

Neil,

Following the discussion last night I have taken the liberty of assessing what the group could consider regarding privacy when collecting information, such as for the surveys, from both the legal and ethical viewpoints.

We need to consider the TYPE OF INFORMATION to be COLLECTED

Privacy Laws do not regulate or apply to all the information we would likely gather or deal with. To assess whether we have obligations under Privacy Laws we should determine whether the information we want to collect and hold falls into one of the following categories of information:

1. personal information
2. sensitive information, or
3. health information. [unlikely to concern us]

'Personal information' is information or an opinion about an identified individual, or an individual who is 'reasonably identifiable'.

Personal information includes a person's name, address, contact details (such as telephone number or email), date of birth, gender, sexuality and race.

Personal information does not include:

- anonymous information,
- aggregated information (eg. data that reflects trends without identifying the sample)
- de-identified information

'Sensitive information' is subject to stricter legal requirements for collection, storage use and disclosure. Under the Privacy Laws, information will be considered 'sensitive information' where it is information or an opinion about a person's:

- racial or ethnic origin
- political opinions
- membership of a political association
- religious beliefs or affiliations
- philosophical beliefs
- membership of a professional or trade association
- membership of a trade union
- sexual preferences or practices, or
- criminal record.

If we determine that the information we collect, store, use or disclose may be considered 'personal' or 'sensitive' information we will then need to determine which (*if any*) Privacy Laws apply.

LEGISLATION

1. National

Under Federal legislation since December 2002 not-for-profit organisations with an annual turnover more than \$3 million have responsibilities under the Privacy Act, subject to some exceptions.

At this stage we would likely not be considered an '*Australian Privacy Principle entity*' to but to be prudent we should endeavour to understand, collect and work with information according to the 13 Australian Privacy Principles (APPs)

APP 1 Open and transparent management of personal information
APP 2 Anonymity and pseudonymity
APP 3 Collection of solicited personal information
APP 4 Dealing with unsolicited personal information
APP 5 Notification of the collection of personal information
APP 6 Use or disclosure of personal information

APP 7 Direct marketing
APP 8 Cross-border disclosure of personal information
APP 9 Adoption, use or disclosure of government related identifiers
APP 10 Quality of personal information
APP 11 Security of personal information
APP 12 Access to personal information
APP 13 Correction of personal information

2. State

I am only conversant with NSW Privacy, but assume other States would be similar based on my understanding of how car clubs handle privacy in other States.

The NSW Privacy and Personal Information Protection Act, as I mentioned last night, applies to the actions of State Government authorities and agencies, and some private sector agencies handling health information, **not** unincorporated associations such as ours.

[The CHMC was informed by the NSW Privacy Commission (2015) and our legal advisors that:

- there are no privacy regulations or provisions specifically relevant to the operations of clubs or associations, such as our historic car clubs – either Federal or NSW,
- there are also no barriers or safety nets as protection against legal action on privacy issues.]

ETHICAL CONSIDERATIONS

Even though not required to do so under the APP we should seriously think about having a privacy policy or at least an appropriate statement when collecting information. Basically so that people know how we will handle their data, especially when giving some financial details. At this time the most appropriate policy guide would likely be that provided free by the Office of the Australian Information Commissioner.

We should aspire to operate in a manner that embraces best practice covering how information is:

- collected
- used
- disclosed
- managed
- administered
- stored
- accessed.

(i.e. conforms to the principles advocated in legislation). This would ensure information management and compliance will be on standard in the future as the operating heritage initiative grows.

Suggestions that CHMC received during discussions with NSW Privacy Commission could warrant consideration in the Operating Heritage context, i.e.:

- To produce and publish a register of membership/affiliation, containing member details, there should be a right to do so, i.e., a constitutional right, which should include authority to collect and update data annually (or whatever).
- The purpose of the register should be clear, e.g.,
 - i. for communication between members only
 - ii. or for distribution beyond association membership

- iii. not for the use of any commercial or other non-association purpose or any
- iv. purpose not authorized by the members
- v. or such other additions/deletions as the members require.
- The content of the register detail should be determined and accepted by the members, e.g., name, phone, fax, vehicle details, addresses, etc. – all, some, or other,
- Member commitment should be considered and any individual objection to inclusion of all or part of the data proposed should be respected,
- Joining and membership renewal forms should –
 - i. Note the Constitutional authority,
 - ii. Note the purpose of the register and limitations on distribution,
 - iii. Request the information approved by members to be sought,
 - iv. Note objection rights.

Completion of the joining/renewal form then signifies the member's consent for detail to be included in the published register under the terms approved. A signature would be a useful add-on but was not considered necessary.

Other comments

We should consider using either a Collection Notice or at least statements that apprise informants of our purpose in collecting information and how we will handle it, such as something like:

- *Operating Heritage Australia values and respects the information you provide to us. We do not use or disclose information that you may give us, such as your name, address, e-mail address or telephone number, to any organisations outside Operating Heritage Australia, unless we receive your consent beforehand.*
- *When you respond to a survey, you have the option to not disclose certain personal information such as your age and gender. Please be assured that if you do identify yourself, your name will be known to no one other than those at Operating Heritage Australia compiling this survey.*
- *We are committed to protecting your privacy, in accordance with applicable Australian privacy laws. The information that you provide us will be protected, secured and used appropriately.*
- *The main purposes for which we collect, hold, use and disclose the information you give us are*
 - ♦ *to gather data on the the behaviours, attitudes, motivations or other characteristics of the operating heritage community in Australia; and*
 - ♦ *to then use that data to promote Australian operating heritage to governments, other organisations, sponsors and the Australian public.*
 - ♦ *We use and disclose this information in anonymous, aggregated form only - you are not individually identified;*
- *We do not sell, trade, or otherwise transfer your personal information to outside parties.*

Jenny Fawbert

[The above is derived from on my professional background in this area, i.e.:

- Information Scientist specialising in information compliance – copyright, privacy, data security and management since 1976;
- Diocesan Privacy Officer 2001-2009 to Bishop, Director, Parishes, schools and community groups;
- Information compliance consultant 2009-present advising educational organisations and NFPs.]

Resources:

Office of the Australian Information Commissioner (OAIC) <https://www.oaic.gov.au/>

NFP Law Privacy Guide 2017.

https://www.nfplaw.org.au/sites/default/files/media/Privacy_Guide_Cth.pdf