

DEPARTMENT OF **FAIR TRADING**
NSW Consumer Protection Agency

DEPARTMENT OF FAIR TRADING

PRIVACY MANAGEMENT PLAN

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1. THE DEPARTMENT OF FAIR TRADING

The NSW Department of Fair Trading was established in October 1995, through the integration of:

- the Department of Consumer Affairs
- the Building Services Corporation
- the Office of Real Estate Services
- the Registry of Cooperatives.

The Department's role is to safeguard consumer rights and to advise business and traders on fair, ethical practice. We do this in regard to:

- consumer goods and services
- accommodation and property services
- home building.

The Department currently administers over 40 pieces of legislation, and it aims to protect consumers while minimising unnecessary restrictions on business and traders.

As well as maintaining the policy framework which provides the setting for consumer and trader interactions, the Department of Fair Trading provides information to the community and conducts education programs for both business and consumers, with the aim of encouraging self-help and informal resolution of matters directly between the parties. The Department also receives formal complaints, investigates non-compliance with the Department's legislation, and obtains redress for consumers.

2. WHAT IS A PRIVACY MANAGEMENT PLAN?

Section 33 of the Privacy and Personal Information Protection Act provides that each public sector agency must prepare and implement a privacy management plan within 12 months of the commencement of that section (ie. by 1 July 2000). The privacy management plan of a public sector agency must include provisions relating to:

- the policies and practices which the agency will adopt to ensure compliance with the provisions of the Privacy and Personal Information Protection Act,
- how those policies and practices will be disseminated to persons within the agency,
- the procedures which the agency proposes to provide in relation to internal review of the agency's conduct with respect to privacy matters,
- such other matters as the agency considers are relevant in relation to privacy and the protection of personal information by the agency.

3. THE PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998

The Privacy and Personal Information Protection Act 1998 sets out privacy standards for most of the NSW public sector. These standards regulate the way public sector agencies deal with personal information. Personal information is defined as information or an opinion about an individual whose identity is apparent or can be reasonably ascertained from the information or opinion. This includes information where the identity of the individual can be ascertained by reference to some other source of information.

The Information Protection Principles

The Privacy and Personal Information Protection Act lays down a number of “Information Protection Principles” which regulate the way in which public sector agencies collect, store, use and disclose personal information.

In brief, these Information Protection Principles provide that:

- Principle 1 – Public sector agencies must only collect personal information for a lawful purpose directly related to a function or activity of the agency and if it is reasonably necessary for that purpose
- Principle 2 – Information must be collected directly from the individual to whom the information relates unless the individual has authorised collection from someone else
- Principle 3 – An agency must take reasonable steps to ensure that the individual to whom information relates is made aware that the information is being collected, the purposes for which it is being collected, the intended recipients, whether the supply of the information is required by law or is voluntary, the existence of any right to access or correct information and the name and address of the agency that is collecting the information and the agency that is to hold the information.
- Principle 4 – An agency must take reasonable steps to ensure that information collected is relevant to the purpose of collection, is not excessive, is accurate, up to date and complete, and that the collection does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates
- Principle 5 – An agency holding personal information must ensure that the information is kept for no longer than is necessary, is disposed of securely, and is protected by reasonable security safeguards against loss, unauthorised use, modification or disclosure.
- Principle 6 – An agency must take reasonable steps to enable any person to find out about the personal information held by an agency, and, if the agency holds personal information relating to that person, the nature of the information, the main purposes for which it is used, and the person’s right to gain access to that information.
- Principle 7 – An agency must provide an individual with access to information about themselves without excessive delay or expense.
- Principle 8 – An agency must, at the request of the individual to whom the information relates, make appropriate amendments to ensure that personal information is accurate, relevant, up to date, complete and not misleading, and, if it is reasonably practicable, have recipients of the information notified of the amendments. If the agency is not prepared to make such amendments, it must, if the person requests it, take reasonable steps to attach to the information a statement provided by the individual of the amendment sought.
- Principle 9 – Before using information, an agency must take reasonable steps to ensure that the information is relevant, accurate, up to date, complete and not misleading.
- Principle 10 – Information must not be used for a purpose other than the purpose for which it was collected unless the other purpose is directly related to the purpose of collection, or the person to whom the information relates has consented to use for the other purpose, or the use of the information for the other purpose is necessary to prevent a serious and imminent threat to someone’s life or health.
- Principle 11 – An agency must not disclose information unless:

- the disclosure is directly related to the purpose for which the information was collected and there is no reason to believe the person to whom the information relates would object;
- the person concerned is reasonably likely to have been aware, or has been made aware, that information of that kind is usually disclosed to another person or body;
- the agency believes on reasonable grounds that disclosure is necessary to prevent or lessen a serious and imminent threat to someone's life or health.

- Principle 12** – (i) An agency must not disclose information about a person's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless disclosure is necessary to prevent or lessen a serious and imminent threat to someone's life or health.
- (ii) An agency must not disclose information to any person or body outside NSW unless:
 - a relevant privacy law (defined as a law which the Privacy Commissioner has determined, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned) applying to the information is in force in that jurisdiction; or
 - the disclosure is permitted under a Privacy Code of Practice.

Requirements for public registers

As well as the Information Protection Principles, the Privacy and Personal Information Protection Act provides that an agency which administers public registers should:

- only provide information from those registers if the agency is satisfied that the information will be used for a purpose relating to the purpose of the register or the Act under which the register is kept;
- provide people with the opportunity to have their personal details held on the register suppressed in certain exceptional circumstances.

Internal reviews

If a person is unhappy with the way the Department of Fair Trading has dealt with their personal information, the person can complain to the Department. If the complaint concerns a possible breach of the Privacy and Personal Information Protection Act or a Privacy Code of Practice, the Privacy and Personal Information Protection Act requires the Department to review the conduct complained about. Depending on the outcome of the review, the Privacy and Personal Information Protection Act provides that the Department may:

- apologise;
- offer a remedy such as compensation;
- promise that the behaviour will not occur again;
- change its operations to make sure that the behaviour will not occur again; or
- do nothing.

If a person who applied for a review is not satisfied with the outcome of the review they can apply to the Administrative Decisions Tribunal for a further review of the conduct they complained about.

The Privacy Commissioner

The Act provides for the appointment of a Privacy Commissioner whose functions include:

- promoting the adoption of, and monitoring compliance with, the information protection principles;
- initiating and recommending the making of privacy codes of practice;

- assisting agencies with preparing and implementing privacy management plans;
- providing advice, conducting education programs and disseminating information on privacy related matters;
- conducting research into privacy related matters;
- making public statements and publishing reports on privacy related matters; and
- receiving, investigating and conciliating complaints about privacy related matters.

4. PRIVACY CODES OF PRACTICE APPLYING TO THE DEPARTMENT OF FAIR TRADING

If a public sector agency believes that any of the provisions of the Privacy and Personal Information Protection Act are unworkable in a particular circumstance, it can make a Privacy Code of Practice. A Privacy Code of Practice is a statement of how one or more of the provisions of the Privacy and Personal Information Protection Act will be modified in their application to an agency. The Department of Fair Trading has developed a Privacy Code of Practice modifying the provisions of the Privacy and Personal Information Protection Act in their application to the Department.

The Department of Fair Trading is also covered by the provisions of the Investigations Code of Practice and the Code of Practice for Inter-agency Transfers of Information prepared by Privacy NSW and the Privacy Code of Practice for the NSW Public Sector Workforce Profile prepared by the Premier's Department.

5. TYPES OF PERSONAL INFORMATION HELD BY THE DEPARTMENT OF FAIR TRADING

The Department of Fair Trading undertakes numerous functions which may involve dealing with personal information. These functions include:

- Assisting customers, traders and the community on all aspects of fair trading. This involves responding to enquiries and complaints, and providing information to assist with the resolution of disputes through self-help
- Monitoring marketplace performance, and identifying, deterring and remedying illegal conduct and ensuring compliance with fair trading legislation.
- Administering a number of trade and business licensing schemes, including associated public registers
- Administering registration and incorporation schemes, including associated public registers
- Conducting disciplinary action in relation to licensing regimes
- Developing and implementing statewide trade measurement programs
- Identifying and removing unsafe consumer products from the marketplace and ensuring the safe installation of electrical equipment
- Acting as custodian of rental bond money
- Providing tenancy information
- Providing an information and mediation service for people living in Strata Title and Community Title schemes
- Administration of the government insurance scheme and oversight of the private insurance scheme for residential building
- Administering the Register of Encumbered Vehicles

- Administering grants and funding programs

Undertaking these functions involves dealing with large amounts of information. Although the majority of this information relates to businesses rather than individuals, the line between business and personal information is often blurred, and business information may become personal information if the identity of the persons who act on behalf of the business can be reasonably ascertained.

In order to carry out these functions, the Department of Fair Trading holds a range of personal information, including:

- personnel information
- information relating to individuals and organisations who are licensed by the Department
- information relating to consumers who have made complaints to the Department and the traders they have complained about
- information regarding cooperatives and associations
- information relating to individuals and organisations being investigated by the Department or who are the subject of law enforcement action
- information regarding landlords and tenants who lodge rental bonds
- information regarding consumers and builders involved in home building insurance claims
- information regarding individuals and organisations funded by the Department
- information contained in correspondence sent to the Minister for Fair Trading and the Department.

6. IMPLEMENTATION OF THE INFORMATION PROTECTION PRINCIPLES

This section will outline how the Department of Fair Trading intends to comply with each of the Information Protection Principles.

Principle 1 – Collection of personal information for lawful purposes (section 8)

Section 8 of the Privacy and Personal Information Protection Act provides that a public sector agency must not collect personal information unless:

- (a) The information is collected for a lawful purpose that is directly related to a function or activity of the agency, and
- (a) The collection of the information is reasonably necessary for that purpose.

Section 8 also provides that a public sector agency must not collect personal information by any unlawful means.

Principle 1 makes it clear that all personal information must be collected for lawful purposes which directly relate to the functions of an agency.

The Department of Fair Trading complies with this principle. Information collected by the Department is collected for the purposes of the Department's lawful functions and in compliance with the legislation under which the Department operates.

Principle 2 – Collection of personal information directly from the individual (section 9)

Section 9 of the Privacy and Personal Information Protection Act provides that a public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless

- (a) the individual has authorised collection of the information from someone else or,
- (b) in the case of information relating to a person who is under the age of 16, the information has been provided by a parent or guardian of the person.

Principle 2 is designed to limit the collection of personal information where the individual concerned is not aware that this is occurring. Secret or undisclosed collections of personal information prevent individuals from exercising their rights under the Act.

Exceptions

The Act provides for exceptions where:

- the information was collected before 1 July 2000;
- the information is collected in connection with proceedings before a court or tribunal;
- the Department is investigating or otherwise handling a complaint which could be referred or made to an investigative agency (ie the Ombudsman, ICAC, Police Integrity Commission, Community Services Commission, Health Care Complaints Commission, Legal Services Commissioner);
- compliance would prejudice the interests of the individual to whom the information relates; or
- the Department is lawfully authorised or required not to comply or non-compliance is otherwise permitted or reasonably contemplated under any Act or law. For example, section 20 of the Fair Trading Act authorises an investigator to demand information in certain circumstances. Section 23(4) of the Property Stock and Business Agents Act authorises the Department to inquire into and report on whether an applicant is a fit and proper person to hold a licence.

Compliance by the Department

In order to comply with this principle the Department of Fair Trading will take the following action:

Licensing/Registration/Certification

A clause will be included above the signature block in the Department's licence/registration/certification application forms stating that:

“The applicant for this licence[registration/certificate] authorises the Department of Fair Trading to make any inquiries and to receive and disclose any information which is relevant to the applicant's initial and ongoing eligibility to hold this licence[registration/certificate]”.

This clause will be inserted into application forms as new forms are printed from 1 July 2000 and will obtain the consent of applicants for checks which are carried out by the Department. In the case of licensing, these checks ensure that only those persons who are suitable and who fulfil the criteria laid down in the relevant licensing legislation are granted licences. Depending on the licence in question, the checks may include criminal record checks, driver's licence checks, bankruptcy searches and other relevant searches. The authorisation

will also enable the Department to receive and exchange information regarding any breach of licence conditions by licence holders. In the case of building licences, where there is statutory requirements that licensees maintain insurance cover, and travel agents' licences, where licensees are required to contribute to the Travel Compensation Fund, this will allow exchange of information with approved insurers and with the Travel Compensation Fund. In the case of electrician's licences, it will allow exchange of information with electricity suppliers who carry out inspections of electricians' work.

