



Government  
of South Australia

Annual Report  
2004-2005

Privacy Committee  
Of South Australia

# Annual Report of the Privacy Committee of South Australia

For the year ending 30 June 2005



Government  
of South Australia

# Annual Report

September 2005

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This annual report has been issued pursuant to Clause 3 (1) of the  
Proclamation of the Privacy Committee of South Australia.

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Government  
of South Australia

# Annual Report

The Hon Michael Wright MP  
MINISTER FOR ADMINISTRATIVE SERVICES

Dear Minister

The Privacy Committee of South Australia is pleased to provide you with this report of its activities for the year ending 30 June 2005. The report is provided pursuant to Clause 3(1) of the Proclamation establishing the Privacy Committee of South Australia, as amended and republished in the South Australian Government Gazette on 17 May 2001.

A handwritten signature in black ink, appearing to read 'Terry Ryan'.

Terry Ryan  
**PRESIDING MEMBER**  
**PRIVACY COMMITTEE OF SOUTH AUSTRALIA**

29 September 2005



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## 1 Introduction

At the end of this reporting year, the current composition of the Privacy Committee of South Australia had been in place for seven months. During the year the range of issues that came before members included disaster recovery, hidden cameras, school enrolments, emergency plumbing services, car accidents, criminals and body tissue samples.

The structure of the membership and powers of the Privacy Committee puts it in a unique position to be able to work in concert with agencies to establish methods for government agencies dealing with personal information while also protecting the privacy of individuals. The Privacy Committee is not an enforcement body but achieves results through collaboration with agencies.

The Privacy Committee continues to be concerned about the need to strengthen the privacy regime in South Australia to one that addresses current and emerging privacy issues.

This report outlines the framework for privacy protection in South Australian Government and the business of the Privacy Committee during the year.



## 2 South Australian Public Sector Privacy Framework

### 2.1 The Information Privacy Principles

South Australia's Information Privacy Principles were introduced in July 1989 by means of *Cabinet Administrative Instruction 1/89*, issued as *Premier & Cabinet Circular No. 12*, and more commonly known as the Information Privacy Principles Instruction.

The Information Privacy Principles regulate the way South Australian Public Sector agencies collect, use, store and disclose personal information. A copy of the Information Privacy Principles can be found on the State Records website at [www.archives.sa.gov.au/privacy](http://www.archives.sa.gov.au/privacy), and in Appendix 1 of this document.

### 2.2 The Privacy Committee of South Australia

#### 2.2.1 Constitution

The Privacy Committee of South Australia (the Privacy Committee) was established by proclamation in the Government Gazette on 6 July 1989. A copy of the proclamation can be found following the Information Privacy Principles Instruction on the State Records website at [www.archives.sa.gov.au/privacy](http://www.archives.sa.gov.au/privacy), and in Appendix 2 of this document.

#### 2.2.2 Reporting

The Privacy Committee reports to the Minister for Administrative Services, the Hon Michael Wright MP. Given the functions of the Privacy Committee to advise the Minister and to take direction from the Minister, it is a direct reporting relationship (see 2.2.4 Functions).



*Back Row: Andrew Stanley, Terry Ryan, Anne French;  
Front Row: Bernadette Quirke, Gaby Jaksa, Lee Thomas.*

## 2.2.3 Membership

There are six members:

- ▶ three nominated by the Minister responsible (one of whom is not a public sector employee and one of whom will have expertise in information and records management);
- ▶ one nominated by the Attorney-General;
- ▶ one nominated by the Minister for Health; and
- ▶ one nominated by the Commissioner for Public Employment.

For this reporting year, the Privacy Committee comprised:

**Presiding Member:**

- ▶ Terry Ryan, Director, State Records of South Australia, Department for Administrative and Information Services

**Members:**

- ▶ Anne French, Principal Consultant, Office of Public Employment



- ▶ Gaby Jaksa, Negotiation Coordinator, Department for Administrative and Information Services
- ▶ Bernadette Quirke, Senior Solicitor, Crown Solicitor's Office, Attorney-General's Department
- ▶ Andrew Stanley, Director, Strategic Planning and Research Branch, Health System Improvement and Reform, Department of Health
- ▶ Lee Thomas, non-public sector employee.

