



Government of South Australia

Privacy Committee
Of South Australia

Annual Report of the Privacy Committee of South Australia

For the year ending 30 June 2008

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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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The Hon Jay Weatherill MP
MINISTER ASSISTING THE PREMIER
IN CABINET BUSINESS AND PUBLIC SECTOR MANAGEMENT

Dear Minister

On 24 July 2008 the responsibility for the Privacy Committee of South Australia was transferred from the Hon Michael Wright MP as Minister for Finance to you as Minister Assisting the Premier in Cabinet Business and Public Sector Management.

As such, the Privacy Committee of South Australia is pleased to provide you with this report of its activities for the year ending 30 June 2008. 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.



Terry Ryan
PRESIDING MEMBER
PRIVACY COMMITTEE OF SOUTH AUSTRALIA

30 September 2008

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1 Introduction

This is a report of the activities of the Privacy Committee of South Australia (the Privacy Committee) for the year ending 30 June 2008. It has been developed pursuant to Clause 3(1) of the Proclamation establishing the Privacy Committee (see [Appendix B](#)).

The year was a challenging one for the Privacy Committee particularly in addressing the needs of Government agencies in applying the Government's Information Privacy Principles and laying the ground work for future privacy reform.

The Privacy Committee continued to assist the Government to meet the challenge of promoting the protection of personal privacy in the face of advances in communication technology and the drive towards information sharing across traditional departmental boundaries. It also progressed its work to amend the Information Privacy Principles to improve privacy protection in the Government's use of third party service providers.

As reported in previous years, the Privacy Committee remains concerned about the gaps in privacy protection within South Australia and the impact of inconsistency in privacy protection across Australia. Local Government, Universities and small businesses in South Australia are not bound to comply with any privacy protection regime. The Privacy Committee remains committed to privacy reform in South Australia to address these issues.

The Privacy Committee continued to keep itself informed of developments in privacy protection in other jurisdictions and participated in key reviews and inquiries, specifically those working toward national privacy reform. To this end, the Privacy Committee continued to contribute to the Australian Law Reform Commission's (ALRC) Review of *Australian Privacy Law* (see 3.2.1.1) by being a significant contributor to the SA Government's response to proposals set out in the ALRC's *Discussion Paper 72*. In its response, the SA Government supported a complementary cooperative scheme for privacy legislation across Australia including a unified set of privacy principles provided that it maintained control over information privacy in the South Australian public sector, its Local Government and Universities. The ALRC completed its review on 30 May 2008 and at the close of the reporting year the Commonwealth had not released or responded to the report.

During the reporting year, the Privacy Committee granted three exemptions (see [item 3.7](#)), concluded three of five complaints (see [item 3.6](#)) and contributed to a number of consultation programs and inquiries (see [items 3.2](#) and [3.3](#)). The Executive Support to the Privacy Committee received fewer telephone and email enquiries from the public and State Government agencies than in the previous year (see [item 2.2.4](#)).

2 South Australian Public Sector Privacy Framework

2.1 The Information Privacy Principles

South Australia's Information Privacy Principles (IPPs) 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 IPPs regulate the way South Australian Public Sector agencies collect, use, store, and disclose personal information. A copy of the Information Privacy Principles Instruction can be found on the State Records website at www.archives.sa.gov.au/privacy, and in [Appendix A](#) of this report.

2.2 The Privacy Committee of South Australia

2.2.1 Establishment and Functions

The Privacy Committee of South Australia (the Privacy Committee) was established by proclamation in the Government Gazette on 6 July 1989. The functions of the Privacy Committee, as described in this Proclamation, are:

- 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 scope of these functions is broader than the application of the IPPs and not necessarily restricted to activity within the South Australian Public Sector. However the primary focus of the available resources (see [item 2.2.4](#)) is on matters that carry the greatest impact on the handling of personal information within State Government agencies bound by the IPPs.

A copy of the Proclamation can be found following the Information Privacy Principles Instruction, and in [Appendix B](#) of this report.

2.2.2 Reporting

During the reporting year, the Privacy Committee reported to the Minister for Finance, the Hon Michael Wright MP. On 24 July 2008, the responsibility for the Privacy Committee was transferred to the Hon Jay Weatherill MP, Minister Assisting the Premier in Cabinet Business and Public Sector Management.

