
Privacy NSW
Annual Report 2008/2009



privacynsw

Privacy NSW

Office of the NSW Privacy Commissioner
Level 4, Justice Precinct Offices
160 Marsden Street
Parramatta NSW 210

Locked Bag 5111
Parramatta NSW 2124

Phone: 02) 8688 8585

Fax: 02) 8688 9660

Email: privacy_nsw@agd.nsw.gov.au

Website: www.lawlink.nsw.gov.au/privacynsw

ISSN: 1448-4609



privacynsw

The Hon. John Hatzistergos, MLC
Attorney General and Minister for Industrial Relations
Level 36
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

29 October 2009

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 2009.

Yours faithfully

Judge KV Taylor AM RFD
NSW Privacy Commissioner

mail: Locked Bag 5111
Parramatta NSW 2124

office: Level 4
Justice Precinct Offices
160 Marsden Street
Parramatta NSW 2150

phone: (02) 8688 8585
fax: (02) 8688 9660
email: privacy_nsw@agd.nsw.gov.au
website: www.lawlink.nsw.gov.au/privacynsw

CONTENTS

OUR CHARTER.....	5
REPORT FROM THE COMMISSIONER.....	6
MANAGEMENT AND STRUCTURE.....	8
REVIEW OF OPERATIONS	9
Enquiries.....	9
Internal Reviews.....	10
Appeals to the Administrative Appeals Tribunal (ADT)	11
Advice.....	12
Complaints.....	13
Physical Privacy	14
Codes of Practice	15
Public Interest Directions.....	15
Privacy Management Plans.....	15
Key Achievements	16
Privacy Law Reform	17
TRAINING.....	19
Staff Education.....	19
Interactive Online Training.....	19
The Website.....	19
PRIVACY AUTHORITIES AND OTHER MATTERS	20
Asia Pacific Privacy Authorities (APPA)	20
Privacy Awareness Week.....	21
Privacy Advisory Committee.....	21
EAPS, CALD and Disability Strategic Plan Reporting.....	22
APPENDIX A – Financial Statement – 2008/2009	23
APPENDIX B – Abbreviations	23

OUR CHARTER

Privacy New South Wales (Privacy NSW) is the Office of the NSW 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 (NSW), 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.

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.

A summary of the HPPs is to be found on the website of Privacy NSW.

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. Information that is regularly published on the Privacy NSW website is not reproduced here.

The good work of agencies' privacy contact officers continues, in particular, in their conduct of internal reviews. Officers have also been responsive to Privacy NSW's request for their Privacy Management Plans to be updated, especially as a large number of them had not been updated since the enactment of the *Health Records and Information Privacy Act 2002*.

Queries received from members of the public continue to concern 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 from intrusions upon a person's seclusion, solitude or private affairs, public embarrassment or misrepresentation or identity theft

Such broader privacy rights are currently protected by some laws, such as nuisance, harassment or workplace surveillance. However, there are still gaps in the protection afforded by the law. The NSW Law Reform Commission (NSWLRC) has recently recommended that these gaps be filled by the introduction of a statutory cause of action for invasion of privacy, which I have supported.

Earlier this year, the Department of Premier and Cabinet issued 'exposure-draft' legislation that would replace current freedom of information legislation and bring in a new open government regime. My principal concern, as Privacy Commissioner, was for the current privacy law reform process to proceed in tandem with the reform of the freedom of information laws. I expressed the view that law reform should not be driven solely by concerns about access to government information and that privacy protection should equally inform the process. I also noted that there remains an outstanding issue of how privacy and open government laws should intersect, particularly where the personal information of third persons is sought under an access application.

I advised the Attorney General that it was appropriate for this 'intersection' issue to be specifically reported upon by the NSWLRC. The Attorney General has since expanded the Commission's privacy terms of reference to include not only the intersection issue, but also the relationship between the Privacy Commissioner and the new Information Commissioner. The Commission's report on these issues is expected by the end of this year.

Ideally, I would like to have seen the reform of privacy laws proceed in tandem with that of freedom of information laws. My particular concern is to ensure that privacy is adequately protected in the context of freedom of information. It would also assist public sector agencies and the public if amendments to privacy and open government legislation were to commence simultaneously.

An outstanding reform issue is the relationship between the Privacy Commissioner and the new statutory office of Information Commissioner. In June 2009, the Premier delivered his Agreement in Principle speech on the now 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.

Ideally, the precise detail of this plan will be resolved before the new Information Commissioner starts exercising functions under the GIPA Act in early 2010. This will assist agencies in seamlessly transitioning to the new FOI regime

In the year ahead, Privacy NSW will continue performing its core statutory functions of handling complaints, overseeing internal reviews and intervening in Tribunal proceedings as appropriate. It will also continue the strong working relationships with agencies, through the provision of assistance and guidance. With greater resources, there is capacity for greater community outreach on privacy issues, particularly if co-located with the Information Commissioner's Office.

Any co-location of Privacy NSW and the Information Commissioner's Office is likely to pose some challenges in the financial year 2009/2010. There may be some disruption with a move of the office from Parramatta to Sydney CBD premises. However, it will also bring an opportunity to enable revitalise its operations and develop strong, cooperative relationships with agencies in the provision of balanced guidance on their open government and privacy obligations.

A handwritten signature in dark ink, appearing to read 'KV Taylor', is positioned above the printed name.

