



Country or jurisdiction report

AUSTRALIA

Website: www.privacy.gov.au

1. Australian Office of the Privacy Commissioner implements new strategic plan

The Australian Office of the Privacy Commissioner (the Office) has developed and begun to implement a new strategic plan. This plan takes as its vision: *'an Australian community in which privacy is valued and respected'*.

The new strategic plan combines broader objectives and goals with practical actions for achieving those goals. One of the Office's key goals is to establish robust relationships and networks with both internal and external stakeholders. This includes strengthening and further developing partnerships with members of the Asia-Pacific Privacy Authorities forum and participants of the International Conference of Data Protection and Privacy Commissioners.

The strategic plan also aims to address commitments made by the Office following its increase in funding in the last financial year.

This increase in funding has allowed the Office to significantly increase its staffing levels to approximately 60 staff. Expansion of staffing has included the establishment and appointment of an Assistant Commissioner with responsibility for the Office's compliance function.

The Office's new strategic plan is available at:
<http://www.privacy.gov.au/about/strategicplan/stratplan0709.pdf>

2. Office makes submission to Australian Law Reform Commission Review of privacy

In January 2006, the Australian Law Reform Commission (ALRC) was asked by the Attorney-General to conduct a review of Australian privacy legislation. In February and April 2007, the Office made submissions to the ALRC's review.

A central theme of the Office's submissions was that any reform of Australia's privacy laws should aim to enhance regulatory consistency and reduce complexity. Nationally consistent privacy legislation will reduce compliance difficulties for agencies and organisations and empower individuals to understand and exercise their privacy rights without confusion.

Currently the Privacy Act 1988 contains two sets of privacy principles. One set applies to Australian Government agencies and the other to the private sector. The Office believes that a technology-neutral, principles-based approach remains the best way to regulate personal

information handling in the context of rapid technological change. However the Office has suggested that these two sets of principles should be replaced by a single set of principles to reduce regulatory complexity.

The Office's submission further noted that, ideally, there should be minimal exemptions from the Privacy Act. Where exemptions do exist, the Office believes that a clear public interest should also exist to support their continuation.

Finally, the Office's submission called for the exploration of options for the development of a tort of privacy to encourage recognition that privacy is an important right that warrants specific recognition and protection within the Australian community.

The Office's submissions to the ALRC review are available at:
http://www.privacy.gov.au/news/alrc_link.html

3. Development of a Health and Social Services smart card – an update

As noted in last year's country report, the Australian Government is currently developing a national Health and Social Services Access Card. The proposed access card will use smartcard technology to streamline human services delivery.

The Office has recommended to Government that the privacy framework surrounding the access card should be multi-faceted, and include such protections as:

- **Fundamental system design**, including card design, system architecture and the parameters governing what information is collected and what information flows are possible;
- **Technological measures**, including, but not limited to, data security initiatives, as well as measures to minimise the degree to which existing systems become increasingly integrated, a consequence of which may be new and potentially privacy invasive flows of personal information;
- **Legislative measures**, including defining the extent of the functions of the access card, proscribing purposes that fall outside those functions and introducing sanctions for misusing any aspect of the system or the personal information it handles; and
- **Oversight mechanisms** that promote confidence in the system by assuring the community that the operation of the system is subject to stringent accountability measures, including provision for audit and independent complaint handling.

In December 2006, the Office entered into an agreement with the Department of Human Services which allows for close consultation on privacy-related issues in the development and roll-out of the proposed access card. Under the agreement, the Office will provide advice to the Department on the privacy implications of the access card system, participate in site visits with registration authorities to observe and analyse the privacy aspects of the registration process, and assist in the development of privacy-related information and educational materials.

The Office's submissions to the Human Services Consumer and Privacy Taskforce are available at: www.privacy.gov.au/news/access-card.html

Sub-national jurisdiction – NEW SOUTH WALES

Website – www.lawlink.nsw.gov.au/privacynsw

1. Law Reform

The major development in New South Wales privacy matters in recent months has been the publication of a report by the NSW Law Reform Commission on the creation of a statutory cause of action in privacy related situations.

The NSW Commission has been given a specific term of reference by the former Attorney General, Bob Debus to examine whether or not there should be a tort of privacy. The complete reference is much wider and covers a general review of privacy legislation in New South Wales and places particular emphasis on the harmonisation of privacy laws throughout Australia operating under one set of privacy principles.

The consultation paper issued by the Law Reform Commission does not propose at this stage that the statutory cause of action for privacy should be introduced as law. The Commission has set out what it considers should be the path to be followed if the decision is made to follow such a course.

The Commission has identified four broad models that could form the basis of statutory for a statutory cause of action for invasion of privacy.

These are:

- one general, non specific right to seek redress for invasion of personal privacy
- a general cause of action for invasion of privacy, supplemented by a non-exhaustive list of circumstances that could rise to a cause of action
- a general clause for invasion of privacy, together with other specific cause of action, for example in respect of unauthorised surveillance activity
- several narrower and separate causes of action based on various distinct heads of privacy.

The Commission's preliminary view is the second option. It came to this view considering the present legal landscape in New South Wales. The Commission stressed that this option was only a tentative view and it would be viewing the consultation process as of the utmost importance when looking at all the options. The Commission proposes next to review the present privacy legislation in New South Wales and to put out an issues paper seeking comment.

Privacy NSW proposes to make a submission both on the statutory cause of action and on the general law revision.

2. New Location

The office of the Privacy Commissioner for New South Wales will be moving from central Sydney to nearby Parramatta by the end of the year.

The office will be located in the Justice Precinct which will be a purpose built building for the Attorney General's Department. The new address will be circulated to all Privacy Commissioners when the move is completed.