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
- 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 of the Premier and Cabinet

Members, in alphabetical order:

- Grantly Mailes, Chief Information Officer, Government of South Australia (resigned December 2007)
- Christopher Radbone, Manager, Projects and Strategy Branch, Department for Environment and Heritage (commenced March 2008)
- Bernadette Quirke, Legal Counsel, Department of Treasury and Finance, Crown Solicitor's Office
- Nancy Rogers, Manager, Research & Analysis, Department for Families and Communities
- Andrew Stanley, Director, Strategic Planning, Policy and Research, Department of Health
- Lee Thomas, non-public sector employee, and Branch Secretary, South Australian Branch of the Australian Nursing Federation (resigned November 2007).
- Samantha Doherty, non-public sector employee (commenced November 2007).

The term of appointment for each of the current members expires on 9 November 2008.

2.2.4 Resources

State Records of South Australia provides support to the Privacy Committee, including an enquiry and advice service to both agencies and the public and a limited research function. The resources include the commitment of time from various personnel equivalent to approximately 1.2 full-time staff.

During the reporting year State Records responded to 234 telephone and e-mail enquiries from the public and State Government agencies relating to privacy of personal information collected and held by the South Australia Government. This represented a decrease of 25% from the previous reporting year, though still above the number handled in other years.

Throughout the year, State Records conducted a small number of Privacy Awareness presentations for South Australian State and Local Government agencies. Privacy management is also included in the curriculum for the nationally accredited Certificate III in Business (Recordkeeping), developed and delivered by State Records.

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. In general, fees are not paid to Government employees, and so 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.

2.2.5 Meetings

During the reporting year the Privacy Committee met on nine occasions. Meetings were supplemented by the conduct of business out of session.

2.2.6 Guidelines for members

A handbook for members contains information on the role of the Privacy Committee, its relationship to other approval and advisory bodies, duties and obligations of members, the process for handling complaints, and other information of value to members in performing their role. It 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 consistent with *Government Boards and Committees: Guidelines for Agencies and Board Directors* (Department of Premier and Cabinet, 2000). At the close of the reporting year this Guideline was under review.

A copy of the handbook can be found on the State Records website at www.archives.sa.gov.au/privacy/committee.html.

2.2.7 South Australia's Strategic Plan

South Australia's Strategic Plan 2007 calls for performance improvement across the South Australian public sector by improvement in government decision-making and administrative efficiency (Objective 1: Growing Prosperity: Targets T1.8 and T1.9). The Privacy Committee continues to improve in this area by implementing strategies such as out of session conduct of business where appropriate to do so. The establishment of the Privacy Officer Network in 2006 has provided further efficiencies in the handling of complaints and enquiries from members of the public.

The constitution of the Privacy Committee meets Target T5.1 (Objective 5: Building Communities) to '*increase the number of women on all State Government boards and committees to 50% on average by 2008*'. During the reporting year the Privacy Committee maintained 50% female membership.

The activities of the Privacy Committee contribute significantly to the achievement of other South Australia's Strategic Plan targets and priority actions across the South Australian Public Sector. Examples include:

- Objective 1: Growing Prosperity: Target T1.7: '*performance in the public sector – customer and client satisfaction with government services*' – the Australian public expects a high degree of privacy protection when accessing government services, and also expect a degree of control over how their personal information will be collected, stored, used and disclosed¹. There is also a high level of expectation and trust by the public that personal information held by the State Government is safe.

- Objective 2: Improving wellbeing: all targets – there is a growing need for more holistic research and development in the areas of health, wellbeing and public safety, including the evaluation of programs designed to deliver these targets. The use of personal information for research requires close attention to application of the IPPs to ensure the information remains protected during, and after completion of, these activities.
- Objective 5: Building Communities: Priority Actions: *‘collaborate to improve access to services [and] increase ... resource sharing’*; and Objective 6: Expanding opportunity: all targets – there has been a marked increase in data matching and sharing activities. This presents a challenge for agencies in adherence to their obligations to comply with the IPPs when handling personal information.

3 Activities of the Privacy Committee

3.1 Advice to the Minister

The Privacy Committee has the function, 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 a range of matters relating to privacy. This included briefings related to national privacy law reform and inquiries into particular privacy issues in other jurisdictions. The Privacy Committee also provided the Minister advice in relation to a number of State Government initiatives that had the potential to impact on the privacy of individuals in South Australia.

