



Privacy Management Plan

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This Document is a Privacy Management Plan made pursuant to Section 33 of the *Privacy and Personal Information Protection Act 1998*.

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1. Introduction

This Privacy Management Plan (hereafter referred to as the "PMP") is made pursuant to Section 33 of the *Privacy and Personal Information Protection Act 1998* (hereafter referred to as 'the *Privacy Act*'). The PMP sets out in writing the methods to be used by the Waterways Authority to comply with the requirements of the *Privacy Act* in relation to the protection of personal information and the privacy of individuals generally.

The Waterways Authority, along with all other public sector agencies, was, pursuant to the *Privacy Act*, required to prepare and implement a PMP by 30 June 2000 and in accordance with the *Privacy Act* the Authority's PMP contains the following information:-

1. Details of the policies and practices devised by the Waterways Authority to ensure compliance by the Authority with the requirements of the *Privacy Act*,
2. Details of how those policies and practices will be communicated to persons within the Authority,
3. The procedures that the Authority proposes to apply in relation to any Internal Review under Part 5 of the *Privacy Act* of its dealings with personal information, and
4. All other matters that the Authority considers relevant in relation to the privacy of individuals and the protection of personal information held by the Authority.

A copy of this PMP is held by both the Waterways Authority and the Privacy Commissioner and is also available to any member of the public upon request.

The early parts of this PMP set out the legal requirements imposed on the Waterways Authority by the *Privacy Act* and the law on which the PMP is based. The PMP then goes on to identify and discuss privacy issues specifically relevant to the Waterways Authority.

2. The *Privacy and Personal Information Protection Act 1998*

The *Privacy Act* was given royal assent on 30 November 1998 and is described as:-

"An Act to provide for the protection of personal information, and for the protection of the privacy of individuals generally; to provide for the appointment of a Privacy Commissioner; to repeal the Privacy Committee Act 1975; and for other purposes. "

As set out above the *Privacy Act* repeals the *Privacy Committee Act 1975* which dealt with the composition and membership of the Privacy Committee, provides for the appointment of a Privacy Commissioner and a Privacy Advisory Committee and transfers the powers and functions of the Privacy Committee to the newly appointed Privacy Commissioner, Chris Puplick.

This was achieved through a partial proclamation of the *Privacy Act* (in particular Part 4 Division 1) and gazettal of the *Privacy and Personal Information Protection (Interim) Regulation* which took effect on 1 February 1999.

The *Privacy Act* also protects the personal information of individuals and their privacy generally. This was achieved through the phased introduction of the remaining provisions of the *Privacy Act* which resulted in privacy standards for NSW public sector agencies that regulate the way such agencies deal with personal information. In this regard, it is relevant to note that as at 30 June 2000 the Waterways Authority is required to comply with Parts 2, 5 & 6 of the *Privacy Act* relating to the Information Protection Principles, Privacy Codes of Practice, Internal Reviews and Public Registers.

2.1 Personal information – Definition

In order to understand the obligations of the Waterways Authority and other agencies pursuant to the *Privacy Act*, it is necessary to fully understand what is meant by the term 'personal information'.

Pursuant to Section 4 of the *Privacy Act* 'personal information' is defined as:-

- “(1) Information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.***
- “(2) Personal information includes such things as an individual's fingerprints, retina prints, body samples or genetic characteristics.”***

It is apparent that pursuant to the above definition, personal information is any information that relates to an identifiable individual.

It is noted that the individual does not have to be directly or clearly identified by the information, as it is only necessary that an individual's identity 'can *reasonably* be ascertained from that information'.

For example, the Waterways Authority collects 'personal information' (eg. name and address information) from vessel owners for the purpose of registering their vessels and stores it on its WALROS database. As part of the registration process, the registered controller of the relevant vessel is issued with a registration number such as "AB123N". Although this vessel registration number does not directly identify the registered controller of the vessel, by knowing this number, an individual or an organisation may be able to *reasonably ascertain* the identity of the registered controller according to the WALROS database. Thus this registration number may be viewed as 'personal information' for the purposes of the *Privacy Act*.

Likewise, a file number on its own could not be the direct source of identifying an individual. If, however, the file number is attached to a file that contains an individual's personal information, then it could be used to *reasonably ascertain* the identity of the individual whose personal information is contained within. In these circumstances, a file number is also 'personal information' pursuant to the *Privacy Act*.

The effect of the above is to substantially widen the classes of information falling within the definition of personal information and, as a consequence, to increase the obligations imposed on the Waterways Authority in relation to the collection, storage, access, use and disclosure of 'personal information' pursuant to the *Privacy Act*.

There are a number of information types that are expressly excluded by Section 4(3) of the *Privacy Act* from constituting 'personal information' including:-

- 1) information about an individual who has been dead for more than 30 years;
- 2) information about an individual that is contained in a publicly available publication;
- 3) information about an individual that is contained in a protected disclosure within the meaning of the *Protected Disclosures Act 1994*, or that has been collected in the course of an investigation arising out of a protected disclosure;
- 4) information about an individual that is contained in a document of a kind referred to in Clauses 1 or 2 of Schedule 1 (restricted documents) to the *Freedom of Information Act 1989* (ie. Cabinet documents or Executive Council documents);
- 5) information or an opinion about an individual's suitability for appointment or employment as a public sector official; and
- 6) information about an individual that is of a class, or is contained in a document of a class, prescribed by the regulations for the purposes of this subsection.

Provided information held by the Waterways Authority does not constitute one of the information types described above and can be used to either identify a person or to *reasonably ascertain* the identity of a person it is 'personal information' for the purposes of the *Privacy Act* and subject to the Information Protection Principles.

2.2 The Information Protection Principles (IPP's)

Part 2 Division 1 of the *Privacy Act* attempts to protect the personal information and the privacy of individuals generally by introducing a set of privacy standards called *Information Protection Principles* (hereafter referred to as "IPP's").

The IPP's regulate the way in which public sector agencies such as the Waterways Authority deal with personal information. In particular, the IPP's specify the minimum requirements in respect of the collection, storage, access, use and disclosure of personal information held by public sector agencies.

There are 12 IPP's which can be found in Sections 8 – 19 of the *Privacy Act*. The Waterways Authority is obligated to comply with the IPP's unless it is Exempt from complying with a particular principle. Sections 23 – 28 of the *Privacy Act* set out a number of Exemptions that apply to certain agencies in particular circumstances.

In an effort to clarify the obligations imposed by the IPP's on the Waterways Authority this PMP will now list the Information Protection Principles, provide a plain English explanation as to what each Principle means and describe any Exemptions from compliance relevant to the Waterways Authority.

The following definitions are applicable to the discussion to follow and should be read before proceeding further.

Investigative agency: means the Ombudsman's Office, the Independent Commission Against Corruption, the Police Integrity Commission, the Community Services Commission, the Health Care Complaints Commission, the office of Legal Services Commissioner, any other person or body prescribed by the Regulations – (*Section 3*).

Law enforcement agency: means the Police Service/Force of another State or Territory, the NSW Crime Commission, the Australian Federal Police, the National Crime Authority, the Director of Public Prosecutions of NSW or of another State or Territory, the Department of Corrective Services, the Department of Juvenile Justice and any other person or body prescribed by the Regulations – (*Section 3*).

law enforcement purposes: this term is not defined in the *Privacy Act*. It is noted, however, that given the definition of *law enforcement agency* above there is an implication that "law enforcement" in this context of the Act refers only to criminal law enforcement and is limited to personal information collected about a specific incident(s) involving a breach of the criminal law.

2.2.1 Principle 1

Section 8 – Collection of personal information for lawful purposes

(1) 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*
- (b) the collection of the information is reasonably necessary for that purpose.*

(2) A public sector agency must not collect personal information by any unlawful means.

This Principle requires the Waterways Authority to collect personal information in a lawful way and for a lawful purpose that can be directly related to one of the Authority's functions or activities.

For example, pursuant to Section 25 of the *Ports Corporatisation and Waterways Management Act 1995* and Delegations from the Minister, it is a function of the Waterways Authority "to investigate or arrange for the investigation of marine accidents and incidents".

To enable the Waterways Authority to perform this function, the Authority must be able to identify the owners of vessels on navigable waters. Vessel owners must, therefore, register their vessels by filling in an application form that requires them to provide the following personal information:-

- (a) personal details such as their name, address and date of birth etc; and
- (b) vessel details such as the name of the vessel, the colour of the hull and topsides of the vessel, its hull type etc.

The collection of personal information for the purpose of registering a vessel is directly related to the Waterway Authority's function of investigating marine incidents. In addition, given that the Authority would not be able to investigate marine incidents without collecting this personal information it can be said that collection of the information is *reasonably necessary* for the lawful purpose and as such is in compliance with IPP 1.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 1 in the following circumstances:-

- 1) if the personal information was collected prior to 1st July 2000 - Section 20(3).

2.2.2 Principle 2

Section 9 – Collection of personal information directly from individual

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 years – the information has been provided by a parent or guardian of the person.*

This Principle requires the Waterways Authority to collect personal information directly from the individual to whom the information relates. The Waterways Authority can, however, collect an individual's personal information from another person if the individual has authorised or consented to such collection or if the collection is from a parent or guardian of an individual that is under the age of 16 years.

For example, when an individual submits an application form for vessel registration, a boating licence, a mooring licence etc., they must provide proof of identification to show that they are the person to whom the application relates. In some instances the Waterways Authority might collect information in relation to an individual's medical fitness from a medical practitioner for the purpose of considering an application for a Certificate of Competency. However, prior to doing so the individual's written consent would be obtained.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 2 in the following circumstances:-

- 1) if the personal information was collected prior to 1st July 2000 – *(Section 20(3))*;
- 2) if the personal information is collected in connection with proceedings or potential proceedings before a Court or Tribunal – *(Section 23(2))*;
- 3) if the personal information is collected in connection with an investigation which could be referred to or has been referred from an investigative agency (see definition above), or a complaint that has been made to or by an investigative agency – *(Section 24(4))*;
- 4) if non-compliance is authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law – *(Section 25)*;

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- 5) if compliance would, in the circumstances, prejudice the interests of the individual to whom the personal information relates – *(Section 26(1))*; and
 - 6) if the personal information is in connection with an investigation which may lead to the institution of prosecution action and compliance would detrimentally affect the conduct of that investigation – Investigations Code of Practice.

2.2.3 Principle 3

Section 10 - Requirements when collecting personal information

If a public sector agency collects personal 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 to hold the information.*

This Principle requires the Waterways Authority to properly inform individuals who provide their personal information of why it is required, what will be done with it and how they can exercise any rights of access and correction in respect of it.

For example, when the Waterways Authority collects personal information from individuals applying for a boating licence, it has an obligation to inform the individual of all the factors listed above. This enables the individual to exercise any rights that might be available under the *Privacy Act* in respect of the personal information such as the right of access to the information and the right to require amendment of the information.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 3 in the following circumstances:-

- 1) if the personal information was collected prior to 1st July 2000 – *(Section 20(3))*;
- 2) if the personal information is collected for law enforcement purposes (see definition above) – *(Section 23(3))*;
- 3) if the personal information is collected in connection with an investigation which could be referred to or has been referred from an investigative agency, or a complaint that has been made to or by an investigative agency. *(Section 24(1))*

-
- 4) if non-compliance is authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law – *(Section 25)*;
 - 5) if compliance would, in the circumstances, prejudice the interests of the individual to whom the personal information relates – *(Section 26(1))*;
 - 6) if the individual to whom the personal information relates expressly consents to non-compliance – *(Section 26(2))*; and
 - 7) if the personal information is in connection with an investigation which may lead to the institution of prosecution action and compliance would detrimentally affect the conduct of that investigation – Investigations Code of Practice.

