



**Asia-Pacific  
Economic Cooperation**

Panel 1: Regulatory and enforcement approaches  
Moderator: Malcolm Crompton

Wednesday 17 July 2013  
09.30 – 10.40



Privacy Commissioner  
Te Mana Matapono Matatapu



## Run Sheet

| <b>Time</b>          | <b>Speakers</b>   |
|----------------------|---|
| <b>9.30 – 9.43</b>   | Malcolm Crompton introducing session, speakers including video - The emphasis is on seeking to ensure "effectiveness" of regulatory and enforcement interventions in achieving the objectives of privacy law. |
| <b>9.43 – 10.00</b>  | Richard Thomas / Rosemary Jay video   |
| <b>10.00 – 10.15</b> | Amos Tan  |
| <b>10.15 – 10.30</b> | Bob Gellman   |
| <b>10.30 – 10.40</b> | Malcolm Crompton leading questions from the floor and session wrap up   |

## Speaking Notes – Malcolm Crompton

### Introductions and how the session will run

- Most privacy regulators are highly resource constrained and have limited power, so what are they expected to do and how can they best achieve it?
- Pleasure to be here with an experienced panel – regulators, former regulators and consumer perspectives
  - **MC**, IIS, former Privacy Commissioner of Australia
  - **Richard Thomas** and **Rosemary Jay** by Video, Hunton & Williams, formerly UK ICO
  - **Amos Tan**, Singapore Personal Data Protection Commission (PDPC)
  - **Bob Gellman**, Privacy & Information Policy Consultant USA, former US Congressional staffer
- From this set of commentators almost certainly walk away with the understanding that
  - Regulator role is challenging for sure, rewarding definitely, able to have an influence and be effective
  - There are many ways to skin the regulatory cat
  - Regulators get regulated – not least by the community and the organisation's they regulate

### Setting the Scene

- Objectives of privacy enforcement
  - Free flow of information PLUS appropriate level of protection for individuals
    - often by organisations following a set of rules or 'privacy principles'
  - Requires behavioural change: greater compliance and better practice
    - Otherwise, no need to regulate!
  - How:
    - Encourage, Guide, Enforce, Remediate and make good
- What's in the regulators kitbag
  - Powers, usually some combination of:
    - Take legal action, directly or through courts
    - Audit
    - Investigate
    - Resolve complaints
    - Require information
    - Enter premises
    - Ombudsman
    - Educate
    - Advocate – policy, law, etc
  - Resources, the only way to give effect to the powers!
    - Never enough!
  - Community expectations
    - Is the regulator actually expected to do the job
    - Strength of Government support
    - Media attitude
    - Other 'influentials' ...
  - YOU!
    - What public profile do you have and should you have?
  - NOTE: what's considered enforcement? – jurisdictional variations
    - Australia – must investigate, can determine individual complaints
    - UK – ombudsman for complaints, prosecute for organisations
    - Punish – might be in the law, 'encourage' might not be or vice versa



## Background briefing - Key points from 'Selective to be Effective'

### Richard

- Not just 'data protection' also people protection
- Regulator Roles:
  - Teacher
  - Ombudsman
  - Enforcer
- Approach depends on:
  - stage of implementation
    - New law, more educative
    - Mature – stronger enforcement
  - 80/20 rule – most organisation want to do the right thing, target enforcement on those that don't
  - resources – more reason to target
    - 12 criteria for targeting
      - seriousness
      - no. of people affected
      - likely to repeat
      - wilful or egregious
      - clarify the law
- Regulator needs to be
  - Transparent
  - Accountable
  - Proportionate in response
  - Consistent
  - Fair

### Rosemary

- Enforcement is the formal quasi legal end of the spectrum – action that will have an impact on organisations
- Organisation's expect
  - Clarity – which actions will be penalised, which not
  - Consistency and fairness
- Naming and shaming, only if there is evidence and intention to prosecute, otherwise unfair impact on reputation

## PANEL MEMBERS

|   |   |
|---|---|
|    | <p>Rosemary Jay - Senior Attorney, Hunton &amp; Williams London, UK</p> <p>Rosemary is a senior attorney at Hunton &amp; Williams. She joined from Pinsent Masons LLP where she headed the Information Law Practice. Earlier she was head of the Legal Office of the Data Protection Registrar (now ICO) for 12 years. She has practiced in privacy law for nearly 25 years and is recognized as one of the top lawyers in the area of data protection in the UK with Chambers and Partners recognizing her in "Band 1" in data protection from 2011-2013. Rosemary is author of Data Protection Law &amp; Practice a contributing editor to The White Book on data protection and an editor of the Encyclopedia of Data Protection and Privacy. She has worked with the Council of Europe and the European Commission on privacy issues in Europe and the Commonwealth Secretariat in West Africa.</p> |
|   | <p>Richard Thomas, Former Information Commissioner UK</p> <p>Richard is best known for his tenure as UK Information Commissioner, a post which he held from 2002 to 2009. During his term as Commissioner, the ICO was particularly noted for raising serious concerns over the Government's proposed British national identity card and database, as well as other similar databases such as the Citizen Information Project, Universal Child Database, and the NHS National Programme for IT, stating that the country is in danger of sleepwalking into a surveillance society, drawing attention to the misuse of such information by the former states of the Eastern bloc and Francisco Franco's Spain.</p>   |
|  | <p>Amos Tan, Personal Data Protection Commission Singapore</p> <p>Amos is currently Director for Communications and Operations, PDPC and Director for Government ICT Strategy &amp; Performance Management. He is one of the Commission members of the PDPC.</p> <p>Amos has more than 15 years of infocomm experience in the public sector. In his career, Mr Tan had worked in several government agencies, responsible for their infocomm master planning; applications deployment; and technical infrastructure implementation. He also spent time in the Middle-East with foreign governments such as the Kuwaiti, Qatari governments on their e- government programmes. He was involved in the development of the data protection law and the setting up of the Personal Data Protection Commission in Singapore.</p>   |



Robert Gellman, Privacy & Information Policy Consultant USA

Robert is a privacy and information policy consultant in Washington, D.C. A graduate of the Yale Law School, Bob has worked on privacy issues for more than 35 years. He spent 17 years on the staff of a Subcommittee in the House of Representatives responsible for privacy, freedom of information, and other information policy matters. He served as a member of the Department of Health and Human Service's National Committee on Vital and Health Statistics (1996 - 2000), a federal advisory committee on health information infrastructure matters, and he chaired the Privacy and Confidentiality Subcommittee for two years. He is the author of numerous columns, papers, reports, and scholarly articles, many of which are available at: [www.bobgellman.com](http://www.bobgellman.com).