

Appendix G: An overview of the Privacy Amendment (Private Sector) Act 2000

The following is extracted from Information Sheet 1, developed by the Office of the Federal Privacy Commissioner (2001) about the new private sector privacy law. Further information on privacy can be obtained from the Federal Privacy Commissioner's website <www.privacy.gov.au>.

Privacy Amendment (Private Sector) Act 2000

The *Privacy Amendment (Private Sector) Act 2000* regulates the way the private sector organisations can collect, use, keep secure and disclose personal information. For the first time, it gives individuals the right to know what information an organisation holds about them and a right to correct that information if it is wrong.

What does the Act mean to service users?

The Act means service users now have the right to know why a private sector organisation is collecting their personal information, what information it holds about them, how it will use the information and who else will get the information. Except for some special circumstances, service users can ask to see this information and for the information to be corrected if it is wrong. Service users can also make a complaint if they think their information is not being handled properly. A service user could also apply to the Federal Court or the Federal Magistrate's court for an order to stop an organisation from engaging in conduct that breaches the National Privacy Principles (NPPs).

Who will the new private sector provisions apply to?

The Act will apply to 'organisations' in the private sector. An organisation can be an individual, a body corporate, a partnership, an unincorporated association or a trust. It will cover:

- businesses, including not-for-profit organisations such as charitable organisations, sports clubs and unions, with a turnover of more than \$3 million;
- federal government contractors;
- health funded agencies that hold health information (even if their turnover is less than \$3 million);
- organisations that carry on a business that collects or discloses personal information for a benefit, service or advantage (even if their turnover is less than \$3 million);
- small businesses with a turn-over of less than \$3 million that choose to opt-in;
- incorporated State Government business enterprises;
- any organisation that regulations say are covered.

The new provisions will not apply to:

- State or Territory Authorities, e.g. Ministers, departments, courts and local government councils;
- Political parties and acts of political representatives in relation to electoral matters;
- Most small businesses with an annual turnover of less than \$3 million;

- Acts or practices in relation to employee records of an individual if the act or practice directly relates to a current or former employment relationship between the employer and the individual;
- Acts or practices of media organisations in the practice of journalism.

When does the Act come into operation?

Most organisations, including all health services holding health information, will have 12 months to get ready for the new scheme. The new provisions will start to apply 21 December 2001. Small businesses (except health services) covered by the new provisions have an additional twelve months and the new provisions will apply in December 2002.

What are the National Privacy Principles (NPPs)?

The NPPs set the base line standards for privacy protection. Organisations may have and enforce their own codes. These codes must be approved by the Privacy Commissioner as having obligations at least equivalent to the NPPs and meet other requirements. The code must have an independent code adjudicator to handle complaints. If the code does not provide for a complaints handling mechanism the Privacy Commissioner is the code adjudicator.

Organisations that do not have their own code must comply with the NPPs set out in the *Privacy Amendment (Private Sector) Act*. The Privacy Commissioner handles complaints in these circumstances.

The NPPs are ten principles or rules in the Act about how organisations should handle personal information. They cover collection (NPP1), use and disclosure (NPP 2), data quality (NPP3), data security (NPP 4) openness (NPP 5), access and correction (NPP6), identifiers (NPP7), anonymity (NPP 8), transborder flow of data (NPP 9) and sensitive information (NPP 10).

Only some of the NPPs will apply to information organisations already hold when the new provisions start to apply. The NPPs relating to data security, data quality when information is used and disclosed, identifiers and transborder flow will apply regardless of when the information was collected. The principle relating to access and correction will apply to all information collected after the new provisions apply, and any already existing information that is used. Those principles relating to collection, use and disclosure, data quality when it is collected, and sensitive information will not apply to information collected before the new provisions start to apply.

What is ‘personal information’?

The Act covers personal information. It has special protection for personal information that is sensitive information. The Privacy Act only applies to information that is recorded in some form, which can include in an electronic record.

Personal information is information or an opinion that can identify a person.

Sensitive information is information about an individual’s racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual preferences or practices, criminal record, or health information.