3.2 Developments in other jurisdictions

The Privacy Committee has the function, under clause 2(a) of the Proclamation, *‘to keep itself informed of developments in relation to the protection of individual privacy in other jurisdictions’*. 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 administrative regimes for privacy protection. These regimes are of interest to the Privacy Committee as it considers its own responses to local and national issues. The following synopsis presents some of the more significant developments in other jurisdictions that have been noted by the Privacy Committee.

3.2.1.1 Australian Law Reform Commission Review of Australian Privacy Law

On 30 May 2008, the Australian Law Reform Commission (ALRC) presented its final report to the Commonwealth Government on the review of Australian Privacy Law and Practice. As of the close of the reporting year the document had not been made public, however there was an expectation that the Commonwealth Government would respond by late August. The review commenced in 2006 to consider the extent to which the Commonwealth *Privacy Act 1988* (the Cth Privacy Act) and related laws continue to provide an effective framework for the protection of privacy in Australia. The Cth Privacy Act applies to Commonwealth Government departments and most private businesses, including all private health care providers in Australia. It does not apply to State and Territory Government Agencies, Local Government Authorities, Universities or some small businesses. The review was prompted by a number of considerations, including:

- the rapid advances in information, communication, storage, surveillance and other relevant technologies;
- possible changing community perceptions of privacy and the extent to which it should be protected by legislation;
- the expansion of state and territory legislative activity in relevant areas; and
- emerging areas that may require privacy protection.

The review also considered relevant existing Commonwealth, State and Territory laws and practices, constitutional issues and the matter of national consistency of privacy law.

The Privacy Committee made a significant contribution to the South Australian Government's submission to ALRC *Discussion Paper 72: Review of Privacy*. This submission was provided to the ALRC in January 2008. The Government gave in principle support for the ALRC proposal that State and Territory Governments enact privacy legislation encompassing a proposed set of Unified Privacy Principles provided that it maintained control over information privacy in the South Australian public sector, its Local Government and Universities. This endorsement formed a key part of the South Australian Government's submission.

The Privacy Committee will continue to monitor the progress of the ALRC Review and any resulting recommendations that impact on South Australia.

3.2.1.2 QLD Inquiry into Automatic Number Plate Recognition Technology

The Queensland Parliament's Travelsafe Committee invited the Minister to provide a submission to its inquiry into Automatic Number Plate Recognition (ANPR) technology, particularly as it relates to data management and privacy. The inquiry was established to examine the costs and benefits and opportunities in introducing ANPR technology in Queensland. The Travelsafe Committee noted that the South Australian Police and the Department for Transport Energy and Infrastructure were currently trialing ANPR technology.

State Records provided a draft response for the Minister on behalf of the Privacy Committee, which included general comments on the privacy implications of ANPR for submission to the Queensland inquiry.

3.2.1.3 Other Commonwealth and National initiatives

In comparison to the previous year, this reporting year saw less material emanating from Commonwealth Government and federal initiatives that impacted South Australian Public Sector agencies' management of personal information. This may have been due to the review of initiatives and strategies with the change of Government at the Commonwealth level.

3.2.2 International Developments

The need for robust regulation of the handling of personal information was a significant international focus during 2007-08, partly due to media coverage of a number of significant breaches of information privacy. Specifically, two high profile breaches in the United Kingdom (UK) raised awareness of the need for good breach notification and management guidance and sound practices for securely storing and transporting high volumes of personal information. In October 2007, Her Majesty's United Kingdom Revenue and Customs Department lost two disks containing the personal information of 25 million individuals while transferring the disks by courier to another agency. In another incident in the UK, a laptop left in a parked vehicle overnight was stolen. It contained the personal information of 600,000 individuals who joined, or expressed an interest in joining, the defence force. The information included bank account, passport, driver's licence and family details.

The Privacy Committee continued to view the adequacy of privacy protection in South Australia in light of these incidents and other international developments. The Committee noted with interest the development of breach notification guidelines by the Office of the Federal Privacy Commissioner. The Committee will stay informed of the implementation of those guidelines in considering options for reform in South Australia.

During 2007-08, the Privacy Committee contributed to an international study of Privacy Impact Assessment (PIA) law, policies and practices commissioned by the UK Information Commissioner's Office. The Privacy Committee provided information about the South Australian Government's use of PIAs. The results of the research were subsequently published in December 2007 by the UK Information Commissioner's Office via www.ico.gov.uk.

