

**Privacy Committee
Of
South Australia**



**Government
of South Australia**

ANNUAL REPORT
YEAR ENDED
30 JUNE
2003

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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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22 September 2003

The Hon. Jay Weatherill MP
MINISTER FOR ADMINISTRATIVE SERVICES

Dear Minister

The Privacy Committee of South Australia is pleased to provide you with this report of its activities for the year ending 30 June 2003. The report is provided pursuant to Clause 3(1) of the Proclamation establishing the Privacy Committee of South Australia, which was most recently amended and republished in the South Australian Government Gazette on 17 May 2001.

A handwritten signature in black ink, appearing to read 'Terry Ryan', with a long horizontal line extending to the left.

Terry Ryan
PRESIDING MEMBER
PRIVACY COMMITTEE OF SOUTH AUSTRALIA

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1 Introduction

The profile of privacy issues dramatically increased last year with the introduction of private sector privacy law by the Commonwealth Government and has continued a steady growth during this reporting year.

Along with increased public awareness and media exposure has come more informed debate around issues affecting privacy and an individual's rights to control how information about them is collected, used and disclosed.

These issues included:

- identity theft and fraud (see 3.2.3);
- video surveillance (see 3.2.4);
- storage of Guthrie Test cards (see 3.7.1);
- genetic information (see 3.2.5);
- covert cameras in mobile phones;
- no-call lists for telemarketers;
- junk mail and spam prevention;
- smart passports;
- private investigation and debt collection; and
- the balance between privacy and national security.

Not all of these issues are within the jurisdiction of the Privacy Committee of South Australia, nor are some of them strictly about information privacy, but they are all being monitored by the Committee in the context of an individual's right to protect themselves from unfair and unwarranted intrusion into their private lives.

The volume of the Committee's business has grown. There was an increase in written complaints from members of the public (see 3.5), more calls to the privacy hotline (see 3.6.2) and more enquiries from government agencies (see 3.4).

Through the launch of the *Citizens' Rights to Information Charter* the South Australian Government stated its commitment to providing an open, honest and accountable government, and to protect citizens' rights without breaching the principles of personal privacy.

All of the above has helped provide agencies with a renewed interest for information privacy - a valuable development to harness for the coming years.

2 South Australian Public Sector Privacy Framework

2.1 The Information Privacy Principles

South Australia's Information Privacy Principles (IPPs) were introduced by means of *Cabinet Administrative Instruction 1/89*, also known as the *Information Privacy Principles Instruction*, and first became operational in July 1989. The IPPs regulate the way South Australian Public Sector agencies can collect, use, store and disclose personal information. A copy of the IPPs, within *Cabinet Administrative Instruction 1/89*, can be found on the State Records website at www.archives.sa.gov.au/services, and in Appendix 1.

2.2 The Privacy Committee

2.2.1. Constitution

The Privacy Committee of South Australia was established by proclamation in the *Government Gazette* on 6 July 1989. A copy of the proclamation can be found on the State Records website at www.archives.sa.gov.au/services, and in Appendix 2.

2.2.2. Responsibility

The Privacy Committee reports to the Minister for Administrative Services, the Hon. Jay Weatherill MP.

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 Human Services (or Health)
- one nominated by the Commissioner for Public Employment.

For this reporting year, the Privacy Committee comprised:

Presiding Member:

Jan Ferguson (July to Sept.) – Executive Director, Policy, Planning and Community Services, Department for Administrative and Information Services

Terry Ryan (Sept. to June) – Director, State Records of South Australia, Department for Administrative and Information Services

Members:

- Andrew Stanley – Director, Research and Evaluation Branch, Strategic Planning and Policy Division, Department of Human Services
- Anne French – Principal Consultant, Office for the Commissioner for Public Employment
- Gaby Jaksa – Project Director, Department for Administrative and Information Services
- Maria Panagiotidis – Managing Solicitor, Crown Solicitor's Office, Attorney-General's Department
- Milton Spurling – Non-public sector representative

The Minister reappointed all members until 25 May 2004.

2.2.4. Functions

The functions of the Privacy Committee are:

- a) to advise the Minister on the need for, or desirability of, legislation or administrative action to protect individual privacy and for that purpose to keep itself informed about 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 about the measures that should be taken by the Government or that person or body to improve its protection of individual privacy
- c) to make information about methods of protecting individual privacy and measures that can be taken to improve existing protection publicly available
- d) to keep itself informed on the extent to which the administrative scheme of Information Privacy Principles is being implemented
- e) to refer written complaints concerning violations of individual privacy received by it to the appropriate authority. This excludes complaints related to employment from employees of the Crown, or instrumentalities of the Crown
- f) such other functions as determined by the Minister.