Privacy Code of Practice

The Department of Fair Trading's Privacy Code of Practice allows the Department to depart from the requirements of section 9 (and therefore collect information from a source other than the person to whom the information relates) in the case of:

- (i) Inquiries and complaints received by the Department of Fair Trading about the conduct of third persons, which may involve fair trading issues;
- (ii) Correspondence received by the Department of Fair Trading containing allegations or information about third parties, which may involve fair trading issues;
- (iii) Information collected for the purposes of investigating possible breaches of legislation administered by the Minister for Fair Trading and for taking action to enforce compliance with that legislation;
- (iv) Information collected to enable the Department to effectively deal with complaints received under (i) and (ii) above and referred to the Department by other bodies;
- (v) Information collected for the purpose of providing an effective licensing regime;
- (vi) Information collected for the purpose of carrying out certification activities;
- (vii) Correspondence referred to the Department of Fair Trading by other State/ Territory, Commonwealth and overseas government bodies.

The exemptions relating to consumer complaints, inquiries and correspondence are designed to enable the Department of Fair Trading to effectively carry out its function of assisting consumers with fair trading issues. Complaints and inquiries will frequently contain information about a trader or other individuals and the exemption will allow the Department to receive this information from the complainant or inquirer so that it can provide effective assistance.

The exemption relating to information collected for the purpose of investigations and law enforcement recognises that, in order to effectively carry out these functions, the Department, like all investigative and law enforcement agencies, must be able to collect information from all possible sources, including other law enforcement and regulatory bodies. Limiting the collection of information to the person who may have committed the breach would make it impossible to effectively investigate possible breaches of the law and to collect evidence for law enforcement.

It should be noted that the Department's Privacy Code of Practice defines 'law enforcement' as 'any action which is aimed at enforcing compliance with legislation administered by the Minister for Fair Trading, and includes the issue of penalty notices, civil action (such as obtaining an injunction), administrative action (such as the cancellation of a licence), and prosecution'.

The fourth exemption, relating to information collected for the purposes of enabling the Department to effectively deal with complaints, recognises that, in order to provide an effective complaint handling service, it is necessary for the Department of Fair Trading to

exchange information with other fair trading, licensing and regulatory bodies, both in Australia and overseas, which may be able to provide assistance with resolving the complaint.

The fifth exemption, for information collected for the purpose of providing an effective licensing regime, will ensure that the Department of Fair Trading can collect from any source information regarding the eligibility of licence applicants, the ongoing eligibility of licence holders, and possible breaches of licensing legislation. In the case of building licences, where there is a requirement that licensees maintain insurance cover, and travel agents' licences, where travel agents are required to belong to the Travel Compensation Fund, the exemption will allow collection of information regarding compliance with licence conditions from approved insurers and the Travel Compensation Fund. In the case of electrician's licences, it will allow collection of information regarding defective electrical work from electricity suppliers who inspect electricians' work.

Although from 1 July 2000 the Department's licence application forms will be amended to include a term authorising the Department to collect information regarding an applicant's initial and ongoing eligibility for a licence, these forms will not have been signed by existing licence holders, and the new forms will be phased in gradually as existing stocks of old forms are used up. The exemption is therefore necessary to cover cases where the new licence application form was not used.

The exemption relating to certification activities allows the Department of Fair Trading to collect information relevant to the certification of articles and instruments under consumer safety and trade measurement legislation.

The final exemption allows the Department of Fair Trading to accept letters about fair trading issues which are referred on by other Ministers and Departments. Given that anyone who writes to a Minister about an issue is likely to want the letter passed to the appropriate organisation, this exemption will allow the provision of an effective service to the public.

In those circumstances not covered by the provisions of the Code of Practice and the amendments to the licence application forms, the Department already complies with section 9.

Principle 3 – Requirements when collecting personal information (section 10)

Section 10 requires that, if a public sector agency collects information from an individual, the agency must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:

- (a) the fact that the information is being collected,
- (b) the purposes for which the information is being collected,
- (c) the intended recipients of the information,
- (d) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,
- (e) the existence of any right of access to, and correction of, the information,
- (f) the name and address of the agency that is collecting the information and the agency that is to hold the information.

Principle 3 aims to ensure that when people are asked to provide their personal information they are given enough information in order to exercise any rights they may have under the Act.

Exceptions

The Act provides for exceptions where:

- the information was collected before 1 July 2000;
- the information is collected for law enforcement purposes (relating to the collection of information about a specific incident or incidents involving a breach of the criminal law)
- the Department is investigating or otherwise handling a complaint which could be referred or made to an investigative agency (ie the Ombudsman, ICAC, Police Integrity Commission, Community Services Commission, Health Care Complaints Commission, Legal Services Commissioner);
- compliance would prejudice the interests of the individual to whom the information relates;
- where the individual expressly consents; or
- the Department is lawfully authorised or required not to comply or non-compliance is otherwise permitted or reasonably contemplated under any Act or law.

Compliance by the Department

As a general rule, the Department complies with sections 10(a), 10(b) and 10(f). In the case of, for example, licence application forms, business registration forms, complaint forms, rental bond lodgement forms and mediation forms, the person providing the information is obviously aware of the fact that the information is being collected, the purpose for which it is collected and the fact that it is the Department of Fair Trading which is collecting and holding the information.

With respect to section 10(d), in the case of complaint forms it is clear that provision of the information is voluntary but necessary if the complaint is to be resolved. In cases where the purpose for which the information is collected may not be clear, the form on which it is collected will indicate the purpose. For example, the application forms used by organisations seeking a grant of funding from the Department of Fair Trading will state that the information will be used to enable a Departmental Grants Committee to make an informed decision about the funding application and its merits (these forms will be amended by 30 November 2000).

In the case of information collected for investigative or law enforcement purposes, provision of information which is sought by subpoena or pursuant to the powers given to investigators under section 20 of the Fair Trading Act is clearly required by law.

In the case of the Department's Customer Satisfaction Survey, people who contact the Department by telephone are advised of the survey and its purpose and asked if they wish to participate. The fact that participation is optional is made clear.

The Department will take the following action with respect to other subsections of section 10:

Section 10(c) – notifying individual of intended recipient of information

Complaint forms

Amendment of the complaint forms used by the Customer Services and Home Building and Property Services Divisions to notify complainants that information about the complainant may be disclosed to the trader who is the subject of the complaint or to another person or body for the purposes of resolving the complaint, or for investigative or law enforcement

purposes. These complaint forms will be amended in the next print run after 1 July 2000.

Telephone complaints

When complaints are taken over the phone (a situation which only occurs when the complaint is urgent or the complainant cannot write), the customer service officers taking the complaint will inform the complainant that information about the complainant may be disclosed to the trader who is the subject of the complaint or to another person or body for the purpose of resolving the complaint, or for investigative or law enforcement purposes. Training of customer service officers has been amended to include training on this point.

Licence application forms/business registration forms

Amendment of application forms from 1 July 2000 to include a clause stating that “The applicant for this licence[registration/certificate] authorises the Department of Fair Trading to make any inquiries and to receive and disclose any information which is relevant to the applicant’s initial and ongoing eligibility to hold this licence[registration/certificate]”.

As well as fulfilling the requirements of section 9 in relation to obtaining the applicant’s permission for the Department to carry out checks and exchange information regarding applicants, this clause will fulfil the requirements of section 10 in relation to notifying applicants that information regarding their initial and ongoing eligibility may be exchanged with other persons or bodies.

Forms for public registers

Amendment of licence application forms, business registration forms, Register of Encumbered Vehicles (REVS) forms, and Registry of Cooperatives forms to include a term saying:

“The applicant for this licence/registration acknowledges that information will be placed on a register open to the public, in accordance with the *[insert the name of the legislation under which the register is established]*”.

These forms will be amended in the first print run after 1 July 2000.

Rental Bond Lodgement Form

Amendment of the Rental Bond Lodgement form to inform parties that information from the form is collated by the Department of Fair Trading and an extract is provided to the Department of Housing and summarised for interested organisations. This will fulfil the requirements of section 10 in relation to the Department’s practice of providing the Department of Housing with information regarding property addresses and rents. This information is analysed by the Department of Housing and general statistical information regarding rent levels in different areas (which does not include addresses or information about individual properties) is included in the Department of Housing’s Rent and Sales Report, which tracks movements in the property market. These forms will be amended in the next print run.

External service providers

The Department does not plan to notify individuals of every possible occasion when their information may be provided to an external service provider such as a mailing house, as it is considered that provision of information in this way would reasonably be expected by the person providing the information. As is explained later, the Department will, however, take steps to ensure that information provided to external service providers will be kept confidential.

Section 10(d) – notifying the individual whether the supply of information is required by law or is voluntary.

Licence application forms/business registration forms

Amendment of application forms from 1 July 2000 to include a clause stating that: “The applicant for this licence[registration/certificate] accepts that failure to supply information may delay the processing of this application”.

Forms relating to the registration of a Co-operative and notification of directors and office holders

Will be amended after July 1 to notify the person providing the information that supply of information on the form is required under section 251B of the Co-operatives Act.

Section 10(e) – notifying the individual about the right of access to, and correction of, the information.

Licence application forms/ business and Co-operative registration forms

Amendment of application forms from 1 July 2000 to include a clause stating that: “The applicant for this licence[registration/certificate] has a right to seek access to and correction of information supplied.”

Forms collecting information from organisations funded by the Department

Will be amended by 30 November 2000 to indicate that the person to whom information relates has a right to seek access to and correction of information supplied.

All customers

The Department has developed a fact sheet, which will be available in Fair Trading Centres, informing all customers of the major provisions of the Privacy and Personal Information Protection Act.

Privacy Code of Practice

The Department of Fair Trading generally complies with this principle except for those circumstances which are covered by the exemptions provided for in the Code of Practice. The Code of Practice authorises non-compliance with section 10 where the Department of Fair Trading considers that compliance with this principle is reasonably likely to detrimentally affect (or prevent the proper exercise of) investigative or law enforcement activities.

Principle 4 – Other requirements relating to collection of personal information (section 11)

Section 11 of the Privacy and Personal Information Protection Act provides that, if a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:

- (a) the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and
- (b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

Principle 4 requires agencies to take reasonable steps to ensure that personal information is accurate and the way it is collected is not unreasonably intrusive.

Exceptions

The Act provides for exceptions where:

- the information was collected before 1 July 2000.

Compliance by the Department

In order to comply with this principle the Department of Fair Trading will take the following action:

Rental bond lodgement form and home building contractor licence application form

Amend the rental bond lodgement form and the home building contractor licence application form to delete the request for information about the first language of the individuals filling out the form. This information was collected in the past for statistical purposes but has not been used.

In all other areas of its operations the Department complies with section 11.

Principle 5 – Retention and security of personal information (section 12)

Section 12 of the Privacy and Personal Information Protection Act provides that a public sector agency that holds personal information must ensure:

- (a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and
- (b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and
- (c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and
- (d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.

Principle 5 sets out standards for the storage, security, retention, transfer and disposal of personal information once it has been collected.

Compliance by the Department

Retention and Disposal

With respect to subsections (a) and (b), the Department is in the process of putting in place procedures to comply with the requirements of the State Records Act in relation to retention and disposal of records.

Security

With respect to security, all paper files held by the Department of Fair Trading are kept in secure areas which can only be accessed by authorised Departmental employees. Electronically stored information can also only be accessed by authorised employees, and many registers and databases can only be altered by employees with a specific authorisation to do so.

Transfer to external service providers

In order to comply with section 12(d), the Department will be inserting confidentiality clauses in its contracts with external service providers who are provided with personal information, such as legal service providers, mailing houses, IT contractors, building consultants, engineers, data entry service providers, consultants, market researchers, printing

firms, and private inquiry agents. These clauses will not be included in existing contracts but will be included in new contracts and contracts due for renewal.

Principle 6 – Information about personal information held by agencies (section 13)

Principle 7 – Access to personal information held by agencies (section 14)

Principle 8 – Alteration of personal information (section 15)

Sections 13, 14 and 15 of the Privacy and Personal Information Protection Act deal with individual's rights to inquire about, access and amend information about themselves.

Section 13 requires an agency that holds personal information to take steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) whether the agency holds personal information,
- (b) whether it holds personal information relating to that person, and
- (c) if the agency holds personal information relating to that person:
 - (i) the nature of that information,
 - (ii) the main purposes for which the information is used and
 - (iii) the person's entitlement to gain access to the information.

Section 14 states that an agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay and expense, provide the individual with access to the information.

Section 15 provides that:

- 1) a public sector agency that holds personal information must, at the request of an individual to whom information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:
 - (a) is accurate, and
 - (b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.
- 2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.
- 3) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.

Section 5 provides that nothing in the Privacy and Personal Information Protection act affects the operation of the Freedom of Information Act. In particular, the Privacy and Personal Information Protection Act does not modify any exemption under the Freedom of Information Act or lessen any obligations under that Act in respect of a public sector agency.

