Privacy Commissioner Releases Consultation Paper on National Scheme for Fair Information Practices

The Human Rights and Equal Opportunity Commission issued the following News Release on 18 August 1997.

Privacy challenge for business

The Federal Privacy Commissioner, Ms Moira Scollay, has today released A National Scheme for Fair Information Practices, a consultation paper which proposes national standards for handling personal information by the private sector. The paper responds to a request from the Prime Minister in March for the Commissioner to work with business to develop voluntary codes of conduct.

"The scheme will only work if business gives it full support" says Ms Scollay. "Business needs to take very seriously the real fears in the community about use of their personal records prompted by the explosion of information technology," she says. "The challenge is there for business to help make the scheme effective."

The paper proposes workable ways in which business can provide adequate protection with minimum red tape and very little expense.

It also addresses government and business concerns about barriers to electronic commerce.

Other key issues covered by the paper include:

- how businesses can allow people reasonable access to information about themselves
- the effect privacy safeguards would have on the marketing of goods and services, and
- complaint handling and dispute resolution

Federal privacy law covers the Federal and ACT public sectors, and some specific areas of business such as credit reporting, but there are no binding safeguards in most of the private sector.

"At present," Ms Scollay says, "there are few limits to what most businesses can do with personal information – about such matters as our health, many of our financial transactions, and our day to day movements. As more and more detailed information is recorded as part of our daily lives, people are increasingly demanding some control over the way it is collected and used."

The National Fair Information Practices Scheme consultation paper will be distributed to a wide range of interested parties – independent companies, peak business organizations, consumer and privacy advocates – for comment, with a view to developing a national consensus.

For further information or a copy of the report please contact HREOC Public Affairs (02) 9284 9618 or 9677.

Publicity in Family Law Cases

On 24 June 1997, the Attorney-General tabled in the Parliament a report entitled "Publicity in Family Law Cases : Proposals for Amendments to the Family Law Act section 121. The Attorney-General's press release following tabling is set out below.

Publication of Family Law Matters

I have today tabled in Parliament a report which recommends the relaxation of the current prohibition on media reporting of family law matters.

The report, by the Hon Ian McCall AO, former Chief Judge of the Family Court of Western Australia, identifies what it considers to be compelling reasons for relaxing current restrictions on publication. I have asked the Family Law Branch of the Attorney-General's Department to seek community views on the recommendations with the view to developing a legislative proposal.

The report recommends that publication, including the names of parties, be allowed in all cases other than those relating to parental arrangements. Under the recommendations the Family Court would retain discretion to prevent publication in sensitive circumstances.

One reason advanced for this recommendation is the issue of public confidence in the Court and the need for justice (as well as being done) to be seen to be done.

The report has found that the public would better appreciate family law and its administration if the media could report on it more freely with appropriate safeguards to curb sensationalist or other misreporting of cases.

Further recommendations include that the findings, but not the day-to-day proceedings of a case, might be reported. In other words, the facts in family law cases, but not any evidence or allegations, could be published. These same restrictions would apply to publication of cases on the Internet.

Review of the New Zealand Official Information Act 1982

In October 1997, the New Zealand Law Commission published its report entitled "Review of the Official Information Act 1982" (Report 40).

The Report concluded that the Act generally achieves its stated purposes. However, it identified a number of factors which inhibit the effective operation of the Act and thus the wider availability of official information.

The major problems identified were:

- the burden caused by large and broadly defined requests;
- tardiness in responding to requests;
- resistance by agencies outside the core state sector; and
- the absence of a co-ordinated approach to supervision, compliance, policy advice and education regarding the Act and other information issues.

The New Zealand Act extends to local government, State Owned Enterprises (the equivalent of GBEs) and those in the private sector performing functions contracted out by the Crown and public bodies but not where the function has been privatised (although contract penal institutions are deemed to be part of the Department of Justice for the purposes of the Official Information Act and the Ombudsmen Act 1975). The Report concludes that State Owned Enterprises should be subject to the Official Information Act and the Ombudsmen Act.

