

**Government Response to  
the Privacy Commissioner's Report**

*Getting in on the Act: The Review of the  
Private Sector Provisions of the  
Privacy Act 1988*

**2006**

**Government Response to Recommendations in the Privacy Commissioner’s Report *Getting in on the Act: The Review of the Private Sector Provisions of the Privacy Act 1988***

<b>Number</b>	<b>Recommendation</b>	<b>Response</b>
<i>National Consistency</i>		
1	The Australian Government should consider undertaking a wider review of privacy laws in Australia to ensure that in the 21 <sup>st</sup> century the legislation best serves the needs of Australia.	<b>Agree.</b> The Government has given a reference to the Australian Law Reform Commission to review the extent to which the <i>Privacy Act 1988</i> and related laws continue to provide an effective framework for the protection of privacy in Australia. This review is due to be completed by March 2008.
2	The Australian Government should consider amending section 3 of the Privacy Act to remove any ambiguity as to the regulatory intent of the private sector provisions.	<b>Noted.</b> The Government will refer relevant recommendations to the Australian Law Reform Commission for consideration in the context of its review (see response to Recommendation 1).
3	The Australian Government should consider asking the Council of Australian Governments (COAG) to endorse national consistency in all privacy related legislation.	<b>Noted.</b> National consistency in privacy regulation is a matter for the Standing Committee of Attorneys-General, rather than COAG. Other existing intergovernmental bodies such as the Australian Health Ministers’ Conference also provide effective mechanisms to deal with privacy consistency.
4	The Australian Government should consider setting in place mechanisms to address inconsistencies that have come about, or will come about, as a result of exemptions in the Privacy Act, for example, in the area of workplace surveillance.	<b>Noted.</b> The Standing Committee of Attorneys-General already provides an existing mechanism for exploring ways to address inconsistencies and is currently considering workplace privacy issues.
5	The Australian Government should consider commissioning a systematic examination of both the IPPs and the NPPs with a view to developing a single set of principles that would apply to both Australian Government agencies and private sector organisations. This would address the issues surrounding Australian Government contractors.	<b>Noted.</b> This will be considered in the Australian Law Reform Commission’s review (see response to Recommendation 1).
6	The Australian Government should consider changing, by legislative amendment, the name of the Office of the Privacy Commissioner to the Australian Privacy Commission.	<b>Noted.</b> The Government will give further consideration to changing the name of the office, including any costs associated with such a change.
7	The Australian Government should consider amending the Privacy Act to provide for a power to make binding codes.	<b>Noted.</b> This is a matter that could be considered in the Australian Law Reform Commission’s review (see response to Recommendation 1).

<i>Telecommunications consistency</i>		
8	The Australian Government should consider amending the Privacy Act and the Telecommunications Act to clarify what constitutes authorised uses and disclosures under the two Acts, and to ensure that the Privacy Act cannot be used to lower the standard of privacy protection in the Telecommunications Act.	<b>Noted.</b> This is a matter that could be considered in the Australian Law Reform Commission's review (see response to Recommendation 1).  It is noted that implementation of this recommendation will be affected by possible legislative amendments stemming from the <i>Blunn Report on the Regulation of Access to Communications</i> .
9	The Australian Government should consider making regulations under section 6E of the Privacy Act to ensure that the Privacy Act applies to all small businesses in the telecommunications sector, including Internet Service Providers and Public Number Directory Producers.	<b>Noted.</b> The Attorney-General's Department will consider this matter further in conjunction with relevant Government agencies.
10 - OPC	<i>The Office will discuss with the ACA the development of guidance to clarify the relationship b/w the private sector provisions and Part 13 Telecommunications Act.</i>	<b>Noted</b> (see response to Recommendation 1).
11- OPC	<i>The Office will discuss with the ACA the development of guidance to clarify the relationship between the private sector provisions and the Spam Act.</i>	<b>Noted.</b>
12 - OPC	<i>The Office urges the National Health Ministers' Council to finalise the National Health Privacy Code. This should include agreement by all jurisdictions on the contents of the code and on its consistent implementation in each jurisdiction.</i>	<b>Noted.</b>
<i>Health consistency</i>		
13	The Australian Government should consider adopting the National Health Privacy Code as a schedule to the Privacy Act. This would recognise the Australian Government's part in the consistent enabling of the Code. Should agreement not be reached by all jurisdictions about implementing the Code, the Australian Government should still consider adopting the code as a schedule to the Act to provide greater consistency of regulation for the handling of health information by Australian Government agencies and the private sector. (See also recommendations 29, 33 and 35.)	<b>Noted.</b>

