

FOR YOUR INFORMATION: ALRC REVIEW OF PRIVACY LAWS AND PRACTICE

The Australian Law Reform Commission tabled its long-awaited report *For Your Information: Australian Privacy Law and Practice* in Federal Parliament on 11 August 2008¹.

In completing this 2700 page report, the ALRC considered 585 written submissions, 3 major public forums, over 200 hundred face to face meetings, roundtables with stakeholders, and held a 2 day phone in, with over 1000 members of the public calling the ARLC.

The report makes 295 recommendations which are expected to take a further 18 months to implement. The more controversial recommendations, including the introduction of the tort of privacy and removal of exemptions for some organisations, have no deadline for implementation.

Key recommendations

- Introduction of the Unified Privacy Principles- a nationally consistent set of rules related to the management of personal information by organisations, removing the overlap with the various State laws, in particular those relating to health records. The ALRC recommends that the Commonwealth *Privacy Act* should apply to the exclusion of State and Territory laws.
- A separate 'direct marketing principle' be included in the UPPs which would permit direct marketing by an organisation to its existing customers where those customers would reasonably expect the direct marketing to occur and an 'unsubscribe' mechanism is provided.
- Removal of some of the existing exemptions for small business (less than \$3m turnover) and political parties from compliance, but retaining the journalism exemption.
- New regulations to govern the privacy of credit information and health records.
- The ALRC recommends that the Privacy Commissioner issue a set of rules clarifying the circumstances in which personal information can be collected for the purposes of bona fide research.
- Recommendations 71 and 72 call for changes to the Telecommunications Act, including a prohibition on charging a fee to keep a telephone number unlisted and that the use and disclosure provisions be redrafted to achieve a clearer and simpler regime.
- The report urges the Office of the Privacy Commissioner (OPC) to publish guidelines in relation to technologies that impact on privacy and to provide guidance to private sector organisations on the implications of data matching.
- Recommendation 74 introduced a cause of action for a 'serious invasion of privacy'. While the Government has not committed to a legislative timeframe, the ALRC suggested that a claimant would be required to show that:
 - there is a reasonable expectation of privacy; and
 - the act complained of is highly offensive to a reasonable person of ordinary sensibilities.

- In determining whether the cause of action is made out, the ALRC acknowledged that a court should take into account the balance between the individual's privacy and the public interest.

Other recommendations

- The report recommends the adoption of consistent rules and guidelines relating to the handling of personal information by ASIO, ASIS, the Defence Imagery and Geospatial Organisation, the Defence Intelligence Organisation, the Defence Signals Directorate and the Office of National Assessments.
- The report recommends that the Australian Communications and Media Authority, in conjunction with the OPC, the Communications Alliance and the Telecommunications Ombudsman, develop protocols addressing privacy issues raised by new technologies such as location-based services, VOIP and electronic number mapping.
- Stronger penalties are recommended to enable the Privacy Commissioner to seek civil penalties for serious interference with the privacy of an individual.
- Empowering privacy beyond the Individual – namely making recommendations to address the privacy needs of Indigenous groups.
- Privacy of deceased people- recommended amendments to the Privacy Act to protect certain information relating to persons who have been dead for less than 30 years.
- A restructure and increasing of the powers of the Privacy Commissioner's office including being able to delegate its powers, being able to direct agencies to undertake privacy impact assessments, to undertake personal information audits and to make own motion investigations.

An amended 'cross-border data flow' principle to ensure that an agency in Australia which transferred personal information to another country would be accountable for the acts of third parties overseas. Restrictions on cross-border data flows would extend to the agencies or organisations would be required to notify both the Privacy Commissioner and affected individuals where they believe an unauthorised person has acquired personal information in circumstances which may give rise to a real risk of serious harm to the individual.

The full ALRC report can be found on the ALRC website at <http://www.austlii.edu.au/au/other/alrc/publications/reports/108/>.