

1. The legislative recognition of the OECD information privacy principles.
2. Coverage of both the public and private sectors, the private sector by means of general coverage with provision for exemptions to be granted. Some specific exemptions were included in the Bill. Otherwise, a procedure was to have been established for the application and approval of exemptions by an independent Tribunal.
3. A procedure for receiving and investigating complaints of breach of the Information Privacy Principles, through the Commissioner's office, by means initially of a mediation procedure, with recourse to a Tribunal hearing should a mediated resolution not prove possible.

Neither bill provided for a database registration scheme.

It is the government's intention to bring back to the House of Representatives the rest of the bill some time in 1992. However, it will undoubtedly face considerable opposition.

Hostility to Privacy of Information Bill

While the original bill was being considered by Parliament's Justice and Law Reform Committee, it received a hostile reception from the media, direct marketing organisations and the private sector generally. Support for the Bill came from the New Zealand Law Society and the Human Rights Commission.

AUSTRALIA'S PRIVACY COMMISSIONER RULES ON CREDIT AND HEALTH DATA

Australia's Privacy Commissioner published his Third Annual Report on December 4th which deals with the concerns raised in our July report (PL&B no.17 p.24) about his powers on the Tax File Number; data matching; the Medicare Card and numbering system; and the Law Enforcement Access Network. Kevin O'Connor, Privacy Commissioner and Nigel Waters, Head of the Commissioner's Privacy Branch, explain their regulatory activities in these and other areas.

This year there have been some significant changes to the Commissioner's jurisdiction.

Privacy Amendment Act 1990

This is the first major extension of the Privacy Commissioner's responsibilities into the private sector.

The Privacy Amendment Act 1990 lays down detailed standards to govern *consumer credit reporting and credit-checking activity*. It limits participation in the nation-wide consumer credit reference database to credit providers. Wilful or reckless breach of the new law's provisions constitutes a criminal offence. Individuals harmed by breach of the provisions may complain to the Privacy Commissioner whose powers include ordering compensation.

PRIVACY PROTECTION IN NEW ZEALAND NOW

Privacy of information in New Zealand is protected in only piecemeal fashion. There are:

- the Common Law action for breach of confidence;
- occasional indications of the protection of privacy by invoking other aspects of tort law;
- and the rules on defamation codified in the *Defamation Act 1954*.
- The New Zealand Human Rights Commission, established in 1978, has an anti-discrimination role, investigating and mediating complaints, and acts to promote and protect human rights, which includes privacy. From April 1st, 1992, when the Privacy Commissioner Act enters into force, the Human Rights Commission's privacy role will be transferred to the Privacy Commissioner.

In 1980, New Zealand was a signatory to the OECD Guidelines. In 1982, an Official Information regime was introduced under the jurisdiction of the Ombudsman, which has been well publicised and operates effectively. Protection of personal privacy is one of the exceptions under which the Ombudsman may decline access to personal official information. The Wanganui Privacy Commissioner has the specific task of protecting the personal information stored on the Wanganui database by law enforcement agencies.

Data Matching

The Data-Matching Program (Assistance and Tax) Act 1990 lays down detailed standards to be observed by *federal welfare agencies when engaging in data-matching programs* designed to identify incorrect payments of benefits and pensions. The standards are legally binding, and substantial monitoring and enforcement powers are conferred on the Privacy Commissioner.

Tax File Numbers System

The legislation was accompanied by an extension to the tax file number system, under which applications for benefits and pensions were required to furnish a number as a precondition to payment. The number may only be used in the data-matching scheme. It may not be used by welfare agencies as a general administrative identifier.

Major Activities of Federal Privacy Commissioner

Since September 1990 the work of the Privacy Commissioner's office has included:

- implementation of new *credit reporting* law, due to come into force not later than 24 September 1991
- monitoring operation of the regulated *data-matching* program
- consultations with government agencies regarding proposed guidelines on other data-matching programs and on the use of *covert surveillance*
- commencement of an *audit program* affecting selected federal agencies as to their information practices generally and selected *private sector employers as to the use of tax file numbers*, including a payroll service, a firm of solicitors and a major banking institution
- development of privacy guidelines affecting the national *Pharmaceutical Benefits System* and the use within the system of the Medicare card

- approving guidelines on access for *medical research* purposes to personal information held by federal government agencies
- undertaking a *public awareness* campaign.

States and Territories

The Queensland government is considering appointing a Privacy Commissioner and Western Australia is planning a privacy bill.

Credit Reporting

The Code of Conduct and two associated determinations were finalised in September following an extensive public consultation process. They were formally issued by notice in the *Commonwealth Gazette* on 13 September 1991 and will become legally binding from 25 February 1992. A booklet entitled *Code of Conduct and Explanatory Notes* containing the full text of the Code and determinations, together with notes explaining the new law, has been prepared by the Privacy Commissioner's Office and is being widely distributed to interested bodies.

Work is now focused on finalisation of additional explanatory material and on promotion of understanding and acceptance of the Code through participation in public and industry seminars and on responses to requests for advice and guidance on the new law.

Tax File Number Issues

The Australian Taxation Office agreed to amend proposed consolidated guidelines on collection of Tax File Numbers (TFN) following consultation with the Privacy Commissioner's Policy Section. The guidelines, which incorporate tax and privacy issues, have now been issued.

A number of companies have been seeking quotations of TFNs in newspaper advertisements for investments. The Policy Section wrote to several companies explaining the requirements of the TFN Guidelines. Advice on TFNs was provided to financial institutions who were merging.

The Section provided comments on information kits being sent to real estate agents and their representative bodies. As a result of our comments the kit was amended to include information on privacy issues.