Following the expiry of the former membership of the Privacy Committee on 25 May 2004, the Minister appointed this Committee on 9 November 2004.

The term of appointment for each of the current members expires on 30 September 2006. The first meeting of this Committee was held on 1 December 2004.

## 2.2.4 Functions

The functions of the Privacy Committee are described in the proclamation establishing the Committee (see also item 2.2.1) as follows:

- ▶ 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.

## 2.2.5 Resources

The Privacy Committee does not administer a budget. The Department for Administrative and Information Services through State Records provides resources for the Privacy Committee. This facilitates research, advisory and executive support to the Privacy Committee and a public enquiry service.

*Premier & Cabinet Circular No. 16: Remuneration for Government Appointed Part-time Boards and Committees* specifies the conditions under which members of Boards and Committees may be paid. Fees may not be paid, in general, to Government employees. Therefore only one member of the Privacy Committee receives a sessional fee. The sessional fees are drawn from State Records' recurrent operating budget. For more information about the payment of fees, see *Premier & Cabinet Circular No. 16* available at [www.premcab.sa.gov.au/pdf/circulars/Remuneration.pdf](http://www.premcab.sa.gov.au/pdf/circulars/Remuneration.pdf).

## 2.2.6 Meetings

Since its appointment on 9 November 2004, the Privacy Committee met on six occasions. Included in these six meetings were two workshops convened to resolve complex items of business that had arisen during peaks in activity in the early months following the Privacy Committee's appointment. Meetings were supplemented by the conduct of business out of session.

## 2.2.7 Guidelines for members

A handbook for members was produced in January 2005. The handbook contains information on the role of the Privacy Committee, its relationship to



other approval and advisory bodies, duties and obligations of members, the approved process for handling complaints, and other information of value to members in performing their role. It also contains a brief history of privacy law and self-regulation in South Australia, and an overview of the protection of personal information in other jurisdictions.

The handbook also contains a Code of Conduct for members, which was adapted from *Government Boards and Committees: Guidelines for Agencies and Board Directors* (Department of Premier and Cabinet, 2000). At the conclusion of the reporting year, the Department of Premier and Cabinet Guidelines were under review in light of recent amendments to the *Public Sector Management Act 1995*.

A copy of the handbook is available by contacting State Records of South Australia.



## 3 Business of the Privacy Committee

### 3.1 Advice to the Minister

The Privacy Committee is able, under clause 2(a) of the proclamation, ‘to advise the Minister as to the need for, or desirability of, legislative or administrative action to protect individual privacy’.

The Privacy Committee briefed the Minister on matters relating to privacy, including responding to his request for a review of certain aspects of the Information Privacy Principles as they relate to the activity of contracting for services (see item 3.4.2).

### 3.2 Developments in other jurisdictions

The Privacy Committee is required, under clause 2(a) of the proclamation, ‘to keep itself informed of developments in relation to the protection of individual privacy in other jurisdictions’. The Privacy Committee informs itself of activities of other privacy agencies, follows developments in relevant law reform and research projects, monitors media reports on matters applicable to privacy policy and participates in inter-agency forums and conferences. Some key instances are described below.

#### 3.2.1 Commonwealth, States and Territories

The Commonwealth and each State and Territory Government within Australia operate under varying legislative and policy environments for privacy protection. These regimes are of significant interest to the Privacy Committee in considering the future direction for privacy protection in South Australia.

Since the last annual report of the Privacy Committee, the Tasmanian *Personal Information Protection Act 2004* was passed by that State’s Parliament in November 2004.



