

Update on direction of Privacy Law in Australia

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Current Australian privacy regime

- *Privacy Act 1988* (Cth)
- other federal legislation – *Spam Act 2003*, *Do Not Call Register Act 2006*, *Telecommunications Act 1997* Part 13
- State and Territory privacy legislation
- Health records legislation (some States and Territories)

How did we get to this point?

- *Privacy Act* commenced on 1 January 1989 – originally intended to be cognate legislation to the *Australia Card* legislation
- Accordingly it only regulated the Commonwealth public sector
- Extended to the private sector (credit reporting) in 1991
- Extended to the private sector generally (with exceptions) in 2001

The reform process

- Referred to Australian Law Reform Commission in 2006
- Interim ALRC report 2007
- Final ALRC report 2008
- Australian government exposure draft of APPs, 2010
- Various parliamentary reviews
- Amendment legislation enacted 2012 (Royal Assent 12 December 2012)

Key reforms

- Effective 12 March 2014
- Unified set of Privacy Principles (APPs) to regulate public and private sectors
- Revised rules dealing with credit providers and credit reporting agencies
- Expanded powers of enforcement, and increased penalties

Revised APPs

- More significant impact on Commonwealth public sector
- Indirect impact on State and Territory public sectors
- Significant changes for private sector relate to the content of privacy policies, the handling of unsolicited personal information and the consequences of mishandling the overseas transfer of personal information

Law enforcement

- New legislation clarifies the privacy implications of three different types of disclosure to law enforcement agencies:
 - disclosure in Australia to a third party pursuant to a non-"Australian law" will be a breach of APP 6.2(b) in the absence of an individual's consent
 - cross-border disclosure from Australia to a third party overseas pursuant to a non-"Australian law" must comply with APP 6 and APP 8
 - disclosure overseas by the recipient of Australian data to a third party also overseas pursuant to a non-"Australian law" does not breach the APPs, by virtue of section 6A(4), and hence no liability under section 16C

Still in limbo ...

- Data breach notification – the *Privacy Amendment (Privacy Alerts) Bill 2013* has lapsed
- Statutory privacy right – recommended by ALRC but not yet implemented

Still on the EU Blacklist ...

- European Union requires controllers to ensure that the country of final destination offers an adequate level of protection
- Article 29 Working Party maintains a "blacklist"
- New Australian laws unlikely change status:
 - Employee records exemption
 - Small business exemption

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