3.2.3 Conferences and seminars

Throughout the year, representation of the Privacy Committee at various conferences, seminars and forums, included:

- Attendance at a meeting of the Asia Pacific Privacy Authorities (APPA) and
- Attendance at the inaugural meeting of the Privacy Authorities of Australia (PAA).

3.2.3.1 Asia Pacific Privacy Authorities

APPA convenes twice a year with meetings hosted on a rotating basis by the various Privacy Commissioners. At the forum issues are discussed such as privacy and security, identity management, surveillance, cross-jurisdictional law enforcement between countries in the Pacific Rim, privacy legislation amendments, cryptography and personal data privacy.

A representative of the Privacy Committee attended the broader group meeting on 30 November 2007 in Wellington, New Zealand. At that meeting issues were discussed such as locational and spatial privacy, privacy law reform in a number of jurisdictions, privacy breach notification guidelines and the Organisation for Economic Co-operation and Development (OECD) working party on information security and privacy. Further information about APPA can be found on the Commonwealth Commissioner's website at <http://www.privacy.gov.au/international/appa/index.html>

3.2.3.2 Privacy Authorities of Australia

The Privacy Committee was represented at the inaugural meeting of the PAA on 7 April 2008.

The PAA grew out of the APPA, which has expanded its scope since its inception to now include Pacific Rim jurisdictions such as Canada. While, it was recognised that APPA served an important purpose there was a need for a group with membership limited to only Australian jurisdictions to encourage knowledge sharing and cooperation on issues specific to Australia.

The PAA terms of reference include:

- Facilitating the sharing of knowledge and resources between privacy agencies and authorities within Australia
- Fostering cooperation in privacy and data protection
- Promoting best practice and consistency amongst privacy agencies and authorities
- Working to continuously improve our performance to achieve the important objectives set out in our respective privacy laws or policies.

It was agreed that the PAA should meet two to three times a year with one meeting to coincide with an APPA meeting when held in Australia, and other meetings when there are significant issues to be consider.

3.3 Recommendations and submissions

The Privacy Committee has the function, 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. Key instances are described below.

3.3.1 Amendments to the Information Privacy Principles

The Privacy Committee submitted a proposal to the Minister in May 2005 to amend the IPPs to recognise the activity of contracting for services. The proposed amendments will address the current gap that exists in the application of privacy principles to service providers contracted to the South Australian Government. This would also improve the privacy protection of individuals transacting with businesses contracted to provide services on behalf of Government.

During the year, significant progress was made towards the finalisation of proposed amendments to the Information Privacy Principles. This work included the drafting of the proposed amendments, the development of model privacy clauses for Government contracts that involve the handling of personal information and consultation with agencies on the changes. The amendments are due to be finalised before the end of 2008.

3.3.2 Population, Health and Wellbeing Data Linkage

The Department of Health continued to consult the Privacy Committee on a proposal to implement a population, health and wellbeing data linkage system to facilitate research projects utilising de-identified data from multiple Government data sets. The project will be undertaken as a joint venture of a consortium of government and non-government bodies, including South Australian Universities.

The Privacy Committee supported the proposal in principle, recognising the commitment of the project's consortium to privacy protection and the positive benefits that might flow from good data linkage research projects. The Privacy Committee provided advice to the project on measures to protect personal privacy and specifically on the governance of research projects in relation to ethics committee approvals.

The consortium advised that it would keep the Privacy Committee informed in the development of the data linkage system.

3.3.3 Online Publication of Government Gazettes

The Government Publisher sought the advice of the Privacy Committee in relation to the online publication of public registers in the Government Gazette. The Government Publisher had received a complaint in relation to the availability of archived editions of the Gazette that contained the Register of Medical Practitioners. In the past, this register had been published in accordance with the *Medical Practitioners Act 1983*, which was repealed by the *Medical Practice Act 2004*. The new legislation no longer requires the register to be published in the Gazette.

The Privacy Committee also dealt with a complaint in relation to the availability of personal information in company registers of unclaimed moneys published in the Government Gazette and available online. The *Unclaimed Moneys Act 1891* requires

companies to keep a register of unclaimed moneys and specifies that these registers be published annually in the Government Gazette. Traditionally, the Gazette was only available in hardcopy but is now published online. At the time of the complaint, current and back issues of the Government Gazettes held on the website could be accessed through global search engines. Therefore unclaimed moneys records could be easily located through a name search on a global search engine.

