

# privacy

## law

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All of us reveal aspects of our personal lives on a regular basis. For example, we often complete detailed forms for the purposes of banking, credit unions, insurance, superannuation, payrolls and the like. Further, on a typical day, we may make a number of mobile telephone calls and a number of banking transactions using credit cards. We may also receive or send e-mails through the Internet. All of these transactions can involve the disclosure of detailed and perhaps sensitive personal information.

Advances in technology have made it relatively easy for all this information to be collated and stored on privately owned databases. Telephone companies are able to monitor and record the movements of mobile telephones and banks generally record details of all transactions using credit cards that may reveal details of an individual's shopping habits. Technology has made it possible to record Web sites that individuals visit by the use of "cookies" (which are recording mechanisms installed on an Internet site).

With all of this happening, it has become difficult to monitor who has personal information about us and, consequently, it is virtually impossible to ascertain or control the accuracy and completeness of this information and to know how it will be used.

### current privacy law in australia

The Federal *Privacy Act* 1988 (the "Act") is currently the major piece of Australian legislation relating to privacy. The Act applies only to some Commonwealth public bodies as well as telecommunications companies. The Act embraces the private sector

only to the extent that it regulates the activities of credit reporting agencies and credit providers and handling of tax file number information. Otherwise, it does not apply to the private or State public sectors.

### information privacy principles

The Act contains a number of Information Privacy Principles ("IPPs"), which are enforceable against Government Agencies and which set out the circumstances in which the organisations regulated by the Act may collect personal information of individuals and how they may deal with that information.

If an organisation regulated by the Act breaches one of the IPPs, an aggrieved person can lodge a complaint with the Privacy Commissioner. The Privacy Commissioner may investigate the complaint and has the power to make a declaration recommending some form of remedy. This determination can be enforced by the Privacy Commissioner or by the complainant in the Federal Court.

### no general right of privacy

At common law, the courts do not recognise a general right of privacy. However, in some circumstances a person may seek a remedy for misuse of information on the grounds of breach of confidence. This action will only apply to information that is:

- confidential in character;
- could not lawfully be obtained from another source; and
- disclosed in confidence or where the recipient should have understood that this was the case.

In addition, there may be obligations of privacy or confidentiality subsisting under private agreements and arrangements. For example: confidentiality undertakings in contracts.

### national privacy principles

In 1998, the Privacy Commissioner issued a number of National Principles known as "National Principles for the Handling of Personal Information" ("NPPs"). These NPPs are more comprehensive than IPPs and have provided the foundation for the development of voluntary codes of conduct in a number of industries. The NPPs have also formed the basis of new proposed legislation that is discussed below. NPPs prescribe the adoption of the following sorts of information handling standards:

- Information collected must be collected for a purpose directly related to the function of the collector and must not be collected by unlawful or unfair means;
- Individuals are entitled to know the purpose for which the information is being collected, and that information may only be used for the purpose for which it was collected;
- Collected information should be kept secure from unauthorised use or access through use of mechanisms such as firewalls, passwords and encryption;
- Organisations should allow individuals access to data held about themselves, and the opportunity to correct any inaccurate information;
- Restrictions apply to the transfer of information outside Australia; and
- Organisations may only collect sensitive personal information such as political opinions, racial or ethnic origins, religious beliefs, and sexual preferences in certain limited circumstances.

### new privacy legislation

The *Privacy Amendment (Private Sector) Bill* (Cth) 2000 (the "Bill") was introduced to Federal parliament on 12

April 2000 and represents significant reform of privacy law in Australia.

Key reforms introduced by the Bill are the extension of privacy regulation to the private sector and the establishment of a comprehensive regime.

The Bill adopts the NPPs and prescribes the manner in which organisations may deal with personal or sensitive information, in particular:

- methods of collection;
- use and disclosure;
- data quality;
- security;
- openness;
- access and correction;
- use of identifiers assigned by government agencies;
- anonymity;
- transfer of information outside Australia;
- handling of sensitive information; and
- complaint handling procedures.

Under the Bill, private sector organisations may either develop their own privacy code (which meets or exceeds the NPPs and is approved by the Privacy Commissioner) or elect not to develop a code, in which case the NPPs will bind them.

### **“personal information” and “sensitive information”**

“Personal information” means information (including opinions) concerning an individual which enables that person’s identity to be ascertained. Certain information is excluded from operation of the Bill, including:

- employee records;
- information used and disclosed by the media; and
- certain information collected by small businesses, in the course of the political process and individuals acting in a non-business capacity.

“Sensitive information” means information revealing a person’s racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union memberships or details of his or her health or sex life. This category of

information gives rise to more onerous obligations.

### **effective date of new legislation**

The Bill is expected to take effect from the later of 1 July 2001 or 12 months after the Bill has been passed.

### **recommended action**

To ensure compliance once the Bill becomes law, businesses and other organisations should consider the following action now:

- undertake a privacy audit to identify and assess any risks associated with:
  - the nature of the information collected or proposed to be collected;
  - the manner in which such information is collected, used, disclosed stored and discarded;
- either:
  - develop a privacy policy for collection, use, disclosure, storage, protection and accessibility of personal information; or
  - prepare a policy statement confirming compliance with the NPPs;
- develop a comprehensive compliance system to support the privacy policy or statement, including:
  - staff education and training;
  - if necessary, appointment of a Privacy Manager to oversee the process;
  - procedures to deal with individual requests for information;
  - complaints handling procedures; and
  - regular compliance audits; and
  - ensure that details of either the privacy policy or statement and compliance system are communicated to all relevant people (including employees, agents, contractors and customers) as appropriate.

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