

Private Word

News from the Office of
the Privacy Commissioner

A new level of regional cooperation

Long-standing privacy forum PANZA+ is moving towards becoming an even more significant organisation for information sharing and cooperation in the Asia Pacific region.

The forum began in 1991 as the Australian National Privacy Agencies' meeting. In 1992 the newly appointed New Zealand Privacy Commissioner joined the second meeting, transforming it into an international forum. The PANZA acronym (Privacy Agencies of New Zealand and Australia) was adopted in 1996. Then in 2002, when the Hong Kong Privacy Commissioner for Personal Data became a full participant, the name was changed to PANZA+. The Korea Information Security Agency (KISA) joined as a full participant last year.

At the forum's most recent meeting,

held in Wellington in May, New Zealand Assistant Privacy Commissioner Blair Stewart put forward a range of proposals on how the organisation could develop into a more effective vehicle for regional cooperation and information sharing.

The proposals are aimed at building on the forum's sound foundation and will be considered further at the forum's next meeting in November. They include consideration of:

- a new name for PANZA+ to better reflect its regional membership and purpose;
- a website to provide a public face for the forum, a regional portal into information about privacy laws and mechanisms in member countries, an effective channel for disseminating information between members, a forum to discuss issues of common interest, and a repository of PANZA+ documentation;
- a Memorandum of Understanding on cross-border complaints handling;
- standardisation of statistical reporting amongst members;
- common citation practices for case notes; and
- joint staff training programmes.

The proposals also include suggestions for enhancing the forum's structures and administrative arrangements.

Mr Stewart said the need for cooperation amongst privacy authorities

was encouraged by APEC (Asia Pacific Economic Cooperation) last year.

"PANZA+ has been successful to date with its quite modest objectives of sharing information to assist participants to individually fulfil their mandates," he said.

"With APEC's new found interest, and with the forum and many of our laws and offices having reached maturity, we should reflect upon PANZA's appropriate role and aim to take things to a new level."

While PANZA+ has been the principal forum for privacy commissioners in the region for the past 14 years, New Zealand also participates in a number of other international forums.

In 1995 a Pan Pacific meeting brought together the privacy commissioners of Canada, New Zealand and Australia.

The first Asia Pacific Forum on Privacy and Data Protection (ASPAC Forum) was convened by the Hong Kong Privacy Commissioner for Personal Data in 1998. It brought together privacy commissioners and government representatives from around the region. The Australian and New Zealand Privacy Commissioners jointly hosted a second ASPAC Forum in 1999 in Hong Kong, and the New Zealand Privacy Commissioner hosted a third ASPAC Forum in 2002 in Auckland.

The largest grouping is the annual International Conference of Privacy and Data Protection Commissioners, of which New Zealand is a member. The 27th Conference is to be held in Switzerland in September.

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Information “vital to a healthy democracy”

Privacy Commissioner Marie Shroff was the keynote international guest speaker at the Freedom of Information (FOI) Live 2005 Conference in London in June. It was held just six months after the UK’s contentious Freedom of Information Act came into full force. Mrs Shroff was invited to speak not just as New Zealand’s Privacy Commissioner but also because of her long experience as Cabinet Secretary.

Mrs Shroff told the London audience that New Zealand’s FOI legislation worked well. The Official Information Act (OIA) had been in force for 23 years, and the Privacy Act for 12 years.

“There is a growing and well founded belief that information is vital to a healthy democracy,” she said.

“Public sector reforms in the western world have been driven by, and delivered, greater accountability to citizens. This has also been a theme of legislation across a number of areas.

“In New Zealand recent reforms to Standing Orders, the Companies Act, the Public Finance Act, the Fiscal Responsibility Act, and the Consumer Guarantees Act, have also delivered greater accountability, open government, consumer and citizen empowerment and rights to information.

“Some thinkers on the subject believe that the 1982 OIA was the key reform which in the 1990s made these later developments possible.

“So let’s get freedom of information into proportion. It is part of a wider reform and development of democracy and society;



Pictured at the FOI Live 2005 Conference are (left to right): Robert Hazell, Director, The Constitution Unit, UCL, UK; Graham Smith, Deputy Information Commissioner, UK; Antonia Romeo, Head of Information Rights Division, Department for Constitutional Affairs, UK; Marie Shroff, Privacy Commissioner, NZ. Photo courtesy: Jon Page

it is a very important way for individual citizens to access information.”

Mrs Shroff said perhaps the greatest success of New Zealand’s open government regime was its wide and inconspicuous acceptance.

“Certainly the OIA and to an increasing extent the Privacy Act have been absorbed into the fabric of New Zealand government.”

Both Acts emphasised openness and transparency, leading to accountability, and to proper democratic pressure to

be fair and reasonable in information handling.

The Commissioner also said she believed the impact of information and communications technology would both drive and assist new FOI features. “Good information management policies and practices will open up and facilitate access requests. Information must also be proactively pushed out into the public arena to achieve a truly participative democracy.”

Mrs Shroff’s full speech is at: www.privacy.org.nz

Privacy and Business: Australia’s experience

An extensive review by Australian Federal Privacy Commissioner Karen Curtis of the Australian Privacy Act’s coverage of the private sector concludes that the provisions are generally effective in protecting privacy.

She also found that the message from business was very positive overall. “Generally speaking, it appears that in most areas, the scheme has met its objective of not unduly impeding the free flow of information, or the right of business to achieve their objectives in an efficient way”.

Many private sector agencies in Australia were made subject to the legislation for the first time from December 2001.

This followed several years of fierce debate about requiring businesses to comply with privacy laws.

