

LEGISLATIVE RESEARCH SERVICE
DEPARTMENT OF THE PARLIAMENTARY LIBRARY

PRIVACY BILL 1986

Date introduced: 23 October 1986
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P.,
Attorney-General

DIGEST OF BILL

Purpose

To enact a set of principles that will govern the use and protection of information held by certain Commonwealth agencies.

Background

The Commonwealth has no direct constitutional power to legislate for the protection of privacy in a uniform manner across Australia. A number of States have passed legislation to protect privacy in their jurisdiction, but the degree of protection offered varies from State to State.

The question of the protection of individuals' privacy was referred to the Law Reform Commission by the Attorney-General in 1976 and part of the terms of reference required the Commission to consider what legislative action is needed to protect privacy. The Commission's two volume report was delivered in December 1983 and examined the need for protection of privacy, Australia's international commitments and the most appropriate method to protect privacy.

The Commission saw a number of threats to privacy and identified the major ones as the growth of official power to acquire and use personal information; certain commercial practices such as the use of unsolicited mail and the growing use of personal information to define markets and create lists that range from potential customers to black lists; the increasing sophistication of surveillance equipment that makes it easier to gain information secretly; and the increasing use of computer and communications

technology that enables more information to be stored and the information to be exchanged more readily.

The major international agreement relating to privacy is the International Covenant on Civil and Political Rights (ICCPR), Article 17 of which contains the right not to be arbitrarily or unlawfully interfered with in one's privacy, family, home or correspondence and the right to be free from unlawful attacks on honour or reputation. In addition, in September 1980 the Council of the OECD adopted a report of an Expert Group established to advise on the guidelines that should be followed by member nations to protect privacy and regulate the cross border flow of personal information. The guidelines contain eight principals which are designed to limit the collection of information, ensure that data is used only for the purpose it was collected, give security to data, ensure that people are aware of what type of data has been collected, allow individuals an opportunity to inspect any data regarding themselves and to have a person responsible for the data.

The Commission made a number of recommendations on methods of protecting privacy, such as making a breach of privacy an actionable tort as was done in British Columbia, but came down in favour of general principals based on the OECD guidelines. The ten Information Privacy Principles (IPP) were listed under the following headings:

- Collection of Personal Information
- Storage of Personal Information
- Access to Records of Personal Information
- Correction of Personal Information
- Use of Personal Information
- Disclosure of Personal Information

The IPP's contained in this Bill are based on these recommendations.

Also refer to the Digest for the Australia Card Bill 1986 which creates the Data Protection Agency.

Main Provisions

The preamble to the Bill states that it is to carry out Australia's obligations under the ICCPR and as a member of the OECD.

Clause 3 states that the Bill is not to effect State and Territory laws that protect privacy and are capable of operating concurrently with this Bill.

'Agency' is defined to mean a Minister, Department or a body established under an Act (other than one which provides for the government of an external Territory and the **Northern Territory (Self-Government) Act 1978**) other than the bodies listed. The more important exemptions are incorporated bodies, an organisation within the meaning of the Conciliation and Arbitration Act 1904, a Federal Court, the A.C.T. Courts, the Defence Forces and the Australian Federal Police (clause 6).

Personal information is defined as information or opinion about a person whose identity is apparent or can be ascertained from the information (clause 6).

Clause 13 contains the Information Privacy Principles. In brief, they are:

1. Information is only to be collected for lawful purposes and by lawful means and only where the collection is necessary or directly related to the lawful purpose.

2. Where information is collected from an individual for inclusion in a record or generally available publication, the person is to be made aware of the purpose of the gathering of the information and any person or body that it is normal practice to pass the information on to.

3. Where information is solicited and the information is to be included in a record or a generally available publication, the collector is to ensure that the information is up to date, complete and does not intrude unreasonably on the person's personal affairs.

4. Reasonable security precautions are to be taken to prevent loss, unauthorised access and other misuse.

5. A record keeper is to ensure that people can ascertain if information about them is kept.

6. A record keeper is to ensure reasonable access to a person's data for that person though they will not be required to give access where a law authorises them to refuse access.

7. Where a record keeper and a person are unable to agree about the accuracy of information, a statement is to be attached to the record setting out the correction sought.

8. Record keepers are to take reasonable steps to ensure the accuracy of information before it is used.

9. Personal information is only to be used by a record keeper for relevant purposes.

10. Personal information is not to be used for a purpose other than that it was collected for unless the subject of the information has given their consent, the information is necessary to prevent or lessen a threat to life, such use is authorised by law, the use is necessary to enforce certain laws or is desirable for medical research conducted in accordance with research guidelines.

11. A record keeper is not to disclose solicited personal information unless the person has been told of likely disclosure to another (see IPP No. 2) or for similar reasons to those contained in IPP No. 10.

The National Health and Medical Research Council may issue guidelines to protect privacy in medical research (clause 14).

IPP's 4 to 9 are to apply to all information held by agencies while the other IPP's will apply to information collected after this Bill comes into operation (clause 15).

Clause 16 will require agencies not to breach privacy but also states that such a breach will not give rise to any liability.

A breach of an IPP will be an interference with privacy (clause 7).

Clause 19 lists additional functions that are to be given to the Data Protection Agency, which include to investigate agencies' actions that may breach privacy, when requested by the Minister to review proposed laws, publish guidelines to help prevent breaches of privacy and to collect and publish the categories of information to which the IPP's apply.

The DPA is not to give notice of information that relates to a document that is exempt under the Freedom of Information Act 1982 (clause 22).

The DPA is to give a report on an investigation where requested by the Minister or where the DPA cannot effect a settlement to a dispute. Where there has been a complaint and the DPA is of the opinion that there has not been a breach of privacy and a report has been given to the Minister, the DPA is to give a copy of the report to the complainant (clause 24).

The DPA may also report to the Minister on any proposed Act it has examined (clause 25) and where it has investigated an agency's activities (clause 26).

Certain matters may be excluded from reports at the DPA's discretion. In determining whether to exclude information the DPA is to have regard to preventing: damage to Australia's security and international relations and relations between the Commonwealth and the States; the disclosure of Cabinet discussions or decisions; the disclosure of an informant in criminal matters; danger to life or safety; prejudicing law enforcement or the unreasonable disclosure of personal affairs or confidential commercial information (clause 27).

Where the DPA is satisfied that an act or practice of an agency breaches an IPP and is also satisfied that the public interest in the doing of that act outweighs to a substantial degree the public interest in adhering to the IPP, the DPA may determine that the agency may continue that act or practice (clause 30).

An agency that proposes to do an act that may breach an IPP may apply to the DPA for a determination under clause 30 (clause 31). The DPA is to notify people who have a real and substantial interest in the determination (clause 34) and such people may require a conference to be held on the matter (clause 35). There will be a right of appeal to the Federal Court from the DPA's determinations (clause 38).

Part VI of the Bill (clauses 39 to 44) will impose an obligation of confidence where an obligation not to disclose personal information arises under a law in force in the A.C.T., or, for an agency or Commonwealth officer, such a duty already exists at law. A breach of an obligation of privacy will enable the aggrieved person to claim damages (clause 43). This will clarify the remedies available for a breach of privacy.

Clause 45 will give the Governor-General power to make regulations for the purposes of the Bill.

For further information, if required, contact the Law and Government Group.

6 February 1987

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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