

# **PRIVACY AMENDMENT (PRIVATE SECTOR) BILL 2000**

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***ACCI SUBMISSION  
TO THE  
HOUSE OF REPRESENTATIVES STANDING COMMITTEE  
ON LEGAL AND CONSTITUTIONAL AFFAIRS***

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## *PRIVACY AMENDMENT (PRIVATE SECTOR) BILL*

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. ACCI's members are employer organisations in all States and Territories and all major sectors of Australian industry.

Through our membership, ACCI represents over 350,000 businesses nation-wide, including the top 100 companies, over 55,000 enterprises employing between 20-100 people, and over 280,000 enterprises employing less than 20 people. That makes ACCI the largest and most representative business organisation in Australia.

Membership of the ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations. Each ACCI member is a representative body for small employers or sole traders, as well as medium and large businesses.

### **Introduction**

ACCI welcomed the introduction into Parliament on 12 April 2000, of the *Privacy Amendment (Private Sector) Bill 2000*, by the Hon Daryl Williams, AM QC MP.

The Bill demonstrates the Commonwealth Government's desire to minimise business compliance costs while taking into account the views of States and Territories, business development opportunities especially in new technologies and meeting the overall privacy interests of the community.

The Bill provides for the protection of personal information collected, stored and handled by the private sector. ACCI believes that the proposed amendments to the *Privacy Act* will provide an appropriate legislative framework to underpin self-regulatory industry codes of practice and address situations where codes do not apply.

The *Privacy Amendment (Private Sector) Bill 2000* provides Australian business with national consistency and certainty for the handling of personal information and has avoided the development of a fragmented state based legislative system. The draft Bill provides an exemption for handling of employee records, diminishes any concerns of the European Union acceptance of Australian based commercial transactions and most importantly provides a transparent simple system which does not burden business with excessive compliance costs.

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ACCI has played an active role in the gestation of the Bill. The Bill was developed through an extensive consultation process with industry and consumer groups over the past three years.

ACCI supported the Government's announcement in December 1998 to introduce light-handed legislation to support and strengthen self-regulatory protection of personal data in the private sector.

ACCI participated in public fora and has made submissions to the Attorney General's Department in September 1999 on the information paper that detailed the proposed legislation and in January 2000 on the key provisions document.

ACCI also was an active participant in the Core Consultative Group and worked closely with the Privacy Commissioner on the development of the National Privacy Principles in 1998 and 1999 which now underpin the amendments to the Act.

### **Comments**

Our specific comments on the provisions of the Bill are as follows:

#### **Objects [section 3]**

ACCI supports the objects of the Bill as outlined in Section 3 particularly the statement in Section 3(b)(iii)

*'...that the establishment of a single national scheme through codes adopted by private sector organisations and the National Privacy Principles... should be done in a way that recognises the right of business to achieve its objectives efficiently'.*

#### **Commencement**

ACCI supports the Bill taking effect either on 1 July 2001 or 12 months after Royal Assent, whichever is the latter. This will allow business sufficient time to prepare for the application of the NPPs and for industries to develop privacy codes.

#### **National Privacy Principles [Schedule 1: 139]**

ACCI supports the use of the *National Principles for the Handling of Personal Information (January 1999 edition)* as the basis of the

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Bill and believes that they have been adequately reflected in the draft legislation. ACCI will continue to encourage industries to develop their own codes based on the National Privacy Principles (NPPs).

**Employee Records**

**[Schedule 1:12; subsection 6.1 & Schedule 1.42, section 7 B (3)]**

ACCI agrees with the definition of ‘employee records’ as outlined in Schedule 1:12, subsection 6.1.

ACCI supports the exemption of employee records contained in the Bill at Schedule 1 section 7B(3) because:

- Employment records are almost always maintained by employers to comply with statutory requirements of some kind, the objects of which almost always already seek to protect employees;
- Such records are maintained to protect the interests of both employers and employees in the employment relationship;
- The maintenance of such records does not involve any invasion of privacy or unlawfulness and should be viewed as a mutually understood and accepted precondition of employment; and
- Privacy regulation with regard to employee records is already covered under workplace relations legislation, therefore there is no need for any further regulation on employment records.

**Small Business**

**[Schedule 1: 28; Section 6D (1) (2) (3) (4) and Schedule 1:54 subsection 16D]**

ACCI supports the definition of small business outlined by section 6D(1), that is, a business is a small business if its turnover is \$3million or less. ACCI also supports the test for annual turnover as detailed in Schedule 1:28 subsection 6(2).

ACCI also supports the exemption for small business.

The legislation is intended to cover small businesses that deal in personal information. The Bill exempts small business from complying with this legislation unless they hold personal information and provide a health service, trade in personal

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information, are a Commonwealth contracted service provider or are prescribed by regulation.