Judge KV Taylor

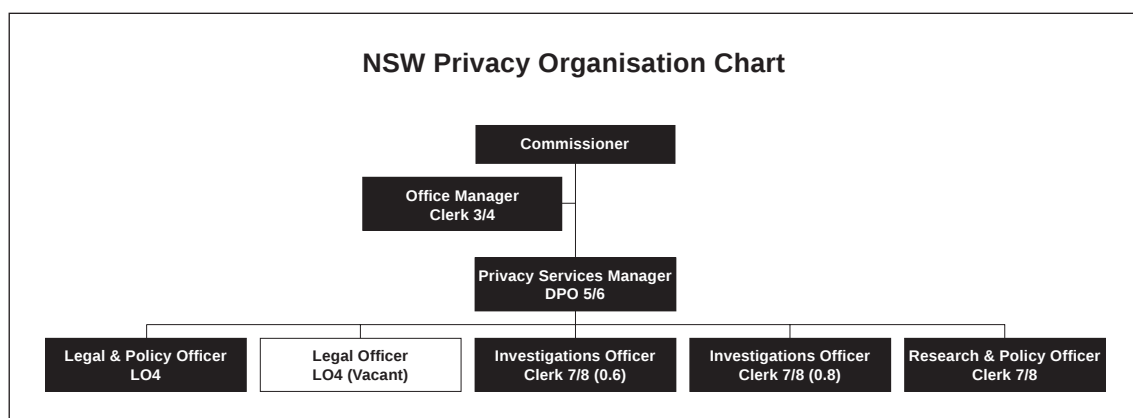
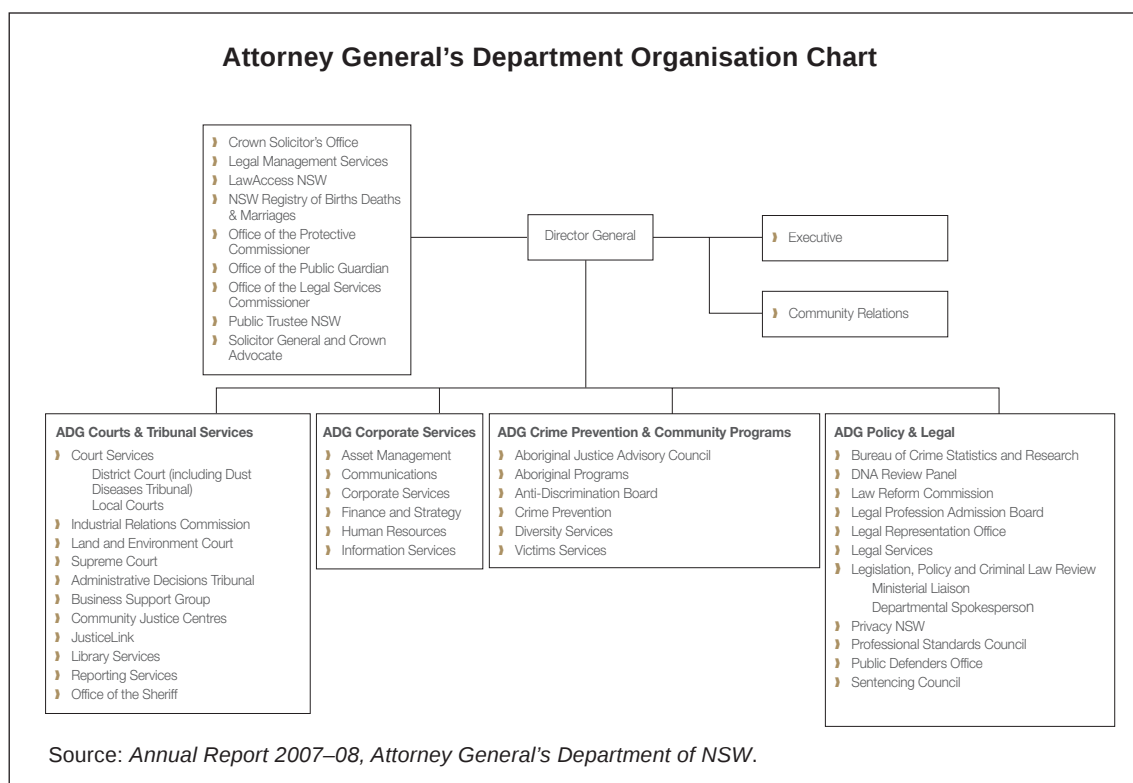
NSW Privacy Commissioner

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 Attorney General's Department of NSW (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. Some of these work part time.



