

Privacy NSW

Annual Report 2007-08



privacynsw

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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.

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.

A summary of the IPPs are to be found on the website of Privacy NSW at http://www.lawlink.nsw.gov.au/lawlink/privacynsw/ll_pnsw.nsf/pages/PNSW_03_ppipact#3.

There is no objects clause in the PPIP Act. The Privacy Commissioner has recommended to the NSW Law Reform Commission (NSWLRC) that an objects clause be incorporated into the Act to provide better guidance to the community.

The HRIP Act, on the other hand, 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.

A summary of the HPPs are to be found on the website of Privacy NSW at: http://www.lawlink.nsw.gov.au/lawlink/privacynsw/ll_pnsw.nsf/pages/PNSW_03_hripact#3.

Report from the Commissioner

The purpose of this Annual Report is to give the Minister a clear, accurate and up to date picture of Privacy NSW and its operations for the year. It is also important that the Privacy Commissioner's views on current issues and the way ahead be published in this report. Accordingly, a number of current and future issues are discussed so the reader is informed of the position of Privacy NSW in times of considerable change. Previously, the Annual Report provided much information, which is now readily available on the Privacy NSW website. Rather than assembling a lengthy and to some extent otiose Annual Report, Privacy NSW is developing its website to ensure that an accurate up to date picture of what it does, is not a yearly event. For example, deidentified case notes, an important aspect of the work of Privacy NSW, will now be reported on the website. In this way, the operations of Privacy NSW will become more transparent.

This report is also formatted along the lines of the *Annual Reports (Statutory Bodies) Act 1984* (NSW).

It will come as no surprise to the reader that developing technology is bringing, and will continue to bring, very significant challenges for Privacy NSW. The 2008 – 2009 year promises to be a testing one, in that there will be an increase in the tempo of operations and likely structural changes.

The strategic direction of Privacy NSW over the short to medium term will be to:

- Realign its organisation and activities with statutory guidance.
- Improve compliance by public sector agencies with privacy legislation.
- Improve the level of privacy education and awareness in public sector agencies.
- Develop an even stronger working relationship with the NSW Attorney General's Department (AGD). This is particularly essential in relation to cross agency schemes such as the Anti Social Behaviour Project. (Close cooperation of this kind will be a key to the effectiveness of the initiatives being taken by AGD and the Department of Premier and Cabinet).

- Consult about, and assist in the formulation of, Codes of Practice.
- Review the basis upon which public interest Directions are made.
- Continue to engage actively with the law reform process, for example with NSWLRC.
- Improve access to decisions by publishing de-identified case notes on the website of Privacy NSW.

I have been very impressed by the work of the Privacy Contact Officers in public sector agencies, both when meeting them and also when observing how they handle privacy complaints. The quality of internal reviews, however, can always be improved and we must be vigilant in this regard. In my view, the privacy output of public sector agencies is very good.

Privacy NSW offers a successful low-key conciliation service. During the law reform process I would not like to see this service affected.

I would also like to observe that Acting Commissioner John Dickie, who led Privacy NSW from 2004-2007, has retired. His friendly and outgoing manner was very much appreciated within and outside Privacy NSW.