The Federal Privacy Commissioner and the Commonwealth Senate Legal and Constitutional Committee each undertook and completed a review of the Commonwealth *Privacy Act 1988*. The reports of the two reviews were released on 31 March 2005 and 23 June 2005 respectively. The Privacy Committee will consider the findings in the new reporting year. The Privacy Committee agreed not to make submissions to the reviews because they related, in the most part, to the private sector provisions of that Act. Similarly, the Privacy Committee did not itself comment on the review of the Medicare and PBS Privacy Guidelines issued under section 135AA of the *National Health Act 1953*. However, it did take note of submissions made independently by the South Australian Department of Health.

The above-mentioned reports are available through the Office of the Federal Privacy Commissioner, including at that Office's website.

[www.privacy.gov.au](http://www.privacy.gov.au).

### 3.2.2 Conferences and seminars

Throughout the year, representation of the Privacy Committee was made at various conferences, seminars and forums, including:

- ▶ Research and Data Linkage in Health Seminar, hosted by the Department of Health, 22 October 2004;
- ▶ 2nd International Policing Conference: Safety and Security in a Hi-Tech World, 1-3 November 2004;
- ▶ Privacy Agencies of New Zealand and Australia, plus Hong Kong and Korea (PANZA +), hosted by the New South Wales Privacy Commissioner, 3 December 2004;
- ▶ Privacy Agencies of New Zealand and Australia, plus Hong Kong and Korea (PANZA +), hosted by the New Zealand Privacy Commissioner, 13 May 2005; and



- ▶ Tissue Ownership: Implications for policy, privacy and use, hosted by the Australian Institute of Health Law and Ethics (AIHLE) and the Department of Health, 31 May 2005.

### 3.2.3 Consistency in the protection of personal information

The Privacy Committee considers national consistency in information privacy protection to be an important objective. Inconsistency potentially creates barriers to appropriate use and disclosure of personal information and in some cases can result in a jurisdiction being excluded from transactions in the interests of protecting the information being handled.

The Privacy Committee will consider issues surrounding inconsistencies in privacy protection that were highlighted by two recent reviews of the Commonwealth *Privacy Act 1988* (see item 3.2.1).

### 3.2.4 Privacy in disaster recovery

The process of a community's recovery from a disaster or major incident typically calls for unusually rapid and unhindered service delivery across all areas, and often requires critical access to a wide range of information. The Eyre Peninsula bushfires of 11 January 2005 (see also item 3.3.2) highlighted the complexity of issues surrounding the collection, use and disclosure of personal information during the critical early stages of a disaster recovery operation, when timely access to information held by Government agencies and private sector organisations is required.

Privacy authorities across Australia and overseas are currently considering how the public interest may be met in situations of emergency response, while continuing to safeguard the privacy rights of individuals both during and after the recovery process. The Privacy Committee will continue to maintain an interest in, and where possible contribute to, the developments in this area.



## 3.3 Exemptions

The Privacy Committee may, under clause 4 of the proclamation, 'exempt a person or body from one or more of the Information Privacy Principles on such conditions as the Privacy Committee thinks fit'.

Requests for exemptions are addressed on a case-by-case basis. Exemptions are only applied in situations where the public interest for an activity outweighs an individual's right to privacy.

During this reporting year, the following exemptions were considered.

### 3.3.1 Department of Human Services: Code of Fair Information Practice

On 1 July 2004, the Department of Health and Department of Families and Communities were established. These two departments previously comprised the Department of Human Services, which had adopted the *Code of Fair Information Practice* (the Code) as its authority for the management of personal information. The chief executives of the two new departments agreed to continue use of the Code. Therefore the Privacy Committee endorsed the continued application of the Code in both departments in addition to the Information Privacy Principles.

In endorsing the Code, the Privacy Committee approved an exemption for each department to allow conditional use of personal health information in health research. The Privacy Committee also approved an exemption to allow collection of health information from a health consumer about a third party, without the consent of the third party, when required to develop social, family or medical histories. Copies of the exemptions are included at Appendices 3A, 3B, 3C and 3D.