REVIEW OF OPERATIONS

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

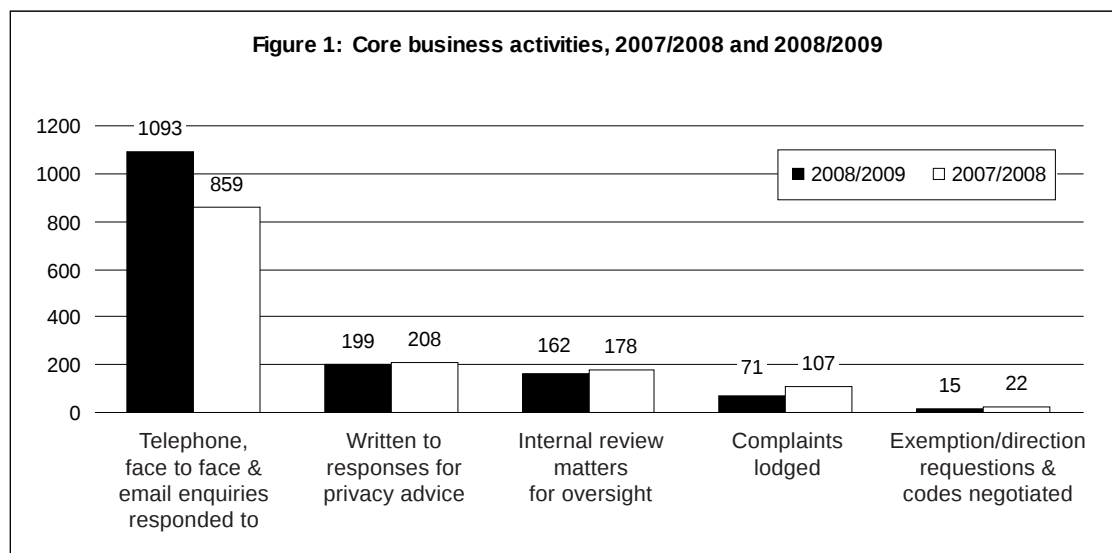
Privacy NSW provides a number of services. Its core work includes advising individuals, public sector agencies, businesses and other organisations about the steps they should take to ensure that basic privacy rights are protected. Privacy NSW does this by educating and promoting the meaning and value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

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 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.

They also provide oral and written guidance on privacy matters to Departmental Heads and Ministers – often on complex compliance issues under privacy laws.

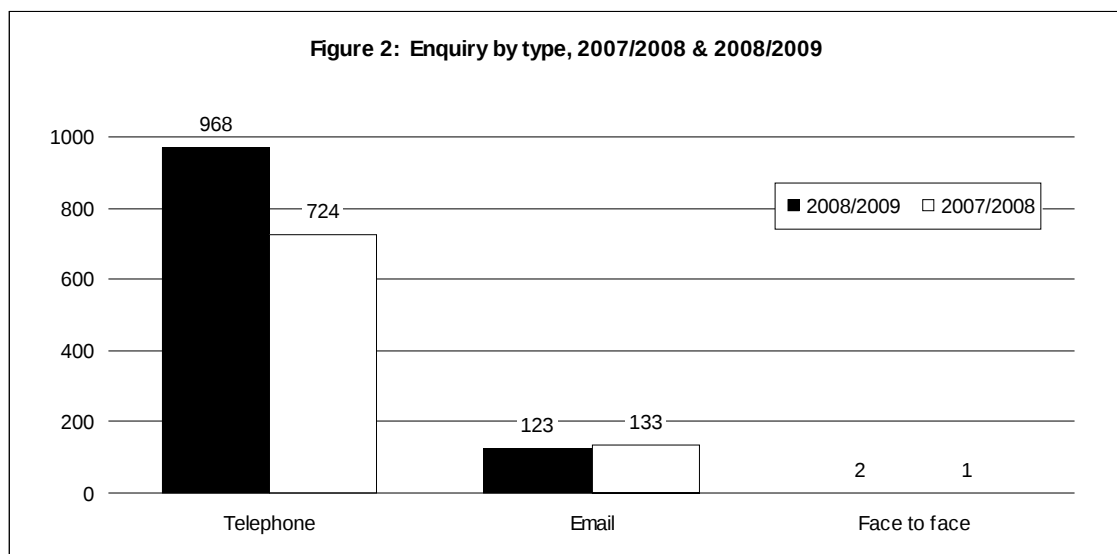
Staff members of Privacy NSW attend numerous public forums throughout the year to keep abreast of changes, which may impact on privacy legislation. They also oversee the conduct of internal reviews of privacy complaints by public sector agencies and appear in the Administrative Decisions Tribunal (ADT)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

Privacy NSW provides a variety of core services (see Figure 1).



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 in 2008/2009 was 1 093, whereas last year it was 858 (see Figure 2).



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 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 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.

Internal Reviews

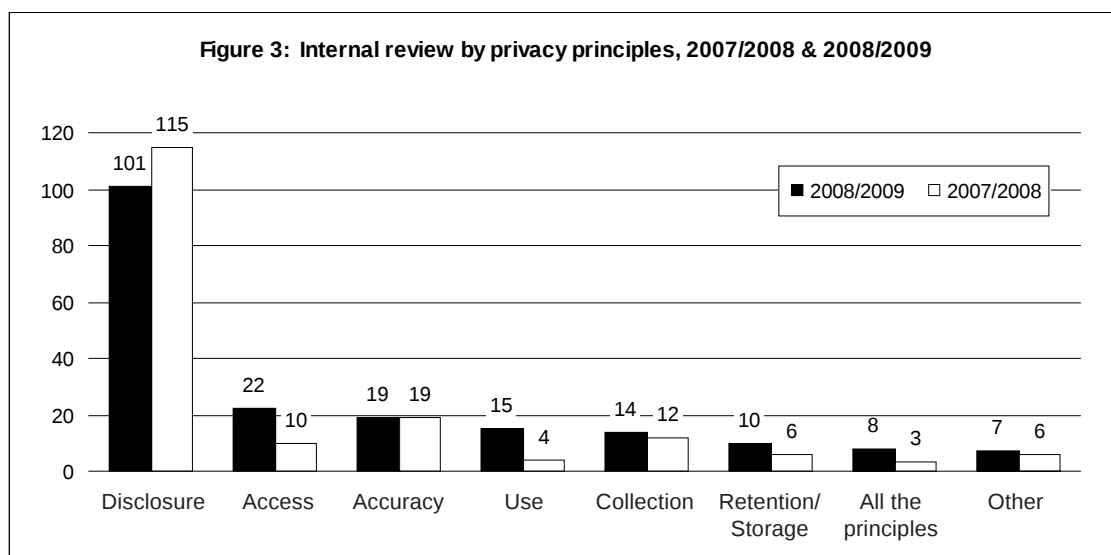
An internal review is an internal investigation, which a NSW public sector agency is required to conduct, when an individual makes a privacy complaint under Part 5 of the PPIP Act or Part 3 of the HRIP Act.

