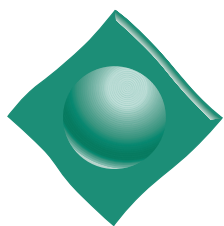


# Privacy NSW



privacy**nsw**

2009-2010  
**Annual Report**

## Privacy NSW

Office of the NSW Privacy Commissioner  
Level 11  
No 1 Castlereagh Street  
Sydney NSW 2000

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Privacy NSW  
GPO Box 7011  
Sydney NSW 2001

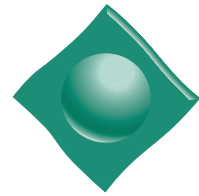
**Telephone:** (02) 8019 1600  
**Fax:** (02) 8114 3755  
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**Website:** <http://www.lawlink.nsw.gov.au/privacynsw>

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privacynsw

Office of the NSW Privacy Commissioner

The Hon. John Hatzistergos, MLC  
Attorney General, Minister for Citizenship,  
and Minister for Regulatory Reform  
Level 36  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

10 November 2010

Dear Attorney

As required by section 64 (1) of the *Privacy and Personal Information Protection Act 1998*, I submit a report on the work of Privacy NSW for the twelve months ended 30 June 2010.

Yours faithfully

John McAteer  
A / Privacy Commissioner

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GPO Box 7011  
SYDNEY NSW 2001

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Level 11  
No. 1 Castlereagh Street  
SYDNEY NSW 2000

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## Our Charter

Privacy New South Wales (Privacy NSW) is the Office of the New South Wales Privacy Commissioner. It is a state government funded, independent, statutory agency with oversight of the two principal pieces of privacy legislation in New South Wales, namely the *Privacy and Personal Information Protection Act 1998* (the PPIP Act) and the *Health Records and Information Privacy Act 2002* (the HRIP Act). The legislation provides for privacy protection in relation to the handling of personal and health information. The position of NSW Privacy Commissioner is established under the PPIP Act. An important part of the Privacy Commissioner's role is to resolve, or assist in the resolution of, complaints that involve breaches of the privacy principles enshrined in NSW privacy legislation.

### Personal Information

The PPIP Act states its purpose is to provide for the protection of personal information and the protection of the privacy of individuals generally. Privacy NSW aims to promote and uphold the Information Protection Principles (IPPs) in the PPIP Act by fulfilling our statutory functions, which include educating and advising NSW public sector agencies about their obligations under the IPPs.

Below is a summary of the IPPs.

#### Collection

1. **Lawful** – when an agency collects your personal information, the information must be collected for a lawful purpose. It must also be directly related to the agency's activities and necessary for that purpose.
2. **Direct** – your information must be collected directly from you, unless you have given your consent otherwise. Parents and guardians can give consent for minors.
3. **Open** – you must be informed that the information is being collected, why it is being collected and who will be storing and using it. The agency should also tell you how you can see and correct this information.
4. **Relevant** – the agency must ensure that the information is relevant, accurate, up-to-date and not excessive. The collection should not unreasonably intrude into your personal affairs.

#### Storage

5. **Secure** – your information must be stored securely, not kept any longer than necessary, and disposed of appropriately. It should be protected from unauthorised access, use or disclosure.

#### Access

6. **Transparent** – the agency must provide you with enough details about what personal information they are storing, why they are storing it and what rights you have to access it.
7. **Accessible** – the agency must allow you to access your personal information without unreasonable delay and expense.
8. **Correct** – the agency must allow you to update, correct or amend your personal information where necessary.

## Use

9. **Accurate** – agencies must make sure that your information is accurate before using it.
10. **Limited** – agencies can only use your information for the purpose for which it was collected, for a directly related purpose, or for a purpose to which you have given your consent. It can also be used without your consent in order to deal with a serious and imminent threat to any person's health or safety.

## Disclosure

11. **Restricted** – the agency can only disclose your information with your consent or if you were told at the time they collected it from you that they would do so. The agency can also disclose your information if it is for a related purpose and they don't think that you would object. Your information can also be used without your consent in order to deal with a serious and imminent threat to any person's health or safety.
12. **Safeguarded** – the agency cannot disclose your sensitive personal information without your consent, for example information about your ethnic or racial origin, political opinions, religious or philosophical beliefs, health or sexual activities or trade union membership. It can only disclose sensitive information without your consent in order to deal with a serious and imminent threat to any person's health or safety.

## Health Information

Unlike the PPIP Act, the HRIP Act, , has an objects clause, which states that the purpose of the Act is to promote fair and responsible handling of health information by:

- (a) protecting the privacy of an individual's health information that is held in the public and private sectors, and
- (b) enabling individuals to gain access to their health information, and
- (c) providing an accessible framework for the resolution of complaints regarding the handling of health information.

The objects of the Act are:

- (a) to balance the public interest in protecting the privacy of health information with the public interest in the legitimate use of the information, and
- (b) to enhance the ability of individuals to be informed about their health care, and
- (c) to promote provision of quality health services.

Privacy NSW aims to promote the Health Privacy Principles (HPPs) to health service providers in the public and private sectors, as well as to members of the public. The 15 HPPs are the key to the HRIP Act and can be found in Schedule 1 of the Act. They are legal obligations describing what agencies and private sector persons must do when they collect, hold, use and disclose health information.

Below is a summary of the HPPs.

## Collection

1. **Lawful** – when an organisation collects your health information, the information must be collected for a lawful purpose. It must also be directly related to the organisation's activities and necessary for that purpose.

2. **Relevant** – the organisation must ensure that your health information is relevant, accurate, up to date and not excessive. The collection should not unreasonably intrude into your personal affairs.
3. **Direct** – your health information must be collected directly from you, unless it is unreasonable or impracticable for the organisation to do so.
4. **Open** – you must be told why your health information is being collected, what will be done with it, and who else might see it. You must also be told how you can see and correct your health information, and any consequences if you decide not to provide it.

Even if an organisation collects health information about you from someone else, they must still take reasonable steps to ensure that you are aware of the above points.

### Storage

5. **Secure** – your health information must be stored securely, not kept any longer than necessary, and disposed of appropriately. It should be protected from unauthorised access, use or disclosure.

### Access & Accuracy

6. **Transparent** – the organisation must provide you with details about what health information they are storing about you, why they are storing it and what rights you have to access it.
7. **Accessible** – the organisation must allow you to access your health information without unreasonable delay or expense.
8. **Correct** – the organisation must allow you to update, correct or amend your health information where necessary.
9. **Accurate** – the organisation must make sure that your health information is relevant and accurate before using it.

### Use

10. **Limited** – the organisation can only use your health information for the purpose for which it was collected, or a directly related purpose that you would expect. Otherwise they can only use it with your consent (unless one of the exemptions in HPP 10 applies).

### Disclosure

11. **Limited** - the organisation can only disclose your health information for the purpose for which it was collected, or a directly related purpose that you would expect. Otherwise they can only disclose it with your consent (unless one of the exemptions in HPP 11 applies).

### Identifiers & Anonymity

12. **Not identified** – an organisation can only give you an identification number if it is reasonably necessary to carry out their functions efficiently.
13. **Anonymous** – you are entitled to receive health services anonymously, where this is lawful and practicable.

### Transferrals & Linkage

14. **Controlled** – your health information can only be transferred outside New South Wales in accordance with HPP 14.
15. **Authorised** – your health information can only be included in a system to link health records across more than one organisation if you expressly consent to this.

## Report from the Commissioner

The purpose of this Annual Report is to give the Minister a clear, accurate and up-to-date picture of the operations of Privacy NSW for the past financial year.

A large amount of information concerning the activities of Privacy NSW is published contemporaneously on the Privacy NSW website. Whilst some of that information will be referred to in this report, it will not be reproduced here in detail.

Most privacy complaints concerning NSW Government Agencies are responded to by the Agency conducting an Internal Review (IR) (or investigation) of the matter, with a focus on the relevant IPP's (or HPP's) and whether there has been a breach. The Privacy Commissioner performs an oversight role in respect of IRs.

The dedicated work of agencies' Privacy Contact Officers (PCOs) has continued, whilst law reform and new legislative regimes replace Freedom of Information (FOI) provisions and some privacy considerations. PCOs often have joint responsibility for privacy matters and FOI/ access to government information requests. I appreciate their dedication and diligence in responding to the large number of internal reviews (and associated requests) that continue to flow in irrespective of a changing legislative environment and the associated administrative and logistical impacts that such regimes create.

I also appreciate that the impact of the commencement of the *Government Information (Public Access) Act 2009* (GIPA Act) at the end of the reporting period and the preparation involving training, revising some 20 years of policies and procedures under FOI, and the development of the significant cultural change necessary to drive the import of the GIPA Act has had a significant resource impact on PCOs and associated staff within Agencies.

In such a climate I note that many agencies have responded positively to submissions and comments from Privacy NSW in respect of how they might improve both the methodology and outcomes of their Internal Reviews.

Inquiries and complaints received from members of the public continue to focus on privacy issues relating to surveillance at home and work, access to medical records and the use of criminal records. Some of these issues are not within the scope of NSW privacy laws, which deal with privacy in information that is largely held by government agencies.



The State's privacy laws have limited application to the broader notion of privacy, which is commonly understood as 'the right to be left alone' or a right to be free of intrusions upon a person's seclusion, solitude or private affairs, public embarrassment or misrepresentation. Whilst the issue of identity theft is not captured by any specific laws (other than the existing criminal laws) at present, across the nation moves are underway to reform the laws in these areas in effect to catch up with the growing problem of 'cyber crime' and remote identity theft. Whilst such broader privacy 'rights' or expectations are currently protected by some laws, such as nuisance, harassment or workplace surveillance, there are still gaps in the protection afforded by the law. The issue of intrusive private surveillance (cameras trained from one property into another) has become

more prominent in recent years and has been the subject of some recent discussion in the NSW Parliament. At present remedies for such matters arise under tort law, in the area of nuisance. It is hoped that a more effective method of addressing the intrusive actions of private video or CCTV surveillance directed at private property, will be available in the near future. I note that the issue of Privacy Tort reform was commented on in the last Annual Report where reference was made to the 2009 NSW Law Reform Commission report recommending a statutory cause of action for 'invasion of privacy', which was supported by the Privacy Commissioner.



