



The politics of privacy

Chris Connolly, Director, Policy Network

In March 1997 Australia was closer than it has ever been to the creation of an effective regime for the protection of privacy. Like most other developed nations, Australia was drafting privacy legislation which would apply to both the public and private sectors. The federal Attorney-General had issued a discussion paper and received submissions. Legislation to amend Australia's existing Privacy Act was at an early drafting stage.

Suddenly, the Prime Minister intervened and announced that there would be no extension of the Privacy Act's application. Indeed, there would be no attempt to legislate for the protection of privacy in the private sector because it would be too costly for small business.

Don't mention the 'P' word

Despite an outpouring of dissent from both consumer and business groups following this decision, the Prime Minister has not spoken publicly about privacy since. He has refused to meet with the media, the consumer movement or the privacy movement to discuss the matter, and has not uttered the word 'privacy' once since that announcement.

Other nations have acted quickly to introduce privacy protections. Canada, Britain, New Zealand, Taiwan, Hong Kong, South Korea and the entire European Union have put legislation in place. Japan, Malaysia, South Africa and the USA are all considering the matter. Australia is alone in rejecting the idea of privacy legislation outright.

Businesses hoping to capitalise on the boom in global communications, electronic commerce and new technologies such as smart cards have

been left out in the cold by the Prime Minister's decision. The European Union member countries and others are set to refuse to trade any information with Australia after October 1998, when the European Union Directive on Data Protection (and linked national laws like those in Taiwan and Hong Kong) come into force. These same businesses know they will suffer because of the lack of consumer confidence and trust in new products, in the absence of adequate privacy protection.

Fallout

A campaign to convince the Prime Minister that he has made a serious and damaging mistake has so far fallen on deaf ears. A coalition of consumer and business groups, in a rare show of unity, called for the process to develop legislation to be re-started. Several government-commissioned inquiries called for national privacy protection. Privacy International and other international organisations began a global campaign to highlight Australia's isolated position on privacy. Still, the Prime Minister has not responded.

Now, new fronts are opening up in the battle for legislation. The Australian Democrats, the ALP and the Greens have launched a Senate campaign on privacy. They are in a strong position to force the issue because the government needs Senate support for a small amendment to the Privacy Act to allow it to outsource government Information Technology. The Act will now be the subject of debate in both houses, and may possibly be referred to a Senate Committee. The Senate numbers are tight, and the Democrats' opening 'motion of urgency' resulted in a tie. Privacy

will not lie down and die for this government.

In Victoria, an announcement is imminent that state based privacy legislation will be introduced. This raises the spectre of inconsistent state privacy laws for business – a headache for businesses operating in more than one jurisdiction, and a nightmare for the Prime Minister, who had claimed his decision would save costs for business. The ACT government is committed to the introduction of privacy legislation for the health sector (including private companies), and in NSW a Privacy Bill is making yet another attempt to squeeze through the Cabinet Office. Queensland and Tasmania are both holding inquiries into privacy legislation.

The Federal Coalition is playing a stalling game. Although the Prime Minister won't mention the 'P' word, several members of the Front Bench have been forced to defend the decision. Ministers including John Fahey (Finance) and Attorney-General Daryl Williams have backed the PM's stance on privacy, although Fahey was careful to stress in a radio interview that the Prime Minister had made a decision based on circumstances at the time, and that nothing was set in stone.

Voluntary codes

In the absence of legislation, the Prime Minister has instructed the federal Privacy Commissioner, Moira Scollay, to assist business in the development of voluntary privacy codes. This has placed her in an unenviable position: her office has always supported the introduction of enforceable legislation, but her work on voluntary codes can be used by the government to stall the introduction of such legisla-



Discussion paper released

A discussion paper entitled 'A National scheme for fair information practices in the private sector' was released by the Privacy Commissioner on 15 August 1997. The paper calls for submissions by 15 September 1997. The paper sets out the background to privacy protection in Australia and internationally, and explains that the Government has asked the Commissioner to develop a national self regulatory scheme for privacy protection.

The bulk of the paper is a summary of the key privacy principles which should be considered in the development of a code, and the different options for making such a code work. There is an acknowledgment that many organisations have strong reservations about the value of a voluntary code, and also an acknowledgment that consumer and privacy groups are generally reluctant to become involved in the code development process.

The paper contains a wealth of detailed information on the privacy principles themselves, and serves to allay many of the fears of business about the effect complying with a privacy regime might have.

The paper is available from:

Privacy Commissioner

Human Rights and Equal Opportunity Commission GPO Box 5218

Sydney NSW 2001

tel (02) 9284 9610 fax (02) 9284 9666

privacy@hreoc.gov.au

<http://www.hreoc.gov.au/hreoc/privacy>

tion. As an added burden, the budget of the Privacy Commissioner's office has been cut by 40%.

The development of a voluntary code has begun slowly. The Commissioner has held informal meetings with consumer groups, privacy advocates and business representatives over the last few months. A general discussion paper (*see insert*) was issued on 15 August, with a deadline for submissions of 15 September. The next step will be a series of discussion forums to be held around the country in September and October. Only after this will the real code development process begin.

The entire process has hit an early and not unexpected snag. Consumer and privacy groups have been unwilling to become involved in the code development process, as they cannot see any worth in a voluntary code. Indeed, if they were to be seen to join this consultation process this would weaken their continuing campaign for fair, enforceable privacy legislation.

It will be impossible to develop a voluntary code without some sup-

port, or at least input, from community consumer and privacy organisations. A number of businesses have already realised this, and are themselves reluctant to continue their involvement in a process which is so obviously flawed.

Compliance costs?

For businesses, the discussion paper has also demonstrated a flaw in the government's argument that privacy legislation would be too costly for small business. It is quickly apparent that compliance with a code will cost as much, if not more, than compliance with legislation. There are in fact very few costs associated with protecting privacy. Admittedly, in the early work on privacy legislation there was an over-reliance on paperwork. But if the government had cared to ask privacy advocates about the matter, they would have learned that there was a general willingness to drop the paperwork requirements completely, and perhaps to even offer further concessions for smaller businesses.

But as a stalling tactic for the gov-

ernment, the voluntary code development process seems to be working. In response to any question about privacy, the government response is that it 'cares very much' about privacy and that it is 'working on a national privacy code'. The fact that a voluntary code provides no actual protection and will not comply with the European Union Directive is conveniently ignored.

Yet even as these political games are played out, the opportunity to show leadership in the information technology arena slips by. Electronic commerce and online services will only boom in those jurisdictions where consumers can be confident about the use of their information online. By the time you are reading this there will be less than twelve months until the European Union Directive comes into force, locking Australia out of the global trade in information.

The clock is ticking. Australia need the Prime Minister to say the 'P' word before it is too late.

Chris Connolly can be contacted by email at chrisc@socialchange.net.au