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 section 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.



Note: The above figure 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.

Internal reviews concerning "Disclosure" remain dominant, although the numbers for 2008/2009 (101) are slightly less than those for 2007/2008 (115). Internal reviews have increased since last reporting year in relation to the privacy principles of "access", "use", "collection", "retention/storage" and in cases where a complaint involves all the privacy principles (see Figure 3). 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.

Appeals to the Administrative Decisions Tribunal (ADT)

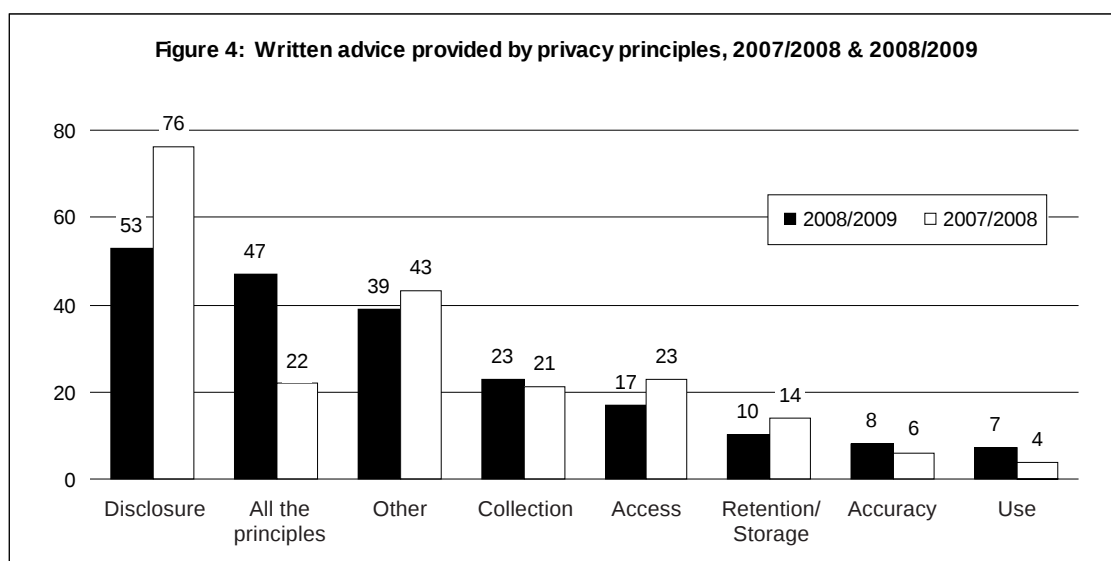
If an individual is not satisfied with the outcome of their internal review or, if their application is not dealt with by the relevant public sector agency within 60 days from the agency's receipt of their application, the complainant can apply to the ADT for a review of the conduct, which gave rise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

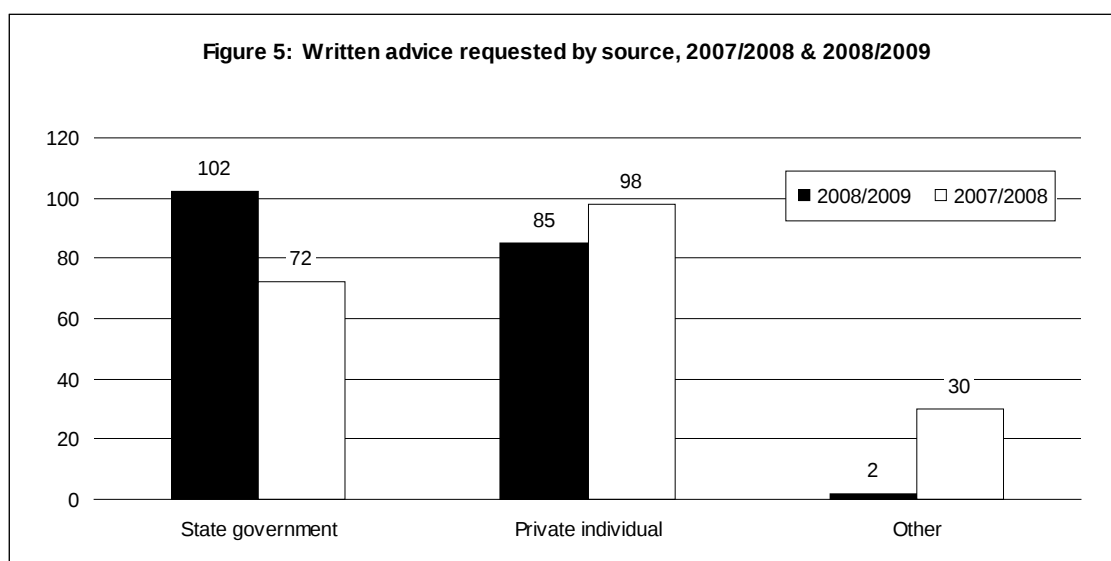
In 2008/2009, Privacy NSW made written submissions in a number of matters before the Tribunal. Privacy NSW also instructed the Crown Solicitor to appear on behalf of the Privacy Commissioner in several matters.