In June 2009, the then Premier the Honourable Nathan Rees delivered his Agreement in Principle speech on the now *Government Information (Public Access) Act* (the GIPA Act), indicating the Government's intention:

“to bring the Privacy Commissioner and the Information Commissioner together within a single office. The two roles will remain functionally independent within a combined office. It makes sense to have a single body overseeing both the key issues relating to government information—privacy and public access.”

I am pleased to report that during the reporting period the staff of Privacy NSW co-located with the staff of the newly established Office of the Information Commissioner (OIC) sharing premises at level 11, No 1 Castlereagh Street Sydney.

Fittingly the co-location commenced on the first day of duty of the inaugural NSW Information Commissioner Ms Deirdre O'Donnell, being 10 May 2010. This co-location has delivered benefits to both Offices with relevant sharing of expertise and information and knowledge about both access to information, and the protection of privacy. Joint training sessions between the two agencies have taken place since May 2010, and the collaborative 'collegiate' approach that all staff have taken in dealing with broad issues, bodes well for the eventual merger / amalgamation of the two administrative agencies into one Office of the Information and Privacy Commission due to occur early in the new-year with the passing of the *Privacy and Government Information Legislation Amendment Bill 2010* on 21 September 2010. I will report on the detail of this Bill later in this Report.

The co-location of Privacy NSW and the Information Commissioner's Office posed some challenges for Privacy staff and the Department. However, with able assistance from the Acting Executive Officer of the OIC, the guidance of the appropriate officers within the Department of Justice and Attorney General, (DJAG) and the dedication and commitment of staff, notwithstanding some technical issues beyond our control, the move occurred with minimal disruption. Whilst the move did pose some short-term challenges to both Privacy NSW and OIC staff, it has provided an opportunity to enable Privacy NSW to revitalise its operations and develop strong, cooperative relationships with agencies in the provision of balanced guidance on their open government and privacy obligations.

In the reporting year, Privacy NSW continued performing its core statutory functions of handling complaints, overseeing internal reviews and a renewed attention to intervening in Tribunal proceedings and providing assistance to the Administrative Decisions Tribunal (ADT) as appropriate. It continued the strong working relationships with agencies, through the provision of assistance and guidance. With greater resources, (as foreshadowed by the creation of the Office of the Information and Privacy Commission) there is capacity for greater community outreach on privacy issues.

## Privacy Commissioner

Judge K V Taylor A.M., R.F.D. was appointed as NSW Privacy Commissioner in January 2008 for a 5-year term. Judge Taylor commenced an extended period of sick leave on 5 November 2009. During this period and especially March and April 2010 Judge Taylor remained involved with the development of policy aspects of NSW Privacy law reform mainly from the period between the release of the NSW Law Reform Commission Report 125, up to the drafting of the eventual legislation being the Government's response to the Report. On 12 April 2010 the Attorney General accepted the Judge's resignation as NSW Privacy Commissioner, at which time His Honour returned to his position on the District Court bench. The position of Privacy Commissioner continues to be filled on an acting basis. Ms Maureen Tangney (an Assistant Director General in DJAG) acted as Privacy Commissioner from 5 November 2009 to 30 June 2010. I was appointed Acting Privacy Commissioner from 1 July 2010 and remain in that role. The position has been advertised at the time of writing. I was recruited by Judge Taylor to a newly created position of Principal Privacy Officer (PPO) commencing on 12 October 2009. The need arose because of the competing demands of the Privacy Commissioner taking on the position of Acting Information Commissioner and working through the establishment of the new FOI / Open Access regime and the creation of the OIC Office. These arrangements continued when the Judge took leave and Ms Tangney was appointed both Acting Privacy Commissioner and Acting Information Commissioner (5 November 2009 – 9 May 2010). The functions of the Privacy Commissioner were delegated to me immediately on taking up the PPO position on 12 October 2009 and this arrangement continued up until my appointment as Acting Commissioner. All of the functions and powers of the Privacy Commissioner had been exercised independently by me on behalf of the Commissioner during nine months of the reporting period.

I wish to acknowledge the significant contribution of the previous Privacy Commissioner Judge K V Taylor A.M. R.F.D. to privacy law reform, and the establishment of a new open access information regime and Office in New South Wales. Judge Taylor was an integral force in privacy and FOI reform in NSW, providing numerous submissions to the various New South Wales Law Reform Commission Privacy References conducted during his term of Office. In addition to his duties as Privacy Commissioner, Judge Taylor sat on the Drug Court of New South Wales, and also held a commission as a part time NSW Law Reform Commissioner. In the latter as well as the positions of Privacy Commissioner and the inaugural Acting Information Commissioner, the Judge provided a significant contribution to privacy and FOI reform in the period early 2008 to 2010.

Finally I wish to acknowledge my Federal, Interstate and Pacific rim privacy colleagues who have been very supportive not only in the excellent Privacy Awareness Week this year, but in assisting me and our small organisation in our work. To my colleagues in the Office of the Information Commissioner, I and Privacy NSW are particularly grateful for their support and assistance. I have thoroughly enjoyed working with Ms O'Donnell on both our current statutory obligations, and planning for our combined future. With Deirdre O'Donnell as the CEO of the new Information and Privacy Commission, the functions of privacy and open access will be well managed on behalf of the citizens of New South Wales. I am particularly indebted to my small team of staff who have all assisted me in my steep learning curve over this last 12 months. Their dedication and commitment to their work is to be applauded, and their corporate knowledge of Privacy will auger well for the future organisation to carry out the privacy functions of both the PPIP Act and HRIP Act.



John McAteer  
A / NSW Privacy Commissioner

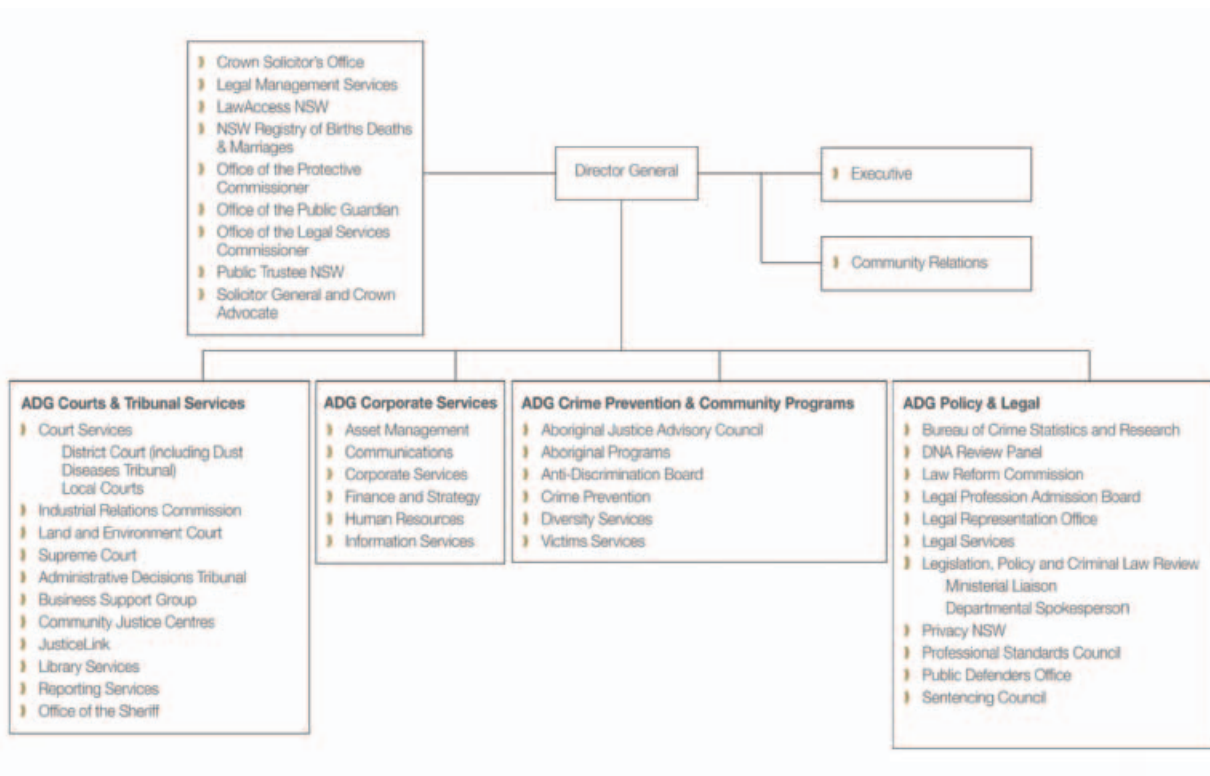
# Management and Structure

The Privacy Commissioner is appointed by the Governor on the recommendation of the Attorney General and is functionally responsible to that Office. The staff of the Privacy Commissioner are employed under the *Public Sector Employment and Management Act 2002* (NSW). Because Privacy NSW expends public monies and employs public servants, the Commissioner is administratively responsible to the Director General of DJAG.

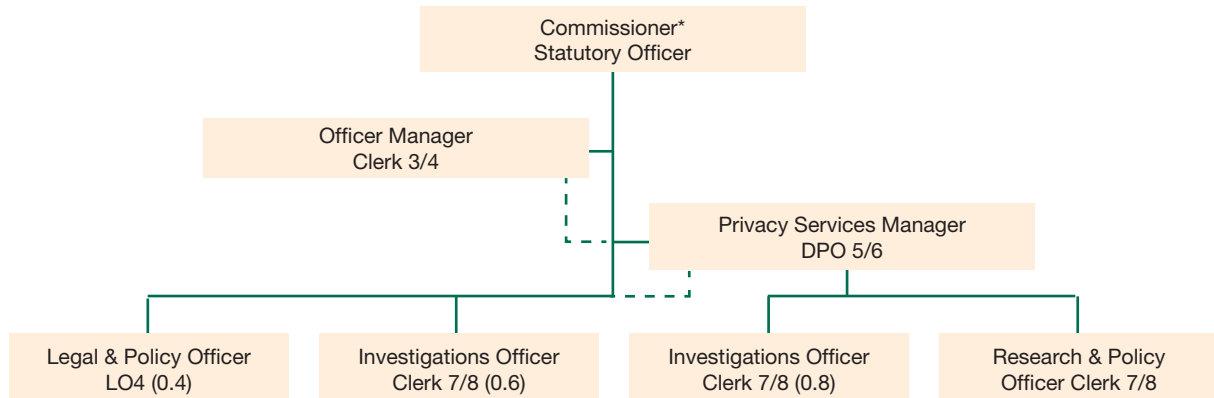
Accordingly, budgeting and some management processes of Privacy NSW are managed within DJAG. These arrangements are working well and leave our small staff time to concentrate on operational activities. Privacy NSW is a small organisation and has a total of seven staff and three of whom currently work part time. The structure of DJAG (Attorney General's Division) is reproduced below. Privacy NSW is administratively located within the Policy and Legal Division.

