom personal information relates.

- (2) A reference to any legislation, regulation or statutory instrument in this Instruction shall be deemed to include any amendment, repeal or substitution thereof.
- (3) A reference to a person, including a body corporate, in this Instruction shall be deemed to include that person's successors.

PART II INFORMATION PRIVACY PRINCIPLES

Principles

4. The principal officer of each agency shall ensure that the following Principles are implemented, maintained and observed for and in respect of all personal information for which his or her agency is responsible.

Collection of Personal Information

- (1) Personal information should be not collected by unlawful or unfair means, nor should it be collected unnecessarily.
- (2) An agency that collects personal information should take reasonable steps to ensure that, before it collects it or, if that is not practicable, as soon as practicable after it collects it, the record-subject is told:
 - (a) the purpose for which the information is being collected (the "purpose of collection"), unless that purpose is obvious;
 - (b) if the collection of the information is authorised or required by or under law - that the collection of the information is so authorised or required; and
 - (c) in general terms, of its usual practices with respect to disclosure of personal information of the kind collected.
- (3) An agency should not collect personal information that is inaccurate or, having regard to the purpose of collection, is irrelevant, out of date, incomplete or excessively personal.

Members' Handbook

Storage of Personal Information

- (4) An agency should take such steps as are, in the circumstances, reasonable to ensure that personal information in its possession or under its control is securely stored and is not misused.

Access to Records of Personal Information

- (5) Where an agency has in its possession or under its control records of personal information, the record-subject should be entitled to have access to those records in accordance with the *Freedom of Information Act 1991*.

Correction of Personal Information

- (6) An agency that has in its possession or under its control records of personal information about another person should correct it so far as it is inaccurate or, having regard to the purpose of collection or to a purpose that is incidental to or connected with that purpose, incomplete, irrelevant, out of date, or where it would give a misleading impression in accordance with the *Freedom of Information Act 1991*.

Use of Personal Information

- (7) Personal information should not be used except for a purpose to which it is relevant.
- (8) Personal information should not be used by an agency for a purpose that is not the purpose of collection or a purpose incidental to or connected with that purpose (the secondary purpose) unless:
 - (a) the record-subject would reasonably expect the agency to use the information for the secondary purpose and the secondary purpose is related to the primary purpose of collection;
 - (b) the record-subject has expressly or impliedly consented to the use;
 - (c) the agency using the information believes on reasonable grounds that the use is necessary to prevent or lessen a serious threat to the life, health or safety of the record-subject or of some other person;
 - (d) the use is required by or under law;
 - (e) the use for that other purpose is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty or for the protection of the public revenue or for the protection of the interests of the government, statutory authority or statutory office-holder as an employer;
 - (f) the agency has reason to suspect that unlawful activity has been, is being or may be engaged in, and discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
 - (g) the agency reasonably believes that the use relates to information about an individual that suggests that the individual has engaged or may engage in illegal conduct or serious misconduct in relation to a person; and

Members' Handbook

- (i) the agency reasonably believes that the use is appropriate in the circumstances; and
 - (ii) the use complies with any guidelines issued by the Minister for the purposes of this clause.
- (9) An agency that uses personal information should take reasonable steps to ensure that, having regard to the purpose for which the information is being used, the information is accurate, complete and up to date.

Disclosure of Personal Information

- (10) An agency should not disclose personal information about some other person to a third person for a purpose that is not the purpose of collection (the secondary purpose) unless:
- (a) the record-subject would reasonably expect the agency to disclose the information for the secondary purpose and the secondary purpose is related to the primary purpose of collection;
 - (b) the record-subject has expressly or impliedly consented to the disclosure;
 - (c) the person disclosing the information believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious threat to the life, health or safety of the record-subject or of some other person;
 - (d) the disclosure is required or authorised by or under law;
 - (e) the disclosure is reasonably necessary for the enforcement of the criminal law, or of a law imposing a pecuniary penalty or for the protection of the public revenue or for the protection of the interests of the government, statutory authority or statutory office-holder as an employer;
 - (f) the agency has reason to suspect that unlawful activity has been, is being or may be engaged in, and discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
 - (g) the agency reasonably believes that the disclosure relates to information about an individual that suggests that the individual has engaged or may engage in illegal conduct or serious misconduct in relation to a person; and
 - (i) the agency reasonably believes that the disclosure is appropriate in the circumstances; and
 - (ii) the disclosure complies with any guidelines issued by the Minister for the purposes of this clause.