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 the 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. Figures 4 and 5 deal with the type of written advice provided.



Note: "Privacy principles" include 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".

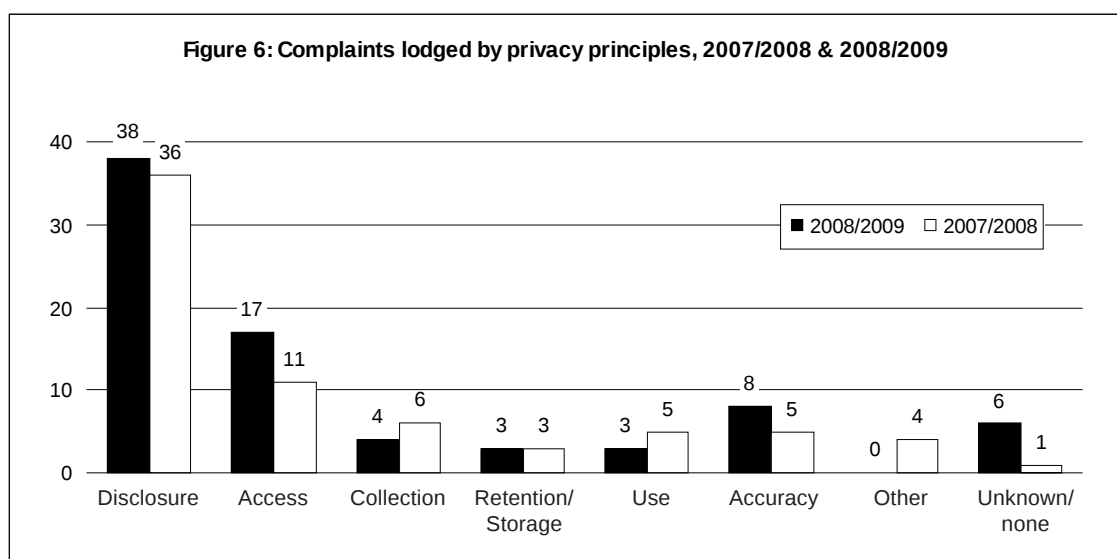


Note: The category "other" includes written requests for advice from private organisations, other governments, local government, advocates/lawyers, inquiry bodies and requests which were categorised as miscellaneous.

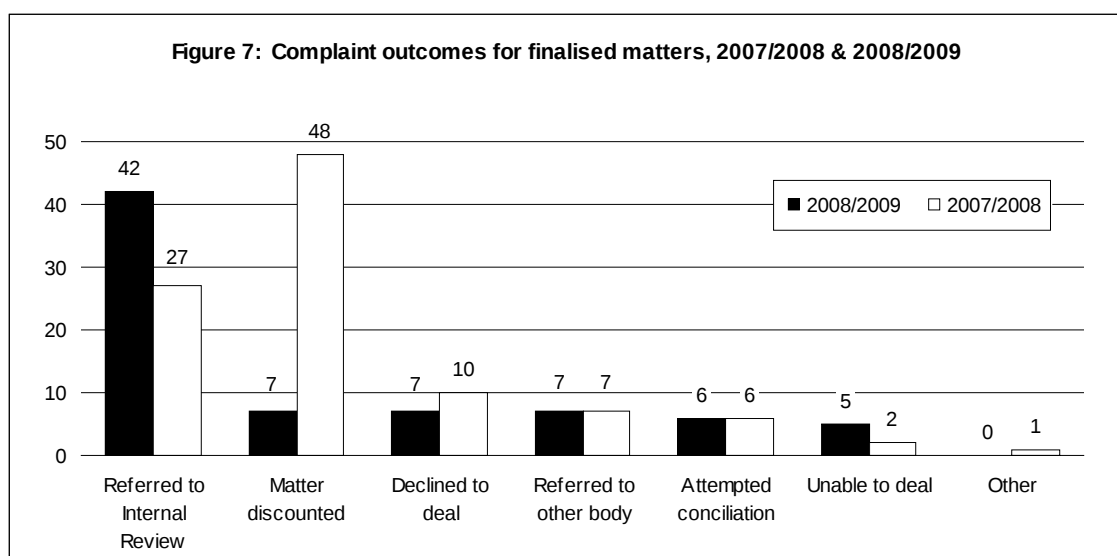
Complaints

Under NSW 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 NSW government agencies. Complaints under the HRIP Act, deal primarily with alleged breaches of the HPPs by NSW government agencies or the private sector.