The exemption granted for the Common Client Project, which commenced in the former Department of Human Services, continues to apply to the Project.



### 3.3.2 State Emergency Management Committee: collection, use and disclosure of information for the management of disaster recovery services

On 19 January 2005, the Privacy Committee responded to a request to comment on the privacy implications of the establishment of a database of victims of the Eyre Peninsula Bushfires that occurred on 11 January 2005. The request came from the State Emergency Management Committee's State Recovery Centre. The database was developed to consolidate information from a range of government agencies to assist the speedy delivery of services to the bushfire victims. After consideration of how the public interest would be served by the establishment of such a database, a provisional exemption was drafted and approved by the Privacy Committee on 27 January 2005. At its February meeting, the Privacy Committee reviewed and simplified the provisional exemption, and considered a further request from the State Recovery Centre for advice on the disclosure of personal information to some private organisations, including charities. The exemption was amended and approved on 24 February 2005. A copy is attached at Appendix 4. See also item 3.2.4.

### 3.3.3 SA Police Department: disclosure of Vehicle Collision Reports to related parties

As reported in the Privacy Committee's 2004 Annual Report, an exemption granted to the South Australia Police Department (SAPOL) in the early 1990s was under review. The exemption permitted, with conditions, the disclosure of vehicle collision report details to certain parties related to the collision (such as insurance providers). Dialogue has continued with SAPOL regarding the relevance of this exemption and its conditions.

## 3.4 Recommendations and submissions

The Privacy Committee is able, under clause 2(b) of the proclamation, '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’.

The Privacy Committee responded to various requests for advice, support and recommendations. Some key instances are described below.

### 3.4.1 SA Water Corporation: disclosure of information to a contracted party

During November 2004, prior to the appointment of the current Committee, privacy concerns were raised surrounding a mail out involving the South Australian Water Corporation (SA Water) offering to its customers the plumbing and maintenance services of Home Service Direct (a private company involved in delivery of various plumbing-related services).

As reported by the Minister for Administrative Services in the House of Assembly on 22 November 2004, the Crown Solicitor was asked to advise whether the disclosure of customer contact information by SA Water to Home Service Direct was a breach of the Information Privacy Principles. In confirming that it was, the Crown Solicitor noted that IPP 10 (dealing with disclosure of personal information) did not recognise the widespread practice of government agencies contracting for services previously carried on directly within the agency concerned. In addition, as a result of contracting for services, there must, of necessity, be a disclosure of relevant information to a third party, even though the disclosure is for a purpose directly related to the purpose for which the information is collected.

The Minister referred this matter to the Privacy Committee for advice on what changes may be required to make the Information Privacy Principles more relevant to today's public sector. The Privacy Committee made a proposal to the Minister, in May 2005, to vary the Information Privacy Principles to recognise the activity of contracting for services (see item 3.4.2).



In response to a request from SA Water, the Privacy Committee made various recommendations as to how the protection of customer information could be improved. The Privacy Committee has been advised that SA Water has amended its practices for the distribution of marketing material, and now complies with the Information Privacy Principles in that regard.

### 3.4.2 Review of the Information Privacy Principles

As reported under item 3.4.1, the Privacy Committee submitted a proposal to the Minister to vary the Information Privacy Principles to recognise the activity of contracting for services. The Minister was considering the proposal at the close of the reporting year.

Recommendations made in the proposal included undertaking consultation with the Crown Solicitor's Office and State Supply Board on proposed amendments to the Information Privacy Principles.

### 3.4.3 Legislative Review Committee: Inquiry into Listening and Surveillance Devices

The Legislative Review Committee (LRC) invited members of the Privacy Committee to give evidence at a hearing for an Inquiry into listening and surveillance devices. The terms of reference for the Inquiry were:

*Pursuant to section 16(1a) of the Parliamentary Committees Act 1991, the following resolution was adopted by the House of Assembly:*

- ▶ That issues associated with listening and surveillance devices relating to private activities by individuals be referred to the Legislative Review Committee for examination.

