

CHAPTER 1

INTRODUCTION

Reference

1.1 On 9 December 2004, the Senate agreed to a motion moved by the Australian Democrats and referred the following matters to the Legal and Constitutional References Committee, for inquiry and report by 30 June 2005:

(a) the overall effectiveness and appropriateness of the *Privacy Act 1988* as a means by which to protect the privacy of Australians, with particular reference to:

(i) international comparisons,

(ii) the capacity of the current legislative regime to respond to new and emerging technologies which have implications for privacy, including:

(A) 'Smart Card' technology and the potential for this to be used to establish a national identification regime,

(B) biometric imaging data,

(C) genetic testing and the potential disclosure and discriminatory use of such information, and

(D) microchips which can be implanted in human beings (for example, as recently authorised by the United States Food and Drug Administration), and

(iii) any legislative changes that may help to provide more comprehensive protection or improve the current regime in any way;

(b) the effectiveness of the *Privacy Amendment (Private Sector) Act 2000* in extending the privacy scheme to the private sector, and any changes which may enhance its effectiveness; and

(c) the resourcing of the Office of the Federal Privacy Commissioner¹ and whether current levels of funding and the powers available to the Federal Privacy Commissioner enable her to properly fulfil her mandate.²

1 Note that although the terms of reference refer to the Office of the Federal Privacy Commissioner, the office is now referred to as the Office of the Privacy Commissioner. Similarly, the Federal Privacy Commissioner is now known as the Privacy Commissioner. This report uses the title the Office of the Privacy Commissioner and Privacy Commissioner, but it is noted that some submissions, quoted in the report, refer to the Office of the Federal Privacy Commissioner and the Federal Privacy Commissioner.

2 *Journals of the Senate*, No. 11, 9 December 2004, p. 286.

Conduct of the inquiry

1.2 The committee advertised the inquiry in *The Australian* newspaper on 15 December 2004, 2 February 2005, 16 February 2005, 2 March 2005 and 16 March 2005 and wrote to over 90 organisations and individuals, inviting submissions by 25 February 2005. Details of the inquiry were placed on the committee's website.

1.3 The committee received nearly 50 submissions from various individuals and organisations, as well as several supplementary submissions, and these are listed at Appendix 1. Submissions were placed on the committee's website.

1.4 The committee held public hearings in Melbourne on 22 April 2005; in Sydney on 19 May 2005; and in Canberra on 20 May 2005. A list of witnesses who appeared at the hearings is at Appendix 2, and copies of the Hansard transcript are available through the Internet at <http://www.aph.gov.au/hansard>.

Acknowledgements

1.5 The committee thanks those organisations and individuals who made submissions and gave evidence at public hearings. The committee particularly acknowledges the work of the Australian Law Reform Commission (ALRC) and the Australian Health Ethics Committee (AHEC) of the National Health and Medical Research Council (NHMRC) in their comprehensive report on the protection of human genetic information in Australia.³ Further, the committee thanks the Office of the Privacy Commissioner (OPC) for its assistance during this inquiry. The OPC's recent report on its review of the private sector provisions (OPC review) was also of great assistance to the committee's inquiry.⁴

Scope of the report

1.6 Chapter 2 provides a background and overview of privacy and the *Privacy Act 1988* (Privacy Act). Chapter 3 considers the capacity of the Privacy Act to deal with emerging technologies, and in particular, those technologies listed in the terms of reference. Chapter 4 examines the effectiveness of the private sector provisions of the Privacy Act, including the recent review of the private sector provisions by the Office of the Privacy Commissioner.

1.7 Chapter 5 considers a range of other issues raised during the committee's inquiry relating to the overall effectiveness and appropriateness of the Privacy Act. Chapter 6 looks at the resourcing and powers of the Office of the Privacy

3 ALRC and NHMRC, *Essentially Yours: Protection of Human Genetic Information in Australia*, ALRC 96, 2003, available at: <http://www.austlii.edu.au/au/other/alrc/publications/reports/96/>

4 Office of the Privacy Commissioner, *Getting in on the Act: The Review of the Private Sector Provisions of the Privacy Act 1988*, March 2005 (OPC review), available at: <http://www.privacy.gov.au/act/review/index.html>

Commissioner. Issues relating to privacy and international comparisons, as listed in term of reference (a)(i) are considered through the report. Finally, chapter 7 presents a summary of the Committee's conclusions and its recommendations on a range of matters relating to the Privacy Act.

Note on references

1.8 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