Judge K V Taylor
NSW Privacy Commissioner

Management and Structure

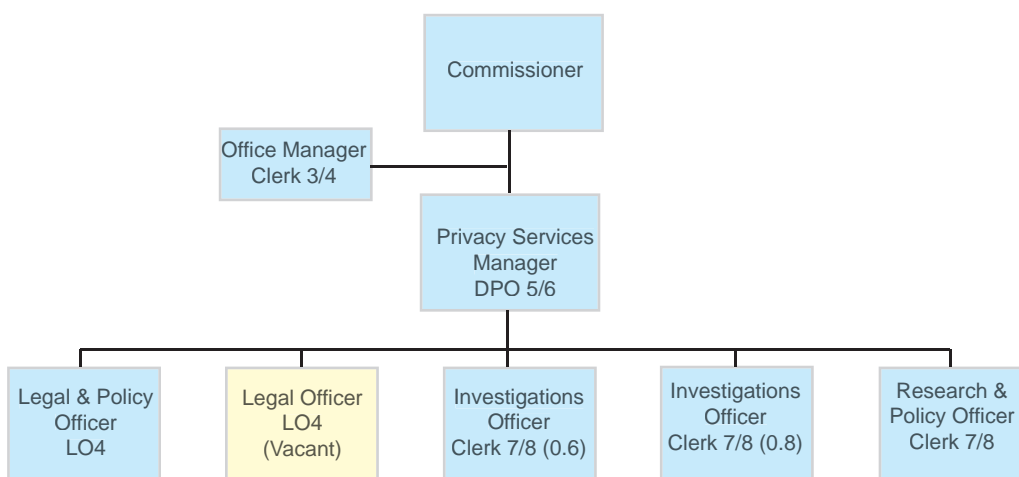
The Privacy Commissioner is appointed by the Governor on the recommendation of the Attorney General and is functionally responsible to that Office. The staff of the Privacy Commissioner are employed under the *Public Sector Management Act 1998 (NSW)*.

Because Privacy NSW expends public monies and employs public servants,

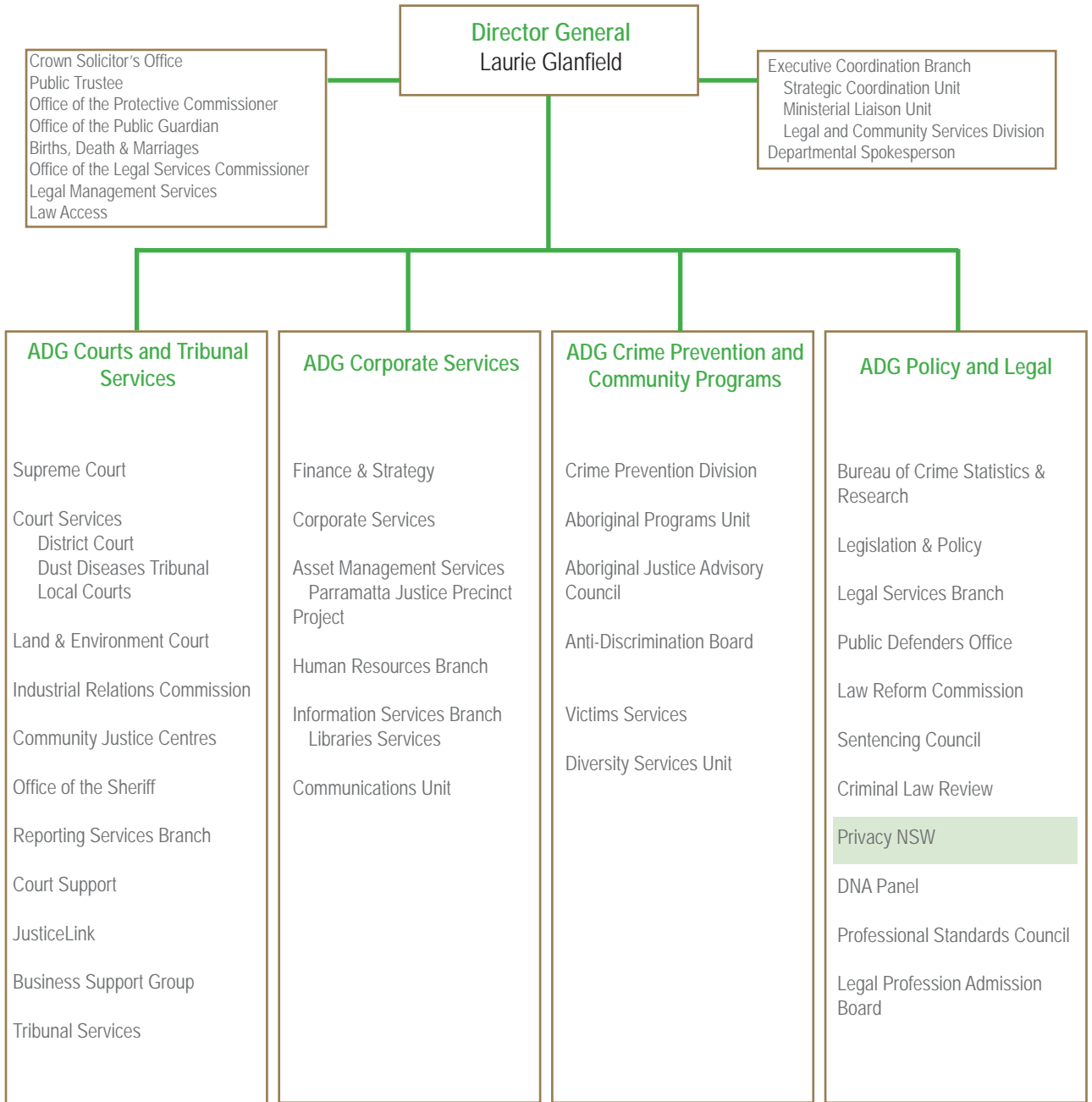
the Commissioner is administratively responsible to the Director General of AGD.

