

PRIVACY LAWS UNDER REVIEW

In 2005 Kreisson Legal held a seminar on the potential upcoming changes to the privacy laws. Since then we have been monitoring the progress of this initiative.

Where is it up to?

On 12 September 2007, the Australian Law Reform Commission (**ALRC**) released a discussion paper seeking feedback on a number of proposals for reform of the privacy laws.

A final report will be submitted by the ALRC to the Attorney General by 31 March 2008.

Discussion paper overview

In an attempt to simplify the privacy laws and streamline associated practices, the ALRC has made a number of recommendations for change.

Upon a review of the *Federal Privacy Act 1998 (Cth)(Act)*, the ALRC has been requested to consider changes in technology since the Act first came into play, the heightened emphasis on privacy protection and the number of different privacy laws introduced by the States.

Some of the recommendations made by the ALRC are as follows:

- That personal information be dealt with in a similar fashion as between government agencies and the private sector.
- In respect of health services, that any new privacy laws should override current State privacy laws and there should therefore be separate legislation regulating the sharing of health information, so as to address how the consent of the patient should be managed, and in what circumstances health information can be collected from an individual, without consent being required.
- That the privacy laws be reviewed again in 5 years to assess whether national consistency has been achieved.

- A review of the types of information which should be considered personal information, suggesting that information such as photographs, finger prints and voice recordings be included in the definition of sensitive information, as well as email and IP address's.
- In respect of direct marketing, that a new principle be enacted so that direct marketing can only occur when an individual has given their prior consent.
- At present, the current privacy laws provide that businesses and non-profit organisations with an annual turnover of less than 3 million dollars are exempt from the Act. The ALRC has proposed that this exemption also be removed.
- Currently, employee records are exempt under the Act however the ALRC is proposing that this exemption be removed.
- Young people have also been identified as an area of concern in the review process and it has been suggested that young people aged 15 and over should be able to provide consent in respect of their health information.
- ALRC has proposed that the privacy commissioner be able to require an organisation to prepare a privacy impact assessment for any new business project which impacts on the handling of the personal information.

Summary

Best practice, dictates that all businesses irrespective of size, should already have in place some arrangements with respect to the management of personal information.

The upcoming proposed changes suggest that privacy management will become more stringent in the future.

If you would like any further information on this topic, please contact Ilona Teremi, Partner on 9230 6503 or ilona.teremi@kreissonlegal.com.au



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