Section 20(5) provides that the provisions of the Freedom of Information Act that impose conditions or limitations (however expressed) with respect to any matter referred to in section 13, 14 or 15 are not affected by the Privacy and Personal Information Protection Act, and those provisions continue to apply in relation to any such matter as if those provisions were part of this Act.

Principle 6 is designed to alert people to the fact that an agency holds personal information and allows them to find out if any of the personal information relates to them.

Principle 7 allows people a right of access to their personal information (subject to the limitations imposed by the Freedom of Information Act).

Principle 8 allows people to seek to correct personal information held about them.

Exceptions

The Act provides for exceptions where:

- the Department is lawfully authorised or required not to comply or non-compliance is otherwise permitted or reasonably contemplated under any Act or law.

Compliance by the Department

The Department of Fair Trading has put in place procedures to enable it to comply with these principles.

Location of personal information

Part 5 of this Privacy Management Plan lists the types of personal information held by the Department. The Privacy/FOI Coordinator, Fair Trading Centre staff, and staff in other areas of the Department already provide assistance to individuals who are attempting to ascertain whether the Department holds information about them. For example, when a person asks whether the Department holds information about him or her, staff will ask about the nature of the person's contact with the Department, identify the Division of the Department which is most likely to hold information about the person, and attempt to locate the information.

If the request involves a large amount of information, staff are unsure about whether the information should be released, or the information is difficult to locate, staff will advise the person to fill out a formal application for access to information. A Privacy/FOI Request for Access form has been prepared which allows individuals to apply for access to information under either the Privacy and Personal Information Protection Act or the Freedom of Information Act. A leaflet to accompany this form has also been prepared, which explains the types of information which can be accessed under each Act.

In order to enable people to find out about their rights to access information, the Department has prepared a fact sheet about the Privacy and Personal Information Protection Act, which will be available in Fair Trading Centres.

Access to personal information

With respect to section 14, the Department of Fair Trading generally provides individuals with access to information about themselves, provided the information is readily locatable and its provision will not compromise any investigative or law enforcement processes. In cases where staff are unsure whether information should be released, or where the request involves a large amount of information or information which is not readily locatable, the person seeking the information will be asked to fill out a Privacy/FOI Request for Access form.

Requests for access to information under the Privacy Act by means of a Privacy/FOI Request for Access form will be processed by means of procedures which are generally the same as the procedures already in place to deal with requests for access under the Freedom of Information Act, with appropriate amendments to deal with the differences between the Privacy and FOI legislation.

Privacy/FOI Request for Access forms will be sent to the Privacy/FOI Coordinator in the first instance. The Coordinator will then send the request to the appropriate officer. Requests for

access which relate to information held in the Licensing and Registration Services Branch and the Business Registration Branch will be sent to the Privacy/FOI officers in those branches. Requests which relate to information in other branches of the Department will be dealt with by the Privacy/FOI Coordinator.

Given that the exemptions under the FOI Act also apply to access applications under the Privacy Act, the Privacy/FOI officers will apply the FOI Act exemptions when dealing with access applications under the Privacy Act.

The Department's Procedures Manual for staff dealing with applications for access under the Privacy Act is attached [Annexure A], and sets out the procedures to be followed in dealing with FOI and Privacy access applications.

Sections 13, 14 and 15 require the Department to take reasonable steps to assist individuals to ascertain whether it holds information about them and to provide access to that information. There may be instances where it is very difficult for the Department to ascertain whether it holds information. For example, a person may wish to know whether they are referred to in any correspondence or complaints received by the Department. The Department receives vast numbers of complaints and correspondence, many of which are answered simply by providing the author with information which will assist them to resolve their dispute themselves or, if the complaint concerns matters which are more appropriately dealt with by another body, by referring the complaint or correspondence directly to that other body.

Formal complaints recorded on the complaint forms provided in Fair Trading Centres are recorded on a database which records the name of the trader complained about as well as the name of the complainant. This system does not record the name of any third person named in the complaint. Complaints in the form of correspondence are generally recorded on a database which records only the name of the author. Given these tracking systems, it may be difficult or impossible for the Department to track all documents which contain information about a particular person.

In these circumstances the Department will take reasonable steps to locate and provide access to the information, but may not be able to do so. This situation will not occur if the Department is taking some action in relation to the complaint, such as attempting to negotiate a solution to the dispute or conducting an investigation. In each of these cases a separate file for the matter will be created, and the information will be easily located.

Alteration of personal information

In order to ensure the reliability of information held by the Department and to reduce opportunities for corruption, the Department will generally require applications to alter information under section 15 to be in writing.

These applications will be dealt with by the Branch of the Department which holds the information concerned. Where the information is covered by an Act which lays down procedures for amending the information concerned, these procedures will be followed. The Branch will also need to be satisfied as to the identity of the person seeking the amendment and may require some evidence to support the amendment.

In those circumstances where the Department does not agree to alter information, the Department will not attach a statement to the information if the information is in electronic form or on a public register, as this would be impractical.

Privacy Code of Practice

The Code of Practice authorises non-compliance with sections 13, 14 and 15 where the Department of Fair Trading considers that compliance with these principles is reasonably likely to detrimentally affect (or prevent the proper exercise of) investigative or law enforcement activities.

This exemption recognises that under some circumstances providing information regarding information which is held about an individual, and allowing that individual to inspect and alter that information, could compromise investigative or law enforcement activities.

Principle 9 – Agency must check accuracy of personal information before use (section 16)

Section 16 of the Privacy and Personal Information Protection Act provides that a public sector agency which holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, up to date, complete and not misleading.

Principle 9 requires agencies to try and ensure that all personal information used by them is accurate and relevant.

Compliance by the Department

The Department of Fair Trading complies with this principle. The Department's practice of providing individuals with an opportunity to correct information about themselves (in compliance with sections 13, 14 and 15) helps to ensure the accuracy of information held by the Department. The Department's practice of including a space for change of address details on licence renewal forms also helps to ensure the accuracy of information which is of ongoing relevance to the Department.

Principle 10 – Limits on use of personal information (section 17)

Section 17 of the Privacy and Personal Information Protection Act provides that a public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected, unless

- (a) the individual to whom the information relates has consented to the use of the information for that other purpose, or
- (b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or
- (c) the use of the information for that other purpose is necessary to prevent or lessen a serious or imminent threat to the life or health of the individual to whom the information relates or another person.

Principle 10 generally restricts use of personal information to the purpose for which the information was collected unless consent is obtained for other uses. 'Use' refers to the treatment and handling of personal information within an organisation, particularly when this involves making decisions on the basis of the information.

Exceptions

The Act provides for exceptions where:

- use of the information is reasonably necessary for law enforcement purposes (relating to the collection of information about a specific incident or incidents involving a breach of the criminal law) or for the protection of the public revenue;
- the Department is investigating or otherwise handling a complaint which could be referred or made to an investigative agency (ie the Ombudsman, ICAC, Police Integrity Commission, Community Services Commission, Health Care Complaints Commission, Legal Services Commissioner);
- the Department is lawfully authorised or required not to comply or non-compliance is otherwise permitted or reasonably contemplated under any Act or law; or
- the use relates to a disclosure to another agency administered by the same Minister for the purpose of informing the Minister about a matter under that administration or to a disclosure to an agency administered by the Premier for the purpose of informing the Premier.

Compliance by the Department

The Department of Fair Trading generally complies with this principle.

For example, if the Department collects information from a licence applicant, this information is collected for the broad purpose of maintaining standards in the industry concerned, and ensuring compliance with licensing legislation. Use of the information for investigating a possible breach of licence conditions or for law enforcement purposes would therefore be a use for the purpose for which the information was collected, or at least for a directly related purpose.

Similarly, information which is collected from a consumer making a complaint is collected for the purpose of resolving a dispute or reporting unfair or illegal conduct and its use for investigative or law enforcement purposes therefore falls within the purposes of collection.

Information collected for purposes such as recording the details of tenants and landlords on whose behalf rental bonds are held, or for the purpose of mediations is not used for any other purpose.

Information collected for the purpose of the Customer Satisfaction Survey is not use for any other purpose.

Investigations Code of Practice

The Department of Fair Trading is covered by the provisions of the “Investigations Code of Practice” which applies to public sector agencies with an investigative role. This provides that an agency is not required to comply with section 17 if compliance is reasonably likely to detrimentally affect (or prevent the proper exercise of) the agency’s conduct of a lawful investigation. A lawful investigation is defined as an investigation which the agency has the lawful authority to carry out and which may lead to the agency taking on a prosecution of the behaviour under investigation.

Privacy Code of Practice

The Code of Practice authorises non-compliance with section 17 in the case of information which is being used for the purpose of investigative and law enforcement activity, to the extent that the use of any such information for these purposes departs from the requirements of section 17.

In most cases information used for investigative and law enforcement purposes is collected specifically for such purposes and therefore satisfies the requirements of section 17. Information used for these purposes may also be obtained from consumer inquiries and complaints. Given that individuals who make complaints to the Department of Fair Trading do so in order to resolve disputes with traders and to report unfair and illegal conduct, it can be argued that investigation of breaches of fair trading legislation and law enforcement are purposes directly related to the purpose for which the information was provided and are therefore permissible under section 17.

Nevertheless, given the importance of allowing the Department of Fair Trading to effectively carry out investigations and law enforcement, the Code of Practice provides for an exemption from section 17 to the extent that section 17 prevents the use of any information held by the Department for these purposes.

Principle 11 – Limits on disclosure of personal information (section 18)

Section 18 of the Privacy and Personal Information Protection Act provides that:

- 1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:
 - (a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or
 - (b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or
 - (c) the agency 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 individual concerned or another person.
- 2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

Principle 11 makes a general rule that personal information should be disclosed only for purposes directly related to the purposes for which the information was collected. 'Disclosure' refers to making personal information available to people outside the organisation, other than to the individual concerned and includes the publication of personal information.

Exceptions

The Act provides for exceptions where:

- disclosure is made in connection with proceedings for an offence or for law enforcement purposes;
- the disclosure is authorised by a subpoena, search warrant or statutory instrument;
- the disclosure is reasonably necessary for the protection of the public revenue;
- the disclosure is reasonably necessary in order to investigate an offence where there are reasonable grounds to believe an offence has been committed;

- the Department is investigating or otherwise handling a complaint which could be referred or made to an investigative agency (ie the Ombudsman, ICAC, Police Integrity Commission, Community Services Commission, Health Care Complaints Commission, Legal Services Commissioner);
- the Department is lawfully authorised or required not to comply or non-compliance is otherwise permitted or reasonably contemplated under any Act or law;
- the individual expressly consents; or
- the use relates to a disclosure to another agency administered by the same Minister for the purpose of informing the Minister about a matter under that administration or to a disclosure to an agency administered by the Premier for the purpose of informing the Premier.

Compliance by the Department

The Department of Fair Trading generally complies with this principle.

In order to facilitate its investigative, law enforcement, licensing and complaint handling functions, it is necessary for the Department to regularly exchange information with other fair trading, regulatory and law enforcement bodies in Australia and overseas. This exchange of information helps to avoid duplication between agencies, maximise efficiency in complaint handling, licensing and law enforcement and promote cooperation in dealing with common issues and protecting consumers. When providing information to other bodies, the Department of Fair Trading does so on the basis that the information is kept confidential and is used only for the purposes for which it was disclosed.

In the case of builders' licences, where there is a statutory requirement that all licensees hold appropriate insurance, and travel agents' licences, where travel agents are required to belong to the Travel Compensation Fund, information regarding compliance with licence conditions is also exchanged with approved insurers and the Travel Compensation Fund. In the case of electricians' licences, information regarding defective electrical work is exchanged with electricity supply companies who inspect electricians' work.

It could be argued that all the information which the Department of Fair Trading discloses for licensing, law enforcement, investigative and complaint handling purposes has been collected for these purposes. For example, when the Department collects information from a licence applicant the aim is to ensure that only suitably qualified persons can engage in that particular occupation, and when it collects complaints about fair trading practices from consumers it aims to ensure compliance with fair trading legislation. In fact all the information which the Department of Fair Trading collects is for the broad purpose of ensuring compliance with legislation administered by the Minister for Fair Trading.

However, section 18(a) and (b) require that, in addition to using information for the purpose for which it was collected, either DFT should have no reason to believe that the person to whom information relates would object to the disclosure (subsection (a)) or that person must be reasonably likely to have been aware or have been made aware in accordance with section 10 that information of that kind is usually disclosed to that other person or body (subsection (b)).

For this reason the Department will be taking the following steps:

Complaint forms

Amendment of complaint forms to notify complainants that information provided on this form may be disclosed to the trader who is the subject of the complaint or to another person or body for the purposes of resolving the complaint, or for investigative or law enforcement purposes.

Telephone Complaints

Training customer service officers who take complaints over the phone to notify complainants that information provided may be disclosed to the trader who is the subject of the complaint or to another person or body for the purposes of resolving the complaint, or for investigative or law enforcement purposes.