Accordingly, budgeting and some management processes of Privacy NSW are managed within AGD. These arrangements are working well and leave our small staff time to concentrate on operational activities. Privacy NSW has a total of seven staff and some of these work part time.

PNSW Organisation Chart



AGD organisation chart



Review of Operations

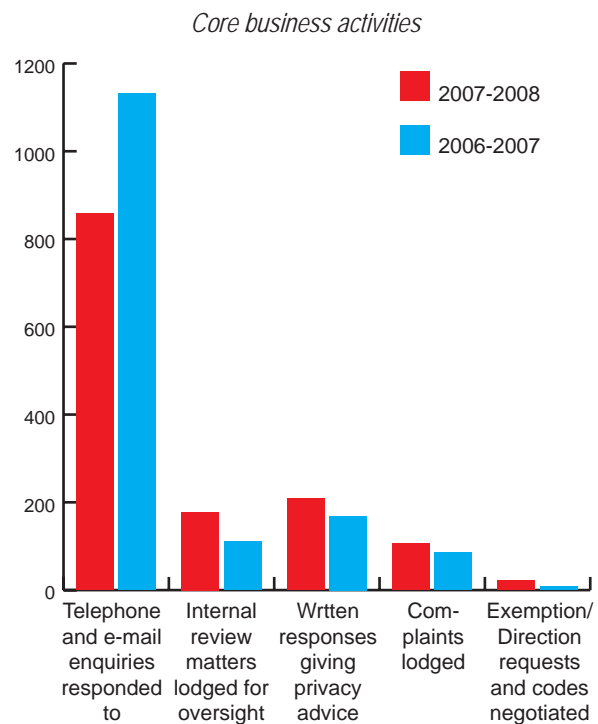
This Report now turns to statutory aspects of the legislation so the reader will better understand the operations of Privacy NSW.

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 reports and recommendations to relevant agencies and authorities. 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.

Staff members of Privacy NSW attend numerous public forums throughout the year to keep abreast of changes, which may impact on privacy legislation. They also oversee the conduct of internal reviews of privacy complaints by 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.



Enquiries

Privacy NSW provides advice to members of the public and other organisations. Enquiries are received by phone and email. In the reporting year, we received 724 telephone enquiries, 133 email enquiries and 1 face-to-face enquiry.

Privacy NSW does not provide legal advice, as this may conflict with our complaint handling functions. Although we cannot provide legal advice, we give general guidance on privacy related matters. In many cases, an enquiry is 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 2007 – 2008, often related to surveillance legislation, such as the *Workplace Surveillance Act 2005 (NSW)* and the *Surveillance Devices Act 2007 (NSW)*. Whilst the Acts mentioned above 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. AGD's publication on the Privacy NSW website: "A Short Guide to the Workplace Surveillance Act" provides information on the Workplace Surveillance Act.