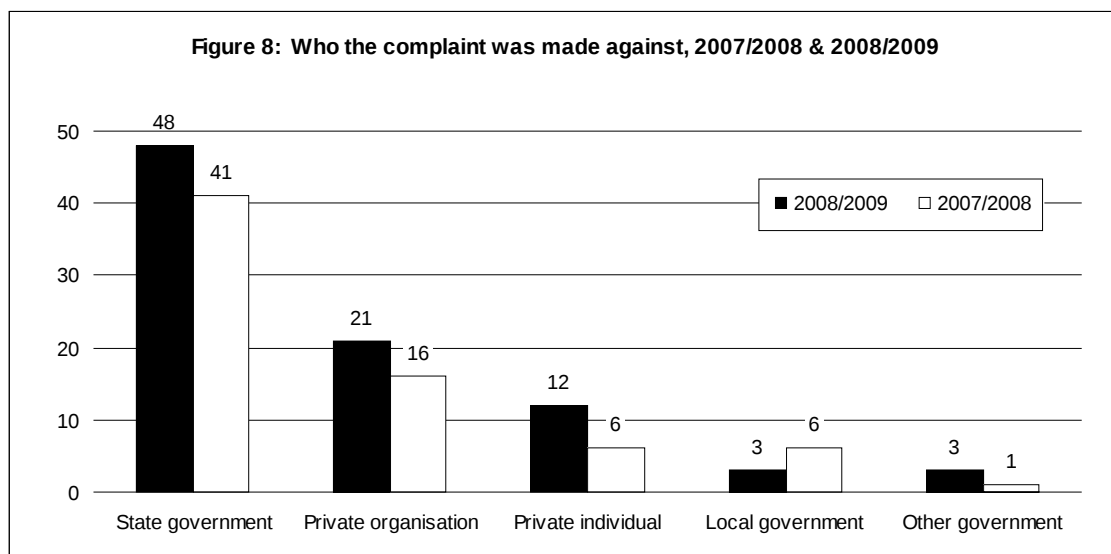
The Privacy Commissioner may decline to investigate a complaint, if, in his view, it is frivolous, vexatious trivial, lacking in substance, not made in good faith etc. In addition, he can decline a complaint, if it can be resolved by referral to a more appropriate agency or if it would be more appropriately dealt with under the internal review provisions (see Figures 6, 7 and 8).



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

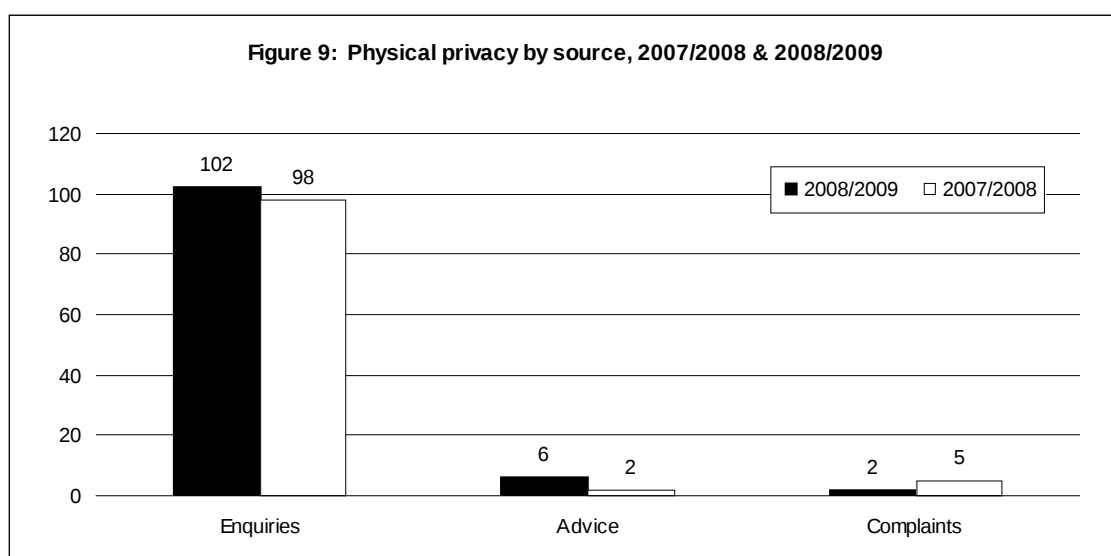


Note: The "matter discontinued" category includes "complainant withdrew". In some instances no advice to this effect was received and "no further contact from complainant". The category "decline to deal" includes "alternative means of redress" and "out of Time". As regards the category "referred to other 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).



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 (see Figure 9). 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 and the 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 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.

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 NSW 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.

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

NSW 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 14 the 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, Privacy NSW revised its *Guide to Making Privacy Management Plans*. This document is available in PDF format on our website. In addition, staff at Privacy NSW undertook an extensive audit of privacy management plans with a view to ensuring that all state agencies complied with their statutory obligation to provide a copy of their plan to the Privacy Commissioner and that all privacy management plans were up-to-date. There is a statutory obligation for public sector agencies to include provisions in their plans relating to the *Health Records and Information Privacy Act 2002*, if applicable (section 33 of the PPIP Act). The Privacy Commissioner is particularly concerned that all agencies have updated privacy management plans, particularly in regard to any health information they handle.