Licensing/Registration/Certification

A clause will be included above the signature block in the Department's licence/registration/certification application forms stating that:

“The applicant for this licence[registration/certificate] authorises the Department of Fair Trading to make any inquiries and to receive and disclose any information which is relevant to the applicant's initial and ongoing eligibility to hold this licence[registration/certificate]”.

Renting Services

- Amendment of the procedures used by the Department's Renting Services Branch to ensure that tenants' forwarding addresses are no longer passed on to landlords.
- Amendment of the Rental Bond Lodgement form to inform parties that information from the form is collated by DFT and an extract is provided to the Department of Housing and summarised for interested organisations. This will fulfil the requirements of section 18 in relation to the Department's practice of providing the Department of Housing with information regarding property addresses and rents. This information is analysed by the Department of Housing and general statistical information regarding rent levels in different areas (which does not include addressed or information about individual properties) is included in the Department of Housing's Rent and Sales Report, which tracks movements in the property market. These forms will be amended in the next print run.

Forms for public registers

Amendment of licence application forms, business registration forms, Register of Encumbered Vehicles (REVS) forms, and Registry of Cooperatives forms to include a term saying:

“I acknowledge that information will be placed on a register open to the public, in accordance with the requirements of *[insert the name of the legislation under which the register is established]*”.

Privacy Code of Practice

The Code of Practice authorises non-compliance with section 18 where disclosure of information to other bodies is reasonably necessary for the purpose of effective investigations, law enforcement, licensing and complaint handling, and where the information is provided on the basis that it is to be kept confidential and used only for the purposes for which it was disclosed.

This exemption is necessary in order to enable the Department of Fair Trading to effectively carry out its functions.

In the case of information which is being used for investigations or law enforcement, DFT may not notify the person to whom the information relates if this would compromise law enforcement process and so may be in breach of section 18(a) and (b), unless it could be argued that the person would be reasonably likely to be aware that this kind of information would be disclosed to other law enforcement or regulatory bodies.

Similarly, although from 1 July 2000 the Department's licence application forms are to be amended to contain a clause whereby the applicant authorises the Department to make inquiries and to exchange information with other bodies regarding the applicant's current and ongoing eligibility to hold a licence, this form will not have been signed by existing licence holders, and the new forms will be phased in gradually as stocks of old forms are used up. The exemption is therefore necessary to enable the exchange of information to occur in relation to licence holders who did not use the new form.

The exemption will also allow the Department of Fair Trading to disclose relevant background information to any person or body who is asked to provide the Department with information which will assist with its licensing, investigative or law enforcement functions. For example, if the Department requires a bank to provide financial information regarding someone under investigation for a breach of legislation, the Department must disclose the person's identifying details in order to allow the bank to comply with this request.

Principle 12 – Special restrictions on disclosure of personal information (section 19)

Section 19 of the Privacy and Personal Information Protection Act:

- (1) provides that a public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious and imminent threat to the life or health of the individual concerned or another person;
- (2) prohibits an agency from disclosing personal information to any person or body who is in a jurisdiction outside of New South Wales, unless a relevant privacy law, approved by the Privacy Commissioner, is in force in that jurisdiction, or the disclosure is permitted under a Privacy Code of Practice.

Principle 12 has two distinct parts:

- 1) deals with a number of categories of sensitive information which are subject to more stringent disclosure requirements; and
- 2) places restrictions on disclosures of personal information outside New South Wales.

Exceptions

The Act provides for exceptions where:

- the disclosure is reasonably necessary in order to investigate an offence where there are reasonable grounds to believe an offence has been committed;
- the Department is lawfully authorised or required not to comply or non-compliance is otherwise permitted or reasonably contemplated under any Act or law;
- the individual expressly consents;
- disclosure is to the Ombudsman, ICAC, Police Integrity Commission, Community Services Commission, Health Care Complaints Commission, Legal Services Commissioner); or
- the use relates to a disclosure to another agency administered by the same Minister for the purpose of informing the Minister about a matter under that administration or to a

disclosure to an agency administered by the Premier for the purpose of informing the Premier.

Compliance by the Department

The Department of Fair Trading complies with subsection (1).

Subsection (2) does not come into force until 1 July 2001 or until a code of practice relating to the disclosure of personal information to persons or bodies outside New South Wales is prepared by the Privacy Commissioner, whichever is the sooner. The Department of Fair Trading generally complies with subsection (2).

Privacy Code of Practice

The Code of Practice authorises non-compliance with section 19(2) where disclosure of information to other bodies is reasonably necessary for the purpose of effective investigations, law enforcement, licensing and complaint handling, and where the information is provided subject to agreement that it is to be kept confidential and used only for the purposes for which it was disclosed. The reasons for this exemption are the same as apply to section 18.

7. IMPLEMENTATION OF THE PUBLIC REGISTER PROVISIONS

The Privacy and Personal Information Protection Act defines a public register as a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).

Section 57 of the Privacy and Personal Information Protection Act provides that a public sector agency responsible for keeping a public register must not disclose any personal information kept in the register unless the agency is satisfied that it is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept.

In order to enable an agency to comply with this requirement, section 57 provides that the agency may require any person who applies to inspect personal information contained in the public register to give particulars, in the form of a statutory declaration, as to the intended use of any information obtained from the inspection.

Section 58 provides that a person about whom personal information is contained (or proposed to be contained) in a public register may request the public sector agency responsible for keeping the register to have the information:

- (a) removed from, or not placed on, the register as publicly available, and
- (b) not disclosed to the public.

If the agency is satisfied that the safety or well-being of any person would be affected by not suppressing the personal information as requested, the agency must suppress the information in accordance with the request unless the agency is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing the information. Any information that it removed from, or not placed on, the register under this provision may be kept on the register for other purposes.

Section 59 provides that sections 57 and 58 prevail to the extent of any inconsistency with the requirements of the law under which the public register concerned is established.

Public registers administered by the Department of Fair Trading

The Department of Fair Trading operates a number of registers which meet the definition of a public register under the Privacy and Personal Information Act. These registers are:

- Deeds of Undertaking Registers
There are three Deeds of Undertakings registers which record enforceable undertakings under the:
 - Motor Dealers Act 1974
 - Consumer Credit Administration Act 1995
 - Fair Trading Act 1987

- Business Names Register
Contains information about the principals behind registered businesses

- Association Names Register
Contains information about the public officer of an Association

- Funeral Funds Register

- Register of Solicitor Corporations

- Register of Limited Partnerships

- Business Licensing Registers
Contains information regarding individuals and organisations who hold the following licences:
 - motor dealers
 - travel agents
 - private employment agents
 - pawnbrokers and second hand dealers

- Property Services Licensing Registers
Contains information regarding holders of the following licences or registrations:
 - real estate agents
 - stock and station agents
 - business agents
 - strata managing agents
 - community managing agents
 - on-site residential property managers
 - conveyancers
 - valuers

- Home Building Licenses Register
Contains information about persons or bodies who are licensed to carry out residential building work and specialist work in the areas of plumbing, gasfitting, electrical work, air conditioning and refrigeration.

- Register of Encumbered Vehicles
Contains information about individuals or organisations who hold an interest in a vehicle.

- Register of Co-operatives
Contains information about the Directors of cooperatives.

Compliance with section 57

In satisfying itself that information provided from a public register will be used for a purpose which accords with the purpose of the register, the Department of Fair Trading considers it reasonable to assume that, where a person is seeking information from registers about one person or body or a small number of persons or bodies, the purpose for which the information is sought is likely to be in accordance with the purpose of the register. Such cases are likely to involve consumers seeking information regarding whether a particular person holds a licence, in the case of licensing registers, or, in the case of the business names register, who the principals behind a business are. It is not uncommon for cautious consumers to request details of 10 to 20 tradespeople in their local area in order to make a comparison between them before they make a choice.

On the other hand, the Department considers that requests for substantial proportions of a register or a whole register (whether in electronic form or in a hard copy) are more likely to be for purposes unrelated to the purpose of the register, such as direct marketing. The Department's procedures will require that, where a person is seeking information about more than 20 individuals or bodies, they will be required to fill in a form stating the purpose for which they intend to use the information. If this purpose is unrelated to the purpose of the register, the Department will deny the request for access. A standard form for requesting access to more than 20 records is attached [Annexure B]. Divisions will adapt this form to suit their individual circumstances.

With respect to licensing registers, the Department takes the view that these registers are kept for the purpose of maintaining standards in a particular trade or profession, and ensuring that only those who are licensed can engage in that occupation. Therefore the Department considers that requests by trade and professional associations for access to the register for the purpose of offering training or education opportunities to those listed is a legitimate use. When the Department provides anyone with a copy of a whole register in electronic format, the Department enters into a confidentiality agreement with the person or body receiving the information, which provides that the information can only be used for the agreed purpose.

Most of the registers administered by the Department of Fair Trading are operated in accordance with a procedures manual. These procedures manuals have been amended to include instructions regarding implementation of procedures to comply with section 57 and information about which officers are authorised to make decisions regarding refusal of requests for access to information.

Access to the Business Names register is provided to a number of information brokers who provide information on the register to their clients. Any new contracts between the Department of Fair Trading and these brokers will include a term requiring the broker to only provide information from the register to customers who are intending to use the information for a purpose which accords with the purpose of the register.

The Register of Encumbered Vehicles is currently the only online public register operated by the Department of Fair Trading. The Department does not consider that offering online access to this register poses a risk that the register will be used for a purpose which does not accord with the purpose of the register. This is both because the purpose of the register is very wide (namely, that anyone considering purchasing a motor vehicle or boat is able to

ascertain whether the motor vehicle or boat has been used as security for a loan) and because in order to obtain information from the register it is necessary to know the registration number, the VIN, chassis or hull identification number, and the engine number. It is likely that anyone who has this information is genuinely considering purchasing a vehicle. Obviously a person who has stolen a vehicle would not be interested in finding out whether it has been used as security.

Compliance with section 58

People who wish to request the Department of Fair Trading to suppress personal information contained on a public register will be required to fill in a Request for Suppression of Personal Information form [Annexure C].

When it receives a request for suppression of personal information on a public register, the Department is required by the Privacy and Personal Information Protection Act to firstly satisfy itself that the safety or well-being of a person would be affected by not suppressing the information. In order to do this, the Department may ask the person requesting suppression for some evidence in support of their claim (eg. an apprehended violence order) depending on the individual circumstances. In other circumstances, the Department may accept the word of the person that their safety or well-being is threatened.

Once the Department has satisfied itself that a person's safety or well-being is threatened, it is then required to decide whether there is a public interest in favour of maintaining public access to the information which would outweigh any individual interest in having the information suppressed.

The procedures manuals for the Department's public registers have been amended to include instructions about how to deal with requests for suppression of personal information on public registers, and to include details of which officers are authorised to make decisions regarding suppression of information.

8. INTERNAL REVIEW PROCEDURES

The Department of Fair Trading has developed an Internal Review Procedures Guide [Annexure D].

9. DISSEMINATION OF POLICIES AND PRACTICES

The following information will be made available:

- A Director-General's memo and attached information sheet will be emailed to staff
- Copies of the Privacy Management Plan and Privacy Code of Practice will be made available on the Internal Reference and Information icon on the Department's intranet
- A fact sheet will be published for distribution to external customers [Annexure E].

Staff training will be conducted as on-the-job training by Divisions. The Privacy Contact Officer (Diana Holy, Senior Policy Officer) will be available to address groups of staff or otherwise provide advice.

10. REVIEW AND EVALUATION OF PLAN

The Privacy Working Party will continue to meet on a regular basis to monitor implementation of the Act and review the Privacy Management Plan.

Compliance with the Act must be reported on in the Department's Annual Report. This will provide an opportunity for annual evaluation of the Plan.

APPLICATIONS FOR ACCESS TO INFORMATION UNDER THE PRIVACY AND PERSONAL INFORMATION PROTECTION (PIIP) ACT

PROCEDURES GUIDE

1. Purpose of the Privacy and Personal Information Protection (PIIP) Act

The Privacy and Personal Information Protection (PIIP) Act has two main purposes.

First it sets up the Office of the Privacy Commissioner, and gives the Commissioner a number of powers that were held in the past by the Privacy Committee. These powers include conducting research, giving out advice and handling complaints about breaches of privacy.

Secondly the Act introduces a set of “Information Protection Principles” for the NSW public sector. These Principles regulate the way public sector agencies deal with personal information.

The privacy standards or principles found in the Act only apply to personal information, that is, any information that relates to an identifiable person. This definition covers not only traditional ideas of data storage such as paper files but also such things as genetic material, electronic records, video recordings, photographs and biometric information such as fingerprints.