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

Telephone

A drop in the number of telephone enquiries is part of a continuing trend at Privacy NSW. It is consistent with the statistics of the Office of the Victorian Privacy Commissioner, which are referred to in their annual report for 2007 – 2008 (at page 26). The decrease in telephone and email enquiries is offset by an increase in the use of our website.

E-mail

During this financial year, Privacy NSW received 133 e-mail enquiries on various subjects, some of which have been outlined above under the heading "Enquiries". Individuals have the option of telephoning or e-mailing Privacy NSW with an enquiry but it is important to note that the Privacy Commissioner requires complaints to be put in writing and sent by post or facsimile.

Internal Reviews

An internal review 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.

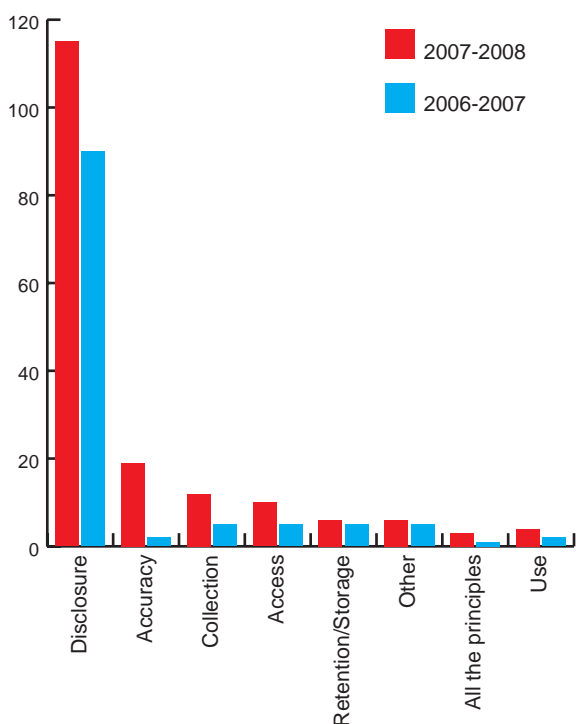
If an individual complains about a breach of a privacy principle, Privacy NSW will, in most cases, recommend that the individual lodge an internal review application with the relevant public sector agency, rather than seek investigation by Privacy NSW. This approach provides the complainant with the 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.

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 person, the complainant may apply to the ADT for an inquiry into the original complaint.

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.

Internal reviews by privacy principle



Note: The above chart is based on internal reviews lodged in the reporting year. The 'Other' category includes occasions when the application for internal review was not clear or it was not disclosed to us by the applicant

There has been an increase in the number of internal reviews since 2006-2007. Internal reviews concerning "Disclosure" remain dominant. Very few reviews give rise to submissions by Privacy NSW. As noted earlier, this reflects the consistently good standard of reviews submitted for oversight by Privacy NSW. It is usual for the Commission to make minor comments to assist a public sector agency in its internal review processes.

External Reviews (Appeals to the Administrative Decisions Tribunal)

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, the complainant can apply to the ADT for a review of the conduct, which gave rise to the internal review application.

