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Member Bulletin

While iappANZ aims to provide its Members with timely and relevant information about what’s happening in the Australia and New Zealand privacy environments, we are also aware that our membership is part of a unique community of practice – where access to practical strategies for accomplishing the tasks of a privacy professional are as valuable as a resource as the legal, academic and political discourse available through iappANZ and other sources.

The Member Bulletin is a monthly publication, exclusive to Members, that highlights the issues affecting today’s privacy professionals as part of their day-to-day business and points Members toward information and strategies that may assist them.

Foreword:

Privacy Awareness Week (PAW) last month was a big success, and your iappANZ colleagues were in the thick of it. PAW activities were hosted and attended by the iappANZ Board and members alike, some of which are highlighted below. In the wake of PAW, it’s only fitting that this month’s Member Bulletin will canvass the issue of organisational awareness of privacy. Common organisational perceptions that can lead to privacy apathy are explored, and human resource managers are provided with sensible opportunities for raising the profile of privacy in the context of staff recruitment.

Kevin Shaw
Vice President
iappANZ Board

Beware the Ostrich – head in the sand vs. using what you don’t know to your advantage

In the privacy profession, colleagues often commiserate about the lack of true awareness about matters involving personal information in their agencies. Some believe it is a level of wilful ignorance on the part of senior decision makers (as in, “if I don’t see it/ hear it/ speak of it, then...”), and others believe it is a more generalised fear of traversing the unknown -
particularly if privacy and the protection of personal information are fairly new in the agency’s lingo.

For practical purposes, both camps are probably right – key players in agencies are sometimes ‘ostriching’ and hoping that privacy is a self-sorting kind of thing, meanwhile others may simply be standing still, frozen by the potential impact of what they don’t know. It is arguable, however, that those who are frozen have a better likelihood of generating (or recovering?) the privacy momentum simply by acknowledging what they don’t know and then setting out to fill that gap in a meaningful way.

Consider the following perceptions and opportunities:

**Perception 1:** Technical privacy controls in our <insert fancy database name here>? How would we implement that? We’re ‘policy people’, not ‘IT gurus’...

**Opportunity 1:** The reality, particularly in government, is that many of those tasked with ‘privacy’ also sit within the administrative law, governance or strategic policy area of their agencies. Another reality is that lawyers, auditors and policy officers know that the most effective research, on-point documentation and credible reporting can often involve asking the experts. When faced with implementing privacy controls in order to render the IT (or any other) aspects of the workplace compliant with the privacy principles, taking the role of facilitator, and engaging with the experts about what the ‘policy’ need is, is a good step towards becoming unstuck..

**Perception 2:** The possible expense to plug this privacy gap seems to outweigh the risk in leaving it be.

**Opportunity 2:** As privacy professionals, it is your job to think in terms of ‘when’ (not ‘if’) when it comes to holes in your privacy framework. Extreme as it may sound, perhaps think about privacy in the context of a faulty seatbelt. Would you risk placing a member of your family (or anyone in the community, for that matter) in the seat with the faulty seatbelt because the anticipated cost of fixing the seatbelt holds greater weight to you than the risk that an accident will happen? Enough said.

If expense (or ‘the bottom line’) is truly an issue, consider the numerous cost-neutral options at your disposal. For example, if you are part of an industry-specific network of privacy professionals, you may find that a colleague in another organisation has faced the same issue – and perhaps you can arrange to borrow the solution. Or if you are sure that creation and provision of resources (such as guidelines, training materials and the like) will be the source of financial strain, consider the varied materials publicly available (at no charge) on the websites of our privacy regulators – often an agreement to acknowledge your source in writing can enable you to borrow those solutions as well.

**Perception 3:** We conducted a voluntary compliance survey, and the survey says everything is fine.

**Opportunity 3:** Of course that’s what the survey says! It is highly unlikely that employees in any organisation are going to voluntarily point to privacy gaps in their localised (or perhaps their own personal) policies, practices and systems, particularly where the informal survey could lead to unforeseen (or, worse, foreseen and very formal) consequences.
A regular, targeted and formal privacy audit process may help here – but it will require the support of your senior executive, particularly in terms of reassuring employees that this is a business improvement tool that, if done properly (and if focussed on bettering privacy outcomes), will not be a lynching. As a carefully planned exercise, where opportunities to improve become the focus, a privacy audit may indeed uncover what you suspect – that there is always room for better practice.

Nicole Waterson
iappANZ Board Member

Recruiting – a perfect opportunity to build privacy in

The rippling effect of the current global financial crisis is evident with a number of organisations downsizing which in turn has equated to a number job losses. Due to the rising unemployment rate, competition for positions has increased resulting in larger numbers of applicants. If your organisation is fortunate enough to be recruiting for a role/s now could be the perfect time for you to review your recruitment procedures in the context of your privacy policy.