The Commissioner’s recent report noted there was still a confusing range of different rules. Areas of particular concern included tenancy databases, health information and failure to meet the EU’s “adequacy” threshold. The report’s 85 recommendations were aimed at easing those and other difficulties. However, the Commissioner’s review found there was no fundamental flaw in the system and private sector coverage should continue.

For details see: www.privacy.gov.au/act/review/index.html

An international career in privacy

Former Office of the Privacy Commissioner Senior Investigating Officer and Education Officer Sandra Kelman is about to take up a high-level private sector job that probably didn't exist when she was first making career choices.

Ms Kelman, currently a Ministry of Social Development (MSD) solicitor specialising in privacy issues, has been appointed Privacy Manager for BP's Asia Pacific region. While the job will see her liaising with the multinational's data protection representatives in each of the 16 regional country offices, she expects the issues will be broadly the same as those she has worked with in the public sector - simply put, how an organisation manages the personal information it processes.

She is obviously passionate about the subject. A librarian by training, Ms Kelman studied law when her four children were growing up. She had a particular interest in human rights, and this led her to include a privacy paper in her honours degree, at a time when the Privacy Act was very new.

Her first job out of law school was with the Office of the Privacy Commissioner. After four enjoyable years, Ms Kelman moved to the UK, where she worked for a privacy consulting firm and travelled widely to provide specialist training for the firm's European clients.

While not expecting to easily find a specialist privacy job back in New Zealand last year, she found her skills and experience quickly led to her heading the MSD's team of three privacy solicitors. MSD processes a great deal of personal information in its role of providing social services to over one million New Zealanders. The MSD Privacy Unit is involved in a variety of privacy related issues from handling client enquiries and complaints, through to commenting on the privacy issues in new initiatives and policies.

"I feel like I took a career gamble, but it has definitely worked in my favour," she says. "It's absolutely fascinating work."

She was also pleased to find that on returning home there had been a cultural shift within New Zealand and that organisations, both public and private sector, were taking privacy issues more seriously.

"When I left New Zealand I felt privacy was something organisations sidelined," she says. "The Privacy Act seems to have fully bedded down now, and people have come to accept that it is not going away and is in fact, all about good information handling practices, which can be a sales and marketing tool."

Ms Kelman says privacy touches a wide range of issues for all organisations,



Sandra Kelman

doesn't exist in a vacuum, and impacts on almost all business areas. "Privacy means something different to everybody ... but to my mind, it's about having respect for people's personal information and never forgetting the individual is part of the process."

She says new technology is having a significant impact on privacy, but it is important to always stand back and look at the issues for what they really are, and to apply the Privacy Act's 12 principles. "Sometimes you can get too involved with the details of a project and the privacy issues seem insurmountable. It helps to take a step back and analyse it from an information life-cycle perspective, collecting, storing, using and disclosing information safely."

News around the world

□ It cost US data broker ChoicePoint US\$6 million in its second quarter to cover costs related to the leak of information about 145,000 Americans. This is in addition to the US\$5.4 million in costs the company recorded in the first quarter. Of the total US\$11.4 million, about US\$2 million was for communications to individuals whose data has been exposed, as well as credit reports and monitoring services for those people. The remaining US\$9.4 million was for legal and other professional fees. http://news.com.com/2100-7350_3-5797213.html

□ The UK Government has launched a website aimed at the general public about IT security awareness. ITSafe - www.itsafe.gov.uk/about/index.html - provides information about threats to computer safety such as software vulnerabilities and viruses, and gives help on how to protect against those threats. The site is designed to work over slow internet connections and with most computers. Information is backed up by the UK's National Infrastructure Security Co-ordination Centre (NISCC), which was set up in 1999 and is an interdepartmental centre drawing on contributions from across government.

UK Privacy Forum

Privacy Commissioner Marie Shroff presented a paper about New Zealand privacy protection to the UK's Data Protection Forum in June.

Founded in 1992, the Forum brings together a cross section of those involved with privacy issues, including public and private sector organisations, and consumers. It provides a focus for the collection, formulation, exchange, analysis and communication of information on data protection.

For further information go to: www.dpforum.org.uk

It isn't hard to be fair ...

Although the Privacy Act has been in place for over a decade, the Privacy Commissioner continues to receive complaints about employers doing unauthorised reference checks.

Why does the Privacy Act allow job applicants to limit who employers can contact? Because people like to feel reasonably in control of their application, and they like to have their wishes treated with respect – particularly since, if they're appointed, they'll be in an ongoing relationship based on trust. Applicants feel unfairly treated when a potential employer goes behind their back to obtain information about them.

On the other hand, employers need to avoid risks during recruitment by obtaining the best information possible. They do not want to take someone on who is going to cause problems with co-workers, managers or clients. So there is a real temptation to contact people who were not nominated as referees, particularly past employers.

Employers are sometimes annoyed by the restrictions placed on them by the Privacy Act, which indicate that they must only contact nominated referees or get an applicant's permission to approach other people. They feel this allows employees to pull the wool over their eyes.

The reality, though, is that employers can still get the information, or make the choices

they need to, and at the same time easily comply with the Privacy Act. For a start, an employer can learn a lot by looking at who applicants nominate as referees – and who they don't. If they don't name a past employer, ask them why. The explanation might tell an employer a lot about the person.

Also, if an employer wants to approach other people, it's not hard to ask applicants whether they can do so. This gives people a chance to specify other contacts, or say no. They also have a chance to explain why. Again, an explanation may be enlightening.

If an employer needs to get a reference from a particular person, because it is relevant to the position advertised, the employer should explain why. If the applicant refuses, employers may then be justified in not going further, on the basis that they don't have sufficient information to judge the person's suitability.

There is nothing in the Privacy Act which stops employers from finding out relevant information about an applicant. They just have to be up front with the person about getting that information. It isn't hard to be fair.

*Judith Manoa
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