



Australian Government
Office of the Privacy Commissioner

Personal Data Protection Compliance, Regulation and Enforcement – An Australian Perspective

Malaysia Personal Data Protection Conference 2010

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A brief history of Australian privacy law

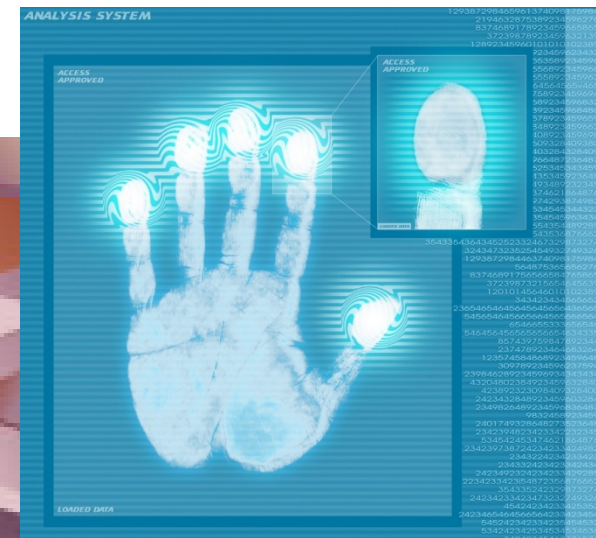
- No common law right to privacy
 - 1984 - Adoption of OECD Guidelines
 - 1988 - Privacy Act
 - 2001 - Private Sector amendment to the Privacy Act
 - 2008 - Australian Law Reform Commission review of privacy law
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A brief history of Australian privacy law

- 1984 - Adoption of OECD Guidelines
 - * Personal computers were scarce
 - * Internet did not exist
 - * Ink fingerprints only biometric technology
 - * CCTV and GPS systems were not widespread
 - * Mobile phones and camera phones were yet to be invented
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Twenty years later






Twenty years later

- Technological developments have changed the way we handle personal information
 - Australian Government has decided to reform the Privacy Act
 - Government has confirmed privacy reform will be based on a review and report by Australian Law Reform Commission
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The Office

Privacy Act 1988

- Australian Privacy Commissioner
 - Regulator with specific statutory functions for complaint handling and investigations
 - Facilitative approach
 - Approximately 1,200 complaints per year
- 




The Office cont...

- Commissioner's determinations enforceable by Federal Court or Federal Magistrates Court
 - Educative and advising role
 - Recognise the right to privacy is not absolute
 - Good privacy is good business
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Coverage of the Privacy Act

Gives protection for personal information handled by:

- federal and most ACT government agencies
 - private sector organisations with an annual turnover of more than \$3 million
 - all health service providers
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Coverage of the Privacy Act cont...

- Regulates reporting of individuals'
 - credit information
 - tax file numbers
 - Does not cover State and Northern Territory agencies
 - Exception is the ACT
 - Some states and the NT have privacy laws
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Meaning of 'personal information'

- Law is about information or data protection
- Focus is on information privacy
- Definition refers to information about an individual:
 - whose identity is apparent; or
 - can be reasonably ascertained






The Privacy Act

- Provides principle-based, technology-neutral regulation
 - Shifts regulatory focus from process to outcomes
 - Principles based on *OECD Guidelines for the Fair Handling of Information*
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The Privacy Principles

- 11 Information Privacy Principles (IPPs) for federal and ACT Government agencies
 - 10 National Privacy Principles (NPPs) for private sector covered by the Act
 - Reforms will merge IPPs and NPPs into a single set of principles
- 




Key issues for reform

- Keep it principles based and technology neutral
 - ALRC supports this notion
 - Create one set of principles
 - Reduce regulatory complexity
 - National consistency in privacy laws
- 



Key issues for reform cont...

- Powers of the Commissioner
 - Create codes where specific privacy concerns emerge
(Codes subject to mandatory consultation and scrutiny and disallowance of Parliament)
 - Audit power for private sector
 - Sanctions (civil penalties)
- 

UK Data breach

	 	News services Your news when you want it
News Front Page  Africa Americas Asia-Pacific Europe Middle East South Asia UK England Northern Ireland Scotland Wales UK Politics Education Magazine Business Health	<p>Last Updated: Thursday, 22 November 2007, 15:57 GMT</p> <p>E-mail this to a friend Printable version</p> <h2>Timeline: Child benefits records loss</h2> <p>Two CDs containing personal details of 25m people have been lost by HM Revenue and Customs. Here is how the crisis unfolded.</p> <p>MARCH 2007</p> <p>A junior official at HM Revenue and Customs gives the National Audit Office a full copy of HMRC's child benefit data, in breach of security procedures. That information is later safely returned.</p> <p>SEPTEMBER</p> <p>Records of about 15,000 people's details go missing after being sent by HMRC to Standard Life. Also in September, a laptop containing around 400 ISA (individual savings</p>	<h3>BENEFIT DISCS LOST</h3> <p>KEY STORIES</p> <ul style="list-style-type: none">▶ More firms 'admit disc▶ £20,000 reward offered▶ Fresh benefit data lap▶ Police search tips in d▶ Data disc report 'in th▶ Discs 'worth £1.5bn' t  <p>Queries a BBC perso reporter Je Clarke ans questions o</p> <p>FEATURES AND BACKG</p> <ul style="list-style-type: none">▶ Q&A: Child benefit rec▶ Government letter: fu▶ Taking cover from ID

http://news.bbc.co.uk/2/hi/uk_news/politics/7104368.stm



Key issues for reform cont...

- **Minimise exemptions**
 - Employee records
 - 86% thought employees should have access to information employers keep about them
 - Small business
 - Many *do not hold significant amounts* of personal information
 - Fall under the Act if they trade in personal information





Key issues for reform cont...

- **Simplify Credit Reporting**
 - Research shows reluctance to give details about finances is higher than almost any other type of information
 - Expansion of credit reporting provisions and data sets (including payment history)
 - Subject to a ‘responsible lending’ framework being implemented





Key issues for reform cont...

- Introduce a Statutory Cause of Action
 - Gives individuals the right to bring actions in court for privacy breach
 - Would not be limited to information privacy
 - Would be consistent with the *International Covenant on Civil and Political Rights*
 - Subject to parliamentary process





Key issues for reform cont...

- **Introduce a Statutory Cause of Action**
 - Coverage for federal government agencies, organisations and individuals
 - Invasion of privacy to be covered include:
 - interference with an individual's home or family life
 - unauthorised surveillance





Thank you

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