2.2.5. Resources

The Committee does not administer a budget. The Department for Administrative and Information Services provides resources for the Privacy Committee. This includes research, advisory and executive support to the Committee, which is provided by State Records of South Australia.

2.2.6. *Meetings*

The Committee met on nine occasions during the reporting year.

3 Business of the Committee

3.1 Advice to the Minister

“...to advise the Minister as to the need for, or desirability of, legislation or administrative action to protect individual privacy...” the Proclamation clause 2(a)

The Committee has met with the Minister to brief him on matters relating to privacy, including legislative and administrative action to protect individual privacy, and has also provided advice as required during the year.

3.2 Keeping informed of developments in other jurisdictions

“...to keep itself informed as to developments in relation to the protection of privacy in other jurisdictions...” the Proclamation clause 2(a)

Within Australia, the Commonwealth and each State and Territory operate under varying legislative and policy environments for privacy protection. These regimes are of significant interest to the Privacy Committee. In South Australia, developments in related areas such as freedom of information are also relevant.

3.2.1. Commonwealth

From 21 December 2002, some small businesses have been required to comply with the *Privacy Act 1988 (Cwlth)* as part of the phased implementation of the *Privacy Amendment (Private Sector) Act 2000*.

In October 2002, the Federal Privacy Commissioner released Public Interest Determinations (PID) 9 and 9A, to allow a health service provider to collect health information from a health consumer about a third party without the consent of the third party when certain conditions are met. The determinations took effect on 11 December 2002 for a period of up to five years and have had implications for the operation of the Department of Human Services' *Code of Fair Information Practice* (see item 3.3.2).

3.2.2. States and Territories

The Northern Territory *Information Act 2002* was assented to in November 2002, and came into effect on 1 July 2003. This Act is unique in that it combines the three areas of freedom of information, privacy and records management. Other jurisdictions have considered the option of combining two or three of these facets, but the Northern Territory is the only jurisdiction in Australia to have implemented the model.

This year, the Tasmanian Government has consulted on, and is preparing, an Information Privacy Bill. The Western Australian Government also proposes to introduce a Privacy Bill during the next reporting year.

New South Wales and Victoria have introduced legislation. The Queensland Government considered the idea of legislation in 1998, but decided, at least in the short-term, to pursue an administrative scheme of privacy protection. South Australia is observing the developments in other jurisdictions and is considering the implementation of a legislative

framework.

3.2.3. *Identity theft or proof of identity*

Recent studies into the issue of identity theft or fraud, and the implications for proving one's identity, have indicated that the cost to Australia may be in the order of four billion dollars per annum. This figure, based on statistical comparisons with other countries, is of significant concern to the various agencies of government and private businesses that attend a regular cross-sectoral forum on the issue. The Committee sends a representative to this forum.

3.2.4. *Video surveillance*

The Committee maintains interest in the growing use and awareness of video surveillance. This area is not explicitly covered by the Information Privacy Principles (IPPs), but more recently the overlap of issues is becoming apparent. The increasing quality of spatial data (for example, aerial photographs) represent risks to an individual's privacy.

3.2.5. *Inquiry into the Protection of Human Genetic Information*

In 2001, the Commonwealth's Attorney-General and Minister for Health commissioned a joint inquiry from the Australian Law Reform Commission (ALRC) and the Australian Health Ethics Committee (AHEC) of the National Health and Medical Research Council into the protection of human genetic information. Following the release of an issues paper and discussion paper, the report of the Inquiry was presented this year.

The terms of reference "directed the ALRC and AHEC to consider, with respect to human genetic information and the samples from which such information is derived, how best to:

- protect privacy;
- protect against unfair discrimination; and
- ensure the highest ethical standards in research and practice."

Most of the recommendations of the report covered areas of interest to the Committee such as legislative reform, information privacy, use of genetic information for testing and research, databases, employee information, and kinship and identity.

3.3 Exemptions

"...may exempt a person or body from one or more of the Information Privacy Principles..." the Proclamation clause 4(1)

Clause 4 of the proclamation establishing the Privacy Committee enables the Committee to grant exemptions from compliance with one or more of the IPPs. This power is applied in situations where the public interest outweighs an individual's right to privacy.