While the Act only gives enforceable remedies in relation to privacy breaches by public sector agencies, it also gives the Privacy Commissioner the power to investigate and conciliate complaints about breaches of privacy by organisations and individuals who are not public sector agencies.

The PIIP Act offers enforceable privacy rights to the people of NSW for the first time. It gives people the opportunity to make a complaint to a public sector agency about misuse of their personal information, and if they are not satisfied with the response it may allow them to make a complaint to the Administrative Decisions Tribunal. The Act also requires all public sector agencies to prepare a privacy management plan which will help to ensure that staff are aware of privacy issues.

The Information Protection Principles in the Act cover matters such as collection, storage, use and disclosure of personal information. The Act does not cover all uses of personal information by public sector agencies, making significant exemptions in the case of law enforcement and investigative agencies. The Act also allows for agencies to opt out of one or more of the principles by developing a privacy code of practice, which must be approved by the Attorney General.

The Act also lays down a number of rules for public registers that are operated by public sector agencies. It introduces a right for people to have their personal details removed from these registers or hidden from public view in some circumstances. The public register provisions can also be modified by privacy codes of practice.

Complaints about privacy

When a public sector agency breaches an information protection principle, a privacy code of practice or a public register provision, then a person can demand that the agency investigate what has occurred. Refer to the Internal Review Procedures Guide for further details.

After the investigation the agency can do one of five things. It can either:

- apologise;
- offer a remedy such as compensation;
- promise that the behaviour will not occur again;
- change its operations to make sure that the behaviour will not occur again; or
- do nothing.

If the person making the complaint is not satisfied with the decision then they can appeal to the Administrative Decisions Tribunal. The Tribunal has the power to make any orders that it thinks necessary including the power to award damages of up to \$40,000 to the person making the complaint.

If the privacy complaint is not about a breach of a principle, code or public register provision or if it is about a non public sector agency, then the complaint needs to be made to the Privacy Commissioner. The Commissioner does not have power to make orders or to award compensation, but will conciliate complaints by trying to reach a decision that all the parties including the Commissioner are happy with.

2. What information does the Privacy and Personal Information Protection Act apply to?

The Privacy and Personal Information Protection Act **only** applies to personal information, that is, any information that relates to an identifiable person.

This definition covers not only traditional ideas of data storage such as paper files but also such things as genetic material, electronic records, video recordings, photographs and biometric information such as fingerprints.

Although the definition of personal information is very broad, the Act **excludes** certain types of information – refer Section 4 of the PPIP Act. Some of the most significant exceptions include information:

- about an individual who has been dead for more than 30 years;
- that is contained in a publicly available publication;
- or an opinion about a person’s suitability for appointment or employment in the public sector;
- about an individual contained in a Cabinet or Executive Council document.

3. Applications for access to information under the Privacy and Personal Information Protection Act

Sections 13, 14 and 15 of the Privacy and Personal Information Protection Act deal with individuals' rights to inquire about, access and amend information about themselves.

Section 13 requires an agency that holds personal information to take steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (d) whether the agency holds personal information,
- (e) whether it holds personal information relating to that person, and
- (f) if the agency holds personal information relating to that person:
 - (iv) the nature of that information,
 - (v) the main purposes for which the information is used and
 - (vi) the person's entitlement to gain access to the information.

Section 14 states that an agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay and expense, provide the individual with access to the information.

Section 15 provides that:

- 4) a public sector agency that holds personal information must, at the request of an individual to whom information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:
 - (c) is accurate, and
 - (d) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.
- 5) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.
- 6) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.

Section 25 of the Act, however, provides for exceptions where the Department is lawfully authorised or required not to comply or non-compliance is otherwise permitted or reasonably contemplated under any Act or law.

3.1 Linkage to the Freedom of Information (FOI) Act

Section 5 provides that nothing in the Privacy and Personal Information Protection Act affects the operation of the Freedom of Information Act. In particular, the Privacy and Personal Information Protection Act does not modify any exemption under the Freedom of Information Act or lessen any obligations under that Act in respect of a public sector agency.

Section 20(5) provides that the provisions of the Freedom of Information Act that impose conditions or limitations (however expressed) with respect to any matter referred to in section

13, 14 or 15 are not affected by the Privacy and Personal Information Protection Act, and those provisions continue to apply in relation to any such matter as if those provisions were part of this Act.

The FOI application form has been amended to accommodate requests for access under the PPIP Act. These forms are available at Fair Trading Centres or from the Privacy Co-ordinator on 9895 0362.

If the application form suggests the applicant is seeking information which is not personal, relating to himself/ herself, the Privacy Co-ordinator will contact the applicant to recommend a transfer of the application to access being sought under the Freedom of Information Act.

4. Fees

The fees which apply to lodge an application for access to information under the Privacy and Personal Information Protection Act are the same as those which apply under the Freedom of Information Act.

The Department charges \$30.00 to make an application for access to documents. This also applies to a personal inspection of a Departmental file. Although there is no separate charge for photocopying of documents, a processing charge of \$30 per hour applies after the first 20 hours of processing time.

A 50% reduction of fees may be claimed in circumstances where -

- the applicant is a pensioner and provides proof of status eg Health Benefit Card;
- the applicant's income is equivalent to that of a pensioner, or they are experiencing financial hardship;
- the application is made on behalf of a child.

All applications are to be forwarded to the:

**Privacy Co-ordinator
Level 3
1 Fitzwilliam Street
Parramatta NSW 2150
Telephone: (02) 9895 0362**

The Privacy Co-ordinator is responsible for the registration and creation of a privacy file and will attach a time charge sheet to the file's inside cover. An officer handling the file needs to record what they do and how long it takes them to handle their part of a privacy file.

The Co-ordinator will forward a letter to the applicant -

- acknowledging receipt of the application;
- informing them of the fee structure; and
- advising that a determination shall be made within 21 days from the date the application fee was received.

If the application is to be dealt with by an officer other than the Privacy Co-ordinator, a memo, together with the file is then forwarded to appropriate Divisional officer for delegation to an officer to make a determination on access to the information sought.

Processing time on a privacy application does not commence until the fee has been paid.

5. Non English speaking applicants

If an officer receives a privacy access request in a language other than English, it should be accepted in the usual manner and referred to the Privacy Co-ordinator, who will then arrange for a professional translation of the request.

It is not the Department's responsibility, however, to have the material requested translated into another language. If an inspection of the file has been requested and the determination is to release the material, the applicants may invite a friend, family member or professional interpreter to accompany them to a Departmental office to view the file. The Department requires prior written authorisation from the applicant for this third person to be present. The costs of a professional interpreter will not be met by the Department.

6. Application for information held by another Department

The Department can only deal with applications for access to information held by the Department of Fair Trading. If the information requested is obviously not held by the Department, politely direct the applicant to the correct Department for lodgement of their privacy access request.

If the person insists on lodging the application with the Department of Fair Trading, accept the application and refer it to the Privacy Co-ordinator as soon as possible accompanied by an explanatory note. The Privacy Co-ordinator will arrange for the application to be transferred to the appropriate agency concerned.

7. Time Limits

Although the Privacy and Personal Information Protection Act only requires an agency to provide access to personal information without "excessive delay", the Department of Fair Trading intends to meet the same time limits in relation to applications for access to information under the Privacy and Personal Information Protection Act as apply under the FOI Act.

The FOI Act requires that applications be dealt with within 21 days of receipt. ("Dealt with" means that documents relevant to the application have been located and examined, a decision taken on access and a determination in writing completed and dispatched to the applicant.)

8. Advance deposits

Advance deposits will only be requested for processing large scale requests likely to involve a lot of time. The Department will follow the same procedure in relation to FOI applications and seek an advance deposit from the applicant prior to determining the application.

Under the FOI Act, the amount requested as an advance deposit must not exceed the estimated total cost to finalise the application. As a guide, 50% of the total cost should be

sought but determining officers may use their discretion. (Remember to halve the estimated total cost if the applicant satisfies the criteria for financial hardship.)

A written request to the privacy access applicant for an advance deposit is to be accompanied by a schedule setting out the basis on which the total processing charge has been calculated and nominate a period of time to receive payment. The Department usually allows two weeks for this purpose, but the determining officer may again use their discretion.

The 21 day response limit is halted from the day the advance deposit request letter has been issued, and does not recommence until payment of the advance deposit has been received. If the applicant does not pay the advance deposit within the specified timeframe, the Department may refuse to deal further with the application. The application fee may be retained.

Before determining to refuse to deal with the application further, the determining officer should try to contact the applicant by telephone. If unsuccessful a contact letter could be issued. A sample notice of determination refusing to continue to deal with an application because of failure to pay the advance deposit appears in the Annexures to the FOI Procedures Manual.

It is strongly recommended however, that the subject documents be reviewed to ensure there is not any material which could be provided outside the Privacy and Personal Information Protection Act in accordance with Departmental policy. If there are such documents these may accompany the determination letter. The notice of determination should contain an explanation for the documents provided.

9. Directions

The “principal officer” of an agency, ie the Director-General, has the authority to make determinations about the release of information under the FOI Act. The Director-General has signed a direction specifying the positions within the Department which may determine access on applications and requests to amend personal information on Departmental files under the FOI Act.

These positions are also those which are entitled to determine applications for access under the Privacy and Personal Information Protection Act. (A list of current determining officers is available from the Privacy Co-ordinator.)

10. Making a Determination

The first step towards determining an access application under the PPIP Act is identify and retrieve the information being sought. This will usually be one (or more) of the Department’s files and/ or databases. A decision will be made as to what documents are covered by the application and this interpretation will need to be explained in the determination letter to the applicant.

It is the Department’s policy that the documents covered by privacy applications are those which exist and are held by the Department at the time the application was receipted at a DFT office. ie up until the application fee has been paid. Any documents created **after** the date the application was receipted do not form part of the documents pertaining to that particular application.

Following the receipt of the file(s) etc, the determining officer needs to consider how the provisions of the Privacy and Personal Information Protection Act and the FOI Act apply to the disclosure of the information requested, including whether:

- the amount of time to process the application requires an advance deposit,
- an exemption provision should be applied.

10.1 Exemptions

The exemptions which apply to applications for access to information under the Privacy and Personal Information Protection Act are:

1. The exemption in section 25 of the PPIP Act, which states that a public sector agency is not required to comply with sections 13,14 and 15 of the Act if the agency is lawfully authorised or required not to comply with any of these sections, or non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law.
2. The exemption in the Department of Fair Trading's Privacy Code of Practice, which states that non-compliance with sections 13, 14 and 15 is authorised where the Department of Fair Trading considers that compliance with these principles is reasonably likely to detrimentally affect (or prevent the proper exercise of) investigative or law enforcement activities.
3. The exemptions and limitations on access to information contained in the FOI Act. As section 5 and section 20(5) of the Privacy and Personal Information Protection Act import the exemptions and limitations on access contained in the FOI Act into the Privacy and Personal Information Protection Act, officers making decisions about privacy access applications must apply the FOI exemptions to those applications.

10.2 Application of exemptions contained in the FOI Act

Section 25 of the FOI Act sets out the categories of information and reasons why access may be refused. The various exemption provisions are set out in Schedule 1 Parts 1, 2 and 3. Any of these exemptions may be applicable to a privacy access application. Refer directly to the FOI Act and the FOI Procedures Manual on the Network for further details.

To decide in any particular case that a document falls within an exempting provision the determining officer must be convinced that every element of the exemption clause has been satisfied.

The making of a decision to refuse access requires the officer concerned to reach his or her own decision based on all relevant considerations, through independent and objective judgement. While there are no restrictions on consulting others prior to a decision, the determination must represent a decision that is genuinely the determining officer's own. A decision resulting from the direction or pressure from another (eg Minister, senior officer) may not be valid.

To demonstrate how the determination was arrived at, the officer is advised to prepare a detailed file note which sets out the factors considered in the decision, the reasons why

certain provisions were applied. This is often referred to as a statement of reasons. This will enable a reviewing officer or the Administrative Decisions Tribunal to understand the basis for the determination should there be a review request or appeal.

10.3 Public interest

The public interest concept in the FOI Act relates to the community's right to be sure that proper standards of administration are being followed by the Department. The public has a right to know that the Department is obeying the law and is effective, efficient and fair in its dealings with people.

Public interest factors are discussed in the Premier's Department FOI Policies and Guidelines Manual, which is held by the Co-ordinator, FOI. For further information refer to the FOI Procedures Manual, under Reference and Information on the Network.

10.4 Documents which cannot be found

If the documents were known to exist but have been destroyed in accordance with approved record disposal policies, the privacy access applicant should be informed of this and refused access on the grounds the documents are not held by the Department. The notice of determination should set out the details relating to the approved destruction of the document.

If the documents were known to exist but have been lost or misplaced, reasonable steps should be taken to locate the documents. Should the search prove unsuccessful the applicant should be advised the document sought has been misplaced and refuse access.

