



Mr Chris Eccles
Director General
Department of Premier and Cabinet
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

28 FEB 2014

Attention: Dr Sue Craig
By email: sue.craig@dpc.nsw.gov.au

Dear Mr Eccles

Re: State Owned Corporations Review Issues Paper

I have been informed that the Department of Premier and Cabinet is currently completing a review of the *State Owned Corporations Act 1989*. I note that the Issues Paper 'Review of the Legislative Framework that provides for the Governance and Accountability of State Owned Corporations' has not canvassed the protection of personal information despite the significant amount of personal information held by NSW State Owned Corporations (SOCs) and their current exemption from NSW privacy legislation.

Nonetheless I provide a short submission to canvass significant privacy issues arising from current arrangements.

My points fall under three headings:

1. lack of clarity for and amongst SOCs about their accountability for the personal information they hold
2. inconsistent privacy protections for users of these services, and
3. recent broadening of the concept of 'government sector' to include SOCs.

Research undertaken by my officers has found confusion amongst SOCs regarding their accountability for the personal information they hold. The majority of SOCs state in their privacy policies or annual reports that they comply with either Commonwealth or NSW privacy legislation. In fact, NSW privacy legislation does not apply to SOCs. Further, unless the SOC is listed in Schedule 5 of the Federal *Privacy Act 1988 (Cth)*, Federal legislation also does not apply to SOCs.

Yet, despite this regulatory gap, a number of SOCS refer to being bound to the Information Privacy Principles in the *Privacy and Personal Information Protection Act 1998* (PIIP Act) including Pillar, Sydney Water, State Water, Eraring Energy. There are also other SOCs which refer to being bound to the Federal *Privacy Act 1988 (Cth)* and their compliance with the National Privacy Principles. These SOCs include Origin Energy, Ausgrid, Macquarie Generation, Endeavour Energy, Landcom and Essential Energy. I am advised however that only four SOCs have been prescribed

under the Federal privacy legislation, that is, Australian Inland Energy Water Infrastructure, Country Energy, Energy Australia and Integral Energy Australia.

The research undertaken by my office suggests that the majority of SOCs see the importance of protecting personal information for the corporate governance and integrity of their agencies. A particular example of this acknowledgement is provided by Sydney Water and its voluntary undertaking to me and their Operating Licencing Regulator, the Independent Pricing and Regulatory Review Tribunal, to comply with the principles set out in NSW privacy legislation. This is a positive and public acknowledgement of due accountability for personal information of their customers by a major SOC.

The recognition by SOCs of the importance of privacy and their attempts to provide some guidance and reassurance for the public is encouraging, however, the confusion as to what privacy compliance regimes apply needs to be addressed.

On the second issue of inconsistency of privacy protections available to the users of SOCs, it is only those who are customers of SOCs prescribed under the Federal privacy legislation who have any formal privacy protections. Voluntary compliance by a SOC with NSW privacy legislation does not enable individuals who have a privacy complaint to take their matter to the NSW Civil and Administrative Tribunal if they are dissatisfied by a SOC's review of their privacy complaint. This is in stark contrast to the options available to customers of Australian Energy Water Infrastructure, Country Energy, Energy Australia and Integral Energy Australia to seek a determination by the Federal Privacy Commissioner.

Customers of SOCs not prescribed under section 6F of the Federal *Privacy Act 1988 (Cth)* do not have the protection provided to those SOC customers, also NSW citizens, purchasing services from SOCs covered by Federal privacy legislation. This inconsistency is confusing to consumers and is clearly not desirable or equitable.

I maintain that there is a need for all customers of SOCs to have their personal information protected in the same manner as they do when using services provided by other NSW government agencies. This is supported by the growing body of public and private research showing that Australians have heightened concerns around the collection, storage, use, and disclosure of personal information and their expectations that Government will provide protections for their personal information and privacy.

Lastly, I note that recent NSW legislative reform in the area of government employment and management has included SOCs in the Government sector for specific purposes. Specifically, section 3(1)(g) of the *Government Sector Employment Act 2013* includes SOCs in the definition of the government sector as a body constituted by or under an Act. SOCs are already covered by the *Government Information (Public Access) Act 2009* (GIPA), which establishes accountability arrangements for the handling of information held by NSW government agencies – in this case, the provision of access to information. The inclusion of SOCs under the scope of GIPA and even more recently the *Government Sector Employment Act 2013*, raises the question of 'why are SOCs not regulated under the PPIP Act?'

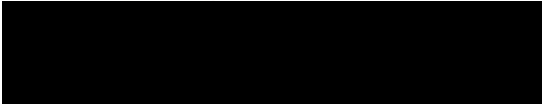
As you will be aware the Information and Privacy Commission has carriage for GIPA and I am aware that my colleague, the Information Commissioner, has also provided input to the review.

The review being undertaken by the Department of Premier and Cabinet provides an opportunity to remedy this confusion by ensuring the accountability of SOCs in terms

of their privacy practices are clarified. It is critical that there is a formal accountability framework for the protection of personal information and handling of privacy complaints arising with SOCs.

Please do not hesitate to contact me to discuss these matters. If your officers seek further information, the relevant contact officer at the Information and Privacy Commission is Sean McLaughlan, Manager Performance Reporting and Projects. Sean can be contacted on (02) 8071 7030, or by email at sean.mclaughlan@ipc.nsw.gov.au.

Yours sincerely



Dr Elizabeth Coombs
NSW Privacy Commissioner

28/2/2014