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Migration Legislation Amendment Bill (No. 5) 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 57 2001–02

Migration Legislation Amendment Bill (No. 5) 2001

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Migration Legislation Amendment Bill (No. 5) 2001

Date Introduced: 23 August 2001

House: House of Representatives

Portfolio: Immigration and Multicultural Affairs

Commencement: 21 December 2001

Purpose

To amend the *Migration Act 1958* to permit private sector organisations to provide information to the Department of Immigration and Multicultural Affairs, avoiding the recent restrictions imposed by the *Privacy Amendment (Private Sector) Act 2000*.

Background

The *Privacy Amendment (Private Sector) Act 2000* sought to establish a national privacy scheme for the private sector in Australia.¹ An act by a private sector 'organisation' will breach privacy if it breaches an approved privacy code that is binding on the organisation or, if the organisation is not bound by a code, a National Privacy Principle (NPP). NPP 2 relates to the use and disclosure of personal information. Generally, information may only be used or disclosed in accordance with the primary purpose for which it was collected. However, use and disclosure is permissible for a secondary purpose including:

- where the secondary purpose is related to the primary purpose and the individual would reasonably expect it to be used for that secondary purpose²
- where the individual has expressly or implicitly consented to the use or disclosure³
- where the use or disclosure is required or *authorised* by or under law, and⁴
- where the organisation reasonably believes the use or disclosure is reasonably necessary for a range of activities carried out by an enforcement body.⁵

The Migration Legislation Amendment Bill (No. 5) 2001 seeks to authorise the disclosure of information relating to travel to and from the 'migration zone' for migration control purposes by certain private organisations that provide travel related services.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

Main Provisions

Schedule 1 inserts **proposed section 488B** into the *Migration Act 1958* (the Act).

Proposed section 448B provides that certain private sector organisations *may* disclose travel information to an 'officer' under the Act 'for any purpose that is *likely* to facilitate the administration or enforcement' of the Act or Regulations. The information covered by this provision is '*any* information relating to travel that has been, is being or is proposed to be undertaken ... on the way ... to ... or ... that involves the departure from the migration zone'. The organisations encompassed are airline operators, shipping operators, travel agents and 'prescribed organisations'. The provision does not require persons to provide information. Nor does it detract from other disclosure obligations under the Act.

An 'officer' includes:

- an authorised officer of the Department of Immigration and Multicultural Affairs
- a customs officer
- a protective services officer, and
- an officer of the Australian Federal Police.⁶

Concluding Comments

Clearly the expression 'likely to facilitate the administration or enforcement of [the Act]' is designed to limit the disclosure of personal information by private sector organisations. Moreover, it is designed to ensure that officers other than 'authorised officers' only receive travel information for the purposes of their role under the *Migration Act 1958*.

However the nature and presence of the limitation raises two issues:

- It is unclear whether the limitation imposes any restrictions on the officers. While officers may only receive travel information for the purposes of their role under the *Migration Act 1958* it is unclear whether they may use information for *other* purposes.
- It is unclear whether the limitation imposes a burden on private organisations. The expression has been used in other legislation in provisions relating to the transfer of information between government agencies,⁷ issue of ministerial directions to a government agency,⁸ and measures to assist negotiations between parties.⁹ All of these provisions are addressed to government agencies. Clearly, the intention is to place a limitation on the disclosure of personal information by private sector organisations. However, while it may be reasonable to expect a government agency to form an opinion about what information is 'likely to facilitate the administration' of legislation,

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it may be unreasonable to expect a private organisation to do the same, particularly when an error in judgement could constitute a breach of the *Privacy Act 1988*.

Significantly, information may be disclosed regarding travel on the way *directly or indirectly* to the migration zone. Thus, information may be disclosed relating to travel to and from destinations prior to the migration zone or previous legs of a person's travel.

Endnotes

- 1 For further background on this Act, see Mary Anne Neilsen, Privacy Amendment (Private Sector) Act 2000, *Bills Digest No. 193* 1999–2000.
- 2 *Privacy Act 1988*, Schedule 3, Sub-item 2.1(a)
- 3 *Privacy Act 1988*, Schedule 3, Sub-item 2.1(b)
- 4 *Privacy Act 1988*, Schedule 3, Sub-item 2.1(g).
- 5 *Privacy Act 1988*, Schedule 3, Sub-item 2.1(h).
- 6 *Migration Act 1958*, section 5.
- 7 Mandatory transfer of information between agencies regarding departure prohibition orders: *Child Support (Registration and Collection) Act 1988*, section 72G inserted by Schedule 6 of the *Child Support Legislation Amendment Act (No. 2) 2000*; *Taxation Administration Act 1953*, section 14S, inserted by section 312 of the *Taxation Laws Amendment Act 1984*. Discretionary transfer of information from the Australian Broadcasting Association to the Classification Board: *Broadcasting Services Act 1992*, paragraph 30(5)(c), inserted by Schedule 1 of the *Broadcasting Services Amendment (Online Services) Act 1999*.
- 8 *Federal Airports Corporation Act 1986*, section 41(1A), inserted by Schedule 4 of the *Airports (Transitional) Act 1996*.
- 9 *Trade Practices Act 1974*, section 152CT, inserted by item 62 of the *Telecommunications Legislation Amendment Act 1999*; subsection 152BBC(3), inserted by item 54 of the *Telecommunications Legislation Amendment Act 1999*.

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