Acts and Practices of Agency and Contracted Service Provider

5. For the purposes of this Instruction-
- (a) an act done or practice engaged in by, or personal information disclosed to, a person employed by, or in the service of, an agency in the performance of the duties of the person's employment shall be deemed to have been done or engaged in by, or disclosed to, the agency;

Members' Handbook

- (b) an act done or practice engaged in by, or personal information disclosed to, a person on behalf of, or for the purposes of the activities of, an unincorporated body, being a board, council, committee, subcommittee or other body established by, or in accordance with, an enactment for the purpose of assisting, or performing functions in connection with, an agency, shall be deemed to have been done or engaged in by, or disclosed to, the agency.
 - (c) subject to clause 5(A), an act done or a practice engaged in by, or personal information disclosed to, a person employed by, or in the service of, a person or organisation providing services to an agency under a contract for services for the purpose of or in the course of performance of that contract shall be deemed to have been done or engaged in by, or disclosed to, the agency.
- 5(A) A contract for service, which will necessitate the disclosure of personal information to a contracted service provider, must include conditions to ensure that these Principles are complied with as if the Contracted Service Provider were part of the agency and must include provisions that enable audit and verification of compliance with these obligations.

Agencies to comply with Principles

- 6. An agency shall not do an act or engage in a practice that is in breach of or is a contravention of the Principles.

Collecting of Personal Information

- 7. For the purposes of the Principles, personal information shall be taken to be collected by an agency from a person if the person provides that information to the agency in response to a request by the agency for that information or for a kind of information in which that information is included.

PART III COMPLIANCE WITH PRINCIPLES

- 8. The Committee may at any time on its own initiative appoint a person (whether or not that person is a public employee) or the Commissioner for Public Employment to investigate or assist in the investigation of the nature and extent of compliance of an agency with the Principles and to furnish a report to the Committee accordingly.

Reporting Procedures Pursuant to this Instruction

- 9. Each principal officer shall furnish to the Committee such information as the Committee requires and shall comply with any requirements determined by the Committee concerning the furnishings of that information including:
 - (a) the action taken to ensure that the Principles are implemented, maintained and observed in the agency for which he or she is responsible;
 - (b) the name and designation of each officer with authority to ensure that the Principles are so implemented, maintained and observed;
 - (c) the result of any investigation and report, under Clause 8, in relation to the agency for which he or she is responsible and, where applicable, any remedial action taken or proposed to be taken in consequence.

Members' Handbook

Agencies Acting Singly or in Combination

10. This Instruction and the Principles shall apply to the collection, storage, access to records, correction, use and disclosure in respect of personal information whether that personal information is contained in a record in the sole possession or under the sole control of an agency or is contained in a record in the joint or under the joint control of any number of agencies.

SCHEDULE: CLAUSE 2 (3)

AGENCIES TO WHICH THIS INSTRUCTION DOES NOT APPLY

Independent Commissioner Against Corruption

Motor Accident Commission (formerly State Government Insurance Commission)

Office for Public Integrity

South Australian Asset Management Corporation

WorkCover Corporation of South Australia

Members' Handbook

Appendix 2 – Proclamation of the Privacy Committee of South Australia

A link to this document can be found as an addendum to the Information Privacy Principles link on the Department of the Premier and Cabinet website at