## DJAG (AG's Division) organisation chart

Privacy NSW is an independent State Government funded statutory agency. It's budget and administrative obligations are managed on behalf of the State through DJAG.



## PNSW Organisation Chart



\* The position of Principal Privacy Officer (PPO Departmental Professional Officer Grade 8) assumed all the functions of the Commissioner 12/10/2009 – 30/6/2010 inclusive. The position was funded for the 9 months by the residue of the part time positions within the existing structure and in addition, the 2 month vacancy of the position of Office Manger during the reporting period.

## Review of Operations

This Report now turns to statutory aspects of the legislation so the reader will better understand the operations of Privacy NSW.

Privacy NSW provides a number of services. Its core work includes advising individuals, public sector agencies, businesses and other organisations about the steps they should take to ensure that basic privacy rights are protected. Privacy NSW does this by educating and promoting the meaning and value of privacy to the people of New South Wales.

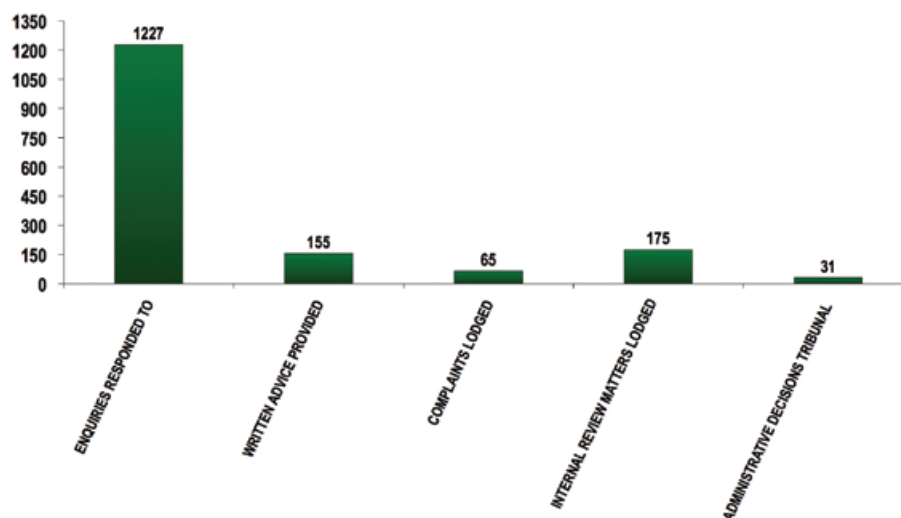
The staff of Privacy NSW research significant developments in policy, law and technology, which may have an impact on privacy. They do this by making submissions, reports and recommendations to agencies and authorities. All members of staff at Privacy NSW also answer enquiries and advise people of possible ways of addressing breaches of privacy. We also receive, investigate and sometimes conciliate privacy complaints.

Privacy NSW staff provide verbal and written guidance on privacy matters to Departmental Heads and Ministers – often on complex compliance issues arising under privacy laws.

Staff members of Privacy NSW have attended numerous public forums, and training and educational sessions throughout the year to keep abreast of changes, which may impact on privacy legislation. They have also overseen the conduct of internal reviews of privacy complaints against public sector agencies and appear in the Administrative Decisions Tribunal (ADT) during appeals dealing with internal reviews.

Privacy NSW provides a variety of core services, which appear in the chart below.

### CORE BUSINESS ACTIVITIES 2009 - 2010



## Enquiries

Privacy NSW provides advice to members of the public and other organisations. Enquiries are received by phone and email. In the reporting year, there was an increase in the number of telephone and e-mail enquiries responded to. The number of telephone, face to face and e-mail enquiries responded to in 2009-2010 was 1,227 whereas in 2008/2009 it was 1,093. In 2007/2008 the figure was 858. These figures demonstrate a clear and consistent increase over the last three years.

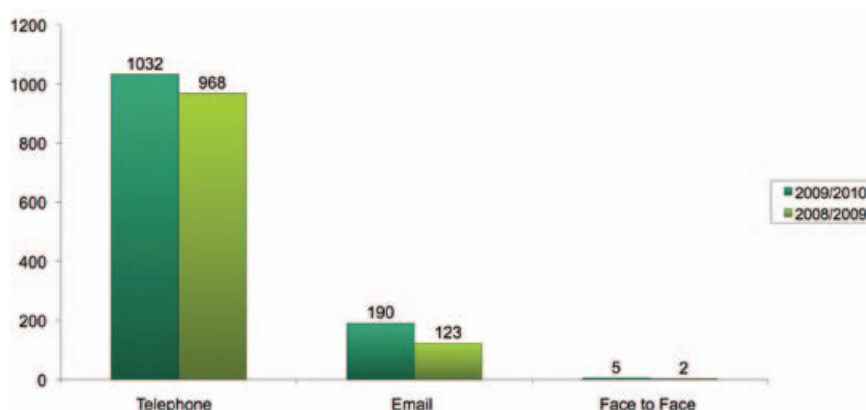
In dealing with enquiries Privacy NSW does not provide legal advice, as this may conflict with our complaint handling functions, however we give general guidance on privacy related matters. In many cases, enquiries are resolved by staff suggesting practical ways of approaching a dispute. Privacy NSW endeavours to respond to enquiries within one working day.

Enquiries, which Privacy NSW received in 2009 – 2010, often related to matters governed by surveillance legislation, such as the *Workplace Surveillance Act 2005 (NSW)* and the *Surveillance Devices Act 2007 (NSW)*. Whilst those Acts are privacy related, Privacy NSW does not administer them and cannot accept complaints about breaches of these Acts. We do, however, provide general information about surveillance to enquirers and refer them to the appropriate department or organisation. The DJAG publication on the Privacy NSW website: “*A Short Guide to the Workplace Surveillance Act*” provides information on compliance with the *Workplace Surveillance Act*.

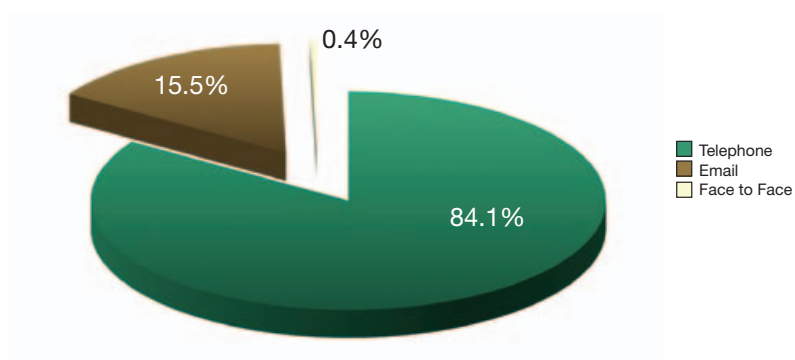
There is also information on the Privacy NSW website for individuals about criminal records and spent convictions under the *Criminal Records Act 1991 (NSW)*. Privacy NSW receives many inquiries on this subject.