2.2.4 Principle 4

Section 11 – Other requirements relating to collection of personal information

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.*

This Principle requires the Waterways Authority to collect personal information only if it is relevant to the purpose for which it is collected and if it is current and complete.

For example personal information in relation to an individual's financial circumstances would not be relevant to the consideration of an application for a boating licence and the Waterways Authority is not, therefore, authorised to collect such information. Personal Information in relation to a person's name, address and date of birth would, however, be relevant to the application. To ensure that such personal information is up to date and complete the Waterways Authority requires individuals to produce current proof of identity documents (such as a NSW Drivers Licence).

In addition, this Principle prevents the Waterways Authority from using unreasonable methods or techniques to collect personal information. For example the Waterways Authority is not entitled to use video surveillance for the purpose of establishing an employee's hours of work. Rather it must use a reasonable method of collecting such information such as requiring the employee to complete and sign a time sheet or alternatively use a Bundy card system.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 4 in the following circumstances:-

- 1) if the personal information was collected prior to 1st July 2000 – (Section 20(3)).

2.2.5 Principle 5

Section 12 – Retention and security of personal information

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 be lawfully be used,*
- (b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information,*
- (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.*

This Principle requires the Waterways Authority to have regard to the *State Records Act 1998* as well as accountability, liability and policy issues when deciding whether to retain or dispose of personal information.

In addition, the Waterways Authority must implement appropriate security measures to ensure that the personal information that it holds is protected against loss, and/or unauthorised access, modification, disclosure or use.

For example, personal information contained on the Waterways Authority's WALROS, SAP and IGLS databases is protected against loss via the use of a backup system. This information is also protected against unauthorised access via the use of a username and password system.

Finally, the Waterways Authority must ensure that when it gives personal information that it holds to another organisation acting in a contractual or agency capacity it is not used or disclosed by that other organisation inappropriately.

For example, the Waterways Authority administers a 'Boatcode Scheme' which is a scheme aimed at facilitating the identification of vessels through a hull identification numbering (HIN) system. As part of the Scheme, the Authority enters into agreements (called 'Agency Agreements') with the proprietors of businesses such as Marinas and Boatsheds (called the 'Boatcode Agent') whereby the Boatcode Agent agrees to provide certain services relating to the Boatcode Scheme to the owners of vessels on behalf of the Authority.

Pursuant to Clause 9.2 of the Agency Agreement it is a condition that the Boatcode Agent:

"...ensures that any personal details obtained in the course of acting as a Boatcode Agent will not be used or obtained by the Agent, its officers, agents, contractors, employees or any person associated with him/her for any purpose other than that directly connected to the Boatcode Scheme.

Relevant Exemptions:

There are no relevant Exemptions applicable to the Waterways Authority in respect of this Principle.

2.2.6 Principle 6

Section 13 - Information about personal information held by agencies

A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) whether the agency holds personal information, and*
- (b) whether the agency 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, and*
 - (ii) the main purposes for which the information is used, and*
 - (iii) the person's entitlement to gain access to the information.**

This Principle requires the Waterways Authority to alert people to the fact that it holds personal information in general. It also requires the Waterways Authority to allow individuals to find out whether the Waterways Authority holds personal information relating to them, and where it does, exactly what that personal information is, the purpose it is held and any right of access to it.

It should be noted that pursuant to Section 20(5) of the *Privacy Act* this Principle must be read in conjunction with any relevant provisions of the *Freedom of Information Act 1989* which also covers matters raised by this Principle.

For example, pursuant to Section 14 of the *Freedom of Information Act 1989*, the Waterways Authority must prepare and make available Statements of Affairs containing a description of the main kinds of documents the Authority holds as well as the procedures for seeking access and amendment to documents that relate to the personal affairs of a member of the public.

Thus, by including details in its Statement of Affairs and Annual Report documents, as to the types of information that it holds, the Waterways Authority would satisfy the requirements of both the *Freedom of Information Act 1989* as well subsection (a) of this principle.

In relation to what constitutes *reasonable steps* in the circumstances to enable individuals to ascertain the nature of any personal information it holds, the Waterways Authority should have regard to matters such as the damaging nature of the information, the credibility of the information and any consequences of the existence of the information.

For example, the Waterways Authority receives complaints from members of the public alleging that certain individuals have committed offences against the Marine Legislation. Given that this type of information could result in the institution of prosecution action, the Waterways Authority is under a stringent obligation to take steps to enable the individual concerned to comment on the allegations made so that there are no unfounded assertions recorded against them.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 6 in the following circumstances:-

- 1) if non-compliance is authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law –(*Section 25*); and
- 2) if the personal information is in connection with an investigation which may lead to the institution of prosecution action and compliance would detrimentally affect the conduct of that investigation – Investigations Code of Practice.

2.2.7 Principle 7

Section 14 - *Access to personal information held by agencies*

A public sector agency that holds personal information must, at the request of an individual to whom the information relates and, without excessive delay or expense, provide the individual with access to the information.

This Principle requires the Waterways Authority to allow individuals access to any personal information that the Authority holds in relation to that person.

The effect of this Principle is to provide individuals with an alternative means of accessing personal information to the *Freedom of Information Act 1989* which also allows individuals access to documents held by Government Agencies concerning their personal affairs.

It should be noted, however, that as with the previous Principle, this principle must, pursuant to Section 20(5) of the *Privacy Act*, be read in conjunction with the provisions of the *Freedom of Information Act 1989*, which impose conditions or limitations on the provision of personal information.

For example, if an individual requests access to personal information held by the Authority, but the personal information is contained in a document that is an 'exempt document' pursuant to Schedule 1 of the *Freedom of Information Act 1989*, then the Waterways Authority can deny the individual access to the document.

The provisions of the *Freedom of Information Act 1989* that impose conditions or limitations on the provision of personal information should not be applied rigidly so as to stop individuals gaining access to information held about themselves because to do so is contrary to the spirit of the *Freedom of Information Act 1989* which provides that:-

" Nothing in this Act is intended to prevent or discourage the publication of information, the giving of access to documents or the amendment of records as permitted or required by or under any other Act or Law."

In fact, to avoid confusion in relation to the effect of the *Privacy Act* and the *Freedom of Information Act 1989* on an individual's right of access to their personal information, the Privacy Commissioner has suggested in its published document titled "A Guide to the Information Protection Principles", that public agencies enforce the conditions and restrictions contained in the *Freedom of Information Act 1989* only where it can demonstrate a supporting public interest for doing so.

For example, the Waterways Authority has video surveillance at a number of its Offices for security purposes. Any request by an individual for access to footage that contains personal information relating to them would require careful consideration of competing public interests if that footage also shows personal information about other people.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 7 in the following circumstances:-

- 1) if non-compliance is authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law – *(Section 25)*; and
- 2) if the personal information is in connection with an investigation which may lead to the institution of prosecution action and compliance would detrimentally affect the conduct of that investigation – Investigations Code of Practice.

2.2.8 Principle 8

Section 15 - Alteration of personal information

- (1) *A public sector agency that holds personal information must, at the request of the individual to whom personal information relates, make appropriate amendments (whether by way of corrections, deletions, additions) to ensure that the personal information is :-*
- (a) *accurate; and*
 - (b) *having regard to the purpose for which it 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 it 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 the recipients of that information notified of the amendments made by the public sector agency.*

This Principle requires the Authority to amend personal information believed to be incorrect or inappropriate at the request of an individual to whom the information relates and to notify recipients of the information of the amendment where it is reasonably practicable to do so. If the Waterways Authority is not prepared to amend personal information then it can be required by this Principle to attach a statement to the relevant individual's information indicating the amendment sought.

The effect of this Principle is to provide individuals with an alternative means of amending personal information to that contained in the *Freedom of Information Act 1989*. As with Principles 6 & 7, Section 20(5) of the *Privacy Act*, requires this Principle to be read in conjunction with the provisions of the *Freedom of Information Act 1989* which impose conditions or limitations on the amendment of personal information. Although it is left to the discretion of the Waterways Authority to determine which Act to apply to a request to amend personal details, it is implied that the Authority would apply whichever Act is the most appropriate in the circumstances.

For example, if an individual requested the Waterways Authority to make a substantial amendment to one of its files which would require a significant amount of time to be spent on effecting the amendment, it might be more appropriate for the Authority to apply the standards contained in the *Freedom of Information Act 1989*. A simple change of address to a record contained on the Authority's WALROS database may, however, be more appropriately amended pursuant to the less complex provisions of the *Privacy Act*.

The amendment of personal information pursuant to this Principle might require the Waterways Authority to contravene a provision of the *State Records Act 1998* by, for example, requiring the deletion of a record. It is noted that the provisions of the *State Records Act 1998* are expressly excluded from applying to this Principle pursuant to Section 20(4) of the *Privacy Act*.

Finally, in relation to what is considered to constitute *reasonable steps* and what is *reasonably practicable* in relation to the requirements to attach a statement detailing a requested amendment to personal information and informing recipients of an effective amendment, the Waterways Authority is required to have regard to factors such as the sensitivity of the personal information, the importance of its accuracy etc.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 8 in the following circumstances:-

- 1) if non-compliance is authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law – (*Section 25*); and
- 2) if the personal information is in connection with an investigation which may lead to the institution of prosecution action and compliance would detrimentally affect the conduct of that investigation – Investigations Code of Practice.

2.2.9 Principle 9

Section 16 - Agency must check accuracy of personal information before use

A public sector agency that 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.

This Principle places an obligation on the Waterways Authority to take steps to ensure that the personal information it uses is relevant and accurate and is qualified by the requirement that the steps taken by the Authority in complying with the principle must be *reasonable* in the circumstances.

For example, if the Authority receives personal information in respect of an individual from a witness to an alleged offence committed by the individual, it would have a stringent obligation to ensure the accuracy of the information before relying on it to institute action against the individual in question. In such circumstances, it would not be *reasonable* for the Authority to solely rely on the witness's allegations without conducting its own investigation to ensure that the information supplied is accurate, correct and complete.

On the other hand, the use by the Authority of an address on its WALROS database for the purpose of sending an individual a Licence Renewal form would not require rigid steps to be taken to ensure the accuracy of the address recorded.

Relevant Exemptions:

There are no relevant Exemptions applicable to the Waterways Authority in respect of this Principle.

2.2.10 Principle 10

Section 17 - Limits on use of personal information

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 and imminent threat to the life or health of the individual to whom the information relates or of another person.*

This Principle restricts the use made of personal information held by Waterways Authority by reference to the purpose for which the information was collected unless the individual has consented to some other use.

Use in this sense refers to the handling of personal information by the Waterways Authority, particularly when this involves the making of decisions based upon the information held.