The hearing took place on 23 March 2005 and was attended by Ms Bernadette Quirke, representing the Privacy Committee, and the Executive Officer, Ms Tamara Wenham.



In her opening statement, Ms Quirke advised the LRC that while activities described in the *Listening and Surveillance Devices Act 1972* are, in general, outside the scope of the Information Privacy Principles, there are overlaps because surveillance activities often create a record of some type. Where such records are created by government agencies, the Information Privacy Principles apply and impose restrictions on:

- ▶ how the information is collected;
- ▶ to whom it may be disclosed; and
- ▶ how it may be used, stored, accessed and corrected.

The Privacy Committee also suggested that any outcomes of the Inquiry should take into account the advantages of creating technology-neutral solutions, especially where the risk or offence to an individual is the same, irrespective of how the information was gathered.

#### **3.4.4 Department of Health: proposed amendments to the *Controlled Substances Act 1984* and Regulations**

In December 2003, the then Department of Human Services consulted the Privacy Committee in regard to proposed amendments to the *Controlled Substances Act 1984* and Regulations. The amendments were considered necessary to improve the prevention and investigation of criminal abuse of prescribed medicines and some over-the-counter medicines. The Privacy Committee responded with a number of recommendations to be considered to ensure that information collected relating to individuals would not be used or disclosed outside the requirements of the *Controlled Substances Act*. Communication has continued with the Department of Health.

#### **3.4.5 Office of Consumer and Business Affairs: publication of registers on the Internet**

As reported last year, the Office of Consumer and Business Affairs (OCBA) has a function to administer several public registers of licensed service



providers in South Australia and their employees. Each register is established by legislation governing the licensing of a particular set of service providers, such as plumbers or electricians. The public nature of the registers is established by each piece of legislation so that consumers may use the information to verify the licence status of a service provider.

Following a complaint from an employee of a service provider, the Privacy Committee liaised with OCBA regarding the publication of its registers on the Internet. Of particular concern was the inability of a licensee to suppress their address if it was their private residential address.

After advice from the Privacy Committee, OCBA made some immediate changes by removing the addresses of employees of service providers from the registers, as there was no legislative requirement for those addresses to be listed. OCBA also changed their procedures such that all applicants for licence are informed of where and why information is made available to the public. Various other recommendations were considered and adopted by OCBA and the matter was concluded to the satisfaction of the Privacy Committee. The Privacy Committee responded to the complainant with an explanation of the outcomes.

### 3.5 Complaints

The Privacy Committee is able, under clause 2(e) of the proclamation, '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'.

No new complaints were received this year, although four pre-existing written complaints from members of the public underwent further deliberation. The



areas of information involved are tenancy records, lands titles, court proceedings, and records on the concession status of energy consumers.

## 3.6 Communication

The Privacy Committee is able, under clause 2(c) of the proclamation, 'to make publicly available, information as to methods of protecting individual privacy and measures that can be taken to improve existing protection'.

### 3.6.1 Participation in committees and groups

The Privacy Committee is represented on the Department of Health Departmental Ethics and Privacy Committee and the Justice Information Systems Privacy Committee. The Privacy Committee was also represented at meetings of the Privacy Agencies of New Zealand and Australia, plus Hong Kong and Korea (PANZA+), in New South Wales on 3 December 2004 (by proxy), and in New Zealand on 13 May 2005.

When the opportunity arises, the Privacy Committee is represented at meetings with Commonwealth, State and Territory Governments as deemed appropriate.

### 3.6.2 Telephone enquiries

As part of its role to support the Privacy Committee, State Records of South Australia continues to provide a response service for telephone enquiries relating to privacy of personal information in South Australia. There were 177 telephone enquiries received from July 2004 to June 2005.

