

Introduction

- 1.1 The Privacy Amendment (Enhanced Privacy Protection) Bill 2012 (hereafter referred to as the Privacy Amendment Bill) was introduced into the House of Representatives on 23 May 2012.

Scope of the Bill

- 1.2 The Privacy Amendment Bill will amend the *Privacy Act 1988* (Cth) and was developed in response to the Australian Law Reform Commission's (ALRC) 2008 report resulting from its inquiry into Australia's privacy laws.¹ The ALRC made 295 recommendations, which the Government has announced it intends to respond to in two stages.² This Bill is the first stage response and addresses 197 of the ALRC's recommendations.³
- 1.3 The Bill will create the Australian Privacy Principles (APPs) to replace the National Privacy Principles (NPPs) and the Information Privacy Principles (IPPs), which currently apply to the private and public sectors respectively. The APPs are a set of unified principles that will apply to both sectors. The changes are intended to bring greater clarity and consistency to Australia's privacy laws and more comprehensive privacy protection.
- 1.4 The Bill will also introduce a more comprehensive credit reporting system. The new measures will replace the current measures in their entirety and aim to introduce greater simplicity, clarity and consistency. They also aim

1 Privacy Amendment (Enhanced Privacy Protection) Bill 2012, Explanatory Memorandum.

2 Privacy Amendment (Enhanced Privacy Protection) Bill 2012, Explanatory Memorandum.

3 Privacy Amendment (Enhanced Privacy Protection) Bill 2012, Explanatory Memorandum.

to operate more effectively in light of developments in the way the system operates since its introduction.

- 1.5 The Bill includes provisions on a code system which allows customised privacy codes to be developed by organisations or industries. It also allows the Privacy Commissioner to develop and register binding codes in the public interest in some circumstances. The Bill also includes provisions governing the credit reporting code.
- 1.6 The Bill will clarify the powers of the Privacy Commissioner and is intended to improve the Commissioner's ability to deal with complaints, conduct investigations, make use of external dispute resolution services and promote compliance with the APPs.

Referral of the Bill

- 1.7 On 24 May 2012 the Selection Committee referred the Privacy Amendment Bill to the House of Representatives Standing Committee on Social Policy and Legal Affairs for inquiry and report.
- 1.8 The Selection Committee provided the following reasons for referral/principal issues for consideration:
- the adequacy of the proposed Australian Privacy Principles
 - the efficacy of the proposed measures relating to credit reporting
 - whether defences to contraventions should extend to inadvertent disclosures where systems incorporate appropriate protections, and
 - whether provisions relating to use of depersonalised data are appropriate.⁴

Previous inquiries and consultation

- 1.9 The ALRC undertook a 28 month inquiry in Australia's privacy laws and in 2008, produced a report of its findings (the ALRC report) including 295 recommendations for reform.⁵

4 House of Representatives Selection Committee, *Report 53*, 24 May 2012.

5 ALRC, *For your Information: Australian Privacy Law and Practice (ALRC Report 108)*, August 2008.

- 1.10 The Australian Government released its first stage response to the ALRC report in October 2009, including exposure drafts of the APPs and the credit reporting provisions. These exposure drafts were tabled in the Senate.
- 1.11 On 24 June 2010, the Senate referred the exposure drafts to the Senate Standing Committee on Finance and Public Administration for inquiry and report.
- 1.12 In June 2011, the Standing Committee on Finance and Public Administration tabled its report on the exposure draft of the APPs. In October 2011, it tabled its report on the exposure draft of the credit reporting provisions.⁶

Concurrent Senate inquiry

- 1.13 On 19 June 2012 the Senate referred the Privacy Amendment Bill to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report.
- 1.14 The Senate Committee issued a call for submissions and received over 50 submissions from a range of individuals and organisations across Australia. Public hearings were conducted on 10 August and 21 August 2012. Submissions, transcripts and the Committee's report can be accessed on the Senate's website.⁷

Conduct and scope of this inquiry

- 1.15 The House Standing Committee on Social Policy and Legal Affairs advertised a public hearing and a call for submissions in *The Australian* newspaper on 11 July and 8 August 2012.
- 1.16 The Committee received 39 submissions and six supplementary submissions from a range of individuals and organisations across

6 Senate Standing Committee on Finance and Public Administration, *Exposure Drafts of Australian Privacy Amendment Legislation*, June 2011.

7 Senate Standing Committee on Legal and Constitutional Affairs, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=legcon_ctte/index.htm>, accessed 5 September 2012.

Australia. These submissions are listed at Appendix A and can be accessed from the inquiry website.⁸

- 1.17 The Committee held a public hearing on 16 August 2012.⁹ A list of witnesses that appeared before the Committee is at Appendix B.
- 1.18 The Committee notes that this is an extremely complex inquiry. The Privacy Amendment Bill and its accompanying Explanatory Memorandum are both lengthy, complex documents and implement an intricate and comprehensive privacy regime. Privacy laws govern many facets of Australian life and the Committee appreciates that these changes will affect not only every Australian in their individual capacity but a wide variety of industries and organisations who hold personal information as part of their business activities.
- 1.19 The submissions the Committee received raised a multitude of issues. The Committee has not attempted to examine all these issues in detail, nor report on each comprehensively.
- 1.20 The Committee is aware that, while significant consultation was undertaken in the preparation of the Privacy Amendment Bill, there remain a number of outstanding concerns from industry and consumers. The Committee acknowledges the breadth of these concerns but has chosen to focus on those concerns it considers the most significant and those that have been raised repeatedly in submissions to this inquiry.
- 1.21 The Committee has endeavoured to acknowledge the majority of issues raised, however the implementation of a privacy regime will necessarily involve an assessment of balancing the protection of privacy rights while allowing for the convenient flow of data. The Committee's objective has been to evaluate the success of this Bill in achieving that balance.
- 1.22 This Bill has also been examined by the Senate Standing Committee on Legal and Constitutional Affairs. As far as possible, this Committee has endeavoured not to duplicate those areas it anticipates the Senate will consider in detail. Therefore, in some instances the Committee refers to the evidence and discussion in the Senate inquiry.

8 House of Representatives Standing Committee on Social Policy and Legal Affairs, <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill%20privacy/index.htm>, accessed 5 September 2012

9 House of Representatives Standing Committee on Social Policy and Legal Affairs, <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill%20privacy/index.htm>, accessed 5 September 2012.

Structure of the report

- 1.23 Chapter Two considers APPs, notably defences to contravention of APP 8, compliance with overseas laws, direct marketing and the 'opt out' provisions for direct marketing.
- 1.24 Chapter Three considers credit reporting provisions, particularly the Australia link requirement, repayment history data provisions and the storage of addresses on file.
- 1.25 Chapter Four considers a number of additional issues, including de-identified data, the commencement period and the complexity of the regime.

