

**SENATE STANDING COMMITTEE ON
FINANCE AND PUBLIC
ADMINISTRATION**

LEGISLATION COMMITTEE

**Exposure Drafts of Australian Privacy
Amendment Legislation**

ADDITIONAL INFORMATION:

Background information: Department of the Prime Minister and Cabinet

Background information on *Privacy Act 1988* reforms

- On 11 August 2008 Senator Faulkner together with the Attorney-General publicly launched the Australian Law Reform Commission's report *For Your Information: Australian Privacy Law and Practice* (ALRC 108). The report consists of three volumes, containing 74 chapters and 295 recommendations for reform. It was the culmination of a 28 month inquiry into the extent to which the *Privacy Act 1988* (Cth) and related laws continued to provide an effective framework for the protection of privacy in Australia.
- The report's recommendations suggest legislative, administrative and educative reform to the Privacy Act and related acts such as the *Telecommunications Act 1997* along with relevant State and Territory Acts. The key recommendations in the ALRC's final report focus on:
 - creating one set of unified privacy principles (UPPs) for the public and private sectors to enable a more simplified privacy regime to be established;
 - developing national consistency in privacy laws by encouraging States and Territories to apply the UPPs to their public sector and agree to allow the Commonwealth to regulate the private sector as a whole;
 - redrafting and restructuring the Privacy Act to achieve greater consistency, clarity and simplicity; developing a more comprehensive credit reporting system;
 - streamlining regulation of health privacy;
 - legislating for a statutory cause of action for invasion of privacy;
 - removing certain public sector exemptions along with the small business, employee records and political party exemptions;
 - requiring mandatory notification of data breaches; and
 - strengthening the enforcement powers of the Privacy Commissioner.
- Given the large number of recommendations, Senator Faulkner announced that the Government would respond to the Report in two stages
- The first stage was to respond to the ALRC's recommendations relating to unified privacy principles, protection of health and credit reporting information, and the changes to the powers and functions of the Privacy Commissioner
- The second stage was to respond to those recommendations relating to the removal of exemptions, mandatory data breach notifications, a statutory cause of action for privacy and other remaining issues. On 14 October 2009, the then Cabinet Secretary, the Hon Joe Ludwig, released the Government's first stage response to the ALRC privacy report.
- The Government's first stage response addressed 197 of the ALRC's 295 recommendations for reforms to the Privacy Act.
- The Government accepted the vast majority of the recommendations
- It should also be noted that it is the intention of the Government to develop a new, rewritten Privacy Act to meet the needs of the 21st century, rather than a set of amendments to the existing Act

- The Government has since announced that it is releasing the exposure draft legislation to implement its response on stage one in four parts.
- On 24 June 2009, the Government took the first step by tabling the new draft Australian Privacy Principles and having them referred to the Senate Committee for Finance and Public Administration for consideration.
- With the release of the draft Australian Privacy Principles, 48 recommendations of the ALRC's 295 recommendations are being implemented
- The next part that will be released for consideration is credit reporting which will involve a rewrite of Part 111A of the Act , to be followed by drafts on health privacy and then the powers and functions of the Australian Information Commissioner (see below for explanation of the replacement of references to the Privacy Commissioner by references to the Australian Information Commissioner)
- It is expected that the part of credit reporting will be available for referral to the Committee before the end of 2010 and the health privacy draft and the draft on the powers and functions of the AIC during the first half of 2011.
- Because the drafting is being done in these parts, each part will be self standing on its referral to the Committee, but of course as each stage is drafted, the development of the concepts in each may lead to drafting (but not policy) changes to earlier parts. Once the Senate Committee has reported on all four parts, a package of legislation will be introduced into the Parliament comprising all of the parts brought together, together with any other necessary consequential and transitional provisions.
- Once the first stage reforms have progressed, the Government will begin considering the second stage response.
- The second stage Government response will deal with the remaining 98 recommendations from the ALRC report,
- The Government will consult extensively when forming its second stage response.

Changes to the role & functions of the Privacy Commissioner

- With the commencement of the Office of the Australian Information Commissioner on 1 November 2010, the Office of the Privacy Commissioner became part of the new organisation.
- As the Australian Information Commissioner (the AIC), appointed by the Governor-General pursuant to the *Australian Information Commissioner Act 2010* ,is the head of the Office of the Australian Information Commissioner, all of the powers and functions in relation to privacy, freedom of information and government information policy are vested in the AIC. The Privacy Commissioner and the Freedom of Information Commissioner can both exercise the AIC's privacy and FOI functions (subject to some limitations where his approval is necessary) but cannot exercise his information

commissioner functions which include advising on the government's general information policies.

- As a result of the commencement of the Australian Information Commissioner Act 2010 all references to the Privacy Commissioner in the Privacy Act and other related legislation have become references to the AIC