### 3.6.3 Presentations and publications

Throughout the year, a representative of the Privacy Committee gave presentations of a privacy awareness session, when requested. Privacy management is included in the curriculum for a series of nationally accredited certificate and diploma courses about Records Management, which are currently being developed and delivered by State Records.



### 3.7 Keep informed as to the extent to which the Information Privacy Principles are implemented

The Privacy Committee is required, under clause 2(d) of the proclamation, ‘to keep itself informed as to the extent to which the Administrative Scheme of Information Privacy Principles are being implemented’.

The Privacy Committee continued to communicate with agencies about matters such as data matching, child protection initiatives and newborn screening cards (also known as Guthrie Test cards). New issues on the Privacy Committee’s agenda included:

- ▶ The impact of foreign legislation (such as the United States of America’s ‘Patriot Act’) on the protection of personal information in South Australia;
- ▶ A comprehensive new school enrolment form;
- ▶ Policies concerning the collection and use of criminal history checks for employees and volunteers; and
- ▶ The proposed implementation of HealthConnect in South Australia.



## Appendix 1: Information Privacy Principles

A link to this document can be found on the Department of Premier and Cabinet website at [www.premcab.sa.gov.au/pdf/circulars/Privacy.pdf](http://www.premcab.sa.gov.au/pdf/circulars/Privacy.pdf).

### Cabinet Administrative Instruction No.1 of 1989

(Premier and Cabinet Circular No. 12)

(Re-issued 30 July 1992)

#### 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 30 July, 1992.
- (2) Subject to any contrary determination by Cabinet, this Instruction shall apply to –
  - (i) 'the public sector' as that expression is defined in Section 4 (1) of the Government Management and Employment Act 1985: and
  - (ii) any agency or instrumentality of the State of South Australia that is subject to control or direction by a Minister.
- (3) This Instruction shall not apply to an agency that appears in the attached schedule.

##### Interpretation

3. (1) In this Instruction –

'agency' means an 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.



‘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.

‘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 Government Management Board 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.

## 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) 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.

#### 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 unless:
  - (a) the record-subject has expressly or impliedly consented to the use;
  - (b) the agency using the information believes on reasonable grounds that the use is necessary to prevent or lessen a serious and imminent threat to the life or health of the record-subject or of some other person.
  - (c) the use is required by or under law; or
  - (d) 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.
- (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 unless:
  - (a) the record-subject has expressly or impliedly consented to the disclosure;
  - (b) the person disclosing the information believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the record-subject or of some other person;
  - (c) the disclosure is required or authorised by or under law; or
  - (d) 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.



## Acts and Practices of, and Disclosure of Information to Staff of Agency Etc.

### 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;
- (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.

### 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.

## 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

State Government Insurance Commission

Workers' Rehabilitation and Compensation Corporation



## 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 Premier and Cabinet website at [www.premcab.sa.gov.au/pdf/circulars/Privacy.pdf](http://www.premcab.sa.gov.au/pdf/circulars/Privacy.pdf).

I, the Governor, with the advice and consent of the Executive Council proclaim as follows:

### Establishment of Privacy Committee of South Australia

1. (1) The 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) 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 for Human Services;
  - (d) one will be appointed on the nomination of the Commissioner for Public Employment.
- (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 —
  - (a) dies;
  - (b) completes a term of office and is not reappointed;
  - (c) resigns by written notice to the Governor; 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)
  - (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.
  - (f) Subject to this subclause the Committee may determine its own procedures.
  - (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.



## Functions of the Committee

2. 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;
  - (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;
  - (e) 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;
  - (f) such other functions as are determined by the Minister.

## General

3.
  - (1) The Committee must prepare a report of its activities annually in accordance with section 66 of the *Public Sector Management Act 1995* and must submit the report to the Minister as required by that section;
  - (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.
  - (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.
  - (2) The Committee must include details of exemptions granted under subclause (1) in its annual report.