Requests for exemptions are addressed on a case by case basis. During this reporting year, the following exemptions were sought.

3.3.1. *Department of Human Services – Research use of non-health information*

The Department of Human Services (DHS) submitted a request for exemption, asking that the word “health” be removed from defining the type of information to be used for research purposes. The Committee refused to grant the exemption as it considered the scope of information being requested was too broad.

As a consequence, the Committee asked to examine all incoming non-health research proposals in parallel with the examination already undertaken by the Human Services Human Research Ethics Committee.

3.3.2. *Department of Human Services – Collection of medical, social and family history information*

In October 2002, the Federal Privacy Commissioner released Public Interest Determinations (PID) 9 and 9A under the *Privacy Act 1988 (Cwth)*. The PIDs allow health service providers to collect health information from a client about a third party, without the consent of the third party, when certain conditions are met.

As the DHS *Code of Fair Information Practice* is based on the principles to which the PIDs apply, it was agreed to grant an exemption from Information Privacy Principle 2 to the Department of Human Services and incorporated hospitals or health units, subject to the conditions outlined in the PID. The DHS requested that the exemption be extended to include social and community services data, but this was denied as it would expand the conditions beyond those of the PID. The exemption remained restricted to “health” information.

An expiry date of 11 December 2007 was added to the exemption to match the expiry of the PID.

A copy of the exemption is found in Appendix 3.

3.4 Recommendations and submissions

“...to make recommendations to the Government or to any person or body ... to improve its protection of individual privacy...” the Proclamation clause 2(b)

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

3.4.1. *Fine debtor records*

In early 2002, the Committee and the Fines Payment Unit (FPU) of the Courts Administration Authority agreed upon a set of protocols designed to direct a data-matching program within similar guidelines to the Commonwealth Government’s Data Matching Protocols. The data-matching program enables the FPU to fulfill their legislative obligations to locate fine debtors for the collection of fines by using selected data from other agencies. The protocols provided added privacy protection for the data being matched.

Data sharing commenced in January 2003 between the FPU and three

agencies (South Australian Police Department, Tenancies Branch and Births, Deaths and Marriages (BDM) - as reported in the Government Gazette). The Committee is monitoring the program.

3.4.2. University request for assistance

The Committee was asked to assist a university research team in negotiations for access to information from BDM. Given that the law prescribes access to the information, the Committee considered that it could not assist in this matter.

3.4.3. Transport SA request for advice

Transport SA requested advice from the Committee regarding the use of the mail-out of renewal notices for registration of recreational boats for distribution of a survey. The Committee referred to an exemption granted to the then Department of Transport in 1998 about distribution of advertising material using the register data, and the conditions of that exemption. The conditions included giving the recipient the option not to receive future advertising material.

Transport SA was advised to consider whether or not the survey was connected to the purpose of maintaining the register. As Transport SA was asking respondents to return the survey to a private company, the Committee recommended that the survey form clearly state this for the information of the respondent. Transport SA enclosed a letter with the survey form to explain the relationship between Transport SA and the company undertaking the survey.

3.4.4. Submission on proposed National Health Privacy Guidelines

The Australian Health Minister's Advisory Council sought comments on proposed National Health Privacy Guidelines. The Committee had several concerns about the guidelines - they would be weaker than the *Privacy Act 1988 (Cwlth)* and the approved Code under that Act, and would be an additional code of principles applying to privacy in Australia. This view was presented at a public consultation meeting, and on the advice of the Committee, the Minister made a submission recommending that the proposed Guidelines not be developed or implemented at this stage.

3.5 Complaints

"...to refer written complaints concerning violations of individual privacy received by it ... to the appropriate authority..." the Proclamation clause 2(e)

During this reporting year, the Committee received 29 complaints from 15 individuals alleging violations of their privacy. This is compared with eight complainants in the previous reporting year, and an average of two to three in other years. Communication with three other complainants was carried over from the previous year. For details of telephone enquiries, see item 3.6.2.

Six parties' complaints were satisfactorily addressed in consultation with the relevant agency. These related to the disclosure of personal information held by a school, a community counselling centre and a prison.

One of these resulted in the agency amending their administrative processes. Consent to undertake a routine practice was previously received from a client verbally. This was amended so it was recorded in writing and signed by the client to ensure consent could be verified.

Four complainants were referred to the Federal Privacy Commissioner as their complaints related to a private business or Commonwealth Government department. One complaint was referred to the Police.