10.5 Disclosure of intelligence information

The Intelligence Unit, within the Operational Priorities and Intelligence Branch, Compliance and Standards Division, provides intelligence information obtained from internal and external databases, Tribunals and other agencies to Departmental officers.

The type of information accessed by the Intelligence Unit includes company extracts, business names extracts, NSW criminal records, NSW electors, NSW Land Titles information, Australian Bankruptcy records, Australian Telephone Subscriber Records, Australia Post records, RTA records, Fair Trading complaints, DFT investigations, Fair Trading Tribunal claims, NSW business licences, and Register of Named Traders.

Printouts of such intelligence information may appear on files which are subject to a privacy access application and a determination needs to be made on whether such information is exempt in terms of the Department's Privacy Code of Practice or the FOI Act.

As a guide there are certain types of intelligence information which are considered exempt eg criminal records, Australian Telephone Subscriber records and Australia Post records.

The FOI Act does not apply to the judicial functions of the Fair Trading Tribunal (refer Section 10 of the FOI Act). However, copies of claims information may be held on Departmental files. Determining officers will need to consider how and why the Department obtained the documents, the content of the documents, who has knowledge of the content of the documents, whether the documents were used in the course of Department's decision-making processes etc when considering whether or not disclose.

The following intelligence information could be refused under Section 25 (b), (b1) or (c) of the FOI Act. However the Department legitimately collects such information for investigative purposes and probity checks on licensing applications. Officers need to determine whether the release of this information to the person about whom it relates is unreasonable, or whether such disclosure would be against the public interest as it is an internal working document. Some intelligence gathered is already available to members of the public, albeit at a cost, and as such may be difficult to substantiate a refusal of access. Examples of publicly accessible databases include:

1. Company and business names extracts are obtained from a public database, which means members of the public can access such details, usually at a cost, by applying to the Australian Securities Commission or through an information broker.
2. Land Titles information is also obtained via a public database. Members of the public can access certain information direct from the Land Titles Office.
3. Australian Bankruptcy records - a public database is maintained by the Insolvency & Trustee Service Australia and can be accessed by the public through a information broker at a cost.
4. Register of Named Traders - this is a list of traders who have been named in the Department's Annual Reports and/ or in Parliament and could be obtained through research in any library.
5. Business licensing records are maintained by the Department and accessed by the public at a fee.
6. Electoral roll information on a particular person. The roll is a public record which can be inspected, at no cost, at any branch of the State Electoral Office.

Requests for access to DFT complaints and investigations should be very carefully considered, with determinations based on the type and extent of the information sought by the applicant.

Determining officers may discuss any queries as to what intelligence information can or should not be released with the Privacy Co-ordinator and/ or Manager, Operational Priorities And Intelligence Branch.

11. Notices of determination

As the PPIP Act imports the conditions and limitations on access provided in the FOI Act, it is recommended that a notice of determination to the privacy access applicant must be prepared in the same manner as that set out in the FOI Act.

A notice of determination must be sent when a decision (determination) regarding access is made. A decision is made when:-

- the Department refuses to continue to deal with an application because it has not received an advance deposit within the required period;
- access to a document is granted;

- access to a document is refused;
- a decision is made to amend a document;
- a decision is made to refuse to amend a document.

The written determination should include:-

- the date on which the determination was made;
- the name and designation of the determining officer (may appear at end of letter);
- where access to any document is deferred, the reasons for that deferral and when access is proposed to be given;
- where access to any document is refused, the reasons for the refusal;
- where access to any document is refused pursuant to an exemption clause, the clause (or the relevant part of it) should be set out in full in the notice;
- where access to any document is refused pursuant to the Department's Privacy Code of Practice, the Code (or the relevant part of it) should be set out in full in the notice; and
- the internal review rights available to the applicant and the procedures to be followed to exercise those rights.

For documents where access is deferred or refused, it is desirable for the notice of determination to contain a schedule very briefly describing the documents in question. Such details as:

1) file source; 2) author; 3) date; 4) addressee; 5) nature of contents - **providing these details are not themselves exempt.** eg File 97/1234 Letter to Department by complainant against ABC dated 24/12/97.

The reasons for the decision must be provided in the determination letter which should demonstrate that the request has been thoroughly considered and resulted in the right decision. This will entail advancing the facts which have played a part in the determination and the weight or significance attributed to those facts.

Where more than one exemption is relied upon in refusing access to documents, the reasons given must be such as to enable the applicant to understand why each particular exemption applies to each particular document (or part of document).

Where refusal to disclose a document (or part of a document) is based on an exemption clause then that clause (or the relevant part of it) must be set out in full in the determination. Alternatively, a photocopy of the clause may be attached to the determination.

Refer to the FOI Procedures Manual for further details.

A determination letter, advising anything other than full access, should always include advice that if they disagree with the decision they have the right to internal review .

Once the determination letter has issued, the papers should be forwarded to the Privacy Coordinator where information will be recorded for statistical purposes.

12. Inspections of Departmental files

Section 14 of the Privacy and Personal Information Protection Act provides that an agency must, at the request of the individual to whom the information relates, provide the individual with access to the information without excessive delay or expense. This access may take the

form of receiving a copy of the documents or inspecting them. The privacy access application form and fee should be handled in the usual manner and the same time limit for a response applies.

A review of the file and a determination on disclosure must first be conducted by the determining officer to ensure there are no documents on file that relate to third parties or that require exemption from release.

If a determination is to refuse access to any document it should be removed temporarily from the file or covered in some way for the inspection.

When the file has been prepared for inspection, contact is to be made with the applicant for a suitable date, time and venue for the viewing. Before the viewing, it should be explained that the officer to be present at the viewing will not answer any questions on the content of the file. Should questions arise the applicant should be advised to arrange a meeting with or call the appropriate officer at a later time.

In order to protect the privacy of clients, a thorough **identity check** must be carried out to confirm that the person is the authorised applicant **before** access is provided. Any accompanying person must either be named on the application form or have a letter of authorisation from the applicant. It is recommended that they undergo an identity check.

A member of staff must be present at all times during the inspection and the applicant is not permitted to remove or alter the file in any way. If during the inspection the applicant identifies something they would like photocopied, provide these photocopies at the end of the viewing. If the volume of photocopying required makes this difficult, arrangements should be made with the applicant to have the copies mailed or collected at a later date.

The period of time permitted for a viewing is to be decided by the determining officer and should be based on the amount of information being sought and the availability of staff to supervise.

Verifying Applicant's Identity

The greater sensitivity of the documentation requested, the more stringent should be the identification verification procedure adopted. Applicants and other authorised parties should be asked to provide at least two of the documents listed below, starting with the most reliable documents - which are:

- original birth certificate;
- certified copy of an extract certificate and
- current Australian passport.

Others of reasonable evidentiary value include:

- naturalisation certificate;
- marriage certificate;
- overseas passport with current entry permit;
- apprenticeship indenture papers;
- a degree, school examination certificate, or report that is less than two years old from an Australian school, college or university;
- title or deed to real estate, or registered mortgage papers for a home or property.

Less reliable identification papers include:

- motor vehicle registration papers where name and address matches those on the privacy access application form;
- a degree, school examination certificate, or report that is more than two years old from an Australian school, college or university;
- an electricity, telephone or gas account with cash register imprint or other evidence of payment where name and address match those on the privacy access application form;
- rates notice where name and address match those on the privacy access application form;
- house and contents insurance policy where name and address match those on the privacy access application form;
- driver's licence with photograph where name and address match those on the privacy access application form;
- employer's ID card with photograph where name matches that on the privacy access application form;
- Bank, Building Society, Credit Union or Finance Company account book or card where the details match those on the privacy access application.

13. Amendment of Personal Records

Section 15 of the Privacy and Personal Information Protection Act provides that an agency that holds personal information must, at the request of the person to whom the information relates, make appropriate amendments (by way of corrections, deletions or additions) to ensure that the personal information is accurate and, having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.

The person will have to provide clear evidence that the information is incorrect, incomplete, out of date or misleading. Supporting documentation is essential in assisting the Department to make a decision on the need for amendment.

The Department does not charge to consider applications to amend its records and requests should be in writing and sent to the Director of the Division which holds the information. The notices of determination are written in the same manner as a usual notice and applications should be dealt with within 21 days of being received.

If the amendment to the Department's records arose from information obtained through a privacy access application, and should the applicant be able to prove that information on the Department's records is incorrect, out of date, incomplete or misleading, the application fee is to be refunded.

Section 15 also provides that, if the Department is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such manner as is capable of being read with the information, any statement provided by that individual of the amendment sought. If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have the recipients of that information notified of the amendments made by the agency.

14. Internal review

14.1 Complaints concerning the Department's conduct

If a person is unhappy with the determination regarding a privacy access application, or believes the Department may have breached an information protection principle or the Department's Privacy Code of Practice or a public register provision, then a person can demand that the Department of Fair Trading investigate what has occurred.

The complaint must first be referred to the Privacy Co-ordinator, within the Department, for an assessment of whether it should be treated as a request for an internal review (refer to the *Internal Review Procedures Guide*). The internal review criteria require that a request for a review of the Department's conduct must:

1. be from a person "aggrieved" by the Department's conduct;
2. be a written complaint addressed to the Department;
3. provide a return address in Australia,
4. be lodged at a Departmental office within 6 months (or later as the Department may allow) from the time the complainant first became aware of the conduct;
5. refer to conduct which occurred after the appropriate provision of the PPIP Act came into force (usually 1/7/2000);
6. allege a breach of one of the information protection principles in the Act or the Department's Code of Practice or allege an improper disclosure of information kept on a public register held by the Department.

If the complaint does not satisfy the criteria, the letter will be referred to the relevant Division for preparation of a general response.

If the complaint meets the criteria, the Privacy Co-ordinator will register it as a privacy internal review and notify Privacy NSW of its receipt. Arrangements will then be made for the review to be conducted by an appropriate officer in the relevant Division.

There are no costs involved in lodging an internal review. After the investigation the Department can do one of five things:

- do nothing (complaint may not be substantiated);
- apologise;
- offer a remedy such as compensation;
- promise that the behaviour will not occur again;
- change its operations to make sure that the behaviour will not occur again.

If the person making the complaint is not satisfied with the decision they can then appeal to the Administrative Decisions Tribunal. The Tribunal has the power to make any orders that it thinks necessary including the power to award damages of up to \$40,000 to the person making the complaint.

14.2 Complaints concerning other organisations

If a person is unhappy with the way an organisation other than the Department of Fair Trading has dealt with their personal information, their complaint should be directed to:

Address: Privacy NSW
Level 17
201 Elizabeth Street
SYDNEY NSW 2000
(PO Box A2122
SYDNEY SOUTH NSW A1235)

Telephone: (02) 9268 5588
Fax: (02) 9268 5501
e-mail: privacy_nsw@agd.nsw.gov.au

Privacy NSW, the Office of the New South Wales Privacy Commissioner, deals with complaints and advice on personal privacy matters free of charge. The Commissioner's staff are available by phone to discuss privacy concerns and provide basic advice and referrals.

The Commissioner asks people wishing to make formal complaints to do so in writing. The staff are happy to assist people to compose complaints and arrange for translator and interpreter services.

The Privacy Commissioner has powers to conduct research, give out advice and handle complaints about breaches of privacy. While the Commissioner does not have the power to make orders or to award compensation, his office will try to conciliate complaints.

People with complaints related to common privacy problems are often provided with a statement of the Commissioner's policy or an information brochure explaining the steps they may be able to take to resolve the complaint themselves.

A general information brochure has been prepared which includes advice on how to have your name removed from a mailing list, and how to deal with unsolicited telephone calls.

Complaints to Privacy NSW should include the nature of the complaint, the person or organisation concerned and how they would like to see the problem resolved.

When a formal written complaint is received, the person or body complained against is given details of the complaint and asked to comment on the alleged facts and privacy issues. Many complaints are resolved at this stage either by explaining the reasons for the action to the complainant or by making the person complained about aware of the effect of his or her actions.

If a complaint cannot be resolved by negotiation between the parties, the Commissioner may prepare a report containing its recommendations regarding the dispute. By giving the report to the parties they are better able to understand the reasons for the Commissioner's decision, and, as a result, are usually more ready to accept its recommendations.

If the Commissioner's recommendations are not accepted, the Commissioner may exercise its discretion to prepare a special report to Parliament.

14.3 Alternative privacy complaint handling bodies

There are a number of other organisations which deal with complaints involving issues of privacy:

Office of the Federal Privacy Commissioner - federal government agencies, tax file numbers, consumer credit reporting, federal spent convictions, phone 1800 023 985.

Health Care Complaints Commission - confidentiality of medical records and conduct of health workers in New South Wales phone (02) 9219 7444.

Community Services Commission - complaints about the Department of Community Services, the Department of Ageing and Disability and Welfare Agencies, phone 1800 060 409.

