



# Privacy backdown: voices grow

*Sue Ferguson reports on reaction to the government's withdrawal of its proposal to implement new privacy laws*

Last month's *CU* reported that the Prime Minister announced, on 21 March, the withdrawal of the government's plans to extend the application of the federal Privacy Act to the private sector. This decision was allegedly based mainly on the increased compliance costs for Australian businesses, despite widespread industry and community support for the legislation.

Since the announcement there has been a steady stream of united concern voiced by consumer representatives and businesses. The only group not to join this united front are the banks.

## Consumer and business concern

On 4 April, a joint statement was issued by privacy groups, consumers, businesses, trade unions and professional societies warning of a privacy disaster resulting from the government's statement. Businesses involved in this joint statement include the Australian Direct Marketing Association, American Express, Readers Digest, the Law Society of NSW, Market Research Society, Stanton Partners, the Australian Computer Society, Ozemail and INTIAA.

The statement referred to a Price Waterhouse survey of 120 large companies, which found that two-thirds supported the introduction of national privacy legislation. The coalition of groups also expressed their concern that Australia will suffer further embarrassment when international companies refuse to trade with Australia because of its lack of privacy protection, following the introduction of the European Union Privacy Directive, which comes into force on 1 July 1998.

## European Directive

The federal government's 'Online Policy Statement' for the 1996 elec-

tion set out its concerns about the potential for Australian business to suffer if they did not develop privacy legislation:

*'The recently released European Union Privacy Directive, which regulates transnational data flows, has made it imperative that Australia's privacy legislation is updated before our access to overseas information resources is curtailed.'*

This Directive sets out privacy principles for the public and private sector. It includes minimum requirements which must be met before personal data can be transferred to a country outside the European Union. The destination country must ensure an adequate level of privacy protection (Article 25(1)). New Zealand, Taiwan and Hong Kong have developed privacy legislation which includes restrictions on trans-border data flows. South Korea, Japan and Canada are each in the process of implementing similar laws.

## Other implications

- Australian consumers will have no assurance that their privacy is protected when dealing with the private sector nor will they have legal recourse if their personal information is sold despite assurances to the contrary.
- In the absence of federal legislation, state governments will pursue separate privacy legislation for the private sector. Businesses who trade in more than one state will therefore be faced with the costs of complying with a range of different regulatory regimes.
- Several key emerging industries rely heavily on consumer confidence in their products. For example, the smart card industry has been seeking to assure consumers that

the privacy of information collected on the cards will be protected.

## State privacy legislation

NSW has draft legislation – the Privacy and Protection of Personal Information Bill 1997, which includes private sector coverage. In February 1997, the NSW Attorney-General, Jeff Shaw, said that he would ask the NSW Privacy Commissioner to consider codes of practice for the private sector should there be a delay in the implementation of Commonwealth legislation. The Bill is expected to be tabled later this year.

Victoria has prepared a set of recommendations that have not yet been released (Data Protection Advisory Council February 1997). It is expected that they will recommend the introduction of privacy laws in Victoria. The DPAC prepared the recommendations on the assumption that the federal plans to cover the private sector would go ahead. However, like NSW, the Victorian government will push ahead with private sector coverage in the absence of federal legislation.

Queensland has two committees examining privacy legislation: one within the Attorney-General's Department and the other a Parliamentary Committee. Both had been considering private sector coverage. However, it has been reported that the Queensland government has backed away from private sector coverage following the Premiers' Conference.

Tasmania recently released a discussion paper on privacy and Western Australia has established a 'privacy working party'. South Australia, the Northern Territory and the ACT may also have to consider privacy legislation in the absence of federal legislation. □