For example, the Waterways Authority cannot use personal information collected in respect of an individual for the purpose of investigating vessel incidents and offences pursuant to the Marine Legislation as a basis for deciding whether or not to employ the individual as a Waterways Authority Customer Service Officer.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 10 in the following circumstances:-

- 1) If the alternative use is necessary for law enforcement purposes or the protection of public revenue – **(Section 23(4))**;
- 2) If the alternative use of the personal information is in connection with an investigation which could be referred to or has been referred from an investigative agency, or a complaint that has been made to or by an investigative agency – **(Section 24(4))**,

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- 3) If non-compliance is authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law – *(Section 25)*;
 - 4) If the alternative use relates to either a disclosure to another agency administered by the same Minister (for example the Roads and Traffic Authority and the State Rail Authority) for the purpose of informing the Minister about a matter under that administration, or a disclosure to an agency administered by the Premier for the purpose of informing the Premier – *(Section 28(3))*; and
 - 5) If the personal information is in connection with an investigation which may lead to the institution of prosecution action and compliance would detrimentally affect the conduct of that investigation – Investigations Code of Practice.

2.2.11 Principle 11

Section 18 - Limits on disclosure of personal information

- (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 principle 3, that information of that kind is usually disclosed to that other person/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.*

This Principle requires the Waterways Authority to restrict the disclosure of personal information that it holds to purposes that can be directly related to the purposes for which the information was collected unless the individual concerned is aware or should reasonably be aware of disclosure for an alternative purpose.

For example, the Waterways Authority requires the owners of vessels to register their vessels with the Authority and in doing so they must provide the Authority with both their personal details and their vessel's details. The purpose of collecting this information is to enable the Authority to identify vessels and their registered controllers when investigating marine incidents. Thus, any disclosure of the details in relation to the identity of the registered controller of a vessel involved in an incident pursuant to a request from another vessel owner involved in an incident would constitute a disclosure of personal information directly related to the purpose for which the information was collected.

On the other hand, any request from a Finance Company for details of the identity of the registered controller of a vessel that is the subject of security for a loan could not be complied with as the Waterway Authority does not collect such information for the purpose of debt collection. In order for the Authority to lawfully disclose such information to the Finance Company it would have to show that the individual to whom the relevant information relates is *reasonably likely* to have been made aware or *is* aware that information of this kind is usually disclosed to Finance Companies for debt collection purposes. The Authority could achieve this by, for example, including a clause in its registration application forms indicating that the personal information provided in the form may be disclosed to Finance Companies for the purpose of debt collection.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 11 in the following circumstances:-

- 1) Where the disclosure is made in connection with proceedings for an offence or for law enforcement purposes – *(Section 23(5)(a))*;
- 2) Where the disclosure is made to a law enforcement agency to locate a person who has been reported missing to the police – *(Section 23(5)(b))*;
- 3) Where the disclosure is authorised by a Subpoena, Search Warrant or other Statutory Instrument – *(Section 23(5)(c))*;
- 4) Where the disclosure is reasonably necessary for the protection of the public revenue – *(Section 23(5)(d)(i))*;
- 5) Where the disclosure is reasonably necessary in order to investigate an offence where there are reasonable grounds to believe an offence has been committed – *(Section 23(5)(d)(ii))*;
- 6) Where the disclosure is to an investigative agency and compliance might detrimentally effect the proper exercise of any investigative function – *(Section 24(2))*;
- 7) Where the disclosure is to any public sector agency that is investigating or otherwise handling a complaint which could be referred to or that has been made to an investigative agency – *(Section 24(4))*,
- 8) If non-compliance is authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law – *(Section 25)*;
- 9) Where the individual concerned expressly consents to non-compliance with the Principle – *(Section 26(2))*;

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- 10) To any use which relates to a disclosure to another agency administered by the same Minister (for example the Roads and Traffic Authority and the State Rail Authority) for the purpose of informing the Minister about a matter under that administration, or a disclosure to an agency administered by the Premier for the purpose of informing the Premier – (*Section 28(3)*); and
 - 11) Where the disclosure is made to another agency that is conducting or may conduct an investigation which may lead to the institution of prosecution action and the information provided is reasonably necessary for the purposes of that investigation – Investigations Code of Practice.

2.2.12 Principle 12

Section 19 – Special restrictions on disclosure of personal information

- (1) 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 or imminent threat to the life or health of the individual concerned or another person.*
- (2) A public sector agency that holds personal information must not disclose the information to any person body who is in a jurisdiction outside New South Wales unless:*
 - (a) a relevant privacy law that applies to the personal information concerned is in force in that jurisdiction, or*
 - (b) the disclosure is permitted under a privacy code of practice.*
- (3) For the purposes of subsection (2), a relevant privacy law means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned.*
- (4) The Privacy Commissioner is, within the year following the commencement of this section, to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales.*
- (5) Subsection (2) does not apply:*
 - (a) until after the first anniversary of the commencement of this section,*
or
 - (b) until a code referred to in subsection (4) is made,*
whichever is the later.

This Principle may be divided into two distinct parts. The first part relates to sensitive personal information held by the Waterways Authority such as that relating to an individual's health or trade union membership. This Principle restricts the disclosure of such information to circumstances where there is a threat to the life or health of the individual concerned or another person.

The second part relates to the disclosure of personal information interstate and only allows the Waterways Authority to make such a disclosure where there is either a relevant Code of Practice permitting the disclosure or the jurisdiction in question is recognised as having adequate privacy laws in force.

The operation of the second part of this Principle relating to interstate disclosures is suspended until either the 30 June 2001 or until a Code to cover such interstate transfers of personal information is developed, whichever occurs later.

Relevant Exemptions:

The Waterways Authority does not need to comply with IPP 11 in the following circumstances:-

- 1) Where the disclosure is made in connection with proceedings for an offence or for law enforcement purposes – *(Section 23(5)(a))*;
- 2) If non-compliance is authorised, required, permitted, necessarily implied or reasonably contemplated under an Act or any other law – *(Section 25)*;
- 3) Where the individual concerned expressly consents to non-compliance with the principle – *(Section 26(2))*;
- 4) To any use which relates to a disclosure to another agency administered by the same Minister (for example the Roads and Traffic Authority and the State Rail Authority) for the purpose of informing the Minister about a matter under that administration, or a disclosure to an agency administered by the Premier for the purpose of informing the Premier – *(Section 28(3))*.

2.3 Privacy Codes of Practice

A Privacy Code of Practice is a statement setting out how an agency that is bound by the provisions of the *Privacy Act* proposes to depart from the IPP's or the Public Register provisions of the Act. The statement can be made by either the agency concerned or the Privacy Commissioner.

If, for example, the Waterways Authority does not comply with IPP 2, in relation to the collection of personal information directly from the individual, and does not propose to implement policies and strategies to ensure compliance with the Principle, then it must prepare a draft Privacy Code of Practice.

The draft Code must set out the classes of records and/or activities that it proposes to cover, the agency or agencies that it applies to, and everything in the IPP's that it does not comply with.

Any Privacy Code of Practice made by an agency must be made in consultation with any relevant stakeholders as well as the Privacy Commissioner before it is submitted to the Minister for approval. The Minister will then decide whether or not to make the Code, with or without submissions from the Privacy Commissioner.

A Code of Practice is made by an order of the Minister published in the Gazette and takes effect either upon publication of the order or upon a date specified in the order.

2.3.1 Privacy Codes of Practice that apply to the Waterways Authority

Codes of Practice developed by the Waterways Authority

The Waterways Authority has not developed any Privacy Codes of Practice at the time of making of this PMP as it does not propose departing from the IPP's and intends developing and implementing policies and procedures necessary to ensure compliance with the IPP's.

Codes of Practice made by the Privacy Commissioner

The Privacy Commissioner has drafted an Investigations Code of Practice pursuant to Part 3 Division 1 of the *Privacy Act*.

This Code is intended to apply to all public sector agencies that have a *lawful investigative function* in relation to those investigative functions.

A *lawful investigative function* is defined in the Code to mean those functions of an agency that are directly related to an investigation carried out by the agency (pursuant to specific legislative authority or necessarily implied or reasonably contemplated under an Act or other law) which may lead to the agency taking on a prosecution of the behaviour under investigation.

Pursuant to the *Ports Corporatisation and Waterways Management Act 1995*, the Waterways Authority is authorised to investigate marine incidents and accidents and breaches of the Marine Legislation and may institute prosecution action in respect of the behaviour under investigation.

Thus the Waterways Authority has a lawful investigative function and is covered by the Privacy Commissioner's Investigations Code of Practice. The Code allows the Waterways Authority to depart from certain IPP's where it is involved in the investigation of behaviour that may lead to the institution of prosecution action and where compliance with the relevant IPP would detrimentally effect the conduct of that investigation.

A copy of the Investigations Code of Practice can be found in Appendix 2 to this PMP below.

3. Specific issues relevant to the Waterways Authority

3.1 Structure and Functions of the Waterways Authority

The Waterways Authority is a self-funding State Government Agency established pursuant to the *Ports Corporatisation and Waterways Management Act 1995*.

The Waterways Authority exercises an on-water management role for the Minister for Transport and the New South Wales Government on behalf of the broader community. The Authority's statutory responsibilities include the safe operation of recreational and commercial vessels, the safety of navigation in ports and other navigable waters and the protection of the environment in connection with the use of vessels in navigable waters.

The Authority is comprised of three Divisions - a Policy, Planning and Research Division, an Operations Division and a Business Services Division-headed by General Managers who report directly to the Chief Executive. These Divisions are divided into numerous business units, each having specific functions directly related to the statutory responsibilities of the Authority.

The Authority has a Head Office located at Rozelle Bay, Regional Offices located at Albury, Wollongong, Hornsby, Newcastle and Coffs Harbour, as well as its 22 Customer Service Centres located throughout the State.

The key responsibilities and functions of the three Divisions and their main business units will now be discussed including their main dealings with personal information.

3.1.1 Policy, Planning and Research Division

The Policy, Planning and Research Division of the Waterways Authority is comprised of 4 main units; - Corporate Planning, Policy, Corporate Communications and Education and Ministerial and Executive Co-ordination.

Corporate Planning

The Corporate Planning unit is responsible for ensuring that the strategic management cycle reflects government direction and statutory obligations, and that the Waterways Authority complies with all mandatory requirements.

In order to discharge these responsibilities the Corporate Planning Unit undertakes the following functions:-

- 1) keeping the strategic management cycle up to date;
- 2) monitoring compliance with the strategic management cycle with government direction and statutory obligations;
- 3) facilitating the development of the Corporate Plan; and
- 4) monitoring progress against the Corporate Plan.

The Corporate Planning unit of the Waterways Authority does not have any dealings with personal information.

Policy

The Policy unit is responsible for ensuring that existing policy is relevant, easy to understand and apply, for identifying and evaluating emerging issues, for developing appropriate policy responses to such issues and for providing client focused advice.

In order to discharge these responsibilities the Policy unit undertakes the following functions:-

- 1) policy development and advice on marine safety and environmental issues and on Waterways Authority products and services;
- 2) identifying and investigating emerging issues and developing policy options;
- 3) legislative review; and
- 4) directing and overseeing the Product Committees and Teams; and
- 5) maintenance and upkeep of the Waterways Operational Policies On-Line (WOPOL) on the Authority's intranet site.

Policy's main dealings with personal information involves the use of information held on the Authority's WALROS database for the purpose of developing policy.

Corporate Communications and Education

The Corporate Communications and Education unit is responsible for ensuring that all education programs are relevant and easily understood and that the Authority's position is communicated to the public effectively.

In order to discharge these responsibilities the Policy unit undertakes the following functions:-

- 1) develop and implement marketing, public relations and educational strategies for the Authority,
- 2) facilitate the development of the corporate communications strategy and monitor progress against the strategy,
- 3) manage the Authority's relationship with its advertising agency,
- 4) manage the Authority's Internet and intranet sites,
- 5) produce the annual report, and
- 6) act as point of contact with the media.