NSW Ombudsman - police complaints phone (02) 9286 1000.

Telecommunications Industry Ombudsman - complaints about telephone carriers and service providers, phone 1800 062 058.

Australian Direct Marketing Association (removing your name from mailing lists) phone 1800 252 389.

**DFT MODEL FORM
REQUEST FOR MULTIPLE RECORDS HELD ON A PUBLIC REGISTER**

The Privacy and Personal Information Protection Act 1998 prohibits the Department of Fair Trading from disclosing personal information held on a public register unless the Department is satisfied that the information will be used for a purpose relating to the purpose of the register or the Act under which the Register is kept.

Applicants Name _____

Address _____

Phone _____ Mobile _____ E-mail _____

Name of Public Register _____

Details of Information being sought

Details of all intended uses of the information

**- A FEE WILL BE CHARGED FOR ACCESSING MULTIPLE RECORDS -
QUOTES ON REQUEST - NOTICE OF FEES PROVIDED ON APPROVAL OF APPLICATION**

Preferred format for information: printout / disc / e-mail / other _____

How will information be disposed of after use ? _____

I _____ request the Director-General of the Department of Fair Trading to provide information from the _____ Register. Information will only be used in the manner described in this application.

SIGNED

DATE

FOR DEPARTMENTAL USE ONLY

Authorised Officer: approval of the application is RECOMMENDED / NOT RECOMMENDED

Authorised Officer: application is: Approved / Not Approved / Referred to Legal / Referred to Director / Applicant required to submit further documentation (please specify) _____

SIGNED DATE

DIRECTOR: Approval is noted _____ COMMENT _____

**DFT MODEL FORM
REQUEST FOR SUPPRESSION OF PERSONAL INFORMATION**

The Privacy and Personal Information Protection Act 1998 allows the Department of Fair Trading to either remove personal information about an individual from a register as publicly available or not disclose this information to members of the public in cases where the individual, whom the information is about, has demonstrated that the safety or well-being of any person would be affected by not suppressing the personal information as requested, unless the Department is of the opinion that the public interest in maintaining public access to the information outweighs any individual interest in suppressing it.

Full Name _____

Name as it appears on Register (if different) _____

Address _____

Phone _____ Mobile _____ E-mail _____

Name of Public Register _____

Details of Personal Information to be suppressed (ie not disclosed to the public)

Reason suppression of information is sought (why not suppressing the information would threaten the safety or wellbeing of any person)

Evidence provided in support of request for suppression
(eg Apprehended Violence Order, copies of Police Reports)

Information should be suppressed until (date) _____

NOTE - you will be advised in writing of the outcome of your application. If your application has been successful the Department will review the need for suppression of the information on an ongoing basis.

I _____ request the Director-General of the Department of Fair Trading to suppress personal information contained on the _____ Register for the reasons above stated.

SIGNED

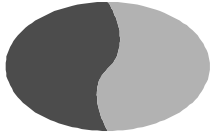
DATE

FOR DEPARTMENTAL USE ONLY

Application is APPROVED / NOT APPROVED

Authorised Officer

DATE



DEPARTMENT OF **FAIR TRADING**

NSW Consumer Protection Agency

**PRIVACY AND PERSONAL INFORMATION
PROTECTION ACT 1998**

INTERNAL REVIEW PROCEDURES GUIDE

OCTOBER 2000

PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 INTERNAL REVIEW PROCEDURES GUIDE

PART I – INTRODUCTION

Introduction

The Privacy and Personal Information Protection Act introduces a set of privacy standards for the NSW public sector. These standards regulate the way public sector agencies deal with personal information.

Jurisdiction

The Act covers those organisations generally considered to be part of the public sector, with the exception of State-owned corporations. It includes such organisations as the Police Service, government agencies and local councils.

Definitions

Under the Act, personal information is defined as information (or an opinion) about an individual whose identity is apparent or can reasonably be ascertained from the information. The definition covers information held in any format - paper files, electronic records, video recordings, photographs, genetic material and so on.

Although the definition of personal information is very broad, the Act also excludes certain types of information. The most significant exceptions are:

- Information contained in a publicly available publication
- Information about an individual's suitability for public sector employment
- Information about people who have been dead for more than 30 years, and
- A number of exceptions relating to law enforcement and investigative agencies.

For the purposes of this Guide, the Privacy Co-ordinator is the officer directed to co-ordinate the activities of the Privacy Review Officers and prepare statistics and reports to meet legislative requirements.

Privacy Commissioner

The Act provides for the appointment of a Privacy Commissioner whose functions include:

- promoting the adoption of, and monitoring compliance with, the information protection principles;
- initiating and recommending the making of privacy codes of practice;
- assisting agencies with preparing and implementing privacy management plans;
- providing advice, conducting education programs and disseminating information on privacy related matters;
- conducting research into privacy related matters;
- making public statements and publishing reports on privacy related matters; and
- receiving, investigating and conciliating complaints about privacy related matters.

Privacy standards applying to the Department of Fair Trading

The Privacy and Personal Information Protection Act requires public sector agencies to adhere to the following privacy principles:

- ❖ Agencies should collect personal information:
 - for lawful purposes directly related to its functions or activities and where the collection is necessary for that purpose;
 - from the individual to whom the information relates, unless otherwise authorised;
 - in circumstances where the individual from whom it is collected is made aware of the fact that it is being collected, the purpose for collecting it, intended recipients of the information, whether the supply is mandatory or voluntary, relevant rights to access and correct the information and the name and address of the Department;
 - taking reasonable steps to ensure the information is relevant, accurate, not excessive and up to date and that the collection does not unreasonably intrude on the personal affairs of the person to whom the information relates.

- ❖ When agencies store personal information they should:
 - ensure that it is kept no longer than necessary and disposed of appropriately, is protected by reasonable security safeguards, and protected from unauthorised use or disclosure;
 - provide individuals with sufficient information about the Department's holdings of personal information to enable the individual to exercise their rights to access and correct information about themselves;
 - provide individuals with access to personal information about themselves without unreasonable delay and expense; and
 - comply with individuals' requests to amend their personal information to ensure that it is relevant up to date, complete and not misleading.

- ❖ When agencies use or disclose personal information they should:
 - take reasonable steps to ensure the accuracy of the information before using it;
 - use it only for the purpose for which it was collected or a directly related purpose, for a purpose to which the individual has consented, or where the use is necessary to prevent or lessen a threat to someone's life or health;
 - only disclose it for a purpose directly related to the purpose of collection and where the individual is unlikely to object, or where the individual has been put on notice that information is usually disclosed in this way, or where the disclosure is necessary to prevent or lessen a threat to someone's life or health;
 - not disclose personal information about a person's ethnic or racial origin, political opinions, religious or philosophical beliefs or trade union membership unless disclosure is necessary to prevent or lessen a threat to life or health; and
 - only disclose information to individuals or organisations outside New South Wales under approved circumstances (this does not apply until after 1 July 2001).

- ❖ When agencies administer public registers, they must:
 - only provide information from those registers if it is satisfied that the information will be used for a purpose which is in accordance with the purpose of the register;
 - provide people with an opportunity to have their personal details held on the register suppressed in some circumstances.

The Department of Fair Trading must generally adhere to the privacy standards set out in the Privacy and Personal Information Protection Act. In some circumstances the Department is exempt from complying with some of these standards where this is necessary to enable the Department to effectively protect consumers, deal with consumer complaints, and administer effective licensing regimes. The exemptions which apply specifically to the Department of Fair Trading are set out in the Privacy Code of Practice for the Department of Fair Trading.

The Department of Fair Trading is also covered by the exemptions contained in the Investigations Code of Practice and the Code of Practice for Inter-Agency Transfers of Information prepared by Privacy NSW.

Exemptions which apply to the Department of Fair Trading are also contained in the Privacy and Personal Information Protection Act itself.

The Department of Fair Trading's Privacy Management Plan

The Department of Fair Trading's Privacy Management Plan sets out how the Department will comply with the requirements of the Privacy and Personal Information Protection Act. This Guide forms part of that Plan.

The Department of Fair Trading's Privacy Code of Practice

The Department of Fair Trading's Privacy Code of Practice sets out the circumstances in which the Department of Fair Trading is exempt from complying with certain provisions of the Privacy and Personal Information Act.

Operation of the Freedom of Information Act

The Privacy and Personal Information Protection Act clearly states (section 5) that the Act does not affect the operation of the Freedom of Information Act.

Inquiries regarding the FOI Act are to be directed to the Co-ordinator, Freedom of Information on (02) 9895 0362.

PART II - GENERAL PRIVACY COMPLAINTS

Complaints about the Department of Fair Trading / general privacy complaints

If a person is unhappy with the way the Department of Fair Trading has dealt with their personal information, the person can complain to the Department.

If a person is unhappy with the way an organisation other than the Department of Fair Trading, in either the public or private sector, has dealt with their personal information, their complaint should be directed to the NSW Privacy Commissioner at:

Privacy NSW	Telephone: (02) 9268 5588
Level 17	Fax: (02) 9268 5501
201 Elizabeth Street	e-mail: privacy_nsw@agd.nsw.gov.au
SYDNEY NSW 2000	
(PO Box A2122	
SYDNEY SOUTH NSW A1235)	

The Privacy Commissioner has powers to conduct research, give out advice and handle complaints about breaches of privacy. The Commissioner does not have power to make orders or to award compensation, but will conciliate complaints by trying to reach a decision that all the parties including the Commissioner are happy with.

PART III - INTERNAL REVIEWS

Ordinary complaints/ applications for internal review

If a complaint about the way the Department of Fair Trading has dealt with personal information concerns a possible breach of the Privacy and Personal Information Protection Act or a Privacy Code of Practice, the Department is required to conduct a review of the conduct complained about. These types of complaints are to be treated as a request for internal review.

If the complaint does not concern a possible breach of the Act or a Code, it should be responded to by the Division which is the subject of the complaint as an ordinary RML or RDL.

Depending on the outcome of an internal review, the Privacy and Personal Information Protection Act provides that the Department may:

- apologise;
- offer a remedy such as compensation;
- promise that the behaviour will not occur again;
- change its operations to make sure that the behaviour will not occur again; or
- do nothing.

If a person who applied for a review is not satisfied with the outcome of the review they can apply to the Administrative Decisions Tribunal for a further review of the conduct they complained about. The Tribunal has the power to make any orders that it thinks necessary including the power to award damages of up to \$40,000 to the person making the complaint.

Assessing an internal review request

The Privacy and Personal Information Protection Act requires that a request for an internal review must:

1. be from a person “aggrieved” by the conduct of the Department of Fair Trading
2. be a written complaint addressed to the Department of Fair Trading
3. provide a return address in Australia
4. be lodged at a Department of Fair Trading office within 6 months (or such later date as the Department may allow) from the time the applicant first became aware of the conduct the subject of the application
5. refer to conduct which occurred after the appropriate provision of the Privacy and Personal Information Protection Act came into force (usually 1 July 2000)
6. allege a breach of one of the information protection principles in the Act or the Department’s Privacy Code of Practice or allege an improper disclosure of information kept on a public register held by the Department.

Who should conduct an internal review?

Section 53 (4) of the Act provides that the person who deals with the internal review must, “as far as practicable” be someone who:

- (a) was not substantially involved in any matter relating to the conduct of the subject of the application
- (b) is an employee or officer of the agency, and

(c) is otherwise suitably qualified to deal with the matters raised by the application.

Procedures for dealing with an internal review request

Internal review requests received by the Department of Fair Trading should initially be directed to the Privacy Coordinator. The Privacy Co-ordinator will assess the complaint to determine if it meets the criteria for an internal review. In order to make this decision, the Privacy Coordinator may contact the complainant to obtain further information. If the complaint does not meet the requirements for an internal review, the complaint will be referred to the most appropriate area of the Department for preparation of a response.

If the complaint meets the criteria the Privacy Co-ordinator will refer it to the Director of the relevant Division. The Divisional Director will then decide who is to conduct the review, having regard to the above principles. The officer conducting the review should generally be more senior than any officer who was involved in the behaviour which is the subject of the complaint. If the Divisional Director was involved in the conduct of the subject of the review, he or she should refer the application for review to the Director of another Division.

The Privacy Co-ordinator will maintain a central register of all internal reviews and appeals to the Administrative Decisions Tribunal.

The Privacy Co-ordinator will follow up the officer conducting the review to ensure the timeliness of the Department's response.

In compliance with Section 54(1) (a) of the Privacy and Personal Information Protection Act, the Privacy Co-ordinator will issue a notice to the Privacy Commissioner advising that the Department has commenced an investigation in response to a request for internal review. The Privacy Commissioner is to be kept informed of the investigation's progress.

Under Section 54(2) of the Act the Privacy Commissioner is allowed to make suggestions or recommendations to the Department at any time during the course of the investigation.