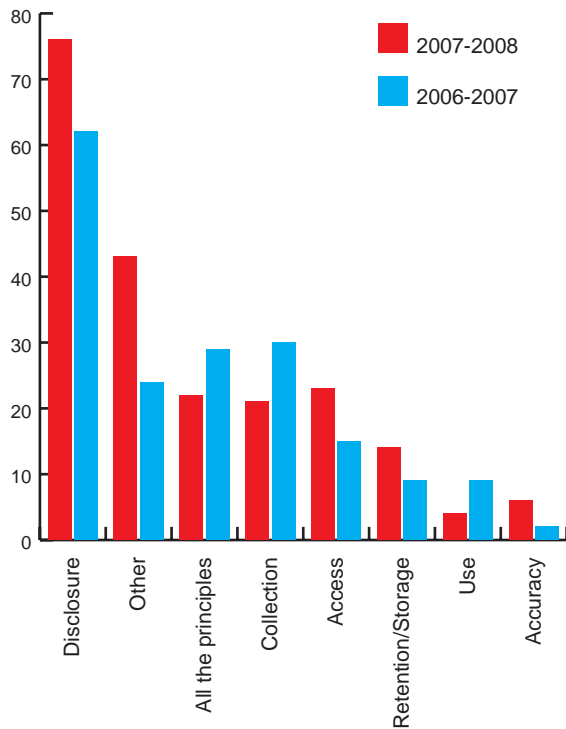
In the ADT proceedings, the Privacy Commissioner has the role of "amicus curiae" (friend to the Tribunal). This means that representatives of Privacy NSW, who attend the Tribunal, assist it with interpretation of privacy law but do not assist the parties to the litigation.

In 2007-8, Privacy NSW aimed to attend all privacy-related planning meetings and hearings in the ADT and increased its participation in matters before the Tribunal.

Advice

Privacy NSW provided advice to individuals and agencies during the reporting period. These agencies included those in the NSW public-sector, local government and Commonwealth government agencies. 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.

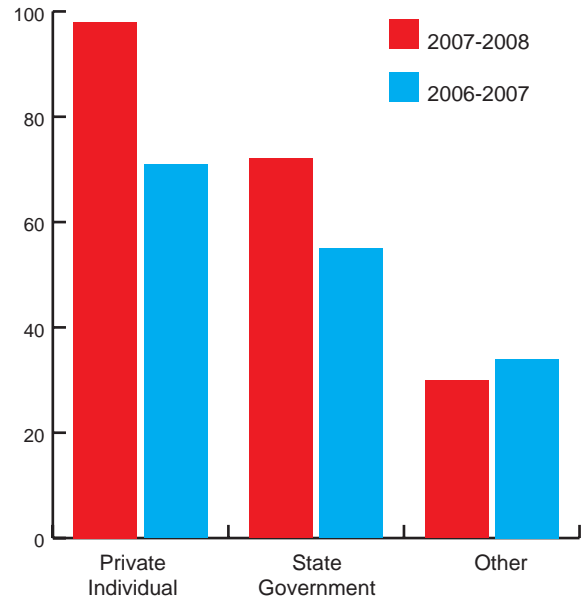
Written advice provided by privacy principle



The above table deals with the type of written advice provided.

Note: "Privacy Principle" includes the Information Protection Principles under the PPIP Act 1998 and the Health Protection Principles under the HRIP Act 2002. The "Other" category includes the categories "unknown/none" and "unique identifiers".

Written requests for privacy advice



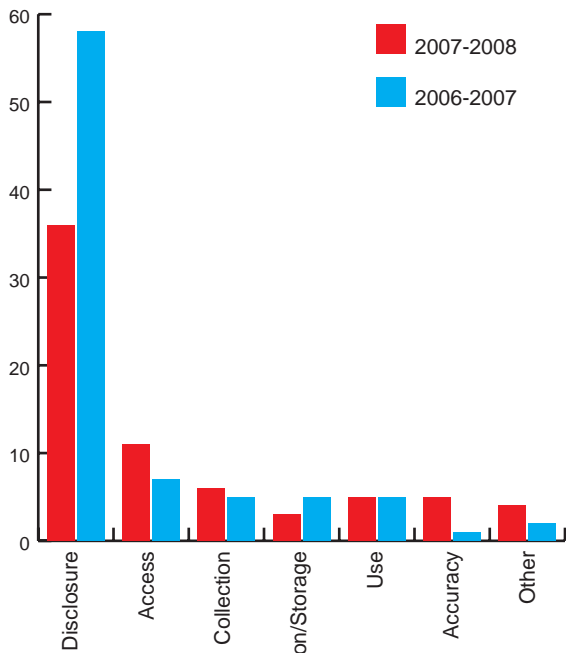
Note: The category "Other" includes written requests for advice from private organisations, other governments, local government, advocates/lawyers, inquiry bodies and requests which were categorised as miscellaneous.