The extent of this unit's dealings with personal information is limited to contact made with the Waterways Authority by members of the media in which the caller's name, telephone number and details of the inquiry are taken and passed on to the Corporate Communications Manager and/or the Senior Journalist.

Ministerial and Executive Co-ordination

The Ministerial and Executive Co-ordination unit is responsible for the provision of timely and quality Ministerial responses that are consistent with Government and Waterways Authority policies, procedures and processes.

In order to achieve this objective the Ministerial and Executive Co-ordination unit has the following functions:-

- 1) provide a day to day link with the Department of Transport relating to Ministerial correspondence,
- 2) research and prepare Ministerial responses,
- 3) provide quality control of Ministerial correspondence prepared by other Waterways staff,
- 4) develop and continually review Ministerial correspondence handling guidelines and systems, and
- 5) provide support to Waterways Authority Policy and Advisory Group (WAPAG).

The Ministerial and Executive Co-ordination unit's main dealings with personal information include the receipt of the names and addresses of individuals who have made a complaint to the Minister for Transport and any personal information provided by individuals in respect of such complaints.

3.1.2 Operations Division

The Operations Division of the Waterways Authority is comprised of 5 main units including Vessel Survey, Registration, Licensing and Service Delivery, Harbour Cleaning, Special Aquatic Event Management, Accident Investigation and Compliance Management and Olympics Management.

Vessel Survey, Registration, Licensing and Service Delivery

The Vessel Survey, Registration, Licensing and Service Delivery unit is responsible for the provision of accurate and timely service to ensure customer satisfaction and in so doing has the following associated functions:-

- 1) testing of applicants and issuing of Waterways General Boat Licences, Personal Watercraft Licences & Certificates of Competency;
- 2) issuing of aquatic licences for special events;
- 3) issuing of private and commercial mooring licences;
- 4) issuing of vessel registrations;
- 5) management of the boatcode system;
- 6) assessment of accredited marine dealers and external boat testers applications;
- 7) management and maintenance of the Authority's Information Line; and
- 8) processing of incoming mail.

The unit's main dealings with personal information involve the collection of information from applicants in respect of the above functions (ie. name, address, vessel details etc.), alteration of that information at an individual's request and the receipt of requests for information from individuals.

The unit also manages and maintains a complaint handling system and Access Line which receives complaints from members of the public usually in relation to alleged breaches of the Marine Legislation. The name, contact details and nature of a complaint received from an individual is recorded in a Complaints Register which is then used in the course of investigating the complaint.

Harbour Cleaning

The Harbour Cleaning unit is responsible for the removal of hazards to navigation and floating litter from the navigable waters of Port Jackson and its navigable tributaries up to the mean high water mark.

The Harbour Cleaning unit also manages and maintains a number of sewage pumpout facilities located at Pymont, The Spit and Gladesville Bridge Marina.

The unit's main dealings with personal information are in respect of a Sewage Pumpout Access database and a Telephone Contact database that it manages and maintains.

The Sewage Pumpout Access database contains the names of the owners of charter vessels registered to use the pumpout facilities. This database is used as a means of recording the usercode of the registered user, the time of arrival and departure at a facility and the litres of sewage discharged from the vessel.

The Telephone Contact database is used as a means of recording phone calls received from the public identifying problems with the Harbour. The database records details including the name and contact details of the caller, the contact time and date and a description of the problem.

In addition, the pumpout facility at Pyrmont is under constant video surveillance for security related purposes.

Accident Investigation and Compliance Management

The Accident Investigation and Compliance Management unit is primarily responsible for the investigation of recreational and commercial vessel incidents and accidents and the enforcement of Marine Safety and Environmental Legislation.

The unit's main dealings with personal information include the use of information held on the Authority's WALROS database for the purpose of compliance management and incident investigation, the recording of interviews, and the taking of video's, photographs and witness statements in the course of incident investigations.

The unit regularly liaises with the NSW Police, NSW Fisheries and the NSW Crime Commission as well as other State and Commonwealth Regulatory and Marine Authorities such as the Australian Federal Police, Australian Customs Service, Queensland Police Service and Queensland Transport, which may involve the exchange of personal information for purposes relating to incident investigations and enforcement of both Marine and Criminal Legislation.

Special Events Management

The Special Events Management unit is responsible for the planning and management of any major special events which occur on Sydney Harbour such as the Centenary of Federation celebrations, the Sydney to Hobart Race and the Volvo Ocean Race.

The unit liaises directly with the Premiers Department and other agencies and organisations providing services and support to these events.

The unit's main dealings with personal information is in relation to the gathering of information regarding the booking of wharves and applications for access to restricted areas by both commercial and recreational vessel operators. Personal information collected by the unit includes the name, address and contact details of the owners of charter vessels and their masters and agents including their vessel details.

3.1.3 Business Services Division

The Business Services Division of the Waterways Authority is comprised of 6 main units including Property, Asset Services, Finance, Information Management Technology, Human Resources and Legal.

Property

The Property Services unit is responsible for the property portfolio of the Waterways Authority. The unit undertakes the day-to-day management of those properties and associated functions which include:-

- 1) the administration of some 2,100 wetland leases;
- 2) project development;
- 3) the assessment of development applications for construction of structures on the Authority's land (ie. the beds of Sydney Harbour, Botany Bay, Newcastle and Port Kembla) and the provision of landowner's consent to the lodgement of development applications with other consent authorities;
- 4) the management and maintenance of historical records;
- 5) the management of the surveying and graphical systems of the unit; and
- 6) the provision of advice to the public, lessees, contractors, consultants, solicitors, agents and government authorities on property issues affecting the portfolio.

The unit's main dealings with personal information involve the use of information contained on the Authority's WALROS database, and the collection, storage and use of information in respect of lessees and development proposal applicants.

Asset Services

The Asset services unit is responsible for developing strategies for asset management and capital works in accordance with the NSW Government Total Asset Management Plan and for providing maintenance, office accommodation, fuel management and security services.

In relation to those responsibilities the unit has the following functions:-

- 1) architectural planning and Statewide office accommodation;
- 2) upkeep of the Authority's Tenders in accordance with the NSW Government's building industry initiatives and policies;
- 3) co-ordination of collating, reporting and expenditure of the Authority's Capital Works Program;
- 4) assessment of the engineering content of applications for land owners and development consent and construction approval on Waterways Authority land in Sydney Harbour;
- 5) contract administration of major maintenance contracts for Sydney Harbour Wharves and the Authority's navigation aids Statewide;
- 6) management of the Head Office pool car fleet; and
- 7) management of the security pass system at Head Office.

Asset Service's main dealings with personal information is limited to information supplied by tenderers on employees in relation to their qualifications and work experience. It is often the case that tenderers supply the Waterways Authority with an employee's complete Curriculum Vitae containing personal information in relation to their address, date of birth etc. Any such personal information received by Asset Services is stored on a file and is used to assess, in part, the tenderer's capability of performing the work required.

Finance

The Finance unit is responsible for performing the functions of accounts payable, accounts receivable, fixed assets, budgeting, treasury and financial reporting. It is also responsible for risk management and the management of the outsourced internal audit contract.

The Finance unit of the Waterways Authority has very limited dealings with personal information.

Information Management Technology

The IM&T unit is responsible for the development, implementation and maintenance of computer software and hardware which support operational, policy and business services within the Waterways Authority.

The main function of the IM&T unit is the storage of data. This data is stored on the Waterways Authority Licensing and Recreational On Line System (ie. WALROS) and includes details in relation to recreational and commercial registrations, waterways general, aquatic and personal watercraft licences, mooring licences, vessel incidents, infringement notices, formal warnings and summonses issued by the Authority including court results.

The unit's main dealings with personal information are in relation to the data entry of personal information onto WALROS, and the prevention of loss, unauthorised access, use or modification of that information.

Human Resources

The Human Resources unit is responsible for the management of the Authority's recruitment, selection, development and placement of employees functions. The unit is also responsible for ensuring that the industrial relationship between employees and management is of a standard which facilitates the achievement of corporate objectives and which enhances individual access, equity and safety in the course of their employment.

The key functions of the unit include payroll, employee relations, workers compensation (including dust disease cases), training and development, equal employment opportunity, cultural diversity, OH&S and the promotion and maintenance of ethical practices. The unit also provides specialist advice to Executive Management and provides advocacy services for the Authority in Industrial Tribunals and in negotiations with trade unions.

The units main dealings with personal information involve the collection of employee details such as their name, address, date of birth, tax file number etc. for payroll and personnel records purposes.

Legal Services Branch

The Legal Services Branch unit is responsible for providing a quality legal service to both internal and external clients of the Waterways Authority. The functions associated with this service include the following:-

- 1) institution and conduct of prosecutions for non-compliance with Marine Safety and Environmental Legislation;
- 2) provision of advice on vessel incidents and potential risks to which the Authority may be exposed;
- 3) disclosure of documentation and information pursuant to Legislative requirements (ie. Freedom of Information applications and Privacy applications)
- 4) assessment of Infringement Notice representations;
- 5) drafting legal documents, agreements and contracts; and
- 6) provision of legal advice generally.

The unit's main dealings with personal information involves the use of information contained on the Authority's WALROS database, Vessel Incident files, Infringement Notices etc, for purposes associated with the above functions. In addition, Legal Services Branch receives name, address and contact details from individuals making Freedom of Information applications, Privacy applications and general requests for advice.

3.2 Existing Internal Policies relevant to personal information held by the Waterways Authority

The Policy, Planning and Research Division of the Waterways Authority is responsible for the development and implementation of the Authority's operational policies. These policies can be accessed by employees of the Authority through its intranet site by choosing the WO POL option (ie. Waterways Operational Policies On-Line). There are fourteen operational policies, three of which are of particular relevance to personal information and privacy related issues, including the Proof of Identity Policy, the Privacy of Client Information Policy and the Changing Details Policy.

3.2.1 Proof of Identity (POI) Policy

When the POI Policy applies

The Waterways Authority's POI policy applies to all applications for Boat Licences, Personal Watercraft Licences, Vessel Registrations & Transfers, Hull Identification Numbers, Replacement Licences and Certificates, Aquatic Licences, Private, Commercial & Club Mooring Licences, Certificates of Competency and Vessel Survey.

Requirements of the POI Policy

The requirements of the POI policy are as follows:-

- 1) Individuals must provide the Authority with either one full POI document (eg. a current NSW Driver's Licence) or at least one primary and one secondary POI document (eg. a full birth certificate and a current credit card);
- 2) At least one form of POI must contain the individual's signature otherwise a letter must be provided by the individual from an acceptable witness to his/her signature.
(An *acceptable witness* includes a Judge, a Solicitor, Justice of the Peace, member of the NSW Police Service, School Principal and Bank Manager);
- 3) Any documents presented for POI purposes in a foreign language must include a translation from a translator accredited by the Ethnic Affairs Commission;
- 4) Where individuals have more than one name and they want to change their preferred, given or family name, they must provide POI for their original name as well as either a marriage certificate, a divorce decree, a Deed Poll, a birth certificate showing the new name and the birth name or an Instrument Evidencing Change of Name registered with the Land Titles Office;

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- 5) Where an individual produces POI documents showing different first names, the name shown on the full or primary POI documents must be recorded on WALROS, and any other first name should be recorded as 'Preferred Name' in the comments pop-up screen;
 - 6) Where an individual born in Australia cannot produce a birth certificate or any other full or primary POI documents, they should either arrange a late registration of birth and produce a birth certificate or alternatively they should produce a 'No Record of Birth' certificate issued by the Registry of Births, Deaths & Marriages (or equivalent), a Certificate of Australian citizenship, or written confirmation of birth by court order;
 - 7) All Young Adult Licence applicants must be accompanied by a parent or legal guardian whom must provide appropriate POI; and
 - 8) In relation to vessels being built to survey standards, full POI requirements of both the company and the nominated controller must be provided (these will relate to either the manufacturer or the individual for whom the vessel is being built).