The Privacy Commissioner

Under section 54 of the Privacy and Personal Information Protection Act, an agency can ask the Privacy Commissioner to conduct an internal review on its behalf. The Privacy Commissioner is entitled to charge a fee for this service.

Privacy NSW have indicated that, unless exceptional circumstances exist, agencies are expected to conduct their own internal reviews. Any requests for the Privacy Commissioner to conduct an internal review on the Department's behalf should be approved by the Director-General.

Conducting an internal review

Section 53(5) of the Privacy and Personal Information Protection Act requires the officer conducting an internal review to consider all relevant material, including any relevant material submitted by:

- the applicant, and

- the Privacy Commissioner.

Time Limit

Section 53(6) of the Act stipulates that a review must be completed as soon as is reasonably practicable in the circumstances. However if the review is not completed within 60 days of the day on which the application was received, the applicant is entitled to make an application to the Administrative Decisions Tribunal for a review of the conduct concerned.

The officer conducting the internal review is to maintain close liaison with the Privacy Co-ordinator and provide fortnightly updates on the progress of an investigation. If the matter has not been determined within one month from the date of receipt, an interim letter will be issued by the Privacy Co-ordinator to the office of the Privacy Commissioner to advise of the progress with the complaint.

Records Management and File Notes

It is essential that good records are kept as part of any internal review investigation. Divisions may elect either to create a new file for each internal review or to consolidate investigations on one file. All Departmental records must be maintained in accordance with the requirements of the State Records Act and the Department of Fair Trading Records Management Guidelines.

All material relevant to the investigation should be kept on the Departmental file. This will include:

- copies of all correspondence.
- complete file notes which document all events, telephone conversations, emails, meetings etc, relevant to the review. File notes should be signed legibly by an officer giving name, position, branch and date.
- any other documents relating to the review.

Corrupt conduct

Should an internal review reveal conduct which is potentially corrupt, the officer concerned should implement the Departmental Internal Reporting Procedures for Confidential Disclosures. A copy of these procedures can be found on the Departmental intranet under Human Resource Policies, Information and Fact Sheets.

Internal Review Decision

Under Section 53(7) the Department can, as a result of an internal review, do any one or more of the following:

1. take no further action on the matter
2. make a formal apology to the applicant
3. take such remedial action as it thinks appropriate (eg. the payment of monetary compensation to the applicant)
4. provide undertakings that the conduct will not occur again
5. implement administrative measures to ensure that the conduct will not occur again.

Approval by Director-General

The officer conducting an internal review should prepare a report for the Director-General setting out:

- the outcome of the review
- the reasons for that outcome
- the proposed course of action and the reason for that proposed action
- a draft letter to the applicant for signature by the Director-General or his delegate.

Notice of decision to complainant and the Privacy Commissioner

Within 14 days of the completion of the review, the Director-General or his delegate must advise the complainant in writing of:

- the findings of the review (and the reasons for those findings)
- the action proposed to be taken by the agency (and the reasons for taking that action)
- the right of the applicant, if they are not satisfied with the findings of the review or the action taken by the Department in relation to the review application, to apply to the Administrative Decisions Tribunal for a review of the conduct which was the subject of the application.

The name of the officer who conducted the review is to appear as the contact officer on this letter.

A COPY OF THE LETTER TO THE COMPLAINANT MUST BE FORWARDED TO THE PRIVACY CO-ORDINATOR. THE CO-ORDINATOR WILL FORWARD A COPY OF THE LETTER TO THE PRIVACY COMMISSIONER.

PART IV - REVIEW BY ADMINISTRATIVE DECISIONS TRIBUNAL **(ADT)**

If the complainant makes an appeal to the ADT, the ADT will send a Notice of Application to the Director-General at the Department's Head Office in Parramatta. The Notice will be referred to the Privacy Co-ordinator for registration.

The Privacy Co-ordinator will:

1. Notify the appropriate Divisional Director of the appeal to the ADT
2. Request all the required documents (copies of relevant documents will be sent to the ADT)
3. Refer a copy of the Notice of Application to the Director, Legal Services for assignment to a Legal Officer.

The Tribunal must advise the Privacy Commissioner of the appeal, and the Commissioner can choose to appear before the Tribunal (Section 55).

Collation of Documents

Following consultation with the nominated Legal Officer, the Privacy Co-ordinator will prepare the letters and documents for service to the complainant and ADT.

Legal Branch is to be consulted to determine if the Department will claim exemption from disclosure under the provisions of the FOI Act of any document or part of a document prior to its release to the Tribunal. This is consistent with Chapter 8, Part 1 Section 124 of the Administrative Decisions Tribunal Act and Part 4, Division 2, Section 43 of the Privacy and Personal Information Protection Act regarding the disclosure of exempt documents.

Tribunal Hearing

The Notice of Application to the ADT will specify a time and date for a Directions Hearing at the Tribunal's office. The nominated Legal Officer will represent the Department at this Hearing. If the application is not resolved prior to or at the Directions Hearing, the Tribunal will advise the Department on how the matter will proceed - whether a formal or informal Hearing will be listed for the parties to present their positions, whether legal representation will be accepted, and whether witnesses will be called. The Legal Officer assigned to the application will inform the necessary parties of the progress of the matter.

Tribunal Decision

After investigating the matter the Tribunal can, under Section 55 of the Act:

- Take no action
- Require the Department to pay the applicant damages not exceeding \$40,000 by way of compensation for any loss or damage suffered
- Order the Department to stop contravening an information protection principle or the Department's Privacy Code of Practice
- Require the Department to act in accordance with an information protection principles or the Department's Privacy Code of Practice

- Require personal information which has been disclosed to be corrected by the Department
- Require the Department to take specified steps to remedy any loss or damage suffered by the applicant
- Require the Department not to disclose personal information contained in a public register
- Make any ancillary order that the Tribunal thinks appropriate
- Bring the matter to the attention of the appropriate Minister.

The Legal Officer will notify the Privacy Co-ordinator of the Tribunal's decision.

Under the terms of the Administrative Appeals Tribunal Act the Tribunal's decision may be appealed to an Appeal Panel of the ADT by any party to the proceedings.

FACTSHEET

Fair Trading and the NSW Privacy law

The Privacy and Personal Information Protection Act 1998 (the Act) introduces a set of privacy standards for the NSW public sector. These standards regulate the way public sector agencies deal with personal information. Personal information is any information that relates to an identifiable person.

From 1 July 2000 the Department of Fair Trading must comply with the privacy standards set out in the Act. This means that the Department must:

- apply the Information Protection Principles outlined in the Act when dealing with the personal information of its staff and customers, except where exemptions are provided under the Act or a Privacy Code of Practice
- prepare a Privacy Management Plan which explains how the Department complies with the Act
- establish procedures to ensure that personal information on public registers is only disclosed in accordance with the purpose for which the register exists
- establish procedures to deal with privacy complaints which relate to the Department's own conduct when dealing with personal information.

What are the Information Protection Principles ?

The Information Protection Principles are 12 general principles which are set out in sections 8 to 19 of the Act. They deal with the collection, storage, use and disclosure of personal information by public sector agencies. The principles are designed to:

- minimise the risk of misuse of personal information
- allow individuals a reasonable degree of control over what happens to their personal information.

In summary, the 12 Information Protection Principles are:

Collection

- Personal information is to be collected for a lawful purpose directly related to an agency's functions
- Personal information is to be collected directly from the individual concerned, unless they authorise otherwise
- The individual is to be told why the information is being collected, who will get it, whether supply is mandatory or voluntary and their right to access and correct it
- Personal information collected is to be relevant and not intrude to an unreasonable extent on the personal affairs of the individual

Storage

- Information is to be kept no longer than necessary and disposed of appropriately, be protected by reasonable security safeguards and protected from unauthorised use or disclosure

Access

- Individuals are to be provided with sufficient information about the Department's holdings of personal information to enable them to exercise their rights to access and correct information about themselves
- Agencies are to give individuals access to personal information about themselves without unreasonable delay and expense
- Agencies are to comply with individual's requests to amend their personal information to ensure that it is relevant, up to date, complete and not misleading

Use

- Agencies are to take reasonable steps to ensure the accuracy of the information before using it
- Agencies are to use personal information only for the purpose for which it was collected or a directly related purpose, for a purpose to which the individual has consented, or where the use is necessary to prevent or lessen a threat to someone's life or health

Disclosure

- Agencies are to disclose personal information only for a purpose directly related to the purpose of collection and where the individual is unlikely to object, or where the individual has been put on notice that information is usually disclosed in this way, or where the disclosure is necessary to prevent or lessen a threat to someone's life or health
- Agencies are to observe special restrictions by -
 - not disclosing personal information about a person's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activity unless disclosure is necessary to prevent or lessen a threat to life or health; and
 - only disclosing information to individuals or organisations outside New South Wales under approved circumstances (this does not apply until after 1 July 2001).

What exemptions apply?

In certain circumstances the Department of Fair Trading does not have to comply with one or more of the Information Protection Principles. Some exemptions are set out in the Privacy and Personal Information and Protection Act, some exemptions apply because of the requirements of fair trading legislation administered by the Department and some are contained in Privacy Codes of Practice.

In general, where there are exemptions it is because:

- personal information is collected, used and disclosed for the purposes of law enforcement
- exemption is necessary in order to effectively protect and assist consumers

What is the Privacy Code of Practice?

The Department of Fair Trading's Privacy Code of Practice sets out the circumstances in which the Department of Fair Trading is exempt from complying with certain provisions of the Privacy and Personal Information Act. Copies of the Department of

Fair Trading's Privacy Code of Practice can be obtained from the Department of Fair Trading upon request.

What is the Privacy Management Plan?

The Department of Fair Trading's Privacy Management Plan sets out how the Department will comply with the requirements of the Privacy and Personal Information Protection Act. Copies of the Privacy Management Plan can be obtained from the Department of Fair Trading upon request.

Public Registers

The Act defines a public register as any register of personal information held by a public sector agency that is publicly available or open for inspection.

The Department of Fair Trading maintains several public registers in relation to trade and business licensing schemes and registration and incorporation schemes.

The Act requires the Department to:

- only provide information from those registers if it is satisfied that the information will be used for a purpose which is in accordance with the purpose of the register
- provide people with an opportunity to have their personal details held on the register suppressed in exceptional circumstances where the safety or well-being of the person is at risk.

Access to Personal Information

The Department is required to take reasonable steps to enable people to find out if the Department holds personal information about them and if so, the nature of the information, what it is used for, and how they can get access to it. Individuals can fill out a Privacy/FOI Request for Access form. A separate leaflet which explains the types of information which can be accessed under either the Privacy and Personal Information Protection Act or the Freedom of Information Act is also available from the Department.

Alteration of Personal Information

If the Department holds personal information about an individual, that individual is entitled to ask the Department to alter the information in order to ensure it is accurate.

In order to ensure the reliability of information held by the Department and to reduce opportunities for corruption, the Department will generally require requests to alter information to be in writing.

Under its Privacy Code of Practice, the Department does not have to permit access to, or alteration of, personal information if it would compromise the Department's investigative or law enforcement activities.

Privacy complaints concerning the conduct of the Department of Fair Trading

The Department of Fair Trading can only deal with privacy complaints which relate to its own conduct.

If a person is unhappy with the way the Department of Fair Trading has dealt with their personal information, the person can complain to the Department. If the complaint concerns a possible breach of the Privacy and Personal Information Protection Act or a Privacy Code of Practice, the Department is required to review the conduct complained about. Depending on the outcome of the review, the Act provides that the Department may:

- take no further action
- apologise
- offer a remedy such as compensation
- promise that the behaviour will not occur again
- change its operations to make sure that the behaviour will not occur again.

If you would like to submit a complaint regarding the way the Department of Fair Trading has dealt with personal information, the complaint should be in writing, addressed to the Department of Fair Trading, specify a return address within Australia, and be lodged at an office of the Department of Fair Trading within 6 months of the time when you first became aware of the conduct you are complaining about.

If a person who applied for a review is not satisfied with the outcome of the review they can apply to the Administrative Decisions Tribunal for a further review of the conduct they complained about. The Tribunal has the power to make any orders that it thinks necessary including the power to award damages of up to \$40,000 to the person making the complaint.

General privacy complaints

Privacy complaints can also be directed to Privacy NSW, which is the office of the NSW Privacy Commissioner. Privacy NSW is able to deal with complaints about the conduct of both government and private sector organisations. The Privacy Commissioner has powers to conduct research, give out advice and handle complaints about breaches of privacy. The Commissioner does not have power to make orders or to award compensation, but will conciliate complaints by trying to reach a decision that all the parties including the Commissioner are happy with.

This fact sheet must not be relied on as legal advice. For more information about this topic, please refer to the appropriate legislation .