



## **Australian government abandons comprehensive privacy law - in short term?**

*Australian government proposes comprehensive privacy law - PL&B's headline in December 1996's Newsletter (pp.2-5) announced the beginning of a consultative process between the government, the business sector and the wider community which was to establish "a workable and effective privacy regime." Now the federal government has changed its policy and abandoned a comprehensive privacy law. Graham Greenleaf, General Editor, Privacy Law and Policy Reporter, explains.*

On 21st March 1997, Prime Minister John Howard announced that the Coalition Government had decided against enacting information privacy laws for the private sector, extending the Privacy Act of 1988. His stated reasons were the increase in compliance costs for all Australian businesses.

This exploited an opening left by Attorney-General, Daryl Williams, who, by leaving the Privacy Act's Information Principles (IPP's) unamended in their proposed application to the private sector, had left the possibility of imposing insupportable record keeping and recording costs on all businesses, particularly small ones. This tactical error allowed anti-privacy business groups to overturn the proposed legislation.

### **Survey refutes government position**

However, the Price Waterhouse 1997 Privacy Survey contradicts the government's position, in that it discovered that major Australian businesses do not fear compliance costs. Of the 130 major companies who responded, 79% felt only minor changes would be required to their business practices in order to comply with privacy legislation. Nearly two-thirds of the companies, most with sales figures in the billions of dollars, believed it would cost them less than \$100,000 to conform to any privacy legislation - less than 0.001% of sales revenue!

### **New Zealand compliance costs are low**

Also, the New Zealand Privacy Commissioner, as part of a comprehensive debunking of the virtues of voluntary codes compared with legislation,

argues that "the compliance costs for most small businesses in New Zealand have been almost nil."

### **Continuing pressure for a privacy law covering the private sector**

Graham Greenleaf believes that it will be difficult for the Government to sustain their opposition to a comprehensive extension to the Privacy Act 1988 to cover the private sector for the following reasons:

- Despite the Prime Minister's request, State and Territory Governments have not abandoned their plans to legislate for privacy in the private sector, with such legislation likely in New South Wales, Victoria and the Australian Capital Territory, and under investigation in Queensland.
- The approach of the Commonwealth Privacy Commissioner that voluntary codes of conduct must not provide lesser standards of privacy protection than best international practice, makes it less likely that acceptable voluntary codes will reduce compliance costs.
- The Federal budget's gutting of the Human Rights and Equal Opportunity Commission, of which the Privacy Commissioner's office is a part, makes the development of any consistent or concerted approach to voluntary codes even more problematic.
- An alliance of privacy and consumer advocates, and some business organisations is committed to a long-term campaign to obtain "fair privacy laws", and is not accepting that voluntary codes of conduct are the way ahead.
- The Government's breaking of its election promises in relation to privacy will continue to be a source of embarrassment.

### **International influence favours a comprehensive privacy law**

International factors relating to the European Union, Hong Kong and Canada are increasing the risks to Australia of a lack of comprehensive privacy laws. Australian businesses recognise this risk as significant. International pressures on Australia in this area are unlikely to reduce, and are very important to Australian business. The survey by Price Waterhouse of 130 of Australia's largest companies found that business perceived that the single most significant privacy issue



facing them was the need to comply with international privacy standards.

The extent of enforcement of the data export prohibitions in the European Union's Data Protection Directive are unlikely to be very clear until after the Directive takes effect in October 1998, but cannot easily be dismissed. But it is an important element in the protection of human rights and its enforcement is a serious matter.

Uncertainty among Australian businesses about compliance requirements, and the costs of providing evidence of either an exception to the prohibitions, or the existence of "sufficient protection" in a particular case (not to mention the costs of providing the safeguards), may lead to significant business pressures for Australia to eliminate these problems by having adequate laws. Businesses involved in international transactions using personal information cannot avoid privacy compliance costs. They either face them at home in the form of adequate laws, or they face much higher costs in trying to comply *ad hoc* with international requirements.

### **Double standards in government outsourcing**

While rejecting comprehensive private sector legislation, the Government is being forced into anomalous situations, such as the problem of outsourcing. In April, the Government announced that most of its IT infrastructure would be outsourced to the private sector, including some of the most sensitive data that the Government holds, such as social security, tax and medical records. In order to comply with the Privacy Act, organisations will have to constantly distinguish between those records to which the Information Privacy Principles apply and those which do not. "Privacy zone" signs will be needed to warn employees of what is expected. If the Act is extended in full to these parties, particularly if this can be done without extensive compliance costs, then it starts to beg the question of why a similar set of standards should not be applied to the whole of the private sector.

### **Privacy Commissioner's budget decimated**

Over three years, the Government has cut funding to the Human Rights and Equal Opportunity Commission (HREOC) by 43%, which will soon result, according to HREOC's estimate, in staff cuts of a third. In a speech on May 21st, the Privacy Commissioner, Moira Scollay, pointed out that she is now expected to deal with the greater complexities of the application of privacy legislation to outsourced public functions, and with convincing the whole of the private sector to adopt consistent voluntary codes which meet international best practice. She cannot just cut her statutory obligations in order to give more time to voluntary code encouragement.

### **Privacy Commissioner encourages voluntary codes of conduct...**

Moira Scollay has indicated that she will take a role in developing voluntary codes of conduct, as she has a function to "encourage corporations to develop programs for the handling of records of personal information that are

consistent with the OECD guidelines." She is also required to take into account other "developing general international guidelines."

### **...to meet international best practice**

The Commissioner proposes that any codes that her office would be involved in developing would have to meet international best practice, including meeting the minimum standards of the EU Data Protection Directive. The codes must include a workable complaints mechanism and could readily be converted into legislation if, and when, an Australian Government so decides. She is also considering development of one single code which could apply to the whole of the private sector.

**This report was edited from *Privacy Laws and Policy Reporter* Vol. 4 nos. 1 and 2, April and May 1997. The General Editor is Graham Greenleaf, Associate Professor of Law, University of New South Wales, 2052 NSW, Australia. Tel: + 61 (0) 2 9385 2233 Fax: + 61 (0) 2 9385 1175 E-mail: [g.greenleaf@unsw.edu.au](mailto:g.greenleaf@unsw.edu.au)**

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"...the single most significant privacy issue facing Australian business is the need to comply with international privacy standards."

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