## ENQUIRIES BY TYPE 2009/2010 & 2008/2009

Note: Total enquiries  
for 2009/2010 1227



## ENQUIRIES BY TYPE 2009/2010

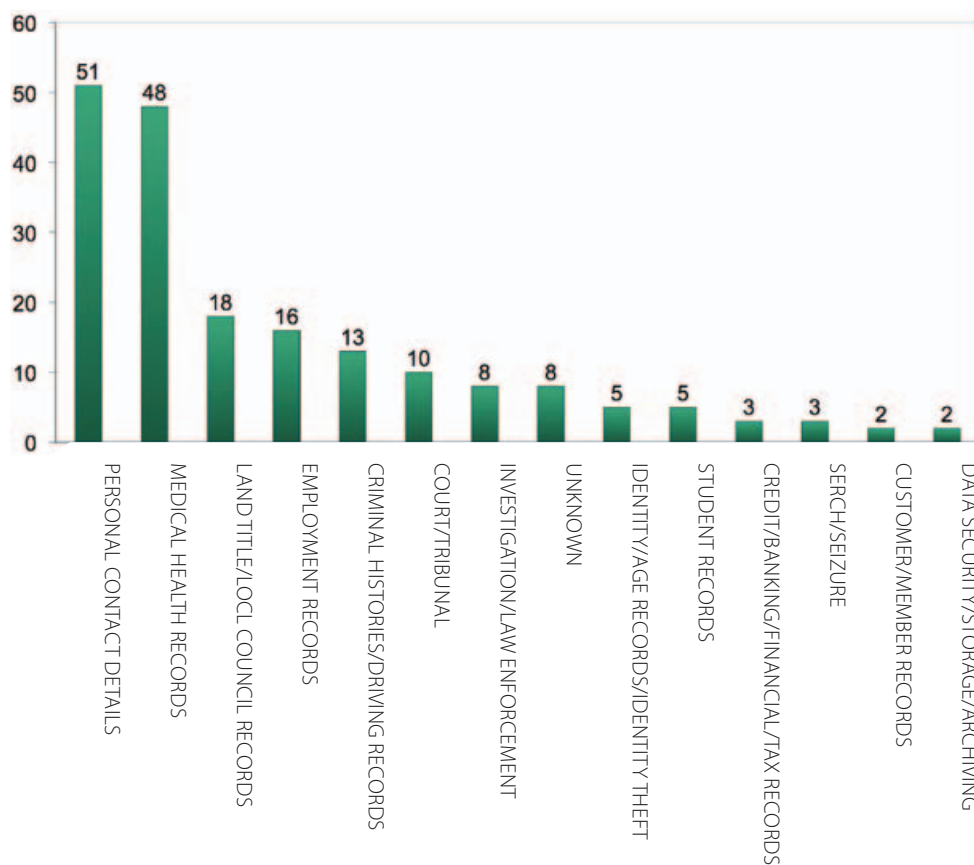


## Internal Reviews

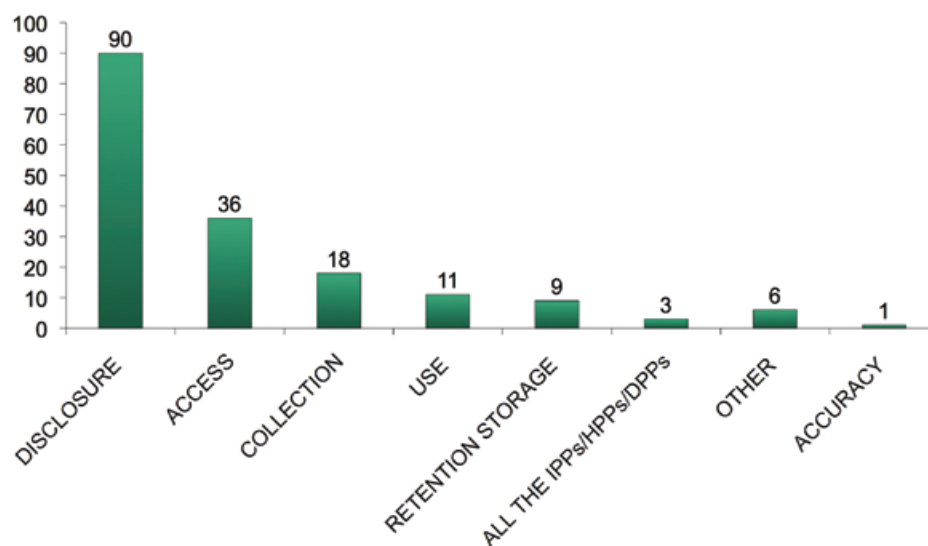
An IR is an internal investigation, which a New South Wales public sector agency is required to conduct when an individual makes a privacy complaint under Part 5 of the PPIP Act or Part 3 of the HRIP Act.

If an individual complains about a breach of a privacy principle, Privacy NSW will, in most cases, recommend that the individual lodge an internal review application with the relevant public sector agency, rather than seek investigation by Privacy NSW. This approach provides the complainant with the option of taking their complaint to the ADT if they are unhappy with the outcome of the internal review. In exceptional circumstances, complainants may ask to have their complaints against NSW public sector agencies investigated by Privacy NSW rather than by the agencies themselves.

**INTERNAL  
REVIEWS &  
NATURE OF  
INFORMATION  
2009/2010**



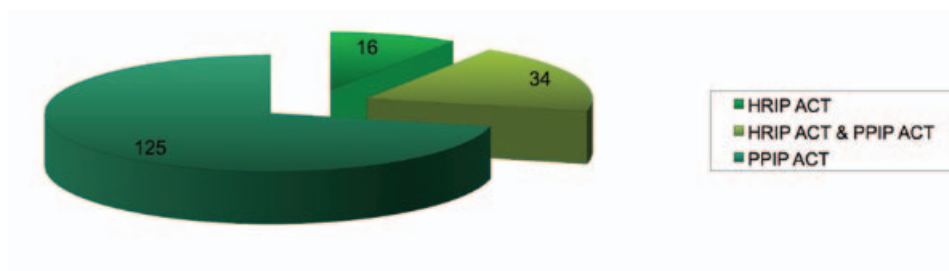
**INTERNAL  
REVIEWS  
BY PRIVACY  
PRINCIPLES  
2009/2010**



(NB some Internal Reviews covered more than one Privacy Principle).

## INTERNAL REVIEWS BY PRIVACY LEGISLATION

Note: Total INTERNAL REVIEWS 175



The Privacy Commissioner has a monitoring role in relation to internal reviews. Privacy NSW must be notified by all agencies of all internal review applications and the Privacy Commissioner may make submissions to agencies on any aspect of the internal review.

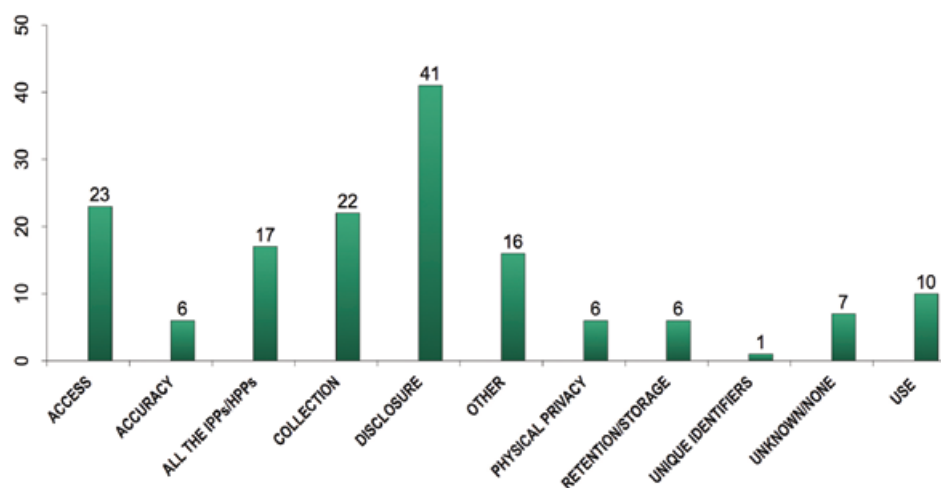
The total number of internal reviews dealt with by privacy NSW increased by 8% over the 2008 / 2009 figures.

Internal reviews concerning “Disclosure” remain dominant, although the numbers for 2009-2010 (90) are 11 fewer than those for 2008-2009 (101), and 25 down on the (115) for 2007 -2008. Internal reviews have increased since last reporting year in relation to the privacy principles of “Access”, and, “Collection”. A minority but significant number of reviews give rise to submissions by Privacy NSW. In addition it is usual for the Commission to make minor comments to assist a public sector agency in its internal review processes.

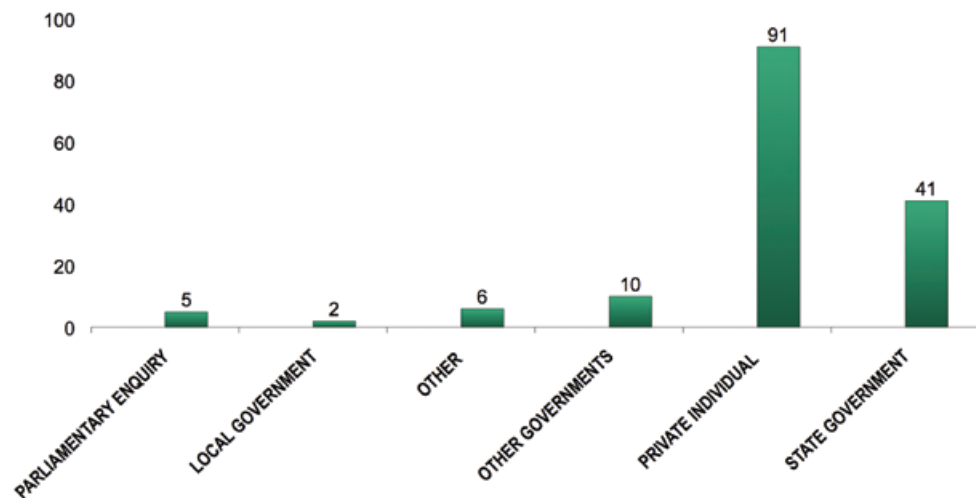
## Advice

Privacy NSW continued to provide advice to individuals, government and agencies regarding privacy issues during the reporting period. Government recipients included the NSW public-sector, local government, NSW Parliament and Ministers and the Commonwealth government agencies. The private sector continued to receive advice and assistance from Privacy NSW. Privacy NSW was also consulted about, and required to comment on, proposed Bills, reviews of Acts, submissions regarding professional standards, discussion papers, guidelines and protocols. As many of these Bills, reviews and protocols are confidential drafts, it is not possible to elaborate on them in this report.

## WRITTEN ADVICE PROVIDED BY PRIVACY PRINCIPLES 2009/2010



WRITTEN ADVICE  
REQUESTED BY  
SOURCE  
2009/2010



### Appeals to the Administrative Decisions Tribunal (External Appeals)

If an individual is not satisfied with the outcome of their internal review or, if their application is not dealt with by the relevant public sector agency within 60 days from the agency's receipt of their application, they can apply to the ADT for a review of the conduct which gave rise to the internal review application.

In the ADT proceedings, the Privacy Commissioner has the role of "amicus curiae" (friend to the Tribunal). This means that representatives of Privacy NSW, who attend the Tribunal assist it with interpretation of privacy law but do not assist the parties to the litigation.

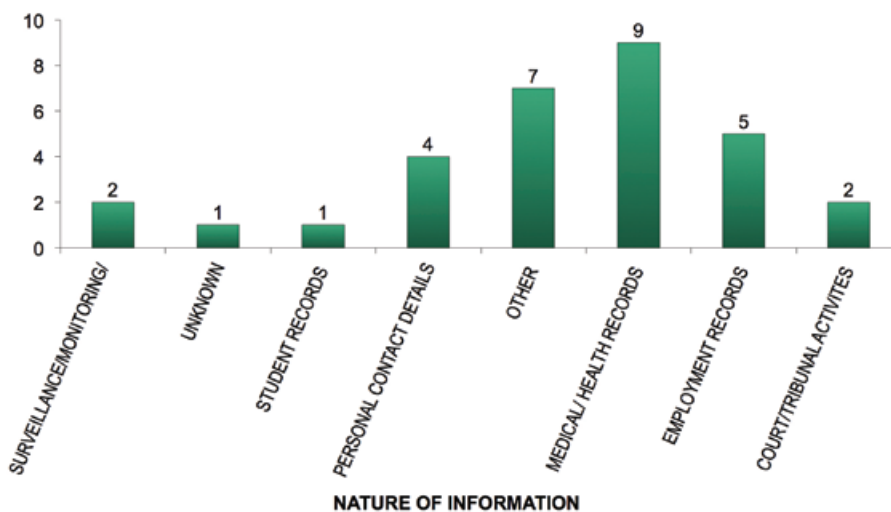
In 2009-10, Privacy NSW made a concerted effort to appear in each new PPIP Act appeal matter in the initial stages in order to assess whether the matter would address privacy issues of a broad public interest or importance. In some matters the various Judicial Members requested the Privacy Commissioner's additional / continued attendance and involvement, and often sought submissions in a matter in order to assist the Tribunal in its task.