Purpose of the POI Policy

The Authority's POI policy aims to:-

- 1) protect and maintain the integrity of the Authority's WALROS database by ensuring that applicants provide adequate evidence of their identity;
- 2) make sure that a person carrying a boat licence is the same person described on the licence;
- 3) make sure that any driver has only one boat licence in his or her name and no licences in other names; and
- 4) protect the interests of all Waterways Authority clients against unscrupulous people carrying out fraudulent activities.

The POI Policy and the IPP's

The POI Policy has implications on the Authority's compliance with a number of IPP's including:-

Principle 2 (Collection directly from individual)

The requirement that individuals produce certain documentation to prove their identity when applying for a Waterways product or service helps the Authority to ensure that it is collecting the personal information directly from the individual to whom it relates, from an authorised agent of the individual (or Company), or from a parent or guardian in the case of individuals under the age of 16 years.

Principle 5 (Other requirements of collection – relevant, not excessive, accurate, up to date & complete)

Proof of identity documents contain personal information pertaining to the individual concerned (such as their name, address, date of birth etc) which helps to ensure that the information provided by the individual and the information collected by the Authority is accurate, up to date and complete.

Principles 8 & 9 (Access & Alteration)

The POI Policy helps the Authority to ensure that it is only allowing the individual to whom the information relates to access the information and require amendment of it.

3.2.2 Privacy of Client Information Policy

When the Privacy of Client Information Policy applies

This policy applies whenever the Authority receives a request for information from an individual or an organisation that involves the personal information of any of the Authority's clients.

Requirements of the Privacy of Client Information Policy

According to this policy, personal information will only be given out in response to:-

- 1) A written request from another government agency where they have a statutory right to obtain that information;
- 2) An on-the-spot request from an officer of the Australian Taxation Department, Department of Social Security, or the NSW Police Service once official identification has been shown;
- 3) A Freedom of Information application by a private individual, an organisation or a government agency pursuant to the *Freedom of Information Act 1989* ;
- 4) A Subpoena for the production of documents; or
- 5) A written request from a private individual for information concerning another individual, vessel or mooring where either the purpose of the request is related to the purpose for which the Authority collected the information or the consent of the person to whom the request relates has been obtained.

Purpose of the Privacy of Client Information Policy

The purpose of this policy is to:-

- 1) ensure that the Waterways Authority complies with relevant Government Legislation, Policy & Guidelines regarding privacy of client information; and
- 2) advise staff of the Authority of the circumstances under which client personal information can be released.

The Privacy of Client Information Policy and the IPP's

This policy has implications on the Authority's compliance with Principle 11 (*Limits on disclosure of personal information*) as it restricts the disclosure of personal information on individuals/organisations to those eligible to receive that information pursuant to the IPP.

3.2.3 Changing Details Policy

When the Changing Details Policy applies

This policy applies when a client of the Waterways Authority wishes to change his/her personal information recorded on the Authority's WALROS database.

Requirements of the Changing Details Policy

The requirements of this policy are as follows:-

- 1) Details that can be changed over the telephone include changes to business or home address, telephone numbers and any other contact information;
- 2) Prior to effecting the requested change of information, the staff member must ask key questions of the caller including their full name, date of birth, current address and telephone number, and their vessel registration number and/or drivers licence number if applicable;
- 3) Once the identity of the caller has been confirmed, details of the new contact details can be entered onto the WALROS database;
- 4) Where any doubt arises as to the identity of the caller, the requested change of details is not to be affected and the caller should be advised to confirm the necessary details in writing;

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- 5) Requests requiring change of name details are not to be affected over the telephone. The client must either attend a Waterways Office in person and produce the required documentary proof of the name change (see point 6) below), or request the change in writing, enclosing a certified copy of the document showing proof of the name change;
 - 6) Acceptable documents for change of name requests include a marriage certificate, a divorce decree plus a primary POI document or a deed poll;
 - 7) Requests requiring change of incorrect date of birth details are not to be affected over the telephone, rather the client must either attend a Waterways Office in person and produce the required documentary proof of the correct date of birth (ie. a birth certificate or a primary proof of identity document), or request the change in writing, enclosing a certified copy of the document showing the correct date of birth.

Purpose of the Changing Details Policy

The purpose of this policy is to:-

- 1) advise staff of the circumstances under which a client's personal information may be altered; and
- 2) maintain the integrity of the Authority's WALROS database.

The Changing Details Policy and the IPP's

This policy has implications on the Authority's compliance with a number of IPP's including:-

Principle 8 (Alteration of personal information)

This policy ensures the Authority is allowing individuals to amend their personal information in accordance with this Principle and that only the appropriate individual is allowed to affect an alteration;

Principle 9 (Agency to check accuracy of personal information)

The policy provides a mechanism for the alteration of personal information and helps to ensure that the personal information held by the Authority is relevant, accurate, up to date and complete.

3.3 Existing Legislation relevant to personal information held by the Waterways Authority

3.3.1 Freedom of Information Act 1989

The Act

The Waterways Authority is an *agency* for the purposes of the *Freedom of Information Act 1989* and is therefore bound by its provisions.

Pursuant to Section 5, the object of the *Freedom of Information Act 1989* is to extend, as far as possible, the rights of the public:

- (a) to obtain access to information held by the Government; and
- (b) to ensure that records held by the Government concerning the personal affairs of members of the public are not incomplete, incorrect, out of date or misleading.

The means by which the Act ensures that these objects are achieved is by:

- (a) ensuring that information concerning the operations of the Government is made available to the public, and
- (b) conferring on each member of the public a legally enforceable right to be given access to documents held by the Government, except documents rendered exempt pursuant to the Act, and
- (c) enabling each member of the public to apply for the amendment of such of the Government's records concerning his or her personal affairs as are incomplete, incorrect, out of date or misleading.

The Act and its relevance to personal information

Pursuant to Section 5 of the *Privacy Act*, nothing in that Act operates to lessen any of the Authority's obligations under the *Freedom of Information Act 1989* nor to modify any Exemption under that Act.

Thus, although the alteration, access to, or disclosure of personal information by the Waterways Authority may comply with the provisions of the *Privacy Act*, they need also to comply with the provisions of the *Freedom of Information Act 1989*.

For example pursuant to Section 18 of the *Privacy Act*, the Authority is not authorised to disclose an individual's personal information to a Finance Company for debt collection purposes. Pursuant to Section 16 of the *Freedom of Information Act 1989*, the Authority is required to give the Finance Company access to requested documents upon the making of a freedom of information application, unless access falls within one of the Exemptions set out in Schedule 1 of the *Freedom of Information Act 1989*.

3.3.2 State Records Act 1998

The Act

The Waterways Authority is a *public office* for the purposes of the *State Records Act 1998* and is therefore bound by its provisions.

The object of the *State Records Act 1998* is to make provision for the creation, management and protection of the records of public offices, to provide for public access to those records and to establish the State Records Authority.

The means by which the Act intends that these objects are achieved is by setting out the Authority's obligations in respect of Records Management, the protection of records and the retention and disposal of records.

The Act and its relevance to personal information

Pursuant to Section 12(b) of the *Privacy Act*, the Authority must dispose of personal information in accordance with any requirements for the retention and disposal of information. Thus, in addition to being bound by the *State Records Act 1998*, the Authority must also ensure that personal information contained in records are disposed of in accordance with that Act.

4. Implementing the Privacy Management Plan

4.1 Compliance with the IPPs

This section examines whether or not the Authority complies with each of the IPP's outlined above in Section 2. Where there is an area of non-compliance requiring a change in the Authority's current practices and procedures, referral will be made to the appropriate Non-compliance table found in Appendix 1 below.

4.1.1 Principle 1 – Collection of personal information for lawful purposes

Division	Comply?	Personal Information Collected	Lawful Purpose	Function/ Activity
Policy	Yes	Name, address, contact details	Receipt of written correspondence & phone messages from individuals Organised Community consultation (eg. WAPAG) and for consultation in respect of special projects	Provision of advice on marine safety & environmental issues. 1) Policy Development; 2) Identifying and evaluating emerging issues & 3) Legislative Review.
Corporate Communication & Education	Yes	Name & contact details	Receipt of written correspondence & phone messages from media personnel	Acting as a point of contact with the media
Ministerial and Executive Co-ordination	Yes	Name, address, contact details & any other personal information supplied in content of Ministerial correspondence (eg. writer's political opinions & beliefs)	Receipt of Ministerial correspondence	Researching & preparing Ministerial responses

Vessel Survey Registration, Licences & Service Delivery	Yes	Name, address, gender & contact details, date of birth, pension number, details of medical conditions and/or disabilities	Application for personal watercraft licence, general or young adult boat licence	Considering applications & issuing of Waterways personal watercraft licences & general or young adult boat licences
	Possibly not (see non-compliance table in Appendix 1 below)	Name, address, gender & contact details, date & place of birth, personal characteristics (ie. complexion, hair & eye colour, distinguishing marks), details of medical conditions and/or disabilities & details of marine qualifications	Application for certificate of competency	Assessment for & issuing of certificates of competency
		Name, address, contact details & position of organisation representative, name of occupier/trustee of relevant foreshore land	Application for an aquatic licence	Issuing of aquatic licences for special events
		Name, address, gender & contact details, date of birth, vessel registration/permit number & name (& position held of Office Holders for commercial)	Application for commercial & private moorings	Issuing of private & commercial mooring licences
		Name, address, gender & contact details, date of birth, pension number & vessel details (ie. name, registration no., engine & hull serial no. etc)	Application for recreational & commercial vessel registration	Issuing of recreational & commercial vessel registrations
		Name, address, gender & contact details, date of birth & drivers licence number	Application for Hull identification number (HIN)	Management of Boatcode system

		Name & contact details	Receipt of information requests over the telephone	Management of Authority's Access Information line
Harbour Cleaning	Yes	Name, address & contact details, vessel name & permit no.	Application for access to sewage pumpout facilities	Management of sewage pumpout facilities & sewage pumpout access database
		Video surveillance	Security purposes	Management of sewage pumpout facilities
		Name & Contact details	Receipt of phone calls from individuals identifying hazards & floating litter & other problems associated with the Harbour	1) Removal of hazards to navigation, floating litter etc. from the harbour; and 2) Management of telephone contact database
Accident Investigation & Compliance Management	Yes	Name, address, contact details, date of birth, vessel details (ie. name, length etc.)	Taking of witness statements, issuing of Infringement Notices & Formal Warnings & receipt of phone calls identifying alleged breached of the Marine Legislation	1) Accident / incident investigation; and 2) Compliance management
		Voice recording	Tape recording of witness statements	Accident / incident investigation
		Video recording & photographs	Video recording of incident sites	Accident / incident investigation
Special Events Management	Yes	Name, address, contact details, vessel details (ie. name, registration/permit no. etc)	Receipt of applications for wharve bookings & access to restricted areas	Planning & management of Special Events
Property	Yes	Name, address, contact details, date of birth, address of proposed development sites, vessel details (ie. type, registration/permit no., length etc.)	Applications for development	1) Assessment of development proposals for construction of structures on Waterways land; And 2) Administration of wetland leases
			Lease Applications	