Key Achievements 2008/2009

- ♦ Continuing the work commenced in the previous reporting period, the activities of Privacy NSW have been realigned with the statutory functions of the Privacy Commissioner under the PPIP and HRIP Acts. Specific functions are discussed below.
- ♦ Revision of Privacy NSW's *Guide to Making Privacy Management Plans*, for the assistance of public sector agencies on the minimum requirements for, and assistance in writing, a privacy management plan as required under Part 3, Division 2 of the PPIP Act.
- ♦ Process commenced of having all public sector agencies to update their privacy management plans, most of which have not been updated since the enactment of the HRIP Act and do not refer to the right to seek internal review in respect of health information.
- ♦ Publication of case notes on Privacy NSW's website, each being allocated a neutral citation consistent with international standards. The case notes report a selection of enquiries or complaints received by Privacy NSW and the internal reviews conducted by public sector agencies under the PPIP and HRIP Acts.
- ♦ Conduct of a client satisfaction survey of public sector agencies, showing encouraging results especially in terms of the satisfaction with Privacy NSW's advice, the timeliness, usefulness of forms and the likelihood of making further requests for advice.
- ♦ 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 direction made under section 41 of the PPIP Act, relating to requests made by the Ombudsman under section 13AA of the *Ombudsman Act 1974*, to allow Public Sector Agencies to cooperate with the Ombudsman when the Ombudsman is conducting preliminary inquiries under section 13AA of the *Ombudsman Act 1974*.
- ♦ Revision of public interest directions under the PPIP and HRIP Acts, relating to the Anti-Social Behaviour Pilot Project, incorporating minor changes relating to the administration of the Project. Finalisation of the public interest direction for Youth Conduct Orders. Involvement in seeking a public interest direction for the CREDIT program, which ultimately did not require a direction in order for it to operate.
- ♦ Submissions to the NSWLRC for its Invasion of Privacy report and in response to its Consultation Paper 3: Privacy Legislation in NSW.
- ♦ Submissions to the Department of Premier and Cabinet on the Open Government Information Bill 2009 (as it was), noting in particular the outstanding issue for resolution of the intersection between privacy and open government.
- ♦ Submission to the Australian Health Ministers Advisory Council on the proposed National Registration and Accreditation Scheme for Australian health care professionals, the National Electronic Health Transmission Authority on its Privacy Blueprint for the Individual Electronic Health Record: Shaping the Future of Healthcare.

- ♦ Sponsoring the regular meetings of the Privacy Advisory Committee established under Part 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, which was formed last year.
- ♦ Participating in the Audit Committee for the City of Sydney's Street Safety Camera Program, involving both privacy and general surveillance issues.

Key Issues

- ♦ Input into the NSWLRC reference which is considering the intersection of privacy and freedom of information laws
- ♦ Input to the current references to the NSW and Australian Law Reform Commissions which are considering privacy laws nationally.

Privacy Law Reform

In January 2006, the Attorney General requested the NSWLRC to undertake a comprehensive review of the State's privacy laws. In May 2008, the Australian Law Reform Commission reported on its extensive review of privacy issues, focusing on current Commonwealth legislation and its effectiveness in protecting privacy. It recommended that the Commonwealth Government re write privacy laws, by introducing a statutory cause of action for the invasion of privacy and prescribing a single set of Uniform Privacy Principles to apply to all federal government agencies and the public sector.

The NSWLRC has since issued its own report on the Uniform Privacy Principles and the introduction of a statutory cause of action for invasion of privacy.

The Privacy Commissioner has publicly supported this recommendation, on the basis that it will fill a significant gap in the privacy protection framework and complement existing information-protection laws, which do not address all forms of privacy intrusion.

In June 2009, the Privacy Commissioner made submissions to the Department of Premier and Cabinet on the proposed open government legislation. It was noted that, although privacy and open government laws share common ground, there exists an inherent tension between their objectives. 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.

At the close of last financial year, the Privacy Commissioner recommended to the Attorney General that the NSWLRC's terms of reference be expanded to include this 'intersection' issue. The Attorney General has done so, with a further reference on the relationship between the Privacy Commissioner and new Information Commissioner. At the time of writing, the NSWLRC is finalising its reports on both these issues.

In June 2009, Parliament passed the *Government Information (Public Access) Act 2009*, which imposes new obligations on agencies to release, and broadens individuals' existing legal rights to access, government information. 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 breach of a privacy principle.

The Privacy Commissioner has expressed the view that privacy could be better protected under the GIPA Act. This is because the presumption in favour of disclosing government information prevents privacy from being balanced on an equal footing with the public interest in openness and transparency. There are a number of means by which privacy can be better protected, such as amending Schedule 1 so that there is a conclusive presumption of an overriding public interest against disclosure where disclosure of government information would involve an unreasonable invasion of a third person's privacy.

TRAINING

Staff Education

The Privacy Commissioner recognises 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 2008/2009, most full-time employees of Privacy NSW reached the Director General's training target of 35 hours (5 days) training.

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. During the 2008/09 financial year, 63 staff of government agencies undertook the online training. These staff were from seven government agencies, four being local government and three state government agencies.

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.

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 30th Asia Pacific Privacy Authorities Forum – Melbourne, 13-14 November 2008.

The first day of the Forum was a broader session with representatives from the Victorian, South Australian, Queensland, ACT and Australian government departments responsible for privacy in attendance, as well as APPA members.

During this broader session, jurisdictional reports were presented and privacy issues and developments were discussed. The second day of the Forum was a closed session for APPA members. Jurisdictional the reports were discussed in greater 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 2009.