This commitment to our statutory presence in the ADT, and exercising of our statutory functions was assisted greatly by Privacy NSW's relocation to the Sydney CBD (where the Tribunal sits), and was initiated in anticipation of our move later on in the reporting period. Coinciding with this commitment and the appointment of the Principal Privacy Officer in early October 2009, Privacy NSW wound down the level of matters in which we instructed the Crown Solicitor to appear on behalf of the Privacy Commissioner. This was in part also due to the fact that many agencies brief the Crown Solicitor to represent them in defending external review appeals lodged in the Tribunal against their agency.

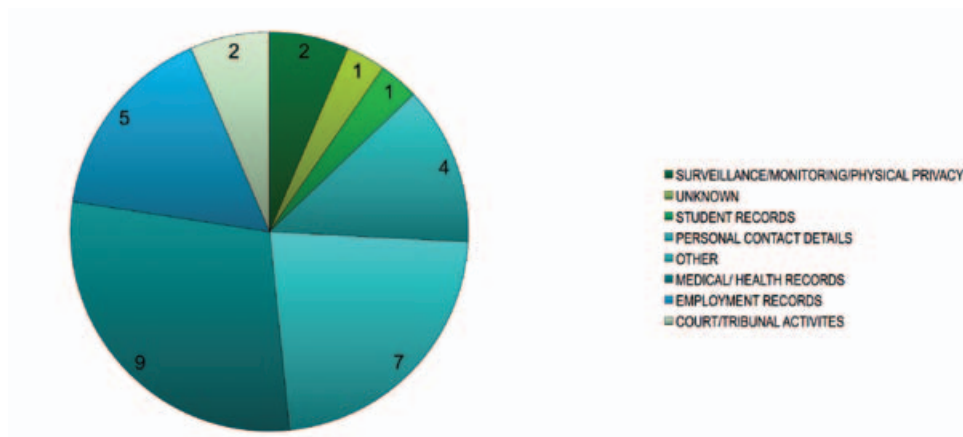
During the reporting period the Privacy Commissioner and Privacy NSW staff attended listings of matters before the Tribunal and made oral and / or written submissions on 47 occasions in some 31 matters during the reporting period. The details of the Privacy cases\* are available on the ADT website under the General Division and Appeal Panel indexes.

\* However case summaries are not provided or reproduced in this Report due to previous privacy concerns, but this position is currently being reviewed.

ADMINISTRATIVE  
DECISIONS  
TRIBUNAL &  
NATURE OF  
INFORMATION  
2009/2010



ADMINISTRATIVE  
DECISIONS  
TRIBUNAL &  
NATURE OF  
INFORMATION  
2009/2010

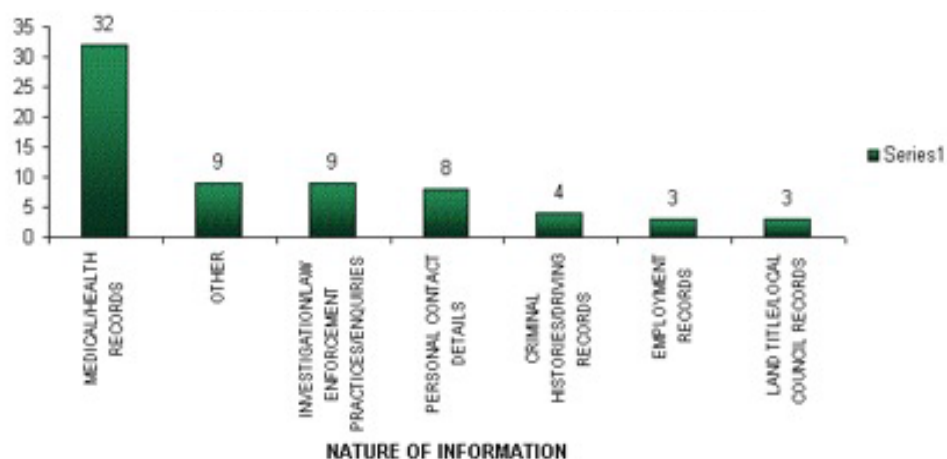


## Complaints

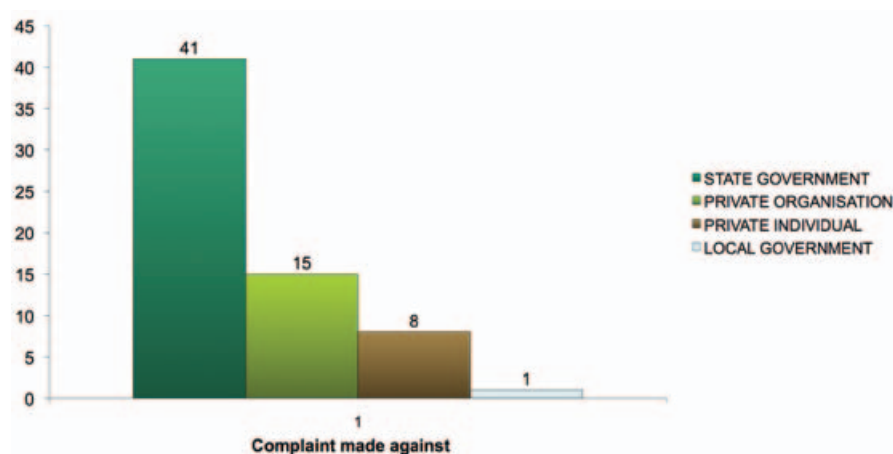
Under New South Wales privacy legislation, Privacy NSW is responsible for assessing, investigating and, in some cases, conciliating complaints. Complaints under the PPIP Act deal primarily with alleged breaches of the IPPs by New South Wales government agencies. Complaints under the HRIP Act, deal primarily with alleged breaches of the HPPs by New South Wales government agencies or the private sector. Most 'private sector' complaints relate to 'access' requests of medical practitioners.

The Privacy Commissioner may decline to investigate a complaint, if, in his or her view, it is frivolous, vexatious trivial, lacking in substance, not made in good faith etc. In addition, he / she can decline a complaint if it can be resolved by referral to a more appropriate agency or if it would be more appropriately dealt with under the internal review provisions.

**COMPLAINT  
& NATURE OF  
INFORMATION  
2009/2010**



**WHO WAS THE  
COMPLAINT  
MADE AGAINST  
2009/2010**



The PPIP Act does not provide the option of a matter being reviewed by the ADT, after it has been investigated by the Privacy Commissioner. If, however, the Privacy Commissioner has made a report under s 47 of the HRIP Act in relation to a private agency or individual, the complainant may apply to the ADT for an inquiry into the original complaint.

**Physical Privacy**

Privacy NSW has a residual discretion and limited jurisdiction to investigate physical privacy matters and other privacy matters that do not only relate to personal or health information or data protection. This is because, amongst the functions listed at section 36 (2) of the PPIP Act, it is stated that the Privacy Commissioner is able to “receive investigate and conciliate complaints about privacy related matters” and “to conduct such enquiries and make such investigations into privacy related matters as the Privacy Commissioner thinks appropriate” (subsections (k) and (l)). The discretion to investigate privacy matters, which go beyond the IPPs or HPPs and data protection, is exercised sparingly and in accordance with Part 4 of the PPIP Act. It is rarely exercised if there would be another more appropriate remedy for the complaint in question.

## Codes of Practice (under the PPIP Act and HRIP Act)

Agencies may request a Privacy Code of Practice to regulate the collection, use and disclosure of personal or health information held by public sector agencies and the procedures for dealing with that information. Codes may also modify the application to any public sector agency of any one or more of the IPPs or the HPPs.

Agencies may prepare Privacy Codes of practice to modify the application of one or more information protection principles or the public register provisions of the PPIP Act or specify how they are to be applied to particular activities or classes of information. This will sometimes be needed where, in the operations of an agency, privacy has to be balanced against other public interests. Codes of practice must still meet a number of requirements to ensure that they protect privacy.

Relevant sections of the legislation governing the making of Privacy Codes of Practice are to be found in Part 3 of the PPIP Act and Part 5 of the HRIP Act. Privacy Codes must be approved by the relevant Minister and the Privacy Commissioner welcomes approaches by agencies to discuss the making of such a Code. There are presently 12 Privacy Codes in operation under New South Wales privacy legislation and they are published on the website of Privacy New South Wales.

A Code is a carefully drafted legal document. Its making usually requires extensive consultation and it can be seen as yet another layer in an already complex system of privacy exemptions, guidelines and legislation. During the reporting period the following Codes of Practice were made in respect of the PPIP Act and The HRIP Act:

The Privacy Code of Practice (General) 2003 made under the Privacy and Personal Information Protection Act 1998 (PPIPA) was amended in June 2010 and now includes a Part 8 about the Domestic Violence Intervention Court Model (DVICM). Similarly, The Health Privacy Code of Practice 2005 made under the Health Records and Information Privacy Act 2002 (HRIPA) was amended in June 2010 and now includes a Part 3 relating to the DVICM. The amendments allow for the collection, use or disclosure of, or any dealings with, personal and health information about a person who has been involved in a domestic violence offence dealt with by Campbelltown, Macquarie Fields or Wagga Wagga Local Area Command of the NSW Police or before the Local Court at Campbelltown, Junee, Temora or Wagga Wagga. The Model is crime prevention based, and is designed to allow an early intervention (where necessary) into high risk situations to prevent domestic violence.