As you are aware, recruitment processes and procedures are governed by a variety of Federal and State statutes and best practice, which crisscross the public and private sector landscapes. These include, but are certainly not limited to, privacy, anti-discrimination, trade practices and industrial relations laws; Australian (and related State) Standards; and, guidelines and best practice offerings produced by various regulatory bodies.

When considering privacy’s role in overall governance of recruitment processes and procedures, it is of benefit to start with the privacy principles governing your organisation. For example, human resource managers in the commerce sector should ensure that their recruitment practices observe the ten NPPs as set out in the Privacy Act 1988, with particular consideration of the following:

- Obtaining informed consent of a candidate prior to collecting, storing, using or disclosing personal information about the candidate from a third party (e.g. a referee nominated by the candidate). Generally third parties are contacted in a recruitment process in order to assist your organisation in assessing their suitability for the position by verifying the candidate’s work history and qualifications. This being the case, your collection of informed consent will also be a mechanism to reassure the candidate that information collected about them from third parties will only be used or disclosed for the specified purpose.

- Advising the candidate, either verbally or in writing, what personal information about them will be kept on file. The Privacy Act regulates the handling of personal information, however specifically excludes personal information about employees kept in employee records. This exclusion will not apply until a candidate is an employee, which means that protection of a candidate’s personal information represents a heightened obligation to securely store and handle that information. It would be of benefit to review your
organisation’s recruitment policy and privacy policy together to ensure the personal information of candidates does not fall through the cracks.

- Advising the candidate, either verbally or in writing, **what sensitive information about them will be kept on file.** Sensitive information includes information about a person’s race, religion, sexual preferences and behaviour, political opinions, membership of a trade union, criminal record and health information. Sensitive information does not include financial information. Sensitive information can only be collected with consent of the candidate and its distribution is closely restricted. As with personal information, it would be of benefit to review your organisation’s recruitment policy and privacy policy together to ensure that any sensitive information of candidates is captured.

When recruiting and interviewing, there are some considerations for compliance with both the *Privacy Act*, and a myriad of other legislative requirements:

**1. Ask for what you need**

- Have questions prepared in advance to ensure consistency and fairness
- Be conscious of the way you ask questions in the interview (e.g. your body language)
- Relate questions to work performance or the job vacancy
- Do not ask intrusive personal questions (e.g. age, marital status, children, etc)
- Ask all candidates the same questions (your notes should relate back to the questions).

**2. Candidate behaviour**

- If candidates behave in a way that is compromising to themselves or you as the interviewer, make a diary note of the incident and place on the recruitment file (e.g. making inappropriate comments).

**3. Your professionalism**

- Do not pass comment or write notes on physical appearance and/or attributes
- Avoid writing negative comments during the interview
- Do not mislead candidates regarding availability, nature of terms or conditions of employment
- Do not defame the candidate, especially during the reference checking process. The reference check must remain confidential and should be standard and routine. A reference check cannot be used as a short listing tool.

**4. Fairness in the process**

- Distinguish between essential criteria (those that the person must satisfy to be able to do the job) and desirable criteria (those that will help to do the job).

**5. Security of records**

- You must ensure confidentiality is respected for every candidate by restricting access to recruitment records
- Ensure your organisation follows the appropriate rules for storing resumes and interview...
notes (e.g. destroy unsuccessful application details within an appropriate time, information of successful applicants should be held on an employee file in a secure location).

6. Legal considerations

☒ The organisation should get verification of the rights of the individual to work in Australia (e.g. working visa if applicant is not an Australian citizen). This is necessary before an offer of employment can be made
☒ Contract of Employment either verbally or in writing, is a legally enforceable agreement. It is essential that all offers of employment are carefully considered prior to any offers being made.

Kate Johnstone
iappANZ Board Member

Privacy Awareness Week – some highlights

During Privacy Awareness Week (3 – 9 May 2009), the iappANZ held events for its members and guests around the country.

In Sydney, on May 7, a casual networking evening was held at the Arthouse Hotel with cocktails and plenty of canapés. Privacy professionals from a number of different organisations including, law firms, security companies, consultants, telecommunications and not-for-profit agencies attended. Although it occurred in conjunction with PAW, this event was also part of the iappANZ Birds of a Feather series. You can find out more about Birds of a Feather gatherings in your city by viewing the Events page at www.iappanz.org.

In Melbourne, on May 8, Ernst & Young hosted a privacy themed breakfast with guest speaker David Watts. The breakfast was well attended and David was a thoroughly engaging and thoughtful speaker. As noted by an iappANZ Board Member, “[h]e was disarmingly frank regarding the leaks and cultural issues facing Victoria Police”. David prepared a power point of his presentation, which is available to those who attended the breakfast. Please contact Dominic at admin@iappanz.org for more information.