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.

The Privacy Commissioner may decline to investigate a complaint, if, in his view, it is frivolous, vexatious, trivial, lacking in substance, not made in good faith etc. In addition, he 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.

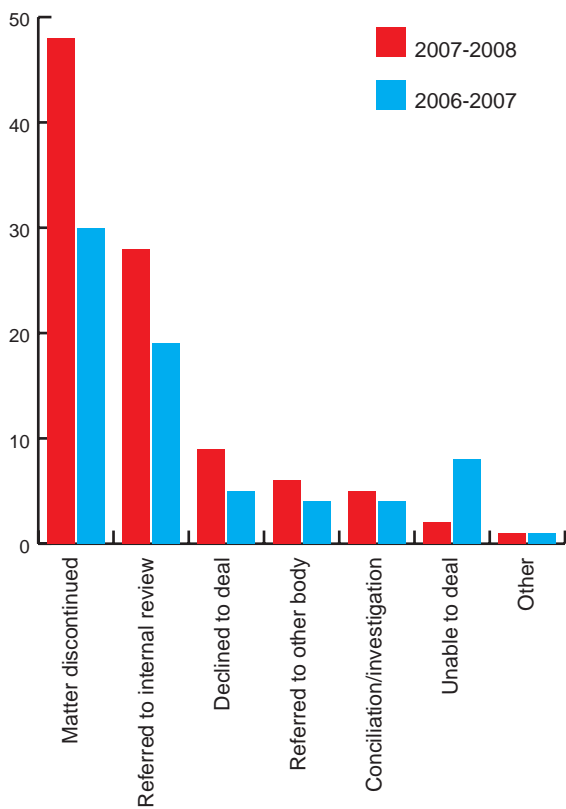
Complaints lodged by privacy principle



Note: The "Other" category includes the categories "unknown/none" and "unique identifiers".

Note: The "Matter discontinued" category

Complaint outcomes for finalised matters

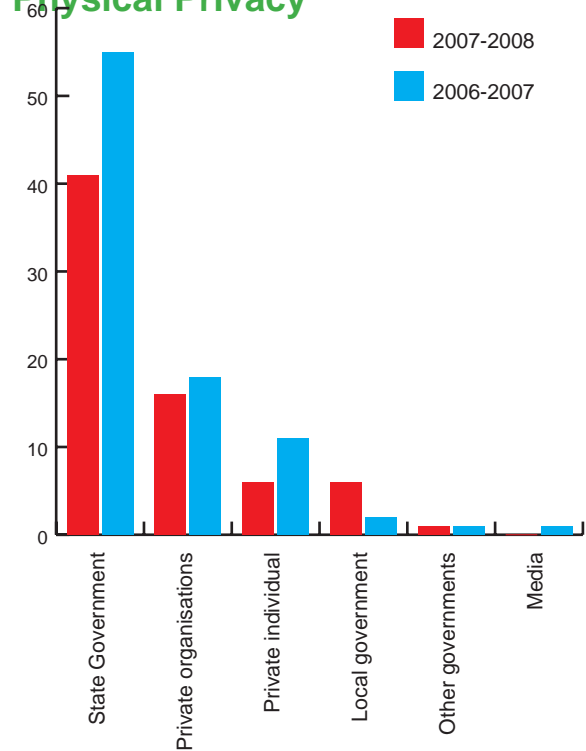


includes "Complainant withdrew". In some instances no advice to this effect was received and or there was no further contact from complainant. The category "Declined to deal" includes "Alternative means of redress"

and "Out of Time". As regards the category "Referred to other body" – the majority of these complaints were referred to the Office of the Federal Privacy Commissioner with one referral being made to NSW Police. Most complaints were dealt with except for those, which were not a privacy complaint (these are included in the "Other" or the "Unable to Deal" category).