Pharmaceutical Benefits Scheme (PBS)

On 21 June legislation was passed by Parliament introducing changes in the administration of the PBS. The legislation requires an analysis of saving from the proposed scheme and of alternative methods which are "no more privacy intrusive" to achieve the savings, as well as requiring the development of privacy guidelines to be finalised by 1 April 1992.

National Health Medical Research Council Guidelines

Revised guidelines took effect on 1 July 1991 and will remain in force until 30 June 1994. A booklet, outlining the background and development of the guidelines, the Privacy Commissioner's reason for his approval of them, and the issues to be kept under consideration during the review period, was published in November and is available through the *Privacy Laws & Business* office.

Public Awareness and Privacy Complaints

Although the press and poster advertising has ceased, Privacy Hotline telephone enquiries have continued at a high level - more than 2,300 between 6 September and 11 October. Credit reporting enquiries from businesses continue to be the single largest category, but there have also been many calls from Social Security clients following their receipt of notices about TFNs and data-matching.

Promotion and distribution organised by the Community Education Section include:

- a) Revising and reprinting a general privacy pamphlet to include credit reporting
- b) Final editing of two new videos, and proposed revision of the Training Pack.

Also, a new Privacy Enquiries and Complaints Unit (PECU) has been established.

Drug Testing Legislation.

The Privacy Commissioner has had contacts with the Department of Arts, Sport, the Environment, Tourism and Territories (DASSETT) starting in early August 1991 on the proposal to establish the Australian Sports Drug Agency (ASDA) and other matters relating to the agency's drug testing programme. The most significant of these is the proposal to expand the drug testing programme to State and Territory levels. Federal Legislation is expected to be introduced in 1992, and all State and Territories are planning to introduce similar legislation shortly afterwards.

Benefit Agency Issues

The Commissioner recommended to the Minister of Social Security that DSS clients be informed about exemptions from supplying a TFN in any correspondence in which a Tax File Number is sought.

Comments were provided on a DSS proposal to directly debit public rent payments.

Enquiries are continuing about DSS use of a private contractor to supply uniforms to staff, and subsequent release of personal information.

The Combined Pensioners Association has raised concerns about the collection of personal information concerning pensioners travelling abroad. The Privacy Commissioners' staff has met with DSS officials and is reviewing policy.

Spent Criminal Convictions Scheme

The Federal Airports Corporation responded quickly to the Privacy Commissioner's advice regarding their continued practice of requiring applications for the Airport Security Identity Card (ASIC) to declare their entire criminal history.

The Casino Control Division of the Queensland Treasury has applied for exclusion from the Spent Convictions Scheme. The Privacy Commissioner has recommended that casino employees do not lose the protection of the scheme and has referred the case to the Attorney-General.

Law Enforcement Access Network

The Government has decided to proceed with the LEAN project. However, funding will not be available until next financial year and, as a result, the commencement of the project has been deferred to July 1992. The privacy issues involved (the question of generally available publications) will be kept under review by the Privacy Commissioner.

Telecommunications Issues

The Privacy Commissioner has been consulting with AUSTEL, the Australian Telecommunications Authority, on its public enquiry into the privacy implications of telecommunications services made possible by new technologies. Discussion has focussed on

caller number display and automatic calling, the latter used most for telemarketing.

The Commissioner will also provide comments on Department of Transport and Communication's draft licence for the merged Telecom/OTC and the new carrier. The main areas of concern are the provisions relating to the mandatory exchange of personal information between carriers for subscription, billing or other purposes.

The Privacy Commissioner has determined that there would be no breach of Information Privacy Principle 11.1 (on non-disclosure) if Telecom disclosed customer's numbers and name information on an automated basis to approved law enforcement agencies, providing certain conditions are fulfilled.

HOW THE COMMISSIONER HANDLED A DIRECT MARKETING COMPLAINT

One of the Privacy Commissioner's functions is to encourage corporations voluntarily to adopt the OECD Guidelines, the international statement upon which the information privacy principles are based. The Commissioner has no direct jurisdiction over the direct marketing sector. When he received a complaint about this sector, it presented him with a challenge on how he would use his powers of persuasion to encourage the parties to reach a resolution of the complaint in line with the Guidelines and the Information Privacy Principles.

A complaint relating to a direct marketing practice was pursued and resolved satisfactorily. A leading Australian company complained to the Commissioner that its share register (with 57,000 names, covering both individuals and corporate entities) was the subject of a request for access by a direct marketing business. Its concern was based on the previous experience of other companies that its shareholders' addresses would be used to make direct marketing approaches. In previous instances this had led to complaints to the company because it had made available the shareholders' address information. The company's difficulty was that under Australian company law, share registers are publicly accessible and there is no restriction on the purpose for which the shareholder information can be used.

The Commissioner contacted the direct marketing company that had made the approach, drew its attention to the concern raised and the OECD Guidelines. The marketing company withdrew its request and the fee of over Aus\$3,000 that it had lodged with the public company.

Subsequently, the Commissioner recommended to the Attorney-General that consideration be given to amending Australian company law so as to place a re-use limitation on share register information.

The Commissioner suggested as a possible approach that the limitation could be along the lines that any person who inspects the register may only use the information obtained for purposes reasonably connected with the management or affairs of the company. The Commissioner indicated his understanding that a re-use limitation of this kind existed in Canadian company law.

The Attorney-General replied in November 1990 that the Commissioner's recommendation would be addressed as soon as possible.

Third Annual Report on the Operation of the Privacy Act for the period 1 July 1990 to 30 June 1991, published December 1991. Human Rights, Australia. ISSN 1035-3372