The Privacy Commissioner can also prepare codes to cover activities common to a number of agencies. In their final form, Codes are drafted by Parliamentary Counsel. Codes must be approved by the Attorney General in respect of the PPIP Act and the Health Minister in respect of the HRIP Act, and published in the Government Gazette. The Attorney must also be consulted in respect of a HRIP Act Code. However prior to this any draft codes prepared by agencies must be submitted to the Privacy Commissioner. The Privacy Commissioner may make a submission to the agency, and ultimately to the Attorney General, on draft codes submitted for approval.

## Public Interest Directions (or Exemptions) under section 41 of the PPIP Act and section 62 of the HRIP Act

Under state privacy laws the Privacy Commissioner can make public interest directions in relation to both the IPPs and the HPPs. **Before making such a direction, the Privacy Commissioner is required to be satisfied that the public interest in requiring the agency or person in question to comply with the relevant privacy principle(s) is outweighed by the public interest in the Privacy Commissioner making the direction.**

(Under the HRIP Act an “organisation” is defined to include private sector persons such as doctors as well as public and private sector agencies.)

There were 12 PPIP Act public interest directions in force as at 30 June 2010. In addition three HRIP Act public interest directions were in force at the end of the reporting period bringing the total number of current Directions as at 30 June 2010 to 15. These directions are listed on the website of Privacy NSW.

In December 2009 the Privacy Commissioner renewed eight of the then 14 pre-existing public interest directions. The following Directions were all renewed under the PPIP Act:

- Direction relating to requests made by the Ombudsman under section 13AA of the Ombudsman Act 1974. This direction allows public sector agencies to co-operate with the Ombudsman when the Ombudsman is conducting preliminary inquiries under section 13AA of the Ombudsman Act. It has been extended to 31 December 2010.
- Direction relating to the Collection of Personal Information About Third Parties by NSW Public Sector (Human Service) Agencies From Their Clients. (This direction replaced the Direction on the Better Service Delivery Program. It commenced on 1 July 2003 and affects some health, education, welfare, housing, juvenile justice and Aboriginal affairs agencies. It has been extended to 31 December 2010.)
- Direction relating to the Disclosures of Information By the NSW Public Sector Agencies to the National Coronial Information System (NCIS) (This direction affects some health and justice agencies. It was originally made on 18 February 2002 and has been extended to 31 December 2010.)
- Direction relating to the Disclosures of Information by NSW Public Sector Agencies for Research Purposes (This direction affects most NSW state agencies. It was originally made on 28 September 2000 and has been extended to 31 December 2010.)
- Direction relating to the Disclosure of Information to Victims of Crime (This direction affects many law enforcement and justice agencies. It was originally made on 28 September 2000. It has been extended to 31 December 2010.)
- Direction relating to The Department of Human Services and Associated Agencies (Originally made on 30 June 2000, this direction has been extended to 31 December 2010. The original Direction was substantially modified in later versions.)
- Direction relating to the Processing of Personal Information by NSW Public Sector Agencies in relation to their Investigative Functions. (This direction covers most NSW state agencies. It was originally made on 30 June 2000. It has been extended to 31 December 2010.)

- Direction relating to the Information Transfers between NSW Public Sector Agencies (This direction covers most NSW state agencies. It was originally made on 30 June 2000. It has been extended to 31 December 2010.)

One additional PPIP Act public interest direction was made during the reporting period. That Direction related to the trial Cross Agency Risk Assessment and Management - Domestic and Family Violence Framework.

- Direction relating to CARAM-DFV Framework. This direction allows public sector agencies and Non-Government Organisations operating within Cross Agency Risk Assessment and Management - Domestic and Family Violence Framework, to assess victims of domestic and family violence as to the extent to which those victims are at risk of experiencing future violence.

A Further Direction relating to NSW Births Deaths and Marriages (BD & M) Document Verification Service was renewed during the reporting period (for 6 months) and lapsed in accordance with its terms later in the reporting period.

- Direction relating to the Document Verification Service NSW Registry of Births Death and Marriages. (Under this direction the Registry may deal with personal information in ways which allow it to participate in the Commonwealth Government Initiative, the Document Verification Service. This direction was renewed on 9 July 2009 and is valid for six months.)

Whilst eight directions were renewed and remain current, one new direction was initiated and remains current, one pre-existing direction was renewed and lapsed, a further three existing Directions remained in force for the entire reporting period, being directions which continue until the end of the specific trial or program to which they relate. This gave a total of 12 PPIP Act Directions in force as at 30 June 2010.

Under the HRIP Act three Directions were in force at 30 June 2010. One of these was initiated during the reporting period, being the companion direction to the CARAM –DFV Framework PPIP Act Direction.

The following HRIPA Act Directions were current at the time of reporting:

- Direction relating to CARAM-DFV Framework. This direction allows public sector agencies and Non-Government Organisations operating within Cross Agency Risk Assessment and Management - Domestic and Family Violence Framework, to assess victims of domestic and family violence as to the extent to which those victims are at risk of experiencing future violence. (A related direction has been made under s41 of the PPIP Act)
- Direction relating to the Anti-Social Behaviour Pilot Project (This direction applies to the agencies listed in Schedule 1 and the Local Area Commands listed in Schedule 2. It operates from 2 September 2008 and replaces previous directions relating to the Project which can be found below under Previous Directions. A related direction has been made under s.41 of the PPIP Act.)
- Direction relating to the Redfern Waterloo Partnership Project (This direction applies to agencies participating in the Redfern Waterloo Partnership Project. It was made on 26 May 2005 and has effect for 12 months from this date or until the completion of the project whichever later occurs. A related direction has been made under s41 of the PPIP Act.)

## Privacy Management Plans

Under the PPIP Act, public sector agencies are required to prepare and implement a Privacy Management Plan and provide a copy to Privacy NSW. A Privacy Management Plan sets out the agency's policies and procedures for complying with relevant IPP's and HPP's in their management and dealing with information. It assists staff within the agency in their day to day handling of personal and health information, and clients who wish understand the privacy protections and how they are managed. We cannot actually prepare these management plans -- particularly if legal advice is needed in relation to the particular agency's functions and legislation. Nevertheless, Privacy NSW is happy to provide general assistance with the drafting of Privacy Management Plans and there is material to assist agencies in this regard on our website.



## Key Achievements 2009/ 2010

- Provision of oral and written guidance on privacy matters to agencies, Department Heads and Ministers on often-complex compliance issues under privacy laws. This is a critical activity in overseeing the agencies' performance of their privacy obligations.
- New public interest directions made under s. 41 of the *PPIP Act*, relating to the Cross Agency Risk Assessment and Management - Domestic and Family Violence Framework, to assess victims of domestic and family violence as to the extent to which those victims are at risk of experiencing future violence.
- New public interest directions made under s. 62 of the *HRIP Act*, relating to the Cross Agency Risk Assessment and Management - Domestic and Family Violence Framework, to assess victims of domestic and family violence as to the extent to which those victims are at risk of experiencing future violence.
- Revision of eight public interest directions under the *PPIP* and *HRIP Acts*, relating to the transfer and exchange of information, investigative functions, research, the National Coronial Information System, disclosure to Victims of Crime, assisting NSW Ombudsman requests, having regard to the restructure of NSW Government Agencies on 1 July 2009 into 'Super Departments'.
- Submissions to the Law Reform Commission for its Offices of the Information and Privacy Commissioners Report No 125.
- Submissions to the Law Reform Commission for its Access to Personal Information Report No 126.
- Submission by the Privacy Advisory Committee to the Attorney in respect of NSW Law Reform Commission Reports 125 and 126.
- Submission by Privacy NSW to the Australian Government Joint Select Committee on Cyber-Safety.
- Submission by Privacy NSW to the Senate Finance and Public Administration Committee Inquiry into *Freedom of Information* Amendment (Reform) Bill 2009 and Information Commissioner Bill 2009 (Cth).

- Submission by Privacy NSW to the Legislative Council Standing Committee on Law and Justice - Inquiry into Spent Convictions for Juvenile Offenders.
- Sponsoring the regular meetings of the Privacy Advisory Committee established under Pt. 7 of the PPIP Act, which has oversight of the Privacy Commissioner's functions.
- Regular attendance at the meetings of practitioners, namely, the Asia-Pacific Privacy Authorities and the Privacy Authorities Australia forum.
- Regular attendance and presenting at the quarterly meetings of the FOI / Privacy Practitioners Forum / Network.
- Continued participation in the Audit Committee for the City of Sydney's Street Safety Camera Program, involving both privacy and general surveillance issues.
- Highly successful Privacy Awareness Week 2 – 8 May 2010 focusing on Identity Theft and launch of on-line self-testing toolkit (co sponsored with Asia Pacific Privacy Authorities).
- Participation by all Privacy NSW staff in a highly successful National Law Week 16 – 22 May 2010 including Sydney CBD and suburban and regional presentations.
- Relocation of Privacy NSW to premises co-located with the Office of the Information Commissioner.

## KEY ISSUES

- Continued input into the NSW Law Reform Commission privacy references especially when considering the intersection of privacy and freedom of information laws.
- Submissions pertaining to the need to ensure that in any Government response to the NSW LRC Report 125, the Privacy Commissioner retained their statutory independence and ability to be a 'champion of privacy'.
- Continued input to the Commonwealth revisions of privacy and FOI regimes in respect of the Exposure Draft legislation and the Commonwealth response to the Australian Law Reform Commission Privacy and FOI report, and consideration of privacy laws nationally eg: National privacy principles, and E-Health identifiers.
- Managing an ever increasing 'privacy landscape' in the modern and technological environment by strategic use of resources and powers.