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5. 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.

Established 6 July 1989; amended 30 July 1992, 25 May 2000 and 17 May 2001 by proclamation in the Government Gazette.



## Appendix 3A: Exemption Granted – Department of Health – Health Information for Health Research

See also item 3.3.1.

In accordance with Clause 4 of the Privacy Committee's Proclamation the following exemption from *Cabinet Administrative Instruction 1/89 'The Information Privacy Principles'* is granted.

This applies to the Department of Health and incorporated hospitals and health centres (inclusively, the Department), exempting them from complying with *Cabinet Administrative Instruction 1/89 'The Information Privacy Principles'* as they collect, use and disclose personal health information for health research purposes, on condition that the Department complies with National Privacy Principle 2.1 (d) as detailed in the Department's *Code of Fair Information Practice*.

This exemption will expire five (5) years from approval, or upon review of National Privacy Principle 2.1 (d) as detailed in the Code, whichever is first.

This exemption supersedes the exemption granted to the Department of Human Services, with the same conditions, in July 2001.

*(Original signed)*

Terry Ryan

**Presiding Member**

**PRIVACY COMMITTEE OF SOUTH AUSTRALIA**

18 January 2005



## Appendix 3B: Exemption Granted – Department of Families and Communities – Health Information for Health Research

See also item 3.3.1.

In accordance with Clause 4 of the Privacy Committee's Proclamation the following exemption from *Cabinet Administrative Instruction 1/89 'The Information Privacy Principles'* is granted.

This applies to the Department of Families and Communities and incorporated hospitals and health centres (inclusively, the Department), exempting them from complying with *Cabinet Administrative Instruction 1/89 'The Information Privacy Principles'* as they collect, use and disclose personal health information for health research purposes, on condition that the Department complies with National Privacy Principle 2.1 (d) as detailed in the Department's *Code of Fair Information Practice*.

This exemption will expire five (5) years from approval, or upon review of National Privacy Principle 2.1 (d) as detailed in the Code, whichever is first.

This exemption supersedes the exemption granted to the Department of Human Services, with the same conditions, in July 2001.

*(Original signed)*

Terry Ryan

**Presiding Member**

**PRIVACY COMMITTEE OF SOUTH AUSTRALIA**

18 January 2005



## Appendix 3C: Exemption Granted – Department of Health – Collection of Family Information

See also item 3.3.1.

In accordance with Clause 4 of the Privacy Committee's Proclamation the following exemption from *Cabinet Administrative Instruction 1/89 'The Information Privacy Principles'* is granted.

This applies to the Department of Health and incorporated hospitals and health centres (inclusively, the Department), exempting them from complying with Principle 2. This exemption allows the collection of health information from a health consumer about a third party without the consent of the third party when both of the following circumstances are met:

- ▶ the collection of the third party's information into a consumer's social, family or medical history is necessary for the Department to provide a health service directly to the consumer; and
- ▶ the third party's information is relevant to the family, social or medical history of that consumer.

IPP 2 will continue to apply outside of the conditions of this exemption.

Health service providers that collect third party information into social, family or medical histories will still need to comply with the protections afforded under Information Privacy Principles 7, 8, 9 and 10 regarding use and disclosure of the information for the purpose for which it was collected.

The conditions of this exemption are similar to the Public Interest Determinations (PIDs) 9 and 9A granted by the Federal Privacy Commissioner under the operation of the *Privacy Act 1988 (Cth)* (effective 11 December 2002).



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The PIDs have been issued for a period of 5 years, with a review planned to take place at their expiry or earlier. This exemption will expire at the same time as the expiry of PIDs 9 and 9A – 11 December 2007, or earlier by review.

This exemption supersedes the exemption granted to the Department of Human Services, with the same conditions, on 7 April 2003.