More details of the proceedings of both days are available in the Communiqué of the 30th Forum, which is available on the website of the Office of the Privacy Commissioner.

The 31st Asia Pacific Privacy Authorities Forum – Hong Kong, 11-12 June, 2009.

The first day of the Forum was a closed session with representatives from the National Commission for Data Protection, Portugal and the Office of Personal Data Protection, Macau in attendance as observers. The Forum reported on national and international privacy developments and received the report of the Privacy Awareness Week Working Group on the success of Privacy Awareness Week (PAW) 2009. The second day of the Forum was a broader session with invited guests.

These included representatives from the Hong Kong Department of Justice and the Constitutional and Mainland Affairs Bureau.

Following the broader session members participated in a public Forum on Electronic Health Record Sharing. On 13 June, a conference was held in Macau on "Data Breaches – Problems And Solutions". Presenters at the conference included representatives from APPA as well as from Macau and mainland China.

More details of the proceedings of the 31st APPA Forum are available in the Communiqué it issued. This is available on the website of the Office of the Privacy Commissioner.

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

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. An annual competition is part of PAW. This year's theme was "Think before you upload. Once it's out there, it's everywhere!"

A sponsored activity is part of PAW and this year, school secondary school students were asked to investigate the privacy compliance of websites by using a Privacy Checklist to scrutinise and rate websites which they usually accessed, for privacy compliance.

The APPA produced a short animated video 'Think before you upload!' which highlighted the risks for young people when accessing social networking sites. The main message of the video was that young people needed to be aware of the possible adverse impact/negative consequences of posting personal information online.

Students were encouraged to look at all the implications such as whether they were happy for everyone to read their postings (for example, parents/other adults), and whether they were comfortable with the notion that others may access that data and send it on with no obligations to maintain privacy.

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. Members of the PAC are appointed by the Governor.

During the reporting period, the Committee met on 4 September 2008 and 11 June 2009.

At the September meeting, the Commissioner reported on the need for Privacy NSW to contact those State government agencies, which did not have current privacy management plans; the attempts of Privacy NSW to increase privacy awareness in its primary jurisdiction (State government agencies) and recent research, which shows that older people are worried about privacy intrusions generally, although the young are often so fond of technology, they may not be aware of the privacy risks associated with it.

The Commissioner also provided the Committee with an overview of the privacy law reform process and dealt with the recent recommendations of the Australian Law Reform Commission on privacy. The Commissioner and the Committee discussed the recent Ombudsman's submission to the NSWLRC. The submission dealt with reform of freedom of information and privacy law.

The Commissioner sought the views of the Committee on these matters and on privacy in general. The Committee considered the need for further support for Privacy Contact Officers. The area of the need to ensure data protection/privacy coverage when personal information is exchanged when agencies subcontract overseas was also covered.

At the June meeting, the Commissioner discussed developments taking place at Privacy NSW. The Commissioner pointed out that Privacy NSW was now "under budget".

The Commissioner informed the Committee that a review of Privacy Management Plans had been undertaken and described various other achievements of the office, for example, the production of a newsletter; the publication of a revised *Guide to the Making of Privacy Management Plans* and the examination of training standards with a view to the accreditation of Privacy Contact Officers.

The success of the recent Privacy Awareness Week (see elsewhere in this report) and the participation of Privacy NSW was discussed.

Following on from the September meeting and due to the more recent privacy law reform developments the meeting was mainly devoted to discussion of the NSW Government's draft Open Government Bill.

The Committee has been particularly helpful in contributing to the law reform issues affecting privacy in general, with sound advice, and a thorough understanding of the issues. In particular the Committee has made a significant contribution to the position of Privacy NSW in respect of the NSW Government's draft Open Government Bill and laying the framework for the passage of the Bill through the legislative process.

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).

The staff at Privacy NSW are also encouraged to attend AGD's Disability Network meetings and any associated events.

In last year's Annual Report, we described how we hoped to use a client survey to address the needs of members of Culturally and Linguistically Diverse (CALD) communities and people with disabilities. We were able to carry out this survey in part (see elsewhere in this report) but, during 2008/2009, privacy law reasons prevented us from collecting survey information retrospectively from individual complainants and clients.

The Privacy Commissioner has, therefore, decided to address our responsibilities in this area by means of focus groups with CALD Community members and with people with disabilities. These will be held as soon as possible in the 2009/2010 reporting year.

APPENDIX A – FINANCIAL STATEMENT – 2008/2009

	2008/2009
EXPENSES	
Employee-related payments	910 383
Crown liabilities	113 564
Total employee-related expenses	1 023 947
Other operating expenses	146 447
Total maintenance	325
TOTAL EXPENSES	1 170 719
Less: Revenue	(-3)
Less: Crown Liabilities	113 564
NET COST OF SERVICES	1 057 152
Depreciation	64 197
NET POSITION	\$1 121 349

Privacy NSW's financial statement is included in this report, although it is prepared by the Financial Services section of the AGD. Although the AGD does not have day-to-day responsibility for the operations of Privacy NSW, the AGD governs the financial policies of Privacy NSW.

APPENDIX B – ABBREVIATIONS

ADT	Administrative Decisions Tribunal
AGD.....	Attorney General's Department of NSW
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
PPIP Act.....	<i>Privacy and Personal Information Protection Act 1998</i>
Privacy NSW.....	Office of the NSW Privacy Commissioner



privacynsw