## A historical reminder of the need for statutory privacy protection of government holdings of 'personal' information.

(The environment which lead to statutory protection of privacy in NSW)

In August 1992 the Independent Commission Against Corruption (ICAC) released its 'Report on the Unauthorised Release of Government Information'. The two-year inquiry which led to the Report, identified more than 250 people who had been involved in corruptly trading in confidential information. Some of those people were employed by NSW government agencies such as the Department of Motor Transport/ Roads and Traffic Authority, the NSW Police Force, Commonwealth agencies such as the Department of Social Security, Telecom and Medibank, along with private organisations such as insurance companies, banks, finance companies and private investigators and commercial agents. These are now 'historical matters' and were identified as transpiring at various times up until the early 1990s. Interestingly, evidence of allegations of an improper exchange, access to, or trade in some government information arising from government service providers (contractors), aired again recently in the print media towards the end of the reporting period. In the opening chapter of the Report, Assistant Commissioner Adrian Roden QC summarised the findings of the investigation:

This investigation has disclosed a massive illicit trade in government information. That trade has been constructed with apparent disregard for privacy considerations, and a disturbing indifference to concepts of integrity and propriety.<sup>1</sup>

The ICAC found that in some cases public sector employees had provided information about individuals to third parties for a fee and in other cases it was done as part of what the ICAC termed 'The Information Exchange Club' whereby mates would help out mates by accessing and providing information about individuals held by the agency they represented<sup>2</sup>. In discussing the root cause of the corrupt trade in personal information Assistant Commissioner Roden put forward the view that 'commercial interest [had] prevailed over public duty; laws and regulations designed to protect confidentiality have been ignored'<sup>3</sup>. Six years later the then Attorney General, the Hon Jeff Shaw noted the findings of the ICAC Report in his second reading speech on the Privacy and Personal Information Protection Bill noted the Report:

As well as drawing attention to the corrupt conduct involved in this trade, the ICAC report was very critical of the lack of any co-ordinated and consistent government policy dealing with the storage and release of information.<sup>4</sup>

The *Privacy and Personal Information Protection Act 1998* (NSW) has been in operation for almost twelve years now, and while it has heightened the awareness of agencies of the need to protect personal information and has given individuals a remedy for misuse of their information, the ICAC Report reminds us that we need to remain vigilant about the potential for the culture which gave rise to the Information Exchange Club and other corrupt dealings with personal information to creep back. Because we now live in a world where information can be digitised and exchanged so rapidly, the ramifications of such practices which gave rise to the ICAC Report would be dire for privacy.



<sup>1</sup> Independent Commission Against Corruption (ICAC Report), 'Report on the Unauthorised Release of Government Information', August 1992, Volume 1, p 3.

<sup>2</sup> ICAC Report pp3 – 13.

<sup>3</sup> ICAC Report p 3.

<sup>4</sup> NSW Parliament, Hansard, Legislative Council, 17 September 1998, at 7601.

## Privacy Law Reform

Many of the developments both federally and in New South Wales from January 2006 to June 2009 were reported on in last years report. On 14 October 2009, the Federal Government presented its First Stage Response to the Australian Law Reform Commission's (ALRC) final report on its extensive review of privacy issues. That response adopts the vast majority of the ALRC's recommendations in respect of the review of the *Privacy Act 1988* Cth. The main element being the adoption of a uniform set of privacy principles for public and private sectors. On 26 November 2009 the Australian Government introduced the *Office of the Information Commissioner Bill 2009* (Cth) and the *Freedom of Information Amendment (Reform) Bill 2009* into Parliament. The Bill lead to the creation of a new Office of the Australian Information Commissioner, with joint responsibility for FOI and Privacy, exercised by the Commissioner. Key proposals include:

- The establishment of two new statutory positions, the Information Commissioner and FOI Commissioner, which would be brought together in the new Office of the Information Commissioner.
- The Information Commissioner would be Chief Executive Officer, and would be vested with all functions and powers under both the Privacy Act and the FOI Act. The Privacy Commissioner would also be directly empowered with functions and powers under the Privacy Act. The FOI Commissioner would be directly empowered with functions and powers under the FOI Act. Both the Privacy and FOI Commissioners would be able to perform each others functions.

The commencement date for the new regime and Office is 1 November 2010. This is a slight variation on the structure / model which came into operation in Queensland with the appointment of an Information Commissioner with two deputies responsible for FOI and Privacy. In the Queensland model the deputies do not share / interchange functions. In both models however the Information Commissioner has the final decision when / where necessary. The above brief analysis of these models is helpful in informing the reader of the discrete differences in the pending NSW model for open access Government information (FOI) and privacy.

Privacy laws are fundamentally concerned with protecting individuals' privacy and confidentiality, whilst open government laws concern transparency and openness. The point at which the laws intersect is the disclosure of third persons' personal information under an access application. The GIPA Act requires the consideration of privacy (when assessing government information access requests) to be undertaken by a balancing / assessment of the public interest in protecting or waiving privacy on a case-by-case basis in relevant matters.

The organising principle of the new open government regime is the 'public interest'. Government information is to be released unless there is an overriding public interest against disclosure. Two public interest considerations against disclosure, which may be taken into account in the new public interest test, are based on privacy protection: that release of government information may involve disclosure of a person's personal information or a breach of a privacy principle. The NSW LRC Reports 125 (the Offices of the Information and Privacy Commissioners) and 126 (Access to personal Information) were made public on 18 March 2010. Report 125 recommended that (in addition to some housekeeping issues that were consequential on the enactment of the GIPA Act), the NSW Information Commissioner

be the Chief Executive of a combined privacy and information office, and that a designated Privacy Commissioner be a deputy Information Commissioner, with many of the existing Privacy Commissioner powers, but required to seek the Information Commissioner's approval in order to go on the public record. After release of the report the Privacy Commissioner and the Privacy Advisory Committee made a submission to the Attorney as part of their statutory functions under the PPIP Act.

The Committee welcomed the suggestion that the public's engagement with government information (whether personal information or otherwise) be the responsibility of one Government Agency. However there was some residual concern about the ability of the Privacy Commissioner to 'report' independently on matters, as in the making of Special Reports and / or speeches / publications – so as to not diminish privacy. The Committee supported a single access to information regime – albeit in one or two pieces of legislation. The Committee strongly supported the recommendation that a Joint Parliamentary Committee oversight the operation of the Office (and Commissioner) in respect of Privacy.

In June 2010 the Government introduced legislation into Parliament encapsulating the Government's response to the NSW LRC Report 125. The *Privacy and Government Information Legislation Amendment Bill 2010* was introduced on 24 June 2010. Importantly, in a departure from the NSWLRC recommendations the Bill preserved the existing powers and independence of the Privacy Commissioner. The role of privacy was not diminished in any way. However the Bill abolishes the agency Privacy NSW, with the creation of a new agency the Office of the Information and Privacy Commission.

The Information Commissioner would be the CEO of the Office and responsible for the resourcing and effective administrative functioning of the Office. Each Commissioner would however retain their sole statutory responsibility for the administration of their respective Acts. The Information Commissioner responsible for the GIPA Act, and the Privacy Commissioner responsible for both the PPIP Act and the HRIP Act. In particular instances both Commissioners would be required to consult where matters before them impacted on the others jurisdiction. However both Commissioners would remain as independent statutory officers as respective champions of the objects of their jurisdiction. Where open access and privacy issues compete the Bill provides for the two Commissioners to consult and take into account each other views on such matters prior to determination. The Privacy Commissioner will be appointed and removed in the same way as the Information Commissioner, and both Commissioners will report to a Joint Parliamentary Committee. The Privacy Commissioner will be responsible for reporting annually on their jurisdiction under the PPIP Act and the HRIP Act, whereas the Information Commissioner will be responsible for reporting on both the GIPA Act and the administrative operation of the Information and Privacy Commission.

The new Office will provide a single organisation responsible for the administration of government information, with discrete functions headed up by independent statutory Commissioners responsible for open access of government information and the protection of privacy . Shared resources in the areas of communications, frontline client service, access and awareness, training and education will be a hallmark of the new organisation providing an efficient method for clients to seek assistance with government information and privacy.

The Bill was introduced into the Legislative Assembly on 24 June 2010. After the Winter recess the Bill passed the Legislative Council on 21 September 2010 with bipartisan support. It was returned to the Assembly that day and passed both Houses, being assented to on 28 September 2010.

It must be remembered that with proclamation, the Privacy Commissioner will still retain jurisdiction to deal with certain complaints involving the private sector and private individuals and corporations in respect of health information, as well as the residual jurisdiction relating to physical privacy and privacy related matters. Notwithstanding the broadness of the jurisdiction, the passage of the Bill promises greater resources in the support and frontline areas allowing the existing resources to be used more efficiently and strategically.

Since its establishment Privacy NSW was administratively dependent on the Attorney General's Department (now DJAG) and reported on administrative, compliance and results and services to the Department during its 11 year existence. This was a continuation of the arrangements involving the former Privacy Committee 1975 – 1999. With the creation of the Office of the Information and Privacy Commission, administration of privacy jurisdiction will no longer be a part of the Department (DJAG). It is envisaged that proclamation of the provisions will occur early in the new calendar year. As part of any initial future report from the Privacy Commissioner under the new structure, some reporting of the final operations of Privacy NSW will occur as part of the 2010/ 2011 reporting period.

# Training

## Staff Education

The Privacy Commissioner recognizes the vital importance of staff training and is committed to the training targets set by the Director General of DJAG. The Director General's target is that all staff should attend 35 hours of training per year.

In the period 2009/2010, most full-time employees of Privacy NSW reached the Director General's Training Target of 35 hours (5 days) training (pro rata for part time staff). Three full time staff exceeded the target, one full – time staff member achieved 69% of the target, one part time staff member exceeded the target, and one part time staff member achieved 82% of the target and one part time staff member achieved the target.

Being such a small organisation and client service focused, it is often logistically difficult to take staff 'off-line' for training, however the reporting period illustrates a significant overall compliance balanced with appropriate maintenance of core and frontline services.

## Interactive Online Training

Privacy NSW offers an online training programme, which aims to help government employees to comply with the PPIP Act. It is available to State government agencies.

The training programme enables staff to test their understanding and to work at their own pace online. The training program is highly interactive and has periodic user testing. It provides book marking, which allows users to begin from the same point at a later session and it allows users to record comments.

The on-line program is interactive and designed to promote a greater understanding and awareness of privacy issues. The training program features the 12 Personal Information Protection Principles and a quiz at the end of the program. The program also includes separate training modules for Local Government and State Government employees.

At present the program is being made available by invitation only and public sector agencies are required to approach Privacy NSW to arrange access. During the 2009-2010 financial year, in excess of 50 staff of government agencies undertook the on-line training. These staff were from 6 government agencies, being 2 local government and 4 state government agencies.

At present the Privacy Training Program does not cover other privacy legislation such as the HRIP Act. However during the reporting period the training module was upgraded to a new platform offering significant improvements in both functionality and reliability. More widespread access may be considered in the future, in addition to new training resources which will be developed as part of the new Office of the Information and Privacy Commission.