Whether during PAW or other times during the year, events carrying the privacy theme are a great way to meet your fellow iappANZ members and find out about current issues.

PAW is an annual promotion by the Asia Pacific Privacy Authorities group. For all in the privacy profession and for those simply with an interest in privacy, PAW activities provide unique insight into privacy issues globally as well as an opportunity to engage in the privacy debate. More information about PAW can be found at: http://www.privacyawarenessweek.org/paw/
**What’s new in privacy?**

**Reward for a job well done**

The Australian Privacy Commissioner is now accepting nominations for the *Australian Privacy Awards and Australian Privacy Medal 2009*. The Awards are a forum for the recognition of good privacy practices engaged in by government, not-for-profit organisations and the private sector and the Medal will celebrate outstanding individual achievement in the advancement of privacy in Australia. More information, including particulars for nomination, can be found on the Office of the Privacy Commissioner website: [http://www.privacy.gov.au/about/awards/index.html](http://www.privacy.gov.au/about/awards/index.html)

**Queensland gets its Acts together**

As part of the broad information reform agenda in Queensland, the state has now enacted the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act). Both will be in force from 1 July. Together the Acts are designed to promote a culture of greater openness in the Queensland public sector environment while providing appropriate protections for personal information. A Privacy Commissioner will provide oversight in relation to application of the IP Act, including the review of agency decisions about access to and amendment of personal information, approvals of applications to waive or modify the privacy principles in the public interest, issuance of compliance notices to agencies in the event of serious or flagrant privacy breaches, and the mediation of privacy complaints. Local Governments in Queensland will have a ‘grace period’ of one year to comply with the bulk of the IP Act. The privacy complaints components of the IP Act will not commence until the proposed Queensland Civil and Administrative Tribunal is up and running later in the year. Prior to 1 July, you can access the RTI and IP Acts ‘as passed’ on the Queensland Parliamentary Council website: [http://www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

An important discussion**

The Australian Law Reform Commission (ALRC) has released a Discussion Paper for its current inquiry into federal secrecy laws—Review of Secrecy Laws (DP 74, June 2009). The Paper makes 65 proposals for reform where, as stated in an 18 June media release, “*the key focus... is on achieving much greater clarity for the public servants and others who handle Commonwealth information*. The ALRC also noted that “*... in doing all of this, we must be careful to fit in with the surrounding matrix of laws on Freedom of Information, privacy and whistleblower protection—areas which are also currently under review*. Further information on this, and other work of the ALRC, can be found at [www.alrc.gov.au](http://www.alrc.gov.au)

**Notable introductions in New South Wales**

The New South Wales government has introduced a suite of information reforms to the NSW Parliament. Three new bills were introduced this month, including: the Government Information (Public Access) Bill, which replaces the *Freedom of Information Act* and promotes pro-active disclosure of information; the Government Information (Information Commissioner) Bill; and, the Government Information (Public Access) (Consequential Amendments and Repeals) Bill. A key feature in this package is the role of the Office of the Information Commissioner, which will be responsible for the independent oversight of agency
obligations under the new laws. Amongst the top priorities in the NSW information reform agenda is striking the right balance between access to government held information and the right to personal privacy. You can find out more about this and other related initiatives in NSW by visiting the Premier’s newsroom at: http://www.premier.nsw.gov.au/Newsroom/Articles.html

Better the devil you know...

In May, the Office of the Victorian Privacy Commissioner released Edition 2 of its Privacy Impact Assessment Guide – a publication aimed at assisting agencies identify and mitigate privacy issues (and identify and integrate privacy enhancements) associated with any new or amended project or process. Privacy Impact Assessments are a tremendous risk management tool, and should be a part of all project planning/ business development/ policy creation projects involving personal information. To access the Guide, see the publications page at: http://www.privacy.vic.gov.au/. Watch this space for future iappANZ articles on this topic!

iappANZ Annual Conference

SAVE THE DATE
iappANZ Annual Conference
14 October 2009
Melbourne, Australia

Privacy Proofing your Organisation: for Now and the Future

- Learn from the success of leading privacy professionals in private AND public sectors
- Discover new ideas and technologies to enhance privacy compliance
- Hear from leading data security experts on issues affecting workplaces and the community
- Understand new trends and initiatives in privacy best practice
- Learn how privacy compliance can give you a marketing edge
- Hear from senior government officials how the privacy and FOI landscape is changing
- Network with Australia’s most senior privacy professionals

Full conference details, including booking information and a packed agenda will be available shortly at www.iappANZ.org

If you have any comments or suggestions about this newsletter or any other aspect of the iappANZ please contact us. Do you have interesting articles or information you would like to share with Privacy Professionals - let us know....contact us at the iappANZ office.

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