The Government Publisher agreed to temporarily remove the particular Gazettes from the website, at least until a legal and policy position could be established. Technical solutions were also sought to limit access to searches conducted directly at the Gazettes website, rather than through more global search engines.

3.3.4 DECS Student Email Processing

The Department of Education and Children's Services (DECS) sought the opinion of the Privacy Committee as to whether a proposal to use an external service provider to conduct student email processing complied with the IPPs. The Committee considered issues such as:

- ensuring contracting arrangements with the external service provider included the application of information privacy protections
- consent arrangements for the external service provider to access personal information in the creation and management of staff and student email accounts
- the use or creation of identifiers
- transborder data flows.

The Privacy Committee responded to DECS on 22 October 2007 and made eleven recommendations to assist in ensuring the electronic messaging solution complied with the IPPs.

3.3.5 Amendments to Controlled Substances Act

State Records provided comments to the Minister on behalf of the Privacy Committee on amendments to the *Controlled Substances (Drug Detection Powers) Amendment Bill 2008* to amend the *Controlled Substances Act 1984*.

3.3.6 SA Water Use of Photographs

SA Water sought the Privacy Committee's advice as to its obligations under the IPPs in using photographs of staff and members of the public for promotional purposes such as annual reports and websites. SA Water highlighted that this included the use of heritage photographs held in its library. Advice was provided to SA Water in April 2008.

Recognising that other agencies may benefit from the advice provided to SA Water, the Privacy Committee developed an information sheet for the use of agencies in relation to images and privacy. The information sheet was finalised by the Privacy Committee in May 2008. A copy of the information sheet is available at www.archives.sa.gov.au.

3.4 Communication

The Privacy Committee has the function, 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'.

3.4.1 Privacy Officer Network

The Privacy Officer Network was established in September 2006 to assist Principal Officers of agencies to fulfil their obligation to comply with the IPPs, and to increase the efficiency of communications about the handling of personal information held by the State Government agencies. State Records coordinates the Network. The Network is contributing to a more robust culture of privacy awareness across the Public Sector.

During 2007-08 the Network was consulted in relation to proposed amendments to the IPPs and was also provided with information and updates in relation to privacy issues across government.

3.4.2 Participation in committees and groups

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

The Privacy Committee is represented on the Justice Information Systems Privacy Committee, the South Australian Identity Security and Management Group, the Asia APPA forum (see also [item 3.2.3.1](#)) and the PAA (see also [item 3.2.3.2](#)).

The Justice Information Systems Privacy Committee advised of its intention to disband because of changes in the way access to the Justice Information System was being managed.

The Presiding Member is also a member of the South Australian Government's ICT Security and Risk Steering Committee.

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

The Privacy Committee has the function, 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 does seek reports from agencies from time to time. See [section 3.3](#) Recommendations and submissions for reviews and reports.

3.6 Complaints

The Privacy Committee has the function, 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'*.

During the reporting year there were four new formal complaints received and one pre-existing complaint that underwent further deliberation. Of the five complaints handled, three were concluded and two remained outstanding.

Of the three completed complaints, one involved allegations of a breach of the IPPs that could not be substantiated following investigations by the relevant agency.

The second complaint concerned the online publication of personal information that was subsequently accessible through a global search engine. This complaint was concluded after the agency removed the information from the site and modified the site to ensure it was only searchable through specific search functions on the website and not via global search engines.

The third complaint related to the disclosure of information about a researcher's qualifications on a University website. This complaint was referred to the University with general advice on the publication of personal information on websites.

3.7 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 (IPPs) on such conditions as the Privacy Committee thinks fit*'.

Requests for exemptions are considered on a case-by-case basis. In practice, exemptions are only applied in situations where the public interest for an activity outweighs the privacy protections afforded by the IPPs, or where otherwise warranted by unique circumstances. Exemptions are generally subject to conditions including an expiry date, and agencies are sometimes asked to report on the activity conducted under the exemption. Agencies can seek to have an exemption extended at which time the need for the exemption is reviewed.

The *Code of Fair Information Practice*, approved by the Privacy Committee for use within the Department of Health and Department for Families and Communities, contains provisions allowing use of personal health information for research purposes, but excludes non-health information. *Cabinet Administrative Instruction 1/89* does not contain a provision for the use of personal information for research purposes.