<i>Residential Tenancy Databases</i>		
14	The Australian Government should advance as a high priority the work currently being undertaken by the Working Group on Residential Tenancy Databases of the Ministerial Council on Consumer Affairs/Standing Committee of Attorneys-General.	<b>Noted.</b> The report prepared by the working group on Residential Tenancy Databases was approved for public release by Ministers at the meeting of the Standing Committee of Attorneys-General (SCAG) in April 2006. The Ministerial Council on Consumer Affairs (MCCA) reached an out of session agreement to note and ratify the SCAG decision and to approve the public release of the working group report. After the MCCA meeting in September 2006, Ministers issued a joint communiqué endorsing the work of the MCCA and SCAG working group. The communiqué also announced MCCA agreement upon development of uniform model Residential Tenancy Database legislation by the States and Territories. It is understood that Queensland will be tasked with drafting the model legislation.
15	The Australian Government should consider, depending on the outcome of the Ministerial Council on Consumer Affairs/Standing Committee of Attorneys-General, making the Privacy Act apply to all residential tenancy databases. This could be done by using the existing power under section 6E to prescribe them by regulation, or by amending the consent provisions (section 6D(7) and section 6D(8)) that apply to the small business exemption. (See recommendation 53.)	<b>Noted.</b>
16	If the Privacy Act is amended to provide for a power to make a binding code, and depending on the outcome of the Ministerial Council on Consumer Affairs/Standing Committee of Attorneys-General, the Privacy Commissioner could make a binding code that applies to tenancy databases.	<b>Noted</b> (see response to Recommendation 7).
<i>EU Adequacy</i>		
17	There is no evidence of a broad business push for 'adequacy'. Given the increasing globalisation of information, however, there may be long term benefits for Australia in achieving EU 'adequacy'. Certainly the globalisation of information makes the implementation of frameworks such as APEC important. The Australian Government should continue to work with the European Union on the 'adequacy' of the Privacy Act and to continue work within APEC to implement the APEC Privacy	<b>Agree.</b>

	Framework.	
<i>Cross border transfer of information</i>		
18- OPC	<i>The Office will provide further guidance to assist organisations comply with NPP 9 by issuing an information sheet outlining the issues that should be addressed as part of a contractual agreement and how to more easily assess whether a privacy regime is substantially similar.</i>	<b>Noted.</b>
<i>Control over personal information</i>		
19	The Australian Government should consider amending NPP 5.1 to provide for short form privacy notices. This could also clarify the obligations on organisations to provide notice, and to clarify the links between NPP 1.3 and NPP 5.1.	<b>Agree in principle.</b> Specific consultation regarding length and content of privacy notices will be considered in light of the outcome of the Government’s taskforce on reducing the regulatory burden on business.
20- OPC	<i>The Office will encourage the development of short form privacy notices. It will also play a more active role in assisting business develop their notices by developing template notices for different sectors, in consultation with them, and by issuing examples of both satisfactory and unsatisfactory notices.</i>	<b>Noted.</b>
21- OPC	<i>The Office will develop guidance to the effect that privacy notices should be dated.</i>	<b>Noted.</b>
22- OPC	<i>The Office will develop guidance on bundled consent, noting the possible tension between the desirability of short form privacy notices and the desirability of lessening the incidence of bundled consent.</i>	<b>Noted.</b>
<i>Direct Marketing</i>		
23	The Australian Government should consider amending the Privacy Act to provide that consumers have a general right to opt-out of direct marketing approaches at any time. Organisations should be required to comply with the request within a specified time after receiving the request.	<b>Noted.</b> This is a matter that could be considered in the Australian Law Reform Commission’s review (see response to Recommendation 1).
24	The Australian Government should consider amending the Privacy Act to require organisations to take reasonable steps, on request, to advise an individual where it acquired the	<b>Noted.</b> This is a matter that could be considered in the Australian Law Reform Commission’s review (see response to Recommendation 1).