Small business does not generally collect large amounts of personal information. ACCI advocated a scheme that would not impose unnecessary costs to small business, but would be flexible enough to ensure that risks to privacy could be covered by the legislation where necessary.

ACCI supports the proposal that the Privacy Commissioner and the Minister for Small Business must be consulted before any changes are made to the small business exemption in the legislation. We also expect that business would be consulted as well.

ACCI supports the delayed application period for small business that is outlined in 1:54 16D. The provision of a delayed application period for small business of 12 months will allow those small businesses that are not exempt from the Act adequate time to implement National Privacy Principles into their business systems and will ensure greater compliance in the longer term.

**Related Bodies Corporate**  
**[Schedule 1 :13B subsection (1)(a)(b)]**

ACCI supports Schedule 1:13 subsection (1) (a) (b) which deals with how corporate groups will deal with personal information.

*‘...each of the following acts or practices of an organisation that is a body corporate is not an interference with the privacy of an individual:*

- (a) the collection of personal information (other than sensitive information) about the individual by the body corporate from a related body corporate;*
- (b) the disclosure of personal information (other than sensitive information) about the individual by the body corporate to a related body corporate.’*

ACCI also supports the clarification of the use of personal information between related bodies outlined under Schedule 113B subsection (a) (b):

*Note: Subsection (1) lets related bodies corporate share personal information. However, in using or*

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*holding the information, they must comply with the National Privacy Principles or a binding approved privacy code*

It is a reality of Australian corporate life that many Australian businesses operate separate legal entities under the umbrella of corporate groups. ACCI believes the proposed provisions on the use of personal information by related bodies within a body corporate will be adequate to cope with current commercial practices.

### **Australian Based Commercial Transactions [Schedule 1:3 subsection 5B]**

ACCI supports Schedule 1:3 subsection 5A which provides for the application of the National Privacy Principles to personal information collected in Australia and transacted overseas. This will ensure that acceptability of Australian based commercial transactions in dealings with overseas jurisdictions, particularly the European Union.

### **Application of National Privacy Principles [Schedule 1:54 16 (c) ]**

ACCI supports the application of the National Privacy Principles as outlined in Schedule 1:54 16 (c) subsection (1) through (4).

ACCI notes that the increased mobility of the Australian population means that personal data has a short life span. Therefore, it is in the interest of business to ensure the accuracy of any personal information that they collect.

### **Privacy Codes [Schedule 1:54 16A, Schedule 1:58 Part III Subsections 18BA, 18BB and 18C]**

ACCI supports and encourages business to develop and implement privacy codes based on the National Privacy Principles. ACCI supports the process of applications to the Privacy Commissioner for approval of a privacy code by organisations as outlined in section 18BA.

ACCI supports the criteria on which the Privacy Commissioner approves privacy codes as detailed in section 18BB (2), particularly, that the Privacy Commissioner must ensure any code

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includes at a minimum all the NPPs and that only those organisations that have given consent are bound by the privacy code. We also support the outlined complaint handling procedures and the requirement to report on the operation of the code.

ACCI supports the provision for when approval takes effect, schedule 1:58 Part III 18BC; the procedure for varying a privacy code, schedule 1:58 Part III subsection 18BD; and the revocation of the approval of an approved privacy codes, schedule 1:58 Part III subsection 18BE.

### **Schedule 1: 58 subsection 18BF, Guidelines about Privacy Codes**

ACCI supports the Privacy Commissioner making written guidelines to assist organisations to develop privacy codes detailed in Schedule 1:59 subsection 18BF. ACCI expects that there will be an opportunity to provide input into the development of the guidelines.

### **Schedule 1: 58 subsection 18BG Guidelines about privacy codes**

ACCI supports the public register and access to privacy codes as outlined in schedule 1:59 subsection 18BG.

### **Role of Privacy Commissioner [Schedule 1:59 subsection (ab)]**

ACCI supports the Privacy Commissioner's role in investigating an act or practice of an organisation which may interfere with an individual's privacy and to try and reach settlement through a conciliation process as outlined in schedule 1:59 subsection (ab).

The Privacy Commissioner in investigations should have regard to the potentially damaging effect of complaints against private sector respondents when carrying out investigations of alleged interference of an individual's privacy.

### **Role of the Federal Court Schedule 1: 55A Proceedings in the Federal Court of Federal Magistrates Court to enforce a determination.**

ACCI considers the Federal Court the appropriate jurisdiction for determinations made by the Privacy Commissioner to be enforced.

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**Conclusion**

The 'light touch' regulatory framework should encourage industry to self regulate on privacy protection in the private sector and should not impose unnecessary compliance costs to business.

The legislation is the result of a productive consultative relationship that stakeholders have had with the Privacy Commissioner and the Attorney General over the last three years. As the Bill becomes law, business hopes that the same balanced and reasoned approach will occur in the implementation of the new provisions.