During this reporting year, five exemptions were considered and three were approved. Following is a summary of each of the requests for exemption.

3.7.1 Disclosure of Offender Details to Victims of Crime

The South Australia Police (SAPOL) sought an exemption to allow disclosure of alleged offender details to alleged victims of crime, via the Office of the Commissioner for Victims' Rights. The request was made on the basis of an earlier dispensation approved in 1991, since which time the *Young Offenders Act 1993* and the *Victims of Crime Act 2001* had been enacted, and the position of Commissioner for Victims' Rights had been established.

The Privacy Committee did not approve the request. It was recommended that SAPOL seek legal advice from the Deputy Crown Solicitor to establish what, if any, secrecy provisions in the two Acts concerned relate to disclosure and the IPPs.

3.7.2 OCSAR Evaluation of the Family Safety Framework

The Privacy Committee received a request for exemption from the Office of Crime Statistics and Research (OCSAR) to be able to conduct evaluation on the Family Safety Framework pilot program. The request was for exemption from both IPP 2 (collection) and IPP 8 (use). The Committee concluded that no exemption was required from IPP 2 to collect the information because OCSAR is part of the Attorney-General's Department (AGD), and AGD is a partner to the Family Safety Framework. The exemption from IPP 8 to use personal information was approved. This exemption was conditional on OCSAR remaining subject to the Family Safety Framework's "Sharing of Information Protocol Agreement", and that any publications or reports on the evaluation do not contain information that would identify an individual. See [Appendix C](#) for the full text of the exemption.

3.7.3 SA Water Contracted Loss Adjuster

The South Australian Water Corporation (SA Water) sought an exemption from IPP 10 to allow for the disclosure of customer information to a contracted loss adjuster. The purpose of disclosure is to allow the contractor to contact customers to advise them of the opportunity to submit a claim for loss adjustment. The contractor is only permitted to use the information for this purpose and while under a contractual agreement with SA Water that includes privacy protection requirements. The personal information to be disclosed was limited to names, addresses and details of any relevant claims that have been made.

The Privacy Committee approved the exemption.

See [Appendix D](#) for the full text of the exemption.

3.7.4 Information Sharing Guidelines regarding Safety and Wellbeing of Children, Young People and their families

The Privacy Committee was consulted on an Information Sharing Guideline for people who protect or promote the safety and wellbeing of children. This Guideline was being developed as part of the Government's *Keeping Them Safe* reform program.

Advice was provided to the project's management team to assist them to comply with the requirements of the IPPs and the *Code of Fair Information Practice*.

The Privacy Committee determined however, that the Guidelines could be interpreted to permit disclosure of personal information without consent beyond that allowable under the IPPs. Recognising the issues that the Guideline was developed to address in relation to the protection of children, the Privacy Committee granted an exemption from IPP 10 (disclosure of personal information) to agencies using the Guidelines.

See [Appendix E](#) for the full text of the exemption.

3.7.5 SA Police CrimTrac National Police Reference System

The South Australia Police sought an exemption for the disclosure of personal information to other non-police law enforcement agencies through CrimTrac's National Police Reference System. The Privacy Committee was still considering this exemption as of 30 June 2008.

Endnotes:

¹ *Community Attitudes towards privacy in Australia: surveys*, commissioned by the Office of the Privacy Commissioner, Australia in 2001, 2004, and 2007. Publications are available at www.privacy.gov.au.

Appendices

A 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.

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

B 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.

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.

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.

C Exemption Granted – OCSAR Evaluation of the Family Safety Framework

See also item 3.7.2.

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 IPPs) is granted.

This is an exemption from IPP 2, and applies to the Office of Crime Statistics and Research (OCSAR)¹, allowing collection of the Justice Information System Personal Identification Number and other personal information for the purpose of Family Safety Framework evaluation.

Conditions

This exemption has the following conditions:

- the Attorney-General's Department continues to be subject to the Family Safety Framework's "Sharing of Information Protocol Joint Agreement"
- any publications or reports on the evaluation must not contain identifiable information
- disclosure of the information by OCSAR is permitted in circumstances where it is required for data linkage purposes.

Destruction or retention of personal information

Destruction or retention of the personal information must be undertaken in accordance with a disposal authority under the *State Records Act 1997*.

Expiry

This exemption will expire at the conclusion of the evaluation of the Family Safety Framework one-year trial project, or two (2) years from approval, whichever is sooner. Approval of an extension of the exemption may be sought from the Privacy Committee.