	individual's personal information.	
25	The Australian Government should consider exploring options for establishing a national 'Do Not Contact' register.	<b>Agree.</b> A Do Not Call Register Bill was passed on 22 June 2006. It is anticipated that the Register will take effect in early 2007.
<i>Consumer Education</i>		
26	The Australian Government should consider specifically funding the Office to undertake a systematic and comprehensive education program to raise community awareness of privacy rights and obligations.	<b>Noted.</b> The Office of the Privacy Commissioner received a substantial increase in funding of \$8.1 million over four years in the 2006-07 Budget.  Responsibility for administration of the Office of the Privacy Commissioner, including decisions about the allocation of resources, is a matter for the Office itself.  The Government notes that the Privacy Commissioner has indicated that she intends to use some of the additional funding to develop educational materials to assist organisations and individuals to better understand their rights and obligations under the Privacy Act.
27 - OPC	<i>The Office will continue to collect demographic information about complainants. It will seek to identify and then remove barriers that prevent sectors of the community from knowing about and exercising their privacy rights.</i>	<b>Noted.</b>
<i>Access</i>		
28	The Australian Government should consider amending NPP 6 to provide that when an individual's personal information is corrected in response to a request from the individual, the organisation should be obliged to notify third parties, where practicable, that they have received the inaccurate information.	<b>Agree in principle.</b> This recommendation could require organisations to keep a record of all disclosures that are made and could potentially result in an increase in compliance costs. Consideration of this issue would therefore need to be carried out in light of the outcome of the Government's taskforce on reducing the regulatory burden on business.
29	The Australian Government should consider adopting the Australian Health Ministers' Advisory Council (AHMAC) Code as a schedule to the Privacy Act (see recommendation 13). This will address the issue of intermediaries, and the issue of fees for access. (See also recommendations 13, 33 and 35.)	<b>Noted.</b>
<i>Transfer of Health Records</i>		
30 - OPC	<i>The Office will develop further guidance on the operation of NPP 6.1 on 'serious threat to life or health',</i>	<b>Noted.</b>

	<i>explaining that a serious threat to a therapeutic relationship could be a serious threat to a person's health. This will go some way towards addressing what appears to be a too narrow interpretation of NPP 6.1(b) by some practitioners.</i>	
31- OPC	<i>The Office will develop guidance on fees for access to personal information.</i>	<b>Noted.</b>
32- OPC	<i>The Office will develop guidance on the meaning of NPP 6.5 which requires that an individual 'establish' that information is not accurate before the organisation needs to take reasonable steps to correct it.</i>	<b>Noted.</b>
33	The Australian Government should consider adopting the Australian Health Ministers' Advisory Council (AHMAC) code as a schedule to the Privacy Act. This will address the issue of the transfer of health records to another health service provider. (See also recommendations 13, 29 and 35.)	<b>Noted.</b>
34	The Australian Government should consider, if the AHMAC Code is not adopted into the Privacy Act, amending the NPPs to include a new principle along the lines of National Health Privacy Principle 11 in the AHMAC Code.	<b>Noted.</b>
<i>Health Service ceases to operate</i>		
35	The Australian Government should consider adopting the AHMAC code as a schedule to the Privacy Act. This will address the issue of access to health records when a health service ceases to operate. (See also recommendations 13, 29 and 33.)	<b>Noted.</b>
36	The Australian Government should consider, if the AHMAC Code is not adopted into the Privacy Act, amending the NPPs to include a new principle along the lines of National Health Privacy Principle 10 in the AHMAC Code.	<b>Noted.</b>
37 – OPC	<i>The Office will maintain its current approach to compliance including the focus on attempting to conciliate complaints in the first instance as set out in Information Sheet 13. However,</i>	<b>Noted.</b>