On large and broadly defined requests, the Report noted the value of the Ombudsman's guidelines which provide advice to requesters and agencies. It recommended that the Act be amended to enable a person to specify the purpose for which information is sought and for the agency to have regard to that purpose in deciding whether to make the information available, in what form and on what conditions. Further, there should be an express obligation on agencies to assist requesters, which includes consulting the requester and an obligation to consider fixing a charge or extending the time limit for responding before refusing a request on the existing ground that it requires "substantial collation and research".

The Report looked at the charging regime but recommended no change to allow agencies to charge for time spent in deciding whether or not to grant the request and no change to enable agencies undertaking commercial activities for profit to charge in a way different from other agencies.

The Report recommended a review of the 20 working day time limit in 3 years, with a view to reducing it to 15 working days and that the complexity of issues raised by a request should be a ground for extending the time limit.

Among other recommendations, the Report did not recommend any change to the provision that an Ombudsman recommendation relating to the release of general official information (not personal information) becomes binding on the agency 21 working days after it is made unless the Governor-General directs otherwise. However, a time limit of 20 days for lodging of an application for review was recommended

for agencies seeking judicial review of an Ombudsman's recommendation.

The Report noted that, in the rare event that an Ombudsman's recommendation is not complied with, the Solicitor-General should enforce the public duty on his or her own initiative, in accordance with constitutional practice.

TRIBUNAL WATCH

Attorney-General Confirms Tribunals Will Stay Independent

On 13 July 1997, the Attorney-General and Minister for Justice, the Hon Daryl Williams AM QC MP, issued the following News Release.

MERITS REVIEW TRIBUNALS TO STAY INDEPENDENT

Cabinet has reaffirmed its decision to streamline the present merits review system through amalgamation of a number of existing tribunals into an independent Administrative Review Tribunal.

As Cabinet decided in March, the Administrative Appeals Tribunal, the Social Security Appeals Tribunal, the Immigration Review Tribunal, the Refugee Review Tribunal and the Veterans Review Board would be amalgamated to form a new Administrative Review Tribunal.

That in-principle decision followed consideration of the Better Decisions report from the Administrative Review Council which recommended amalgamation.

An Inter-Departmental Committee was established to devise a strategy for implementation of the decision. The committee will report to Cabinet in due course.

The Cabinet is firm in its resolve that any proposal for reform of the merits review tribunals is not to affect the level of independence of such bodies in reaching decisions and it is confident that the report of the inter-departmental committee will be consistent with this aim.

Proposed Merger of IRT and MIRO into new Migration Review Tribunal

The last edition of *Admin Review* reported on the announcement of changes to be made in the Migration Act, in particular, to merge the Immigration Review Tribunal and the Migration Internal Review Office into a new Migration Review Tribunal and to introduce a privative clause to restrict judicial review in the High Court and federal Court in migration matters.

The legislation to achieve this – the Migration Legislation Amendment Bill (No 4) 1997 – was introduced into the House of Representatives by the Minister for Immigration and Multicultural Affairs on 25 June 1997.

In his Second Reading Speech on the Bill (Hansard pages 6281 - 6285), the Minister said that review of decisions by the Migration Review Tribunal would commence on 1 July 1998.

The Bill also makes a number of procedural changes for both the new Tribunal and the Refugee Review Tribunal.

Changes to Eligibility for Appointment to National Native Title Tribunal

The Native Title Amendment (Tribunal Appointments) Bill 1997 was introduced into the House of Representatives on 25 June 1997.

The Attorney-General's Second Reading Speech (Hansard p 6209) describes the amendments made by the Bill as adding a further class of persons to those eligible for appointment as presidential members – currently only judges are eligible, the amendments provide that persons who have been admitted to legal practice for at least 5 years are also eligible – and enabling the President of the Tribunal, instead of the Governor-General, to appoint an acting Registrar during vacancies in that office.