

## Introduction

### Background to the Privacy Amendment (Private Sector) Bill 2000

- 1.1 On 15 December 1998 the Attorney-General, the Hon Daryl Williams, AM QC MP, and Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts announced that the Government would develop 'light touch' legislation to support and strengthen self regulatory privacy protection in the private sector.<sup>1</sup>
- 1.2 Consultation for the proposed legislation began in early 1999 when the Attorney-General's Department established a Core Consultative Group (CCG) which included representatives from business, consumer and privacy groups, the Federal Privacy Commissioner and the National Office for the Information Economy. The States and Territories were also represented. The CCG provided advice to the Attorney-General's Department on a number of issues including assisting it to understand how different models for the legislation would operate in practice.
- 1.3 In May 1999 the Attorney-General asked the Privacy Commissioner to conduct public consultations on how the *National Principles for the Fair Handling of Personal Information* could be applied to personal health information. The Privacy Commissioner's report in December 1999 was used as the basis for developing the health related provisions in the Bill.

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1 The Hon Daryl Williams AM QC MP, Attorney-General and Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts, *Joint Press Release*, 15 December 1998.

- 1.4 In September 1999 the Attorney-General's Department issued an information paper entitled 'The Government's proposed legislation for the protection of privacy in the private sector'. In addition, public fora were held in Perth, Melbourne and Sydney to provide information on different aspects of the proposed legislation and to obtain feedback from interested groups on the substance of the proposals before drafting commenced.
- 1.5 On 14 December 1999, the Government released the key provisions of the Privacy Amendment (Private Sector) Bill 2000, including the draft National Privacy Principles, for comment. The Government received over 100 submissions and held a number of meetings with interested parties.
- 1.6 On 12 April 2000, the Attorney-General introduced the Privacy Amendment (Private Sector) Bill 2000 into the House of Representatives. The Bill as introduced contains a number of revisions to the key provisions, largely in response to submissions received. Some of those submissions were provided in evidence to the Committee.

## Overview of the Bill

- 1.7 The Bill will create a national scheme for the collection, holding, use, disclosure and transfer of personal information by private sector organisations. 'Organisation' is defined to include a body corporate, an unincorporated association, a partnership, a trust or an individual.<sup>2</sup>
- 1.8 The National Privacy Principles (NPPs) set out in the Bill are intended to provide a set of benchmark privacy principles on which organisations or groups of organisations may base tailored codes of practice applicable to their particular circumstances. Organisations will be bound by the NPPs unless they have developed a privacy code that has been approved by the Privacy Commissioner. The Privacy Commissioner will be empowered to approve privacy codes provided they meet, at a minimum, the standards set out in the NPPs.<sup>3</sup>
- 1.9 Privacy codes may include provision for industry based code adjudicators who may hear and determine complaints made against organisations subject to the code. In the absence of provision for a code adjudicator in an approved code, the Privacy Commissioner will perform that role.<sup>4</sup>
- 1.10 Both the Privacy Commissioner and approved code adjudicators will have the power to issue determinations in relation to a particular act or practice

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2 See subclause 6C(1).

3 See clause 18BB.

4 See clauses 18BA – 18BG in relation to privacy codes generally.

of an organisation. This could include an order to pay monetary compensation to an individual whose privacy has been breached. In the event that a determination is not complied with, the individual concerned, the Privacy Commissioner or the relevant code adjudicator may apply to the Federal Court or the Federal Magistrates Service for enforcement of the determination.

- 1.11 The Bill contains a number of exemptions which the Committee considers further below. These exemptions are for small business operators, acts and practices in relation to employee records, acts and practices of the media and acts and practices of political parties and political representatives. In addition, the Bill makes provision for the sharing of personal information between related bodies corporate and the handling of personal information by service providers contracted to the Commonwealth.

## **Relationship between the Bill and the *Privacy Act 1988***

- 1.12 The Bill amends the *Privacy Act 1988* which provides privacy protection for information held by the Commonwealth public sector and private sector credit reporting bodies.
- 1.13 The *Privacy Act 1988* contains eleven Information Privacy Principles (IPPs) based on the 1980 Organisation for Economic Cooperation and Development Guidelines for the Protection of Privacy and Transborder Flows of Personal Data. After the passage of the Bill, the IPPs will continue to be the applicable standard of privacy protection in the Commonwealth public sector while the National Privacy Principles (NPPs) contained in the Bill will apply to private sector organisations.
- 1.14 A number of the NPPs are analogous to the standards contained in the IPPs while others deal with matters that concern the private sector only.<sup>5</sup>

## **Relationship between the Bill and the National Principles for the Fair Handling of Personal Information**

- 1.15 The Bill implements the *National Principles for the Fair Handling of Personal Information* (the National Principles) which were developed by the Federal Privacy Commissioner and originally released in February 1998. Revised

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5 See Appendix D for text of the NPPs.

National Principles were issued by the Privacy Commissioner in January 1999. At that time the then Privacy Commissioner described them as ‘a workable, flexible and comprehensive set of principles for the fair handling of personal information.’<sup>6</sup>

- 1.16 For their use in the Bill, the National Principles were renamed the National Privacy Principles, redrafted in legislative form and modified in their application to health information and international data exchanges. The changes made in relation to health information were based on recommendations made to the Attorney-General by the Privacy Commissioner after consultation with health stakeholders.

## **Recent privacy issues**

- 1.17 The significance of privacy issues in the community was highlighted during the course of the inquiry by reports that the Australian Taxation Office intended to make personal information from the Australian Business Register available for sale to the public. The information included the names and addresses of individuals who, for example, owned a rental property and were therefore required to obtain an Australian Business Number (ABN).
- 1.18 The Committee invited officers of the Australian Taxation Office to give evidence to the inquiry on 8 June 2000. The Committee notes that following its involvement and discussions between the Australian Taxation Office and the Privacy Commissioner, the original proposals have been altered. On 20 June 2000, the Assistant Treasurer, the Hon Rod Kemp MP, issued a press release stating that in response to concerns raised over public access to the Australian Business Register, the information to be made available on the register was to be limited. Under the new arrangements, only information necessary for the functioning of the new tax system will be publicly available. Postal and email addresses will remain part of the Register, but will not be able to be accessed by the public. In addition, it is proposed that individuals be able to request in certain circumstances that their information be removed from the Register as is permitted in relation to electoral roll information.

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<sup>6</sup> *National Principles for the Fair Handling of Personal Information*, Office of the Privacy Commissioner, January 1999, p.3.

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## The inquiry process

- 1.19 The terms of reference for the inquiry were posted on the Committee's website on 21 April 2000 and advertised in a national newspaper on 22 April 2000. The Committee invited all interested persons and organisations to make written submissions.
- 1.20 The Committee received some 130 original written submissions on the Bill, as well as exhibits and other correspondence.<sup>7</sup>
- 1.21 Public hearings were held in Canberra, Sydney and Melbourne.<sup>8</sup>

## Scope and structure of the report

- 1.22 In the report, the Committee focuses on the key issues identified in the evidence and the structure of the report reflect the major groups of issues. A separate chapter is devoted to each of the main exemptions in the Bill.
- 1.23 Chapters 2 to 5 seek to clarify the operation of the exemptions in the Bill. In Chapter 2 the Committee examines the proposed exemption for small business operators. Chapter 3 deals with the issue of the employee records exemption. Chapters 4 and 5 deal with the exemptions for the media and political acts and practices respectively. Chapter 6 considers the inclusion of provisions dealing with health information in the Bill and Chapter 7 looks at the specific health issue of access to medical records. Chapter 8 considers a range of issues including the application of the Bill to existing information, direct marketing and tenancy databases. Chapter 9 is concerned with the ability of related bodies corporate to share personal information and the interaction of those provisions with the general exemptions in the Bill. In Chapter 10, the Committee notes that the enforcement of privacy standards is a continuing issue.

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7 Appendix A contains a list of submissions, and Appendix B contains a list of exhibits.

8 Appendix C contains a list of witnesses.