*(Original signed)*

Terry Ryan

**Presiding Member**

**PRIVACY COMMITTEE OF SOUTH AUSTRALIA**

18 January 2005



## Appendix 3D: Exemption Granted – Department of Families and Communities – Collection of Family Information

See also item 3.3.1.

In accordance with Clause 4 of the Privacy Committee's Proclamation the following exemption from *Cabinet Administrative Instruction 1/89 'The Information Privacy Principles'* is granted.

This applies to the Department of Families and Communities and incorporated hospitals and health centres (inclusively, the Department), exempting them from complying with Principle 2. This exemption allows the collection of health information from a health consumer about a third party without the consent of the third party when both of the following circumstances are met:

- ▶ the collection of the third party's information into a consumer's social, family or medical history is necessary for the Department of Families and Communities to provide a health service directly to the consumer; and
- ▶ the third party's information is relevant to the family, social or medical history of that consumer.

IPP 2 will continue to apply outside of the conditions of this exemption. Health service providers that collect third party information into social, family or medical histories will still need to comply with the protections afforded under Information Privacy Principles 7, 8, 9 and 10 regarding use and disclosure of the information for the purpose for which it was collected.

The conditions of this exemption are similar to the Public Interest Determinations (PIDs) 9 and 9A granted by the Federal Privacy Commissioner under the operation of the *Privacy Act 1988 (Cth)* (effective 11 December 2002).



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The PIDs have been issued for a period of 5 years, with a review planned to take place at their expiry or earlier. This exemption will expire at the same time as the expiry of PIDs 9 and 9A – 11 December 2007, or earlier by review.

This exemption supersedes the exemption granted to the Department of Human Services, with the same conditions, on 7 April 2003.

*(Original signed)*

Terry Ryan

**Presiding Member**

**PRIVACY COMMITTEE OF SOUTH AUSTRALIA**

18 January 2005



## Appendix 4: Exemption Granted – State Emergency Management Committee

See also items 3.3.2 and 3.2.4.

In accordance with Clause 4 of the Privacy Committee's Proclamation the following exemption from *Cabinet Administrative Instruction 1/89 'The Information Privacy Principles'* (the Instruction) is granted.

This exemption applies to the State Emergency Management Committee, operating from within the Department of Families and Communities under the *Emergency Management Act 2004*, and other South Australian Public Sector agencies involved in the provision and management of disaster recovery services to victims of bushfires (clients) occurring on the Eyre Peninsula in January 2005.

This is an exemption from compliance with Principles 2, 8 and 10 (as stated in clauses 4(2), 4(8) and 4(10) in the Instruction). All other Principles continue to apply.

### Condition

Personal information may be disclosed to Centrelink, the Red Cross or the Eyre Peninsula Fire Donated Funds Allocation Committee (EPDFAC) for the purpose of the provision and management of disaster recovery services on the basis that Centrelink, the Red Cross and the EPDFAC undertake in writing that they will only use, retain or disclose any such information for the stated purpose.

Access to personal information by personnel within the above organisations is on a need to know basis only, subject to the right to application for access under the *Freedom of Information Act 1991*.



## Expiry

This exemption will expire at the conclusion of this disaster recovery program, or upon review, or on 27 January 2006, whichever is first. This disaster recovery program will be considered to have concluded when the provision of client services has been absorbed by the relevant agencies. If required, the State Emergency Management Committee may ask the Privacy Committee to extend the exemption.

## Reports

The Department of Families and Communities should provide reports to the Privacy Committee, at the end of April, July, October 2005 and January 2006.

Each report should include:

- ▶ A list of fields of information collected by the database;
- ▶ A list of agencies and organisations whose data has been used to populate the database;
- ▶ The number of individuals listed by the database and, if different, the number of identified victims of the bushfires;
- ▶ A list of agencies and organisations who have received data from the database; and
- ▶ A brief summary of how the data has been used.

*(Original signed)*

Terry Ryan

**Presiding Member**

**PRIVACY COMMITTEE OF SOUTH AUSTRALIA**

24 February 2005