Version: 11.6.2009

South Australia

Privacy Committee of South Australia

1—Establishment and procedures of Privacy Committee of South Australia

- (1) My Government will establish a committee to be known as the *Privacy Committee of South Australia*.
- (2) The Committee will consist of six members appointed by the Minister as follows:
 - (a) three will be chosen by the Minister, and of these one must be a person who is not a public sector employee (within the meaning of the *Public Sector Management Act 1995* as amended or substituted from time to time) and one must be a person with expertise in information and records management;
 - (b) one will be appointed on the nomination of the Attorney-General;
 - (c) one will be appointed on the nomination of the Minister responsible for the administration of the *Health Care Act 2008* (as amended or substituted from time to time); and
 - (d) one will be appointed on the nomination of the Commissioner for Public Employment (and, for the purposes of this paragraph, the reference to the Commissioner will, if the title of the Commissioner is altered, be read as a reference to the Commissioner under his or her new title).
- (2aa) At least 2 members of the Committee must be women and at least 2 must be men.
- (2a) One of the persons appointed under subclause (2)(a) will be appointed (on the nomination of the Minister) to be the presiding member.
- (3) A member will be appointed for a term not exceeding four years.
 - (3a) Where a member is appointed for a term of less than four years, the Minister may, with the consent of the member, extend the term of the appointment for a period ending on or before the fourth anniversary of the day on which the appointment took effect.
- (4) The office of a member becomes vacant if the member—

Members' Handbook

- (a) dies;
 - (b) completes a term of office and is not reappointed;
 - (c) resigns by written notice to the Minister; or
 - (d) is removed from office by the Governor on the ground of—
 - (i) mental or physical incapacity to carry out official duties satisfactorily;
 - (ii) neglect of duty;
 - (iii) disclosure of information by the member contrary to clause 3(2);
or
 - (iv) misconduct.
- (5) Subject to the following, the Committee may determine its own procedures:
- (a) a meeting of the Committee will be chaired by the presiding member or, in his or her absence, by a member chosen by those present;
 - (b) subject to paragraph (c), the Committee may act notwithstanding vacancies in its membership;
 - (c) four members constitute a quorum for a meeting of the Committee;
 - (d) a decision in which a majority of the members present at a meeting concur is a decision of the Committee but if the members are equally divided the person presiding at the meeting will have a casting vote;
 - (e) a member who is unable to attend a meeting of the Committee may, with the approval of the presiding member, be represented for voting and all other purposes at the meeting by his or her nominee;
 - (g) the Committee must keep minutes of its proceedings.
- (6) In performing its functions the Committee may consult any person and may establish subcommittees of at least two of its members to assist and advise it.

2—Functions of the Committee

The Committee will have the following functions:

- (a) to advise the Minister as to the need for, or desirability of, legislation or administrative action to protect individual privacy and for that purpose to keep itself informed as to developments in relation to the protection of individual privacy in other jurisdictions;
- (b) to make recommendations to the Government or to any person or body as to the measures that should be taken by the Government or that person or body to improve its protection of individual privacy;

Members' Handbook

- (c) to make publicly available information as to methods of protecting individual privacy and measures that can be taken to improve existing protection;
- (d) to keep itself informed as to the extent to which the Administrative Scheme of Information Privacy Principles are being implemented;
- (g) to refer written complaints concerning violations of individual privacy received by it (other than complaints from employees of the Crown, or agencies or instrumentalities of the Crown, in relation to their employment) to the appropriate authority;
- (h) such other functions as are determined by the Minister.

3—Prohibition against disclosure of information

- (2) A member of the Committee must not disclose any information acquired by the member by virtue of his or her membership of the Committee except—
 - (a) in the course of performing duties and functions as a member of the Committee; or
 - (b) as required or authorized by law.

4—Exemptions

- (1) The Committee may exempt a person or body from one or more of the Information Privacy Principles on such conditions as the Committee thinks fit.

4A—Annual report

- (1) The Committee must, on or before 30 September in each year, prepare and present to the Minister a report on its activities during the preceding financial year.
- (2) The report must include details of any exemptions granted under clause 4 during the year to which the report relates.
- (3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

5—Interpretation

In this proclamation, unless the contrary intention appears—

Information Privacy Principles means the principles set out in Part II of Cabinet Administrative Instruction No. 1 of 1989 entitled "Information Privacy Principles Instruction"

Minister means the Minister who is, for the time being, responsible for the Committee.

Members' Handbook

Appendix 3 – Honesty and Accountability

Government board and committee members are required to operate under a framework of rules regarding honesty and accountability.

The Department of the Premier and Cabinet (DPC) produced the *Honesty and accountability for members of government boards* in March 2011 regarding their behavioural requirements under state law.

The paper is available at:

http://www.dpc.sa.gov.au/sites/default/files/pubimages/documents/boards-committees/BC_honesty-accountability.pdf

Members' Handbook

Appendix 4 – Complaint handling process

On 13 August 2003 the Committee approved the following plan for processing complaints.