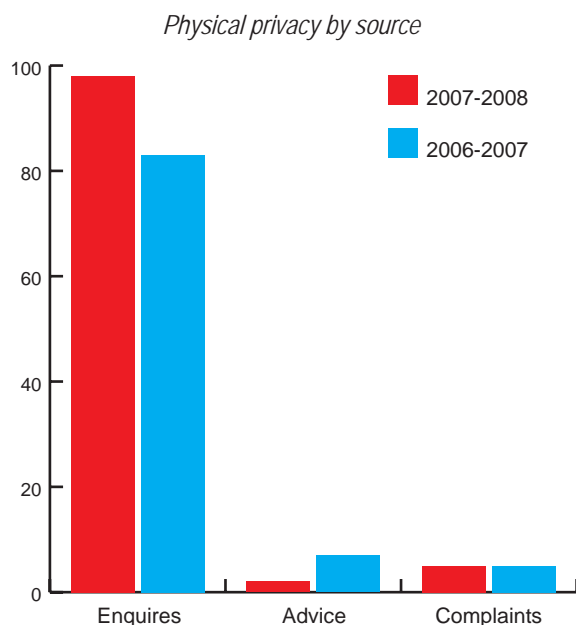
Complaints against

Physical Privacy



Privacy NSW may have a residual discretion and limited jurisdiction to investigate physical privacy matters and privacy matters that do not only relate to 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 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.



Note: Physical privacy is not a “privacy principle” but the number of enquiries about it impacts on the work of Privacy NSW.

Codes of Practice

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

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 listed on the website of Privacy NSW.

Previously, Privacy Codes of Practice had not been used extensively. 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.

Privacy NSW remains close to the NSWLRC process so as to contribute to any modification of the present legislative model relating to Privacy Codes of Practice. The Commissioner also wishes to ensure that any change to the existing system enhances the protection of personal and health information held by New South Wales public sector agencies.

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

New South Wales privacy legislation enables the Privacy Commissioner to make a direction exempting a public sector agency or a private sector “organisation” (as specially defined in the HRIP Act) from compliance with the application of the privacy principles. 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 are presently 15 directions in force. These are listed on the website of Privacy NSW.

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. 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. During the reporting year, we received and reviewed 7 Privacy Management Plans. Several of these were from Local Councils and the rest were from other public sector agencies.

Privacy Law Reform

The impact of law reform proposals on the privacy landscape is likely to be considerable but at this time it is difficult to identify any detail. Privacy NSW will publish on its website its responses to the Australian Law Reform Commission and to the NSWLRC privacy references.

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 the AGD. The Director General's target is that all staff should attend 35 hours of training per year.

In the period 2007/8, all 5 full-time employees of Privacy NSW exceeded the Director General's training target and our 2 part-time staff members both attended approximately 25 hours of training during the year.

In addition, Privacy NSW financed and supported a staff member, who undertook the Public Sector Management Course. This is the third year running, that Privacy NSW has paid for a female staff member to undertake this course.

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 bookmarking, which allows users to begin from the same point at a later session and it allows users to record comments.

At present the program is being made available by invitation only and public sector agencies are required to approach Privacy NSW to arrange access. Some 130 staff of State government agencies participated in the online training during this reporting year.

At present the Privacy Training Program does not cover other privacy legislation such as the HRIP Act.

More widespread access may be considered in the future, although this depends on usage, operating costs and budget allowances.

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. The website is currently being reviewed to make it as "user-friendly" as possible.

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 28th in Wellington, New Zealand (30 November to 1 December 2007) and the 29th in Seoul, Korea (19 to 20 June 2008). The communiqués and programs of the 28th and 29th Forums are available on the APPA website, which is hosted by the Office of the Privacy Commissioner (Cth). The Privacy Services Manager of Privacy NSW attended the Wellington Forum.