(Original signed)

Terry Ryan
Presiding Member
PRIVACY COMMITTEE OF SOUTH AUSTRALIA

27 August 2007

¹ OCSAR is part of the Attorney-General's Department (AGD) and AGD is a partner to the Family Safety Framework.

D Exemptions Granted – SA Water – Contracted Loss Adjuster

See also item 3.7.3

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 IPPs) is granted.

This exemption applies to the South Australian Water Corporation (SA Water). It is an exemption from compliance with Principle 10, allowing disclosure of personal information of customers to a contracted loss adjuster. The personal information is limited to names, addresses and details of any relevant claims that have been made. The purpose of disclosure is for the contracted loss adjuster to perform its obligations under the agreement with SA Water, such as contacting customers to advise them of the opportunity to submit a claim for loss adjustment. The loss adjuster must only use the information for this purpose.

All other Principles continue to apply.

Compliance

The Principal Officer of SA Water must establish an agreement with the loss adjuster that contains the abovementioned conditions of disclosure, and must ensure compliance with this exemption.

Unless otherwise directed or agreed, the contracted loss adjuster should continue to handle any personal information in accordance with its usual practices under the Commonwealth *Privacy Act 1988*.

Destruction or retention of personal information

Upon fulfillment of the agreement, the contracted loss adjuster must return to SA Water custody all personal information originating from SA Water.

The contracted loss adjuster must provide access to documents relating to the services provided under the agreement if required by SA Water to meet its obligations under the *SA Freedom of Information Act 1991*.

Destruction or retention of the personal information must be undertaken in accordance with a disposal authority under the *State Records Act 1997*.

Expiry

This exemption will be reviewed by SA Water and the Privacy Committee two (2) years after approval. An extension may be negotiated with the Privacy Committee if required.

(Original signed)

Terry Ryan
Presiding Member
PRIVACY COMMITTEE OF SOUTH AUSTRALIA

21 February 2008

E Exemption Granted – Information Sharing Guidelines regarding Safety and Wellbeing of Children, Young People and their families

See also item 3.7.4

In accordance with Clause 4 of the Proclamation dated 17 May 2001 under which the Privacy Committee was established, the Privacy Committee grants the following exemption from compliance with Information Privacy Principle (IPP) 10(b), issued under Cabinet Administrative Instruction 1/89 "The Information Privacy Principles" .

This exemption applies to agencies that are required to observe the Information Sharing Guidelines for people who promote the safety and wellbeing of children, young people and their families (the Guidelines).

IPP 10(b) provides that an agency should not disclose personal information about some other person to a third person unless 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 some other person (our emphasis).

This exemption authorises the disclosure of personal information without the consent of the record subject where the person disclosing the personal information does not have or has no reasonable grounds to believe that a threat to the life or health of a person who is under 18 years of age is imminent, insofar as the word “imminent” is generally understood to mean “immediate”.

The effect of the variation is to remove the words “and imminent” from IPP 10(b).

In all other respects the requirements of the IPPs continue to apply and must be observed. In particular, the person making the disclosure must believe on reasonable grounds that the threat is “serious”, as required by IPP 10(b), according to the ordinary meaning of that word and in the context of the any particular special needs or vulnerabilities of the juvenile record subject.

To avoid doubt, this exemption does not apply to personal information:

- that is required or permitted to be disclosed by law; or
- for which the law prohibits disclosure.

Compliance

The Chief Executives of agencies required to observe the Guidelines must ensure compliance with this exemption.

Further Conditions

This exemption is also conditional on Chief Executives ensuring the proper implementation of the Guidelines within agencies, particularly:

- the recording of decisions where personal information was disclosed without consent;
- the introduction of staff / volunteer induction on the application of the Guidelines;
- the adoption of appropriate protocols for gaining consent from clients for disclosing personal information.

The Department for Families and Communities is responsible for reporting to the Privacy Committee on the implementation of the Guidelines within twelve (12) months of the approval of this exemption.

Expiry

This exemption will be reviewed by the Department for Families and Communities and the Privacy Committee one (1) year after its approval. An extension may be negotiated with the Privacy Committee if required.

(Original signed)

Terry Ryan
Presiding Member
PRIVACY COMMITTEE OF SOUTH AUSTRALIA

2 May 2008