



NSW moves on privacy legislation

The NSW Attorney General, Jeff Shaw QC MLC, announced in April that the NSW Government would introduce comprehensive privacy and data protection legislation in the current session of Parliament.

Instead of waiting for the Federal Government's proposed 'national approach' to privacy and data protection, NSW is preparing to go it alone. 'I will not allow the important human rights of NSW citizens to be sacrificed to the usual lengthy delays in national agreement, and our privacy legislation will proceed very soon', said Mr Shaw.

Although no details of the proposed Bill have been released, the Government has set out the following policy objectives for privacy and data protection:

- 1) Protecting all privacy rights, with comprehensive enforcement provisions and legislative sanctions;
- 2) Increasing access to justice, including compensation for privacy breaches;
- 3) Developing Codes of Conduct for the private sector;
- 4) Ensuring NSW meets the requirements of the European Union Privacy Directive (see box); and
- 5) Developing a national approach to privacy and data protection in the longer term.

One of the most significant announcements was the Government's commitment to provide victims of privacy breaches with access to compensation of up to \$40,000. This will add teeth to the legislation, which will be overseen by a proposed Human Rights and Justice Commission - a

new body combining the staff of the existing Anti-Discrimination Board and Privacy Committee, with the addition of new staff to meet the increased demand in the privacy and data protection field.

Mr Shaw's announcement follows almost twenty years of lobbying by community groups and privacy advocates for enforceable statutory privacy protection. Privacy has been eroded by developments in information technology, surveillance equipment and customer profiling techniques which have outstripped the pace of legal and legislative reform.

Only the existing Privacy Committee of NSW (with a staff of just six) and the Privacy Committee of South Australia (with a staff of just one!) have had jurisdiction to deal with privacy issues at the state level. Neither have been able to enforce their recommendations through legislative sanctions. Yet it is at the state level that some of the largest collections of information take place - the various departments of health, housing and community services hold extensive records on individuals, as do state police and roads and traffic authorities.

The Federal Privacy Act, administered by Commissioner Kevin O'Connor's office, has jurisdiction only over the Commonwealth public sector, and the credit reporting activities of private sector companies.

The move by NSW to introduce privacy legislation at the state level may prove attractive to other states. New international privacy regulations (notably the European Union Privacy Directive) have resulted in a situation where it is essential for jurisdictions to show a commitment to privacy legislation in order to participate in the international trade of information. Waiting for the federal government to move on this point may be a

dangerous economic decision, as international businesses seek to base their operations in jurisdictions which offer statutory privacy protection.

The Federal Coalition was elected on a platform which included a commitment to improving privacy protection as a 'matter of the utmost priority'. However implementing national laws will be a challenging and time consuming task for new Attorney General Darryl Williams. Victoria, Western Australia and Queensland are all considering legislative moves of their own.

There is, however, one matter of concern in the NSW proposal. The new Privacy Commissioner will be a part time Commissioner, sharing his or her time with a more general role in the anti-discrimination field. The government has already announced that Chris Puplick will be the first Commissioner.

While Mr Puplick's appointment is a popular decision, the move to make the role part time is likely to be bitterly opposed by community groups, and possibly some elements in Parliament. The implementation of comprehensive privacy and data protection requires a full time commitment, especially in the formative stages when education and promotion of the new legislation will be a high priority.

The NSW legislation is said to be largely modelled on the successful New Zealand Privacy Act. New Zealand is a similar sized jurisdiction to NSW, and has a full time Commissioner who spends a great deal of his time promoting the legislation and consulting with industry and the community. NSW deserves the same level of attention. □

Chris Connolly recently commenced work as a policy researcher at the CLC. He was previously a research officer for the NSW Privacy Committee.