Staff at Privacy NSW also participated in other APPA activities during the reporting period, for example Privacy Awareness Week.

Privacy Awareness Week (PAW)

PAW is an initiative of all the APPA privacy authorities, including the Australian states and territories. Privacy NSW 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. An annual competition is part of PAW and, this year, secondary school students were asked to create and submit a two minute video about privacy and what it means to them. The heads of the APPA authorities selected the winners. Some of the competition videos can be viewed on the APPA website at www.privacyawarenessweek.org/paw/competition08.html.

It is important to note, however, that the experience of Privacy NSW shows those in the workforce, who are involved in the management of data and its protection, and those, who manage them, are the most important recipients of privacy awareness. These individuals are also the most important recipients of tools to handle privacy issues.

Law Week

Privacy NSW participated in Law Week (31 March to 5 April 2008). On 1 April 2008, AGD hosted the Community Open Day, which is part of Law Week, at the Parramatta Justice Precinct (Privacy NSW is situated within the Precinct). The Community Day provided Privacy NSW with an opportunity to promote privacy issues to the public. There were over a 100 visitors to the stall of Privacy NSW and the areas of concern raised included health privacy, criminal records and workplace privacy.

Privacy Advisory Committee

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. Members of the PAC are appointed by the Governor.

During the reporting period, the Committee met on 12 July 2007, 3 April 2008 and 23 June 2008. Privacy NSW has found these meetings particularly useful in formulating policy. It is also a useful way for Privacy NSW to connect to people with significant responsibilities in the community.

EAPS, CALD And Disability Strategic Plan Reporting

Privacy NSW reports through AGD and the Community Relations Commission in relation to the Ethnic Affairs Priority Statement (EAPS). This year we reported to both bodies on our newly devised client survey, which will contain questions relating to the needs of members of Culturally and Linguistically Diverse (CALD) Communities and people with disabilities. When the results of the survey are analysed and collated, Privacy NSW hopes to be able to adjust its programmes and services to address any needs revealed.

Staff of Privacy NSW also attended various “consciousness-raising” events, which took place under the sponsorship of the Diversity Services section of AGD. The staff at Privacy New South Wales are also encouraged to attend the Department’s Disability Network meetings and any associated events.

Appendix A – Financial Statements 2007 – 2008

	2006 – 2007	2007 - 2008
EXPENSES		
Total Employee Related Payments	723,840	1,288,762.66
Other Operating Expenses	275,044	235,527.92
Total Depreciation	161,061	26,661.75
Total Maintenance	479	1,188.24
TOTAL EXPENSES	1,160,424	1,552,140.57
Less: Revenue	2	166.69
NET COST OF SERVICES	1,160,426	1,552,307.26
Less: Depreciation	-161,061	26,661.75
Less: Crown Liabilities	-100,176	488,848.85
NET POSITION	\$899,189	\$1,036,796.66

Privacy NSW's financial statement is included in this annual report, although it is prepared by the Financial Services section of the AGD. 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.

In 2007-08 Employee Related Payments increased due to year-end adjustments for Long Service Leave. This adjustment is in accordance AASB 119 *Employee Benefits*, which measures Long Service Leave at Present Value. This is based on the application of certain factors (specified in NSW TC 07/04) to employees with five or more year's service, using current rates of pay. These factors were determined based on an actuarial review to approximate present value.

Appendix B - Abbreviations

ADT	Administrative Decisions Tribunal
AGD	New South Wales Attorney General's Department
APPA	Asia Pacific Privacy Administrators Forum
HPPs	Health Privacy Principles
HRIP Act	<i>Health Records and Information Privacy Act 2002</i>
IPPs	Information Privacy Principles
NSWLRC	New South Wales Law Reform Commission
PAC	Privacy Advisory Committee
PAW	Privacy Awareness Week
PPIP Act	<i>Privacy and Personal Information Protection Act 1998</i>
Privacy NSW	Office of the NSW Privacy Commissioner