Asset Services	Yes	Name, address, contact details, educational & work experience details	Employee details of Company's submitting tenders to the Authority Issue of Waterways building passes to contractors	1) Assessment of personnel expertise of Company's tendering for government work; 2) Management of maintenance & development contracts; and 3) Management of security pass system at Head Office.
Information Management Technology	N/A			
Human Resources	Yes	Name, address, contact & gender details, date & place of birth, Bank Account no. & details, tax file no & medical certificates	Authority to deposit wage/salary into Accounts	Payroll & Personnel function
		Vehicle details	Use of own vehicle claims	Payroll function
		Gender details, Aboriginal / Torres strait islander details, ethnicity, languages spoken, disability details	Equal Employment Opportunity (EEO) Data Collection Form	Provision of EEO statistics pursuant to <i>Public Sector Management Act 1988</i> & Workplace Profile to Premiers Department
Legal	Yes	Name, address, contact details	Receipt of written requests for information, Freedom of Information & Privacy Applications	1) Disclosure of documents & information pursuant to legislative requirements; and 2) Provision of legal advice.
Albury, Blacktown, Gosford, Hornsby & Pittwater Customer Service Centres	Yes	Video surveillance	Security purposes	

4.1.2 Principle 2 – Collection of personal information directly from individual

Division	Compliance	Method of Compliance
Policy	Yes	Personal information collected by this unit is collected directly from the individual concerned.
Corporate Communication & Education	Yes	Personal information collected in respect of media communication is collected directly from the media person requesting contact and/or information.
Ministerial and Executive Co-ordination	Yes	Personal Information collected in respect of Ministerial Correspondence is collected directly from the person raising the relevant issue and/or complaint.
Vessel Survey, Registration, Licences & Service Delivery	Yes	<p>Personal Information collected by this unit is collected directly from the individual making the application, an agent with the applicant's consent or from the parent or guardian of an individual who has not attained the age of 16 years.</p> <p>Applicants, agents, parents or guardians providing personal information are required to provide proof of identification (such as a NSW Drivers Licence) to ensure that the personal information is being collected directly from the individual or their agent, parent or guardian.</p> <p>It is noted, however, that Authorised Marine Dealers collect personal information in respect of applications for recreational and commercial vessel registrations on behalf of the Waterways Authority. In addition External Licence testers collect personal information in respect of applications for personal watercraft licences and general or young adult boat licences on behalf of the Waterways Authority.</p> <p>Applicable Exemptions:-</p> <p>1) the individual to whom the personal information relates will have authorised collection by the Dealer/Tester.</p>
Harbour Cleaning	Yes	Personal Information collected by this unit is collected directly from the individual concerned.
Accident Investigation & Compliance Management	No	<p>Personal Information collected by this unit is often collected from individuals other than the individual to whom the information relates in particular from witnesses of vessel incidents and accidents and from individuals making formal complaints in respect of breaches of the Marine Legislation by other individuals.</p> <p>Applicable Exemptions:-</p> <p>1) Section 23(2) – personal information collected from others in connection with proceedings for an offence;</p> <p>2) Section 24(4) – personal information collected in connection with an investigation which could be referred to or has been referred to an investigative agency;</p>

		<p>3) Section 25 - Non-compliance is authorised/necessarily implied under the <i>Ports Corporatisation and Waterways Management Act 1995</i>;</p> <p>4) Investigations Code of Practice –personal information collected in connection with an investigation which may lead to the institution of prosecution action and compliance would detrimentally affect the conduct of that investigation</p>
Special Events Management	Yes	Personal Information in respect of wharve bookings and applications for access to restricted areas is collected directly from individuals making the applications and bookings.
Property	Yes	Personal Information in respect of development or lease applications is collected directly from the applicant individual or an agent of the individual with the applicant’s consent.
Asset Services	No	See Non-Compliance Table in Appendix 1 below.
Information Management Technology	N/A	N/A
Legal	Yes	Personal Information in respect of Freedom of Information Applications and general search requests is collected directly from the individual making the request for information or documents.

4.1.3 Principle 3 – Requirements when collecting personal information

Division	Compliance	Method of Compliance
Policy	N/A	Personal information received by this unit is unsolicited.
Corporate Communication & Education	N/A	Personal information received by this unit is unsolicited.
Ministerial and Executive Co-ordination	N/A	Personal information received by this unit is unsolicited.
Vessel Survey, Registration, Licences & Service Delivery	No	See Non-Compliance Table in Appendix 1 below.
Harbour Cleaning	Yes	<p>Personal Information received by this unit in respect of phone calls of problems associated with the Harbour is unsolicited.</p> <p>In relation to personal information collected in connection with the video surveillance of the sewage pumpout facility, there is a large sign at the facility advising persons that they are under video surveillance for security purposes.</p>
Accident Investigation & Compliance Management	No	<p>Personal Information collected by this unit in respect of vessel incidents and accidents and breaches of the Marine Legislation is often collected from an individual(s) other than the one to whom it relates and thus without informing the individual of the other requirements of this principle.</p> <p>Applicable Exemptions:-</p> <ol style="list-style-type: none"> 1) Section 23(3) – where personal information is collected for law enforcement purposes; 2) Section 24(4) – where personal information is collected in connection with an investigation that could be or has been referred to an investigative agency; 3) Section 25 – non-compliance is authorised/necessarily implied under the <i>Ports Corporatisation and Waterways Management Act 1995</i>; 4) Investigations Code of Practice – where personal information is in connection with an investigation that may lead to the institution of prosecution action and compliance would detrimentally affect the conduct of that investigation. <p>It is noted, however, that it is the practice of the Authority to inform individuals whom have had certain allegations made against them of the content of such allegations once it has been established that there is a basis to the allegation in order to allow the individual concerned a chance to defend themselves against it.</p>

Special Events Management	N/A	Personal information received by this unit is unsolicited.
Property	No	See Non-Compliance Table in Appendix 1 below.
Asset Services	No	See Non-Compliance Table in Appendix 1 below.
Information Management Technology	N/A	N/A
Legal	N/A	Personal information received by this unit is unsolicited.
Albury, Blacktown, Gosford, Hornsby & Pittwater Customer Service Centres	NO	See Non-Compliance Table in Appendix 1 below in respect of the personal information collected in connection with the video surveillance of these Centres.

4.1.4 Principle 4 – Other requirements when collecting personal information

Requirement that Personal Information collected is relevant & not excessive

The personal information collected by all Divisions and units of the Waterways Authority is directly relevant to the purpose for which it is collected and hence is not excessive. This is evident upon examination of the Compliance Table for Principle 1 above.

Requirement that the Personal Information is accurate, up to date & complete

In relation to personal information collected by the Waterways Authority through application forms [eg. registration application & boat licence application forms etc.], this requirement is fulfilled via the Authority's POI Policy (see Section 3.2.1 above) requiring applicants to provide the Authority with proof of identity information that is current and complete. [eg. Current NSW Driver's Licence].

There is an assumption that personal information collected by the Authority from an individual that is unsolicited [eg. a letter of complaint] contains accurate, up to date and complete personal information.

In addition, if at any time the Authority is of the opinion that the personal information it holds is not accurate, up to date and/or complete it will contact the individual to whom it relates and obtain the correct information required.

Requirement that collection of Personal Information does not unreasonably intrude on an individual's personal affairs

The Waterways Authority does not use any unreasonable methods or techniques to collect personal information.

4.1.5 Principle 5 – Retention and security of personal information

(a) Retention of personal information for no longer than is necessary

The Waterways Authority keeps personal information that it holds for as long as is necessary to enable it to lawfully use the information.

Where personal information is no longer required for lawful use by the Authority, then it will either be archived with the State Records Authority or destroyed in accordance with the *State Records Act 1998* (See (b) below).

(b) Retention and disposal of personal information in accordance with any relevant requirements

The Waterways Authority is a *public office* for the purposes of the *State Records Act 1998* and is therefore bound by its provisions.

The *State Records Act 1998* regulates the creation, management and protection of the records of the Authority. In particular the *State Records Act 1998* regulates the retention and disposal of the Authority's records and any personal information contained within them.

The Records Department of the Authority is responsible for ensuring compliance with the *State Records Act 1998* and in relation to the retention and disposal of records, it acts in accordance with the following documents:-

- 1) "Records Management System – Policy Guidelines";
- 2) "Records Management System – General Records Disposal Schedules"; and
- 3) "Functional Disposal Schedule."

By virtue of its compliance with the requirements of the *State Records Act 1998*, the Waterways Authority complies with subsection (b) of IPP 5.

(c) Security Safeguards against loss, unauthorised access, use modification or disclosure

Record	Safeguards against loss	Safeguards against unauthorised access	Safeguards against unauthorised modification	Safeguards against unauthorised use and/or disclosure
Files	<p>The Authority keeps track of all official files (eg. Vessel Incident files and Lease files) through its RecQuery Database. This system enables files to be marked out to individuals and/or their relevant Division and marked back to Records upon their return.</p>	<p>The Records Department ensures that files are only given to individuals who have the authority to access them (eg. personnel files may only be accessed by the HR unit and General Managers)</p>	<p>Any modifications to personal information contained in paper files require the approval of the relevant unit manager.</p>	<p>Use: Employees of the Authority are aware that they are only authorised to use personal information for a purpose directly related to their unit's functions and/or activities</p> <p>Disclosure: The disclosure of personal information is either conducted by the Legal Services Branch or approved by the Legal Services Branch in accordance with legislative requirements</p>
WALROS/SAP & IGLS Property Management Databases	<p>Regular back-ups of the information contained on these databases helps to safeguard against loss. In addition, deletion of information can only be affected by the Officer responsible for managing the system</p>	<p>An Officer's access to personal information contained on these databases is limited by reference to the information they require to fulfil their duties/activities. Restrictions on access are affected via the use of a username and password system</p>	<p>Only certain authorised Officers have the ability to modify details contained on the database</p>	<p>As Above</p>

Harbour Cleaning MIS Database	Regular back-ups of the information contained on this database helps to safeguard against loss	Access to this database can only be achieved via a computer located in the Harbour Cleaning Office and thus personal information contained on this database is limited to Harbour Cleaning Officers once the appropriate username and password has been entered	Harbour Cleaning Officers are the only people who have the ability to modify information contained on this database	As Above
Database of Wharve Bookings	Regular back-ups of the information contained on this database helps to safeguard against loss	Access to this database can only be achieved via a computer located in the Olympics & Special Events Management Office and by the Officer responsible for the management of wharf bookings	The Officer responsible for the management of wharve bookings is the only person who can modify the information contained on this database	As Above
Survey Diary Database	Regular back-ups of the information contained on this database helps to safeguard against loss	Waterways Authority Surveyors are the only Officers who can access this database	Waterways Authority Surveyors are the only Officers who can modify information contained on this database	As Above
Ministerial Correspondence Register	Regular back-ups of the information contained on this register helps to safeguard against loss	Access to this register is limited to those Officers who require it to perform their duties/functions	Modification of personal information contained on this register is limited to a number Officers who have access to it	As Above

(d) Unauthorised use or disclosure of Waterways Authority Agents/Contractors

Where the Waterways Authority discloses personal information to an individual/organisation in connection with the provision of a service to the Authority, the Authority either:-

- 1) requires an undertaking; or
- 2) makes it a condition of the relevant agreement;

that the individual/organisation does not use or disclose the information obtained for any purpose other than that directly related to the purpose for which the information is disclosed to it.

