

Victoria moves to legislate privacy

Victoria's Data Protection Bill 1999 provides for fines of up to \$100,000 for privacy breaches

The Victorian government first released a discussion paper on data protection in July 1998. Draft legislation followed in December 1998. This coincided with the federal government's announcement of its plans to develop national laws covering privacy protection in the private sector. The Data Protection Bill 1999, part of the government's package for privacy, data protection and electronic commerce, was introduced into the Victorian Parliament on May 28.

Alan Stockdale, Minister for Information Technology and Multimedia, has said that the "Data Protection Bill will provide discrete protection for the public and private sectors, with support from a new data protection and privacy regime which can be adapted in light of the actual form of Federal legislation".

The Bill applies to public sector and private sector organisations and establishes the Office of the Victorian Privacy Commissioner. Provision is made for the Victorian government to make arrangements for the Federal Privacy Commissioner to deal with the private sector on its behalf.

There are a number of exemptions, including the news media, which are exempt from the principles relating to collection, use and disclosure of personal information in respect to their "news activities". These are defined as the gathering of news, the preparation of articles or programs about news or current affairs, and the dissemination of this information to the public. But the news media are subject to the Information Principle dealing with access-and-correction once the information has been disseminated to the public.

The Bill requires organisations to comply with the Information Privacy Principles (IPPs) set out in Schedule 1. These principles are based on the National Principles for the Fair Handling of Personal Information devised by the Federal Privacy Commissioner. An organisation can meet its duty to conform with the IPPs by complying with an approved code of practice.

Outsourcing is addressed specifically. An outsourcing contract may provide that the IPPs and any applicable code apply to any act or practice of the organisation providing a service (the outsourced service provider) to the outsourcing organisation. An act done or practice engaged in by an outsourced service provider is taken to have been done by the outsourcing organisation as well, unless such a contractual provision applies and the IPP or code is capable of being enforced against the outsourced service provider.

Codes of practice may modify the application of the IPPs by prescribing standards that are more or less stringent, or by exempting any act of practice from an IPP, either unconditionally or subject to conditions. Codes of practice may apply to specific types of information, organisations or activities. They may impose controls on data matching and prescribe procedures for dealing with complaints and remedies available where a complaint is substantiated.

The Victorian Privacy Commissioner advises the Minister as to the approval of codes. The criteria for approval include whether the code would substantially

achieve the objects of the Act and that approval is not contrary to the public interest.

Individuals may complain to the Privacy Commissioner: where there is no applicable code of practice; where there is a code of practice but it does not provide for the appointment of a code administrator to whom complaints may be made; where there is a code of practice but the complainant received no response within 45 days of complaining or received an inadequate response.

The Privacy Commissioner's role in relation to complaints is to endeavour to reach settlement by conciliation. The Victorian Civil and Administrative Tribunal (the Tribunal) also has jurisdiction where the Minister refers to it a complaint raising an issue of important public policy; or where the Privacy Commissioner refers to it a complaint that he or she has declined, or where conciliation is inappropriate or has failed. The Tribunal has the power to make orders restraining an organisation from repeating or continuing any act or requiring an organisation to perform any reasonable act to redress the loss or damage suffered by the complainant. It can also order that the complainant is entitled to compensation not exceeding \$100,000. Where a code of practice applies, the Tribunal may order the code administrator to take specified steps including using conciliation or mediation; securing an apology or undertaking as to future conduct; or the payment of compensation not exceeding \$100,000.

The Privacy Commissioner also has the power to serve a compliance notice on an organisation requiring it to comply with an IPP or code; failure to comply with which is an offence.

The Bill is expected to lie over until the Spring 1999 session to allow further public consultation in light of developments at the national level.

Vic Marles and Jenny Mullaly

