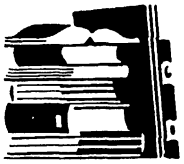


Privacy Act extended to business

The Federal Government proposes to extend the operation of the Privacy Act to the private sector.

The federal Attorney-General, Daryl Williams, has finally announced the Government's proposals to improve privacy protection in Australia. Privacy advocates who have suffered more than twenty years of frustration over the lack of strong privacy legislation in Australia welcomed the announcement on September 11 at a Sydney luncheon.

The long march

For a short period in the 1970s, Australia was at the forefront of international efforts to protect personal privacy. Privacy advocates correctly predicted that new information technology would erode privacy if developments remained unchecked. Several states, including NSW and Queensland, passed privacy legislation and set up Ombudsman-type bodies to oversee the legislation.

The federal Government was widely tipped to follow suit, but developments were stalled for a lengthy period. In 1983 the Australian Law Reform Commission released a report on privacy which called for the establishment of a federal Privacy Act. For five years, the government failed to act on any of the recommendations, and then only established privacy legislation with jurisdiction over the public sector.

The Privacy Act 1988 has the unfortunate burden of being associated with the government's failed Australia Card legislation. Opposition to the Australia Card proposal had been widespread, and when the legislation was eventually defeated in 1987, the government instead promised to crack down on tax fraud by introducing the Tax File Number system. The Privacy Act was introduced at the same time to protect individuals from unauthorised government privacy intrusions.

The result is that the Privacy Act is limited to regulating the activities of government departments, although some provisions were extended to include the credit reporting activities of private sector companies.

The staff of the Office of the Privacy Commissioner, including the Commissioner himself, have performed a function that is purely regulatory, and have done little to advocate for change or improvements to privacy protection.

The comunity will be looking for strong and independent Commissioner to lead the way forward

In the meantime, state based privacy protection has suffered a lethargy of its own. The Queensland Privacy Committee wound up its activities in 1991 and has not been replaced. The South Australian Privacy Committee has never had more than one full time member of staff. The New South Wales Privacy Committee has survived for over twenty years and has been the stalwart of privacy advocacy in Australia. However, it has never had either the legislative 'teeth' to enforce its advice and decisions in the private sector, or the resources to cope with the numerous privacy intrusions which occur at the state level.

The other states and territories have had no privacy protection. Just weeks before the latest federal Government announcement, the Victorian and New South Wales Governments had taken steps of their own to improve privacy protection. Victoria, impatient with the pace of change at the federal level, and wary of the impact of new technologies on privacy, established a Data Protection Advisory Council to advise on the best options for protecting the privacy of Victorians. In New South Wales, the Government was putting the finishing touches on its long awaited Privacy and Data Protection Bill.

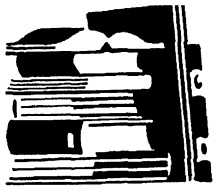
The proposed legislation

Although it has been a long time coming, the general tenor of the proposed federal legislation comes as no surprise. Improvements to privacy protection formed part of the Coalition's pre-election justice strategy (matching closely proposals by Labor and the Democrats). Improvements have also been recommended in a number of recent government inquiries, including the report of the Broadband Services Expert Group and the National Information Services Council.

A short discussion paper indicates the nature of the proposed legislation, which is based on a co-regulatory approach. The Privacy Act will be amended to allow the Information Protection Principles (IPPs) to be enforced in both the public and private sectors. For the private sector, codes of practice can be developed which can be more flexible than a strict application of the IPPs.

Codes may be initiated either by the Commissioner or Industry, but must ultimately be approved by the Commissioner. Parliament would be given a power of veto over any Code.

The Act would distinguish between issues arising from the crea-



tion of records containing personal information, which would be protected by the IPPs, and issues arising from other acts and practices which lead to privacy intrusions, such as telemarketing and surveillance. In these cases, the Privacy Commissioner may choose to issue technology specific guidelines.

The scope of the proposed legislation is comprehensive, with one exception. The discussion paper recognises that privacy protection in relation to the activities of the media is a special case, and the media are therefore exempted from the proposed legislation. However, the discussion paper states that 'separate consideration will be given to privacy issues in relation to the media'.

Support and opposition

The proposed legislation appears to have all party support at the federal level. The previous government was itself working towards a similar goal, and the Democrats have been quietly developing their own privacy legislation (along similar lines).

The states, however, may raise a number of objections to the new legislation. State government departments have large databases of personal information that are managed according to state based information policies. They may resent having to comply with a new regime based on federal legislation. This is a matter which will require further consultation and negotiation - there is nothing to be gained by riding roughshod over the interests of the states. This is especially the case in NSW, where there is already a level of expertise in applying privacy principles. A cooperative approach is required.

Law enforcement agencies may also oppose improvements to privacy legislation, but their claims will require close examination. The privacy legislation will not in any way prevent law enforcement agencies from carrying out their duties where they have a warrant. This is a good result on both privacy and civil liberties grounds.

Private investigators are also likely to raise objections - as are their supporters in the community (such as solicitors, debt collectors, and the families of missing persons). However, private investigators have, in the past, been responsible for the worst privacy intrusions, and their negotiating position is weakened by this long history. There is little to indicate that the profession has improved its conduct since the damning revelations of the Independent Commission Against Corruption in 1991.

Support from privacy and consumer groups will be strong, although there is a fear that the legislation may result in nothing more than another bureaucratic regulator administering the IPPs, without agitating for change or attempting to anticipate privacy issues likely to be raised by new technologies. The community will be looking for a strong and independent Commissioner to lead the way forward.

Finally, the media, although exempt at this stage, will have their own interests in mind when discussing the merits of the proposal. There is no simple solution to balancing privacy issues against freedom of the press, and at this stage a complete exemption, although crude, will at least allow privacy protection in the private sector, without complicating the debate.

In any event, the proposed legislation is a chance for the Office of the Privacy Commissioner to finally shake off the 'government' tag and take on an independent role, protecting privacy for all.❑

Chris Connolly

Copies of the Discussion Paper may be obtained from the Attorney General's office (see Policy File for details). Submissions close on 29 November 1996.

Telstra aims for privacy best practice

IN EARLY 1994, following revelations that Telstra employees had eavesdropped customers' telephone conversations, the corporation developed a Privacy Protection Policy designed to introduce and safeguard privacy protection principles. As part of this policy, Telstra also established a Privacy Audit panel, comprising the privacy auditor, Price Waterhouse, the Privacy Commissioner, Kevin O'Connor and the Chair of the Australian Privacy Charter Council, Janine Haines.

The Privacy Auditor investigates and reports on:

- the appropriateness and effectiveness of Telstra's privacy policy;
- the corporation's compliance with that policy;
- the extent to which the level of privacy protection meets international standards;
- the security of the networks; and
- the extent to which the policy meets Telstra's statutory obligations, its own policy commitments and its data protection requirements.

The audit covers all of Telstra's business units, is overseen by the Privacy audit panel and reports annually to Telstra.

To date, the auditor's recommendations have led to Telstra expanding its Privacy Protection Policy by, among other things, limiting the amount of data collected and kept on customers and placing significant restrictions on access to that data within Telstra as well as on disclosure of the information to outside sources.❑ AG