4.1.6 Principle 6 – Information about personal information held by agencies

Steps taken to enable any person to ascertain whether the Authority holds personal information generally

The Waterways Authority is a *public authority* for the purposes of the *Freedom of Information Act 1989* and is therefore bound by its provisions. Pursuant to Section 14 of the Act, the Authority is required to publish a Statement of Affairs document every 12 months that includes a description of the various kinds of documents that are:-

- 1) usually held by the Authority; and
- 2) available for inspection at the Authority.

The Authority's June 2002 Statement of Affairs document is now available for public inspection and includes a list of the files that the Authority holds (eg. Vessel Incident files and Complaint Files) and complies with this part of IPP 6.

It is proposed that the Authority's next Annual Report will include a statement of the classes of personal information, if any, held within such files so as ensure compliance with this Principle.

Steps taken to enable a person to ascertain nature, purpose & access to personal information held about them

The Waterways Authority, upon request from an individual, will allow them to ascertain the nature of any personal information it holds in relation to them and the purpose for which the Authority holds the information. This would usually be done by providing the individual with a copy of the information held.

4.1.7 Principle 7 – Access to personal information held by agencies

The Waterways Authority complies with this principle by, at the request of an individual, providing them with a copy of the personal information held in relation to them or allowing them to inspect documents containing their personal information.

Individuals are given immediate access to their personal information and will not usually be charged money for the access unless it involves a significant amount of photocopying.

The Authority's POI Policy described in Section 3.2.1 above ensures that only the individual to whom personal information relates is provided with access to the information.

4.1.8 Principle 8 – Alteration of personal information

The Waterways Authority allows individuals to whom personal information relates (or parents/guardians in respect of individuals under the age of 16 years) to amend that information in accordance with its Changing Details Policy described in Section 3.2.3 above.

The Authority's POI Policy ensures amendment by the appropriate individual.

Where the Authority disagrees with an individual's view as to the accuracy of personal information it holds about them, the individual's claim will be noted where the information is stored/accessed. The Authority has not yet had a case where it has refused to amend personal information at the request of the individual to whom it relates.

4.1.9 Principle 9 – Agency must check accuracy of personal information before use

Steps taken to ensure personal information used is relevant

The Waterways Authority does not collect personal information unless it is directly relevant to a purpose for which it is to be used.

Steps taken to ensure personal information is accurate, up to date and complete

The Authority's POI Policy and Changing Details Policy helps to ensure that the personal information it proposes to use is accurate, up to date and complete. In addition, renewal forms sent to individuals in respect of licences and registrations require individuals to provide any relevant change of address or contact details.

4.1.10 Principle 10 – Limits on use of personal information

All the Divisions/Units of the Waterways Authority use the personal information collected by the Division/Unit for a purpose that is directly related to the purpose for which the information was collected (see Section 4.1.1 Principle 1 – Collection of personal information for lawful purposes)

4.1.11 Principle 11 – Limits on disclosure of personal information

Division	Types of disclosures	Disclosure related to purpose of collection?	Notice given of disclosure/ Consent received	Applicable Exemption?
Policy, Planning & Research	N/A			
Corporate Communication & Education	N/A			
Ministerial and Executive Co-ordination	Name and contact details are disclosed to other government agencies in respect of Ministerial correspondence	The purpose of the disclosure is to pass on the details to the relevant government agency where the Authority is not the appropriate agency	Consent received	Section 26(2) Individual concerned expressly consents to non-compliance
Vessel Survey Registration, Licences & Service Delivery	Vessel, licence, mooring etc details contained on the WALROS database are disclosed to other government agencies that have a statutory right to obtain the information	The purpose of the disclosure is usually <u>not</u> directly related to the purpose for which the information was collected by the Authority	NO	1) Section 23(5)(a) & 23(5)(d)(ii) Disclosures made in connection with proceedings for an offence/law enforcement purposes, or the investigation of an offence (eg. NSW Police Service investigating criminal activity); and 2) Section 25 Non-compliance is required / permitted under an Act (eg. Section 120(1) <i>Child Support (Registration & Collection) Act 1988</i> ;
Harbour Cleaning	N/A			
Accident Investigation & Compliance Management	Vessel, licence, mooring etc details contained on WALROS as well as vessel incident/accident details are disclosed to other government agencies that have a statutory right to obtain the information	The purpose of the disclosure is usually <u>not</u> directly related to the purpose for which the information was collected except for disclosures in respect of vessel incidents	NO	1) Section 23(5)(a) & 23(5)(d)(ii); and 2) Section 25 (As Above)

Special Events Management	N/A			
Property	Name and development details in respect of development applications are disclosed to adjoining landowners and others with an interest in the application	The purpose of the disclosure is to assess applications for development and which is directly related to the purpose for which the information was collected by the Authority (ie. assessment of development proposals)	N/A	N/A
	Name, address, contact details etc. of lessees who default on their lease payments is sometimes disclosed to debt collection agencies	The purpose the disclosure is directly related to the purpose for which the information was collected (ie. administration of wetland leases)	N/A	Section 23(5)(d)(l) Disclosure is reasonably necessary for the protection of public revenue
Information Management Technology	N/A			
Human Resources	Employee's personal information is disclosed to the Australian Taxation Office, the Superannuation Board, the Office of the Director of Equal Opportunity in Public Employment (ODEOPE) & the Premiers Department	The purpose of the disclosure is directly related to the purpose for which the information is collected (ie. payroll purposes and provision of EEO statistics)	Although not required, a memorandum is sent to staff advising them of the disclosure EEO statistics	Section 25 Non-compliance is required / permitted under an Act (eg. Section 47 <i>Public Sector Management Act 1988</i>)
	Personal information in relation to employee's position and salary details may be disclosed to lending institutions	The purpose of the disclosure is <u>not</u> directly related to the purpose for which the information is collected	Consent received	

Legal	Vessel, licence, mooring etc details contained on the WALROS database and vessel incident /accident details are disclosed to other government agencies that have a statutory right to obtain the information	The purpose of the disclosure is usually <u>not</u> directly related to the purpose for which the information was collected except for disclosures in respect of vessel incidents	NO	1) Section 23(5)(a) & 23(5)(d)(ii) Disclosures made in connection with proceedings for an offence/law enforcement purposes, or the investigation of an offence (eg. NSW Police Service investigating criminal activity); and 2) Section 25 Non-compliance is required / permitted under an Act (eg. Section 120(1) <i>Child Support (Registration & Collection) Act 1988</i> ;
	Various types of personal information is disclosed to individuals/organisations pursuant to Freedom of Information applications	The purpose of the disclosure is usually <u>not</u> directly related to the purpose for which the information was collected by the Authority	NO	Section 25 Non-compliance is required / permitted under an Act (eg. Section 16 <i>Freedom of Information Act 1989</i>)
	Various types of personal information is disclosed to individuals /Solicitors pursuant to a Subpoena for the production of Documents	The purpose of the disclosure is usually <u>not</u> directly related to the purpose for which the information was collected except for Subpoenas in respect of vessel incidents	NO	Section 23(5)(c) Disclosure is authorised by a Subpoena
	Vessel, licence, mooring etc details contained on the WALROS database are disclosed to Chartered Accountants /Solicitors acting in respect of bankrupt & deceased estates and insolvent corporations	The purpose of the disclosure is <u>not</u> directly related to the purpose for which the information is collected by the Authority	NO	Section 25 Non-compliance is required / permitted under an Act (eg. Section 77C <i>Bankruptcy Act 1966</i>)

	Vessel, licence, mooring etc details contained on the WALROS database are disclosed to private individuals upon written request	The purpose of the disclosure is usually <u>not</u> directly related to the purpose for which the information is collected by the Authority (eg. for the purpose of purchasing a vessel owned by another)	Consent from the individual to whom the information related will <u>always</u> be obtained prior to any such disclosure	Section 26(2) Individual concerned expressly consents to non-compliance
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4.1.12 Principle 12 – Special restrictions on disclosure of personal information

1) Disclosure of Sensitive Personal Information

Division	Sensitive Personal Information Held	Disclosed?	Purpose of disclosure?
Policy, Planning & Research	N/A	N/A	N/A
Corporate Communication & Education	N/A	N/A	N/A
Ministerial and Executive Co-ordination	Ministerial & Executive correspondence sometimes contains information relating to individual's political opinions and political beliefs	NO	N/A
Vessel Survey Registration, Licences & Service Delivery	Personal characteristics (ie. complexion, hair & eye colour & distinguishing marks) & medical condition/disability details are held in respect of certificate of competency applications	NO	N/A
Harbour Cleaning	N/A	N/A	N/A
Accident Investigation & Compliance Management	N/A	N/A	N/A
Special Events Management	N/A	N/A	N/A
Property	N/A	N/A	N/A
Asset Services	Sometimes curriculum vitae's held in respect of tender applications may contain details as to individual's ethnic or racial origin	NO	N/A

Information Management Technology	N/A	N/A	N/A
Human Resources	Details in relation to employee's ethnic & racial origin as well as their trade union membership are kept on file	NO	N/A
Legal	N/A	N/A	N/A

2) Disclosure of Personal Information outside New South Wales

The disclosure of personal information outside New South Wales by the Authority is discussed in Section 7 below.

4.2 Compliance with the Public Register provisions

Part 6 of the *Privacy Act* contains requirements in relation to personal information contained in public registers.

The term *public register* is defined in Section 3 of the *Privacy Act* to mean:-

“ a register of personal information that is required by law to be, or is made, publicly available or open to public inspection.”

The Waterways Authority does not have a register of personal information that is publicly available or open to public inspection and therefore this Part of the *Privacy Act* does not require any further discussion.

5. The Internal Review Process

5.1 Introduction

The *Privacy Act* not only sets standards in relation to the way that the Waterways Authority must collect, store, use and disclose personal information, but also makes the Authority accountable to the public when it breaches those standards.

The *Privacy Act* achieves this by giving an individual the ability to require the Authority to conduct an internal review where it is alleged that the Authority has either:-

- 1) Contravened an IPP; or
- 2) Contravened a Privacy Code of Practice that applies to the Authority.

The Internal Review provisions are contained in Part 5 of the *Privacy Act*. These provisions set out the requirements in relation to Internal Reviews.

5.2 Who can apply for an Internal Review?

5.2.1 Breach of IPP or Code of Practice

Prior to the Waterways Authority performing an Internal Review pursuant to Part 5 of the *Privacy Act* there must be an alleged breach of either an IPP or a Privacy Code of Practice applicable to the Authority.

In order to determine whether or not the Authority has breached an IPP or a Code of Practice it is suggested that a potential applicant do the following:-

- 1) Refer to the examination of the IPP's and/or the Codes of Practice contained in Sections 2.2 and 2.3 above;
- 2) If an applicant believes upon examination of a particular IPP and/or Code that the Authority has breached it or will breach it at some time in the future, he/she should then examine any applicable Exemptions contained in those Sections to ensure that the Authority has not been given statutory permission not to comply with the Principle or Code in circumstances relevant to the conduct in question;
- 3) If at this point the applicant believes that the Authority has breached an IPP or a Code of Practice or is about to and it has not entitled to an Exemption then the applicant should proceed to the next step.

