

PRIVACY REGULATION ACROSS AUSTRALIA

(AT 5 NOVEMBER 2009)

Privacy is a personal right that attaches itself to various concepts including privacy of the home, bodily privacy, information privacy and communications privacy. In Australia, aspects of privacy are protected by laws of trespass, nuisance, breach of confidence and copyright. The courts are also beginning to recognise an emerging tort of invasion of privacy and the Australian Law Reform Commission, in its 2008 report ALRC 108 – *For Your Information, Australian Privacy Law and Practice*, recommended the implementation of a statutory cause of action for serious invasions of privacy. Laws limiting the use of surveillance devices or the interception and recording of telephone conversations also have the effect of protecting privacy, as do confidentiality provisions that are often found in laws regulating sensitive matters such as adoption, infectious disease or the handling of criminal records.

Most Australian jurisdictions, except Western Australia and South Australia¹, have enacted specific information privacy legislation which regulates how certain public and private sector organisations collect, store and handle personal information and provide a mechanism for individuals to make a complaint to an independent Commissioner about a breach of the relevant legislation. In some jurisdictions, privacy legislation now provides rights for individuals to access and correct their personal information while in other jurisdictions these rights remain in complementary legislation (freedom of information laws). Health information is often given specific legislative protection (health privacy laws) and in Victoria and the Australian Capital Territory, human rights legislation recognise a broader right to privacy and oblige public sector organisations to act in a way that is compatible with this and other protected rights.

Most privacy laws in Australia and overseas are based on internationally accepted standards set down by the Organisation for Economic Co-operation and Development (OECD) in 1980 and more recently by the European Union in 1995.

This information sheet deals only with laws that regulate information and health privacy in Australia across the Commonwealth, States and Territories. References are also included to human rights laws establishing a general right to privacy.

(For more information, and links to privacy-related developments across Australia, see the interactive privacy map at www.privacy.vic.gov.au > Relevant Laws > Privacy Laws.)

¹ South Australia has administrative guidelines that are largely based on privacy laws

Existing Australian privacy laws

In summary, information privacy laws apply in the Commonwealth (CTH) and the Australian Capital Territory (ACT), New South Wales (NSW), the Northern Territory (NT), Queensland (QLD), Tasmania (TAS) and Victoria (VIC). Specific laws protecting health information exist in the ACT, NSW and VIC. A general right to privacy is recognised under human rights laws enacted in the ACT and VIC.

- ACT: The [Human Rights Act 2004](#) (ACT) (as amended) took effect on 2 January 2007 and establishes the right to privacy for individuals. The [Health Records \(Privacy and Access\) Act 1997](#) (as amended) commenced on 18 November 2006 and applies to health services providers in the ACT. The [Human Rights Commission](#) administers both of these Acts.
- CTH: The Commonwealth [Privacy Act 1988 \(Cth\)](#) applies to the federal (Commonwealth) public sector from 1 January 1989 and was extended to cover parts of the private sector from 21 December 2001. The [Privacy Act 1988 \(Cth\)](#) also applies to public sector agencies in the ACT. The [Australian Office of the Privacy Commissioner](#) administers this Act.
- NSW: The New South Wales [Privacy and Personal Information Protection Act 1998 \(NSW\)](#) commenced in stages from 1 February 1999 and took full effect from 1 July 2000, applying to state and local government agencies. It was amended in 2009 to include access to and correction of personal information. The [Health Records and Information Privacy Act 2002](#) (NSW) commenced on 1 September 2004 and applies to NSW state and local governments as well as private sector persons and organisations in NSW. The [NSW Privacy Commissioner](#) administers both of these Acts.
- NT: The Northern Territory [Information Act 2002](#) commenced on 1 July 2003 and became enforceable on 1 July 2004 in relation to state public sector organisations, and on 1 July 2005 in relation to local authorities. The [Northern Territory Information Commissioner](#) is responsible for overseeing the information and privacy provisions of this Act.
- QLD: The [Information Privacy Act 2009](#) (IP Act) commenced on 1 July 2009 and applies to all Queensland public sector organisations. The IP Act contains a set of Information Privacy Principles (Qld IPPs), which bind all public sector organisations except Queensland Health. Queensland Health is also subject to the IP Act but instead of the Qld IPPs, it is subject to 'National Privacy Principles' (NPPs) which are included in Schedule 4 of the Act and correspond to the National Privacy Principles in the [Privacy Act 1988 \(Cth\)](#). The IP Act establishes the office of Privacy Commissioner, who is appointed by Governor in Council but acts at the direction of the [Information Commissioner](#).
- TAS: The Tasmanian [Personal Information Protection Act 2004](#) commenced on 5 September 2005 and applies to state public sector bodies and local councils. The [Tasmanian Ombudsman](#) administers this Act.
- VIC: The [Information Privacy Act 2000 \(Vic\)](#), applying to state and local government agencies in Victoria, commenced on 1 September 2001 and became enforceable on 1 September 2002. The [Health Records Act 2001](#) (Vic) became fully operational on 1 July 2002 and applies to all identifying personal information collected by health service providers as well as health or disability identifying personal information collected by non-health service providers in Victoria. These Acts are administered, respectively, by the [Victorian Privacy Commissioner](#) and the [Victorian Health Services Commissioner](#). The [Charter of Human Rights and Responsibilities Act 2006](#) commenced on 1 January 2007 and became fully operative on 1 January 2008. The

Charter establishes a general right to privacy for individuals in addition to other rights and is administered by the [Victorian Equal Opportunity and Human Rights Commission](#) .

Administrative directions

South Australia has opted to use administrative privacy standards in lieu of privacy legislation. It implemented a set of state [Information Privacy Principles](#) by means of a Cabinet Administrative Instruction introduced in July 1989 and re-issued on 30 July 1992. This Instruction applies to state, but not local, government in South Australia. South Australia also has a Code of Fair Information Practice which is based on the National Privacy Principles and regulates the South Australian Department of Health, its funded service providers and others with access to personal information held by the Department of Health.

You can find the source documents for the underlined text above by going to the interactive privacy map at www.privacy.vic.gov.au under Relevant Laws > Privacy Laws.

This information sheet is designed to give general guidance only.

It should not be relied on as legal advice.