Eight parties' complaints were under consideration at year's end.

3.6 Communication

"...to make publicly available information as to methods of protecting individual privacy..." the Proclamation clause 2(c)

3.6.1. Participation in committees and groups

The Committee was represented at meetings of the Privacy Agencies of New Zealand and Australia in Sydney in November 2002, and in Wellington in March 2003.

The Committee is represented on the Human Services' Departmental Ethics and Privacy Committee, the Justice Information System Privacy Committee (see item 3.7.2), and also sends a representative to a cross-sectoral forum dealing with issues of proof of identity and identity theft.

From time to time, the Committee is represented at meetings with both Commonwealth and State agencies as deemed appropriate.

3.6.2. Telephone enquiries

The Committee receives monthly reports in relation to a telephone enquiry service provided by State Records of South Australia on privacy issues. A database is maintained by State Records of South Australia for statistical purposes. No personal details of callers are retained.

During the reporting year, over 430 calls were received relating to privacy, compared with fewer than 320 during the previous year. Approximately 56% of calls were related to the effects of the *Privacy Act 1988 (Cwlth)* on private businesses or Commonwealth Government departments. This is a slight decrease from last year, due in part to a misleading telephone directory listing. Amendments will appear in the next edition of the telephone directory to assist callers in contacting the appropriate agency.

The other 44% of calls sought general advice about how various agencies within the South Australian Public Sector handle their personal information. Specific concerns related to surveillance, telephone tapping and direct marketing.

Almost 20% of all calls were from State Government agencies seeking advice on how they can protect an individual's privacy.

3.7 Compliance

“...to keep itself informed as to the extent to which the IPPs are being implemented...” the Proclamation clause 2(d)

3.7.1. Newborn screening records

The Committee sought information from the Department of Human Services (DHS) about the collection, storage and use of Guthrie Test Cards in South Australia. The request was prompted by the Australian Law Reform Commission (ALRC) / Australian Health Ethics Committee (AHEC) *Inquiry into the Protection of Human Genetic Information* (see item 3.2.5), which was examining various issues relating to these test cards as a small part of the Inquiry.

The Guthrie Test is a newborn screening test to detect congenital metabolic disorders, and has been undertaken in South Australia since 1962. During the test, blood is collected from each newborn and spotted onto filter paper and then dried. The information recorded on the card includes details about the child, hospital, mother and referring doctor. The testing is undertaken by the Department of Chemical Pathology at the Women’s and Children’s Hospital.

DHS reported to the Committee that the process for handling and retaining the cards was to be the subject of a review by that Department. In undertaking the review, the Department was awaiting the outcome of the ALRC / AHEC report to see if any recommendations might be made regarding the privacy protection complexities surrounding the cards’ scientific and forensic value. DHS undertook to keep the Committee informed of the matter.

3.7.2. Justice Information System

The Committee is made aware, through involvement with the Justice Information System Privacy Committee, of information technology projects making use of data from the Justice Information System. This Committee met twice during the reporting year. Projects brought before the Committee are presented in the context of their compliance with the IPPs.

Appendix 1 Information Privacy Principles

A copy of this document can be found on the State Records of South Australia web site at http://www.archives.sa.gov.au/services/public/privacy_index.html.

CABINET ADMINISTRATIVE INSTRUCTION 1/89
SOUTH AUSTRALIAN GOVERNMENT
Cabinet Administrative Instruction No.1 of 1989
(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 Bank of South Australia
State Government Insurance Commission
Workers' Rehabilitation and Compensation Corporation

Appendix 2 Proclamation of the Privacy Committee of South Australia

A copy of this document can be found on the State Records of South Australia web site at http://www.archives.sa.gov.au/services/public/privacy_index.html.

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.

Appendix 3 Exemption granted to the Department of Human Services and incorporated hospitals or health units

According to the Proclamation establishing the Privacy Committee of South Australia, Clause 4(2), the Committee must include details of exemptions granted under subclause (1) in its annual report.

EXEMPTION FROM COMPLIANCE WITH THE INFORMATION PRIVACY PRINCIPLES

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

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

- the collection of the third party's information into a consumer's social, family or medical history is necessary for the DHS or incorporated hospitals or health centres to provide a health service directly to the consumer
- the third party's information is relevant to the family, social or medical history of that consumer.

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

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

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

Original signed

Terry Ryan
Presiding Member
PRIVACY COMMITTEE OF SOUTH AUSTRALIA
7 April 2003