5.2.2 A person who is aggrieved

An application for an Internal Review can only be made by "...a *person (the applicant) who is aggrieved.*" (Section 53(1))

The *Privacy Act* does not define this term, however, guidance is given in the Privacy Commissioner's publication titled "A Guide to Internal Reviews" where it states that a person aggrieved for the purposes of the Act includes:-

- 1) An individual who believes that their own privacy has been breached by the Authority or will be in the future; or
- 2) An individual whose personal information is held by the Authority and who believes that the Authority has or is about to engage in conduct that will affect the privacy of other individuals.

For example, if an individual believes that the Waterways Authority has disclosed their name and address details to a debt collection agency in breach of IPP 11, then the individual is *a person who is aggrieved* and he/she can apply for an Internal Review of the decision to disclose the information.

If an individual whose personal information is held by the Authority, becomes aware that the Authority is disclosing other individuals name and address details to debt collection agencies in breach of IPP 11, they can still apply for an Internal Review of such disclosures even though their own information has not yet been disclosed.

5.3 Requirements of an application for review

Once a person believes that he/she is aggrieved by conduct of the Authority amounting to a contravention or a potential contravention of an IPP or Privacy Code of Practice, the person may make an application to the Waterways Authority for a review of the relevant conduct.

An application for an Internal Review must:-

- 1) be in writing;
- 2) be addressed to the Legal Services Branch of the Waterways Authority;
- 3) specify a return address in Australia; and
- 4) be lodged at an office of the Waterways Authority within 6 months of the applicant first becoming aware of the conduct the subject of the application.

5.4 The Review Process

5.4.1 Deciding whether a complaint is actually a request for review

When the Legal Services Branch of the Waterways Authority receives a complaint about a privacy matter it must firstly decide whether the complaint concerns a breach of an IPP or a Privacy Code of Practice. In deciding whether or not the complaint does concern such matters the Legal Services Branch can seek further information from the complainant in relation to the matters raised in their complaint.

Once the Legal Services Branch determines that the complaint does concern a breach of an IPP or a Privacy Code of Practice it should do the following:-

- 1) ask the complainant whether they are aware of their rights to seek an Internal Review pursuant to the *Privacy Act*;
- 2) provide the complainant with information about the formal requirements for lodging an application for Internal Review; and
- 3) provide the complainant with information about the role of the Privacy Commissioner in relation to Internal Reviews.

5.4.2 Who conducts the review?

Generally, an officer employed in the Legal Services Branch of the Waterways Authority will conduct an Internal Review in accordance with directions given by the Legal Manager.

It is believed that Officers from the Legal Services Branch will be most qualified to determine whether the subject matter of the complaint amounts to a breach of an IPP or a Privacy Code of Practice.

However, in instances in which the conduct complained of involves an Officer of the Legal Services Branch, and there is no independent Legal Services Branch Officer available to conduct the review, an Officer of the Policy, Planning and Research Division of the Authority who is not involved in the subject conduct, will conduct the Review as directed by the General Manager Policy, Planning.

It is noted that pursuant to Section 54(3) of the *Privacy Act*, the Privacy Commissioner may, at the request of the Waterways Authority, undertake the review on its behalf. Where the Privacy Commissioner does undertake the review on the Authority's behalf, the Commissioner is, once a review is completed, bound by the procedure contained in Section 5.5.2 below.

5.4.3 How will the review be conducted?

Once it has been determined who will conduct the review the Officer will:-

- 1) Send the request to the Records Section so that a file can be created;
- 2) Notify the Privacy Commissioner of the receipt of the request by sending a copy of the request together with a covering letter including contact details of the Review Officer;
- 3) Notify the applicant of receipt of the request for review including details of the Review Officer;
- 4) Proceed to review the conduct the subject of the complaint,
- 5) Send a letter to the Privacy Commissioner at the expiration of 20 days of receiving the complaint and every 20 days after that informing him of the progress of the review.

[It is noted that there are certain consequences for the Waterways Authority if the review is not completed within 60 days from the date of receipt].

In reviewing the subject conduct the Review Officer will have regard to all the relevant material supplied by the applicant as well as all relevant material supplied by the Privacy Commissioner [It is noted that pursuant to Section 54(2) of the *Privacy Act* the Commissioner is entitled to make submissions to the Authority during the course of the Internal Review].

The Review Officer will then notify the Officer(s) of the Authority who is involved in the conduct the subject of the complaint and require the Officer to make a written submission in response to the allegations contained in the complaint.

Once all the material supplied by the applicant, the Privacy Commissioner and the alleged offending Officer(s) has been considered, the Review Officer will then decide whether or not it is *probable* that the alleged conduct amounts to a contravention of an IPP or a Privacy Code of Practice. [probable in this context means whether the conduct probably does breach an IPP or Privacy Code of Practice or probably does not breach an IPP or Privacy Code of Practice].

5.5 Completion of the review

5.5.1 Time limit for completion

The Review Officer is required, pursuant to Section 53(6) of the *Privacy Act*, to complete the review as soon as is reasonably practicable in the circumstances.

It is noted, however, that if the Review Officer does not complete the review within 60 days of the receipt of the request for review, the applicant is entitled to make an application under Section 55 of the *Privacy Act* to the Administrative Decisions Tribunal (hereafter "the ADT") discussed below at Section 5.6 - Right of Appeal to the Administrative Decisions Tribunal.

5.5.2 Procedure once a review is completed

Once the Review Officer has completed the Internal Review he or she will make a recommendation to either the Legal Manager or the General Manager, Policy, Planning and Research that the Waterways Authority do one or several of the following:-

- 1) take no further action;
- 2) make a formal apology to the applicant;
- 3) give an undertaking that the conduct will not recur; and/or
- 4) implement measures to prevent recurrence of the conduct.

The Review Officer will then notify the applicant and the Privacy Commissioner as to:-

- 1) the findings of the review;
- 2) the reasons for the finding;
- 3) the action proposed to be taken [in accordance with that approved by the Legal Manager or the General Manager, Policy, Planning and Research]; and
- 4) the reasons for the proposed action

In addition to that listed above, the applicant will also be notified of any right to have the Authority's findings reviewed by the ADT.

5.6 Right of Appeal to the Administrative Decisions Tribunal ("the ADT")

Where an applicant for an Internal Review is not satisfied with either:-

- 1) the findings of the review undertaken by the Waterways Authority; or
- 2) the action taken by the Waterways Authority in relation to the application for review;

the applicant can apply to the ADT for a review of the conduct the subject of the application to the Authority.

This includes requiring a review by the ADT in respect of the time taken by the Authority to complete the review and any failure by the Authority to notify the applicant of their right to seek a review by the Authority in the first place.

After reviewing the matter, the ADT may decide to take no further action in respect of the complaint or it may make an order requiring the Waterways Authority to do one or several of the following:-

- 1) refrain from conduct which breaches an IPP or Privacy Code of Practice;
- 2) take action to comply with an IPP or Code of Practice;
- 3) correct information disclosed by the Authority; and/or
- 4) pay damages of up to \$40,000 for loss or damage suffered where and only where:-
 - (i) the conduct complained of occurs after 30 June 2001; and
 - (ii) the applicant has suffered financial loss or psychological or physical harm as a result of the conduct.

In addition to the above, the ADT can also make a report to the Minister for Transport where it believes that the Authority's CEO or an Officer of the Authority has failed to exercise a function conferred or imposed on the Officer or the CEO by the *Privacy Act* in 'good faith'.

The ADT is required pursuant to the *Privacy Act* to notify the Privacy Commissioner of an application for review by it so that the Commissioner may also appear and be heard at the ADT proceedings.

6. Dissemination of policies and practices

The Waterways Authority is required, as part of its Privacy Management Plan, to indicate how it proposes to disseminate the policies and practices devised to ensure compliance with the *Privacy Act*, to persons within the Authority.

It is the Authority's intention to comply with this requirement as follows:-

- 1) Send a copy of the Privacy Management Plan to every Division of the Waterways Authority's Head Office located at Rozelle Bay, the Waterways Office in Sydney and the other 26 Waterways Service Centres located throughout the State;
- 2) Attach a checklist of Waterways Officers to the Plans sent in accordance with 1) requiring every employee within that Division/Office to sign their name indicating that they have looked over the Plan and are aware of its contents. This checklist is to be returned to Legal Services Branch once completed;
- 3) Put a copy of the Authority's Privacy Management Plan on its intranet site.

7. Disclosure of personal information outside NSW

As previously discussed in Section 2.2.12 & Section 4.1.12 above, pursuant to Section 19(2), the Waterways Authority cannot disclose personal information that it holds, to a person or body outside the jurisdiction of New South Wales unless either:-

- (a) there is a relevant privacy law applicable to the personal information concerned in force in that jurisdiction; or
- (b) the disclosure is permitted pursuant to a Privacy Code of Practice.

Pursuant to Section 19(3) a **relevant privacy law** means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned. Although the Privacy Commissioner has not, to date, issued any notices of determination as to the relevant privacy laws that fall under subsection (3), there is a list of privacy laws which may be candidates for such determinations and that may be found on the Privacy NSW website at www.lawlink.nsw.gov.au/pc.

It should be noted that Section 19(2) does not apply until 1st July 2001, or until the Privacy Commissioner develops a Privacy Code of Practice in relation to interstate disclosures of personal information pursuant to Section 19(4) of the **Privacy Act**, whichever occurs later.

In the above regard, although the Privacy Commissioner has developed a "Draft Code for Disclosures of Personal Information outside NSW", it is yet to be approved by the Attorney General as a Privacy Code of Practice.

The following Section examines disclosures made by the Waterways Authority to persons and bodies outside NSW to assist the Privacy Commissioner with the preparation of the Code of Practice.

Division	Personal Information disclosed	Body/Person to whom PI is disclosed	Purpose of disclosure
Policy, Planning & Research	N/A	N/A	N/A
Corporate Communications and Education	N/A	N/A	N/A
Vessel Survey, Registration, Licensing & Service Delivery	Names, addresses, dob's, contact details, vessel details, in particular details relating to a the commercial registration of vessels (ie. initial & periodic surveys)	Interstate Marine Authorities (eg. Queensland Transport)	Issuing of interstate commercial registration and survey certificates

Division	Personal Information disclosed	Body/Person to whom PI is disclosed	Purpose of disclosure
Harbour Cleaning	N/A	N/A	N/A
Accident Investigation & Compliance Management And Legal	Names, addresses, dob's, contact details, vessel details (including vessel names, registration numbers, etc.) vessel incident/accident details, Mooring and boating licence numbers, Infringement Notice & Formal Warning details.	1) Interstate Marine Authorities (eg. Queensland Transport) 2) Interstate Law Enforcement Agencies (eg. Australian Federal Police)	Issuing of interstate boating licences and vessel registrations. Investigation of criminal activity or breaches of the relevant State's Marine Legislation.
Special Events Management	N/A	N/A	N/A
Property	N/A	N/A	N/A
Asset Services	N/A	N/A	N/A
Harbour Cleaning	N/A	N/A	N/A

8. Non-compliance with the Information Protection Principles

As at 1st July, 2000, the Authority identified a number of areas in which it did not comply with the IPP's set out in the *Privacy Act*. It prepared a Non-Compliance Table setting these areas out and indicating a proposed strategy to overcome the non-compliance which is contained in Appendix 1 below.