

**Government Response to
the Victorian Parliament's Scrutiny of Acts and Regulations Committee's
Final Report on a Privacy Code of Conduct for Members of the Victorian
Parliament**

1. Introduction

The Government welcomes the Final Report of the Scrutiny of Acts and Regulations Committee ("SARC") on a Privacy Code of Conduct for Members of the Victorian Parliament. The Inquiry was referred to SARC on 26 September 2000 by the Minister for State and Regional Development, the Hon. John Brumby MP.

The *Information Privacy Act 2000* sets standards for the collection, use, disclosure and handling of personal information by the public sector in Victoria.

Section 9(1) of the *Information Privacy Act 2000* expressly exempts Members of the Victorian Parliament, other than in their capacity as Ministers or Parliamentary Secretaries, from its application.

During the passage of the *Information Privacy Act 2000*, there was bipartisan agreement that MPs should be covered by a voluntary code of conduct, dealing with the same range of issues as the Act, resulting in the reference by the Minister.

In May 2001, SARC published its first Report on an Interim Privacy Code of Conduct for Members of the Victorian Parliament. This Report recommended an Interim Code of Conduct for voluntary adoption by MPs.

The Final Report makes seven recommendations. Implementation of these recommendations is the responsibility of each House of Parliament, rather than the Government.

In brief, the Report recommends the adoption of the Privacy Code of Practice contained in Appendix 1 of the Report, by resolution of each House, as the standard applicable to the handling of personal information by Victorian MPs including their staff.

2. Recommendations

The Committee recommends that the Privacy Code of Practice in Appendix 1 of this report be adopted, by resolution of each House, as the standard applicable to the handling of personal information by Victorian MPs including their staff.

The Code imposes a lower standard of privacy protection than is provided by *Information Privacy Act 2000*. The Government considers that this may be a concern for agencies which share information with MPs.

The Code does not include standards for the use of codes as unique identifiers for the exchange of personal information between entities or addressing the right of persons to deal with an entity anonymously. SARC argues in its report that these issues would

rarely be relevant to an MP's activities. The Government considers that this should not prevent MPs from having a standard in the Code addressing these issues.

The Code also grants MPs an absolute discretion to withhold access to personal information held by them except as required by law. Reasons must be given by an MP for withholding access. By comparison, access under the Information Privacy Principles can only be denied in certain limited circumstances. The Government considers that the appropriateness of the reasons given by the MP should be subject to review by the relevant Presiding Officers of the Parliament.

The adoption by resolution of each House of this Code is a matter for the Presiding Officer of each House of Parliament.

The Committee recommends that the Code be made available for MPs to adopt on a voluntary basis.

The Government notes the comment in the Final Report that public opinion will ultimately determine whether it is acceptable, and sustainable, for a Member to choose not to formally adopt the Code.

The Committee recommends that Members adopting the Code be accountable for compliance to the relevant Presiding Officer, whose decision in relation to complaints and sanctions should be final. One outcome could be referral of the complaint to the Privileges Committee for further consideration and action.

The Interim Report noted that one of the main reasons for the exemption of MPs from the *Information Privacy Act 2000* was that it was considered inappropriate to subject Members to the jurisdiction of the Commissioner and the Victorian Civil and Administrative Tribunal in relation to the performance of their functions as Members of Parliament.

The Final Report has noted that the principle of sovereignty and separation of powers is not necessarily inconsistent with self imposed standards.

Implementation of this recommendation is a matter for the Presiding Officers of each House of Parliament.

The Committee recommends that consideration be given to appointing one or more former MPs to provide privacy advice and assistance with mediation as, or if, required by individual Members.

Privacy protection is a new right in Victoria and the provision of advice and assistance to individual Members of Parliament will assist in ensuring proper information handling procedures are followed by MPs.

Such an appointee would ensure a consistent interpretation of the Code and would be a contact point for Departments and Ministers. Departments and Ministers on occasions will be sharing information with MPs and members of the public will feel reassured knowing that any personal information so shared will be subject to a form

of privacy regulations. Such an appointee will also assist in encouraging MPs to adopt the code.

Implementation of this recommendation is the responsibility of the Presiding Officers of each House of Parliament.

The Committee recommends that those Members adopting the Code be entitled to communicate their intended compliance with the Code.

As noted in the Final Report, MPs promoting their intended compliance with the Code will assist public awareness and understanding of the Code.

Implementation of this recommendation is a matter for the individual Members of Parliament.

The Committee recommends that the Parliament provide support to Members and their staff in the form of guidance, template wording for notices, IT infrastructure and training. The Parliament should develop a policy on relevant records retention and deletion for Members who retire from either House.

The Final Report recommends that MPs be assisted in their compliance with the Code by the Joint Services Department (JSD). The Report recommends that the Frequently Asked Questions (FAQs) and compliance checklist (Appendices 2 and 3) to the Report could be revised and re-issued by the JSD.

The Report also recommends that the JSD should also provide Members with standard "template" privacy notices and statements for use in their offices, in correspondence, and on their web sites.

As the JSD takes direction from the Presiding Officers of the Houses of Parliament, implementation of this recommendation is the responsibility of those Presiding Officers.

The Committee recommends that there be a formal review of the Code after three years of operation.

As noted in the Final Report, such a review would provide information on the extent of implementation of the Code, types of breaches and complaints (if any) and any difficulties that may have arisen in the use of the Code.

Implementation of this recommendation is a matter for the Presiding Officers of each House of Parliament.

3. Conclusion

The Government is grateful for the hard and careful work SARC has put into the Inquiry. Its Report and the Privacy Code of Practice have done a great deal to advance privacy protection for the citizens of Victoria in their interaction with Members of Parliament. The Government encourages all Members to consider the desirability of implementing the SARC recommendations.