	<i>the Office will consider whether it might be appropriate in some circumstances to use its other powers earlier, such as the determination making power.</i>	
38 – OPC	<i>The Office will consider options for providing more feedback on systemic issues either in advice or guidance or in some form of regular update to stakeholders.</i>	<b>Noted.</b>
39- OPC	<i>The Office will consider promoting privacy audits by private sector organisations, including by providing information on the value of auditing as evidence of compliance in the event of complaints and by developing and providing privacy audit training for organisations.</i>	<b>Noted.</b>
<i>Review rights for complaints decisions</i>		
40	The Australian Government should consider amending the Privacy Act to give complainants and respondents a right to have the merits of complaints decisions made by the Privacy Commissioner reviewed.	<b>Noted.</b> This is a matter that could be considered in the Australian Law Reform Commission’s review (see response to Recommendation 1).
<i>Fair &amp; transparent complaint resolution &amp; processes</i>		
41	The Australian Government should consider amending National Privacy Principle 1.3 to require organisations to tell individuals how they can complain to the organisation; and that, if the complaint is not resolved, they can also complain to the Privacy Commissioner or (where relevant) the code adjudicator.	<b>Agree.</b>
42 - OPC	<i>The Office will review its complaints handling processes and will consider the circumstances in which it might be appropriate to make greater use of the Commissioner’s power to make determinations under section 52 of the Privacy Act.</i>	<b>Noted.</b>
43- OPC	<i>The Office will also consider measures to increase the transparency of its complaints processes and complaints outcomes.</i>	<b>Noted.</b>
<i>Additional Powers</i>		
44	The Australian Government should	Point 1: <b>Agree</b> – the Government will give further

	<p>consider amending the Privacy Act to:</p> <ul style="list-style-type: none"> <li>• expand the remedies available following a determination under section 52 to include giving the Privacy Commissioner power to require a respondent to take steps to prevent future harm arising from systemic issues</li> <li>• provide for enforceable remedies following own motion investigations where the Commissioner finds a breach of the NPPs</li> <li>• provide a power for the development of binding codes and/or binding guidelines in cases where there is a strong public interest, where more detailed guidance is warranted or complaints reveal recurrent breaches (see Recommendation 7).</li> </ul>	<p>consideration to such amendments Point 2: <b>Agree.</b> Point 3: <b>Noted</b> (see response to Recommendation 7).</p>
<i>Resourcing implications and complaint handling</i>		
45	<p>The Australian Government should consider the strong calls by a wide range of stakeholders for the Office to be adequately resourced to meet its complaint handling functions.</p>	<p><b>Noted.</b> The Office of the Privacy Commissioner received a substantial increase in funding of \$8.1 million over four years in the 2006-07 Budget.</p> <p>Responsibility for administration of the Office of the Privacy Commissioner, including decisions about the allocation of resources, is a matter for the Office itself.</p> <p>The Government notes that the Privacy Commissioner has indicated that she intends to use some of the additional funding to ensure that people's complaints are handled in a timely and efficient way.</p>
46	<p>The Australian Government should consider amending the Privacy Act to give the Commissioner a further discretion not to investigate complaints where the harm to individuals is minimal and there is no public interest in pursuing the matter.</p>	<p><b>Noted.</b> This is a matter that could be considered in the Australian Law Reform Commission's review (see response to Recommendation 1).</p>
<i>Approved privacy codes</i>		
47 - OPC	<p><i>The Office will review the Code Development Guidelines dealing with the processes relating to code approval with a view to simplifying them.</i></p>	<p><b>Noted.</b></p>
<i>Business awareness</i>		
48	<p>The Australian Government should consider the benefits of greater business and community awareness of</p>	<p><b>Noted.</b> The Office of the Privacy Commissioner received a substantial increase in funding of \$8.1 million over four years in the 2006-07</p>

	privacy and specifically fund the Office to undertake a systematic and comprehensive education program to raise business awareness.	<p>Budget.</p> <p>Responsibility for administration of the Office of the Privacy Commissioner, including decisions about the allocation of resources, is a matter for the Office itself.</p> <p>The Government notes that the Privacy Commissioner has indicated that she intends to use some of the additional funding to develop educational materials to assist organisations and individuals to better understand their rights and obligations under the Privacy Act