

AUSTRALIAN PRIVACY COMMISSIONER TO REGULATE CREDIT INFORMATION

It is surely unique in the history of data protection that only six months after a law has been enacted, a government announces a major extension of a Privacy Commissioner's jurisdiction. But the Australian government did just that. With its majority in the legislature and with the opposition suggesting amendments only on points of detail, the bill extending the Privacy Commissioner's supervisory responsibility to the credit information industry should be enacted by the middle of next year. This is the first part of the private sector to come within his jurisdiction. The Privacy Commissioner, Kevin O'Connor, prepared this paper for the Data Protection Commissioner's conference on credit information which was organised by Privacy Laws & Business and held in Denmark in early September.

In mid-1988 the major Australia credit reporting business, the Credit Reference Association of Australia (CRAA) announced that it intended to implement a system of "positive reporting" (or "profiling"). The CRAA holds computerised credit history files on virtually all adult Australians. It has 98% of the consumer credit reporting business (only the small island State of Tasmania has an independent operation).

CRAA uses state-of-the-art technology and it proposed that all major credit providers (those with the necessary technological capabilities) would input month-by-month the status of loan repayments. This proposal had been considered and not pursued some years before by CRAA; it was revived after a national meeting of consumer organisations urged early in 1988 that a range of measures be adopted by the credit industry to prevent overcommitment, including more detailed credit reporting.

After announcing its proposal in mid-1988, the CRAA proceeded to make arrangements with major credit providers to participate in a "closed user group" which would provide profile reports. The proposal only became a major news story nine months later when it was run on the front page of the major Australian business daily, the Australian Financial Review. After that public controversy quickly developed, especially on talk-back radio and current affairs television - with many individual stories of refusal of credit due to error. In mid-April the Australian Privacy Foundation (a diverse group of prominent Australians formed in 1986 to oppose the Australia Card) held a national credit reporting summit, after which the Federal Minister for Consumer Affairs announced that the federal government was intending to legislate on the issue (PL&B May '89 p. 4).

On 30th May the federal government announced details of its credit information privacy policy and a bill, the Privacy Amendment Bill 1989 was introduced into the upper house of Federal Parliament, (the Senate), on 16th June 1989 immediately prior to the winter recess.

Privacy Amendment Bill 1989

The new bill has the following features:

- * it prohibits positive reporting

- * it imposes detailed information privacy standards on the credit reporting industry
 - the file must contain only "reasonably necessary" particulars of identity
 - the file may only include: information about inquiries for credit; default (i.e. 90 days overdue) reports; court judgements; bankruptcy. Limits are placed on the length of time this information can be kept
 - it must not include information about: political, social or religious beliefs, criminal record, medical history or physical handicaps, race ethnic origins or national origins, sexual preferences or practices or lifestyle, character or reputation
 - credit reporting agencies must observe information privacy standards regarding accuracy, relevance and security
 - reasonable arrangements for giving access to the file must be made, and for allowing corrections or additions to be made
 - file information may only be disclosed for credit assessment purposes, where it is required or authorised by law or to prevent fraudulent conduct
 - misuse or wrongful disclosure of file information attracts significant criminal penalties.

A credit provider must inform a consumer of a credit refusal and whether it was based wholly or partly on a credit report. In that notice, the consumer must be informed of his or her rights of access to the file. A credit provider is basically prohibited from making any further use of credit report information. A credit reporting agency or credit provider who knowingly keeps a false or misleading credit report commits a criminal offence. A person who suffers a breach of these standards may complain to the Privacy Commissioner. The Privacy Commissioner's powers under the Privacy Act are extended to cover the credit reporting area. So the Privacy Commissioner has power to order damages to be paid for breach of the standards. The Act makes provision for a Code of Conduct to be developed by the Privacy Commissioner to govern detailed aspects of the operation of the new scheme.

Opposition Views

The Opposition Shadow Minister indicated in a statement on 6th August that the Opposition supported the main provisions of the Act, though it would have preferred uniform Commonwealth-State rather than national legislation. Its main criticisms related to preventing commercial credit providers from taking into account consumer credit information about an individual when considering a loan application; and the prohibition on access to credit files

by insurers and real estate agents. The Government has indicated its preparedness to revise the Bill to take account of Opposition criticisms; except for the prohibition on real estate and insurance-access where it does not propose to amend.

This development is significant for privacy protection in Australia in that it involves the extension of the Privacy Act, for the first time to cover a major private sector industry.

The attitude of the party holding the balance of power in the Senate (the Australian Democrats) will be critical as to whether the government is supported on the points where it remains in disagreement with the opposition. Once passed by the Senate, the bill will proceed for consideration by the lower house, where the government has a majority.

Privacy Commissioner to develop a Code of Conduct

Once passed, the Privacy Commissioner will be required to develop a Code of Conduct. The Bill states that the Code of Conduct shall cover

- the collection of personal information for inclusion in individual's credit information files
- the access to, storage, security, correction, use and disclosure of personal information included in an individuals' credit information files or in credit reports
- the manner in which credit reporting agencies and credit providers handle disputes relating to credit reporting.

In framing the Code of Conduct the Commissioner is required to have regard to the Information Privacy Principles contained in the Privacy Act 1988 (these are based on the OECD guidelines of 1980 and bind the federal public sector). The Code of Conduct is to be a legally-binding instrument, breach of which (as noted earlier) provides a right to seek remedies from the Privacy Commissioner.

The Privacy Commissioner also has a range of boundary-defining roles under the bill. He is given power to make determinations as to whether a business falling outside the statutory categories is to be regarded as a "credit provider", the scope of information about identity appropriate to include in a credit information file and the manner of disclosure of credit information. The Privacy Commissioner also has powers of audit, monitoring, advice, public education and promotion.

The legislation will probably commence operation in early-to-mid 1990.