In addition to discrete training modules, Privacy NSW regularly provide face-to-face training and information sessions to employees of both the NSW public and private sector. This training is often provided on a demand and capacity basis as a large number of request are received by Privacy NSW.

## The Website

The Privacy NSW homepage posts a “What’s New” section, which informs the public of the latest developments at Privacy NSW by means of brief summaries. Agencies are encouraged to view this part of the website and keep up to date with the changing legal and policy issues, which affect them. Almost all of the publications of Privacy NSW are available on the website and can be downloaded from it. Individuals are welcome to make contact by telephone or e-mail us to request a hard copy of these publications.

## Privacy Authorities and Other Matters

### Asia Pacific Privacy Authorities (APPA)

APPA is the principal forum for privacy authorities in the Asia-Pacific region. The forum aims to form partnerships and exchange ideas about privacy regulation, new technologies and the management of privacy enquiries and complaints. APPA convenes twice a year and discusses permanent agenda items, which include jurisdictional reports from each delegation. An initiative-sharing round table is also held. The forum consists of members from Australia (the Commonwealth), Canada, British Columbia, Hong Kong, Korea, New Zealand, New South Wales, Victoria and the Northern Territory.

During the reporting period, APPA held two forums:

**The 31st Asia Pacific Privacy Authorities Forum** was held in Adelaide 3rd and 4th of December 2009. The first day of the Forum was a closed session with representatives from the Victorian, South Australian, Queensland, ACT, Northern Territory, New South Wales, and the Commonwealth in addition to New Zealand, Hong Kong, South Korea, the United States, participating.

Jurisdictional reports were discussed in great depth and members exchanged experiences in regard to issues raised in these reports. A review of the objectives of the APPA Forum was undertaken and, in addition to other matters, members planned Privacy Awareness Week 2010, and opening up of membership to APPA.

The morning of the second day of the Forum was a broader session, whereby law enforcement experts and privacy academics gave presentations on cyber security, identity theft and government regulation / control of personal information holdings. In the afternoon jurisdictional reports were further discussed with a focus on law reform in the various jurisdictions including the Commonwealth and NSW. More details of the proceedings of both days are available in the Communiqué of the 31st Forum, which is available on the website of the Office of the Privacy Commissioner (Cth).

**The 32nd Asia Pacific Privacy Authorities Forum** was held in Darwin on the 3rd and 4th of June, 2010. Unfortunately due to staffing limitations Privacy NSW was unable to send a representative, however the Principal Privacy Officer provided a detailed jurisdiction report and sent an agenda item for the Forum participants to discuss. Details of the proceedings of the 32nd APPA Forum are available in the Communiqué it issued. This is available on the website of the Office of the Privacy Commissioner (Cth). Staff at Privacy NSW also participated in other APPA activities during the reporting period, for example Privacy Awareness Week (see following page).

## Privacy Awareness Week (PAW)

PAW is an initiative of all the APPA privacy authorities, including the Australian states and territories. Privacy supports the nationally sponsored PAW by making a small financial contribution and by the involvement of its staff in PAW activities. PAW is an annual APPA event and there is a corresponding event in the countries of the European Union held in late January. An annual theme is part of PAW. This year the theme was the issue of identity theft, with two headlines: "Identity Security, Keep Your Identity Safe" "Stop and Think don't leave a Privacy Risk Behind".

A sponsored activity is part of PAW and this year, we co-launched an on-line tool kit to allow users to test themselves 'self assess' their privacy awareness in limiting the risk of identity theft. The toolkit (above) and other information about Privacy Awareness Week is available

via a link to the APPA Website from the Privacy NSW site at: [www.lawlink.nsw.gov.au/privacynsw](http://www.lawlink.nsw.gov.au/privacynsw)

The following Press Release points out the features of the Toolkit, which remains available for users to access from the link on the Privacy NSW Website at [www.lawlink.nsw.gov.au/privacynsw](http://www.lawlink.nsw.gov.au/privacynsw)



**Monday, 3 May, 2010**

### TAKE THE IDENTITY THEFT PROTECTION TEST

An online self-test for identity security was launched today to mark Privacy Awareness Week.

"With an increase in card-skimming, internet scams, hoax e-mails and identity theft, Privacy Awareness Week provides an important reminder of both the need and the means to remain vigilant in protecting your identity," said Mr John McAteer, Principal Privacy Officer of Privacy NSW and delegated NSW Privacy Commissioner.

"Users can complete the short assessment task at our website and receive useful hints as to how to improve their identity protection."

Practical tips such as a lock on your mailbox, protecting information on your mobile phone with a password and being mindful as to who you give your credit card details to are included in the test assessment.

The online identity security toolkit was launched at Privacy NSW's Castlereagh Street offices in Sydney today. Attending were members of the Identity Security Strike Team comprising NSW and AFP Police Officers, the Federal Privacy Commissioner, and other public and private sector privacy professionals.

Privacy Awareness Week (2-8 May) is an initiative of all the Asia Pacific Privacy Authorities (APPA) of which Privacy NSW is a member.



## Law Week 2010

This year Law Week was a National Event. For the first time, a large expo of legal information and services was held in the heart of the Sydney CBD at Martin Place on 17 May 2010 and attracted large numbers of members of the public, clients, and those interested in both legal and government services.

Privacy NSW had its own stall and attracted plenty of passers-by, who collected brochures, information booklets, posters, checklists and other material with a strong focus on privacy and identity theft. All members of Privacy NSW took turns in staffing the stall on a roster basis. With a strong focus on identity protection and identity theft, coming only 2 weeks after Privacy Awareness Week, staff were able to provide up to date information and resource promotion to members of the public in this area.

The Principal Privacy Officer gave a presentation at a privacy themed Forum conducted by the Inner West Law Society and staff contributed to other events during the week.

## Privacy Advisory Committee

Under Part 7, the PPIP Act allows for the creation of a Privacy Advisory Committee (PAC). The functions of this committee as set out in section 61 of the Act are:

- (a) to advise on matters relevant to the Privacy Commissioner's functions,
- (b) to recommend material to the Privacy Commissioner for inclusion in guidelines to be issued by the Privacy Commissioner in exercising the Commissioner's functions,
- (c) to advise the Minister on such matters as may be referred to it by the Minister.

Members of the PAC are appointed by the Governor.

During the reporting period, the Committee met on four occasions. Meetings were held on 29 September 2009, 14 December 2009, 15 April 2010, and 25 May 2010.

As in the previous year the main focus of the Committee was in the area of privacy law reform. However in the December 2009 meetings and the April 2010 meeting the topic of spent convictions (as one of the major streams of client inquiries received by Privacy NSW) was examined in detail. The Privacy NSW recent Parliamentary Inquiry submission on this issue and the historical work of the former Privacy Committee during the 1990's on this topic were examined.

The continuing focus however was on current legislative developments focusing on privacy and the methods of protection, as well as services available to the citizens of New South Wales. Of significant interest to the PAC were the proposals to streamline the methods in which clients could interface with privacy rights and seek remedies and information in respect of government held personal information. The NSW LRC reports 125 and 126 were discussed at length at the 2010 meetings and a formal submission was provided by the Principal Privacy Officer on behalf of the Committee in response to the Government's consultation process in response to the release of the NSW LRC privacy reports.

The PAC comprises both Government and Opposition appointees, and it is worth noting that the eventual *Privacy and Government Information Legislation Amendment Bill 2010* received bi-partisan support in its passage through Parliament from late June to September 2010.

Upon proclamation of the Bill, the Privacy Advisory Committee will be abolished, replaced by a joint Information and Privacy Advisory Committee.

I wish to thank all members of the PAC (past and present) for their valuable contribution to the work of Privacy NSW and the protection of privacy of individuals.

### **EAPS, CALD And Disability Strategic Plan Reporting**

Privacy NSW reports through DJAG and the Community Relations Commission in relation to the Ethnic Affairs Priority Statement (EAPS).

DJAG sponsors the Department's Disability Network meetings and associated events. One staff member has regularly attended the Disability Network meetings throughout the reporting period and has provided information on relevant issues to Privacy NSW staff.

## Appendix A – Financial Statements 2009 – 2010

	2009 - 2010
<b>EXPENSES</b>	
Employee Related Payments	796,173
Crown Liabilities	29,592
<b>TOTAL EMPLOYEE EXPENSES</b>	<b>825,765</b>
Other Operating Expenses	147,917
Depreciation	43,783
<b>TOTAL EXPENSES</b>	<b>1,017,465</b>
Plus: Revenue	283
Less: Crown Liabilities	29,592
<b>NET COST OF SERVICES</b>	<b>988,156</b>
Depreciation	43,783
<b>NET POSITION</b>	<b>\$944,373</b>

Privacy NSW's financial statement is included in this annual report, although the accounting reports (of which this statement is only a summary) are prepared by the Financial Services section of the DJAG. Although the Department does not have day-to-day responsibility for the operations of Privacy NSW, the Department governs the financial policies of Privacy NSW.

## Appendix B - Abbreviations

<b>ADT</b>	Administrative Decisions Tribunal
<b>APPA</b>	Asia Pacific Privacy Authorities
<b>CTH</b>	Commonwealth
<b>DJAG</b>	Department of Justice and Attorney General
<b>FOI</b>	Freedom of Information
<b>GIPA</b>	<i>Act Government Information (Public Access) Act 2009</i>
<b>HPPs</b>	Health Privacy Principles
<b>HRIP</b>	<i>Act Health Records and Information Privacy Act 2002</i>
<b>IPPs</b>	Information Privacy Principles
<b>IR's</b>	Internal Reviews under the PPIP Act
<b>NSWLRC</b>	New South Wales Law Reform Commission
<b>NSW</b>	New South Wales
<b>OIC</b>	Office of the Information Commissioner
<b>PAC</b>	Privacy Advisory Committee
<b>PCO's</b>	Privacy Contact Officers
<b>PPIP</b>	<i>Act Privacy and Personal Information Protection Act 1998</i>
<b>PPO</b>	Principal Privacy Officer
<b>Privacy NSW</b>	Office of the NSW Privacy Commissioner





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