

AUSTRALIAN PRIVACY COMMISSIONER STEPS UP HIS ENFORCEMENT PROGRAMME

With the Australian Privacy Act now in force for over a year (PL&B Nov '88 p.18), the Privacy Commissioner, Kevin O'Connor, has in his first year of office established his organization, launched his policy programme and is now preparing to step up enforcement. His office has a Privacy Branch carrying out most of the Commissioner's policy functions and a Conciliation Branch handling privacy complaints. Nigel Waters, the Commissioner's Senior Privacy Consultant, explains the office's 1990 programme.

The emphasis in 1989 has been on educating the Commonwealth (federal) Public Service and Tax File Number Users about their obligations under the Act. The Tax File Number is the point where the Privacy Commissioner's jurisdiction applies directly to business in addition to the public sector.

Tax File Numbers

Tax file numbers are unique numbers issued by the Australian Taxation office to identify individuals, companies and others who lodge income tax returns.

All employees, pensioners and recipients of benefits are now required to quote their tax file number if they wish to avoid paying tax at the highest rate. This system has been devised to help prevent taxation and social security frauds. However, the Privacy Act requires any person or organisation needing to record tax file numbers to:

- * use them only for tax related purposes
- * keep them secure
- * restrict access to tax file numbers to authorised staff.
- * disclose tax file numbers only in accordance with the tax laws.
It is a criminal offence under the tax laws to make an unauthorised disclosure of tax file numbers.

Late last year, the Privacy Commissioner invited public comments on the draft revised Tax File Number Guidelines.

Investigations

Investigations have been launched into the substantive complaints received to date and into public allegations of misuse of personal information. A number of the complaints have been resolved by changes of practice by the organisations concerned.

Public consultations

Public consultations were announced late last year on the exclusions from the new spent convictions legislation which provides for individuals convicted of minor offences to "wipe the slate clean" after 10 years. Copies of the consultation papers on the tax file number and spent convictions proposals are available from the Privacy Commissioner's office.

This year, community views are being invited on other issues:

1. guidelines for the conduct of medical research, to be developed by the National Health and Medical Research Council and approved by the Privacy Commissioner.
2. a code of conduct for the use of credit reporting information, subject to passage of the Privacy Amendment Bill 1989, currently in Parliament,
3. any applications made by Commonwealth agencies for a Public Interest Determination (to waive the application of one or more of the Information Privacy Principles) will be advertised and the views of interested parties taken into account before the Commissioner makes a final determination.

Information and enforcement

Amongst the Privacy Commissioner's other priorities for 1990 will be:

1. Wider promotion and public education concerning individuals' rights under the Act. It is hoped that public interest groups, such as the Council for Social Service, prisoners' rights groups and the Privacy Foundation (PL&B May '89 p.4) will be able to assist in this. A leaflet has already been widely distributed. A poster and a training pack with a video are under development.
2. The start of a planned programme of audit and inspection to monitor compliance with the Information Privacy Principles and Tax File Number Guidelines. Major accounting firm, Peat Marwick, has been engaged to help draw up an auditing methodology and to help train staff in carrying out audits.
3. The development of more detailed guidelines for Commonwealth agencies, particularly for such sensitive practices as data matching.
4. Development of privacy guidelines in relation to the prevention and treatment of AIDS, as part of the National AIDS Strategy.

The Privacy Commissioner's growing role in the private sector

5. A further set-up phase in connection with the extension of the Privacy Commissioner's jurisdiction by June this year to cover interferences with privacy arising from misuse of spent convictions. This jurisdiction arises from amendments to the Federal Crimes Act made by the Crimes Legislation Amendment Act 1989. A ten year rule is enacted to limit the use of old, minor federal convictions. Federal administration is required to observe the new rule in relation to State as well as Federal convictions. Exceptions must be the subject of advice to the government by the Privacy Commissioner before the new law is brought into force. Government departments wanted a blanket exemption and banks and insurance companies wanted some exclusions from the spent convictions scheme. However, in both cases, the Privacy Commissioner has recommended only limited exemptions above those in the Crimes Legislation Amendment Act 1989.
6. If, as expected, the Privacy Act is amended to include credit information (PL&B Sep '89 p.13), the Privacy Commissioner's office will need to make the necessary organizational arrangements.
7. To the extent that the other priorities allow, discussions with private sector bodies and public interest groups about privacy concerns not currently regulated by the Act, including employment/personnel record keeping; electronic funds transfer and direct marketing.

Nigel Waters is Senior Privacy Consultant at the Australian Privacy Commissioner's Office and was formerly Assistant Data Protection Registrar in the UK.

Kevin O'Connor, Australia's Privacy Commissioner (PL&B February '89 p.3), has kindly agreed to participate and speak at Privacy Laws & Business's Annual Conference on September 11th-13th on both data protection auditing and privacy aspects of telecommunications. For further information, see the announcement on the back page of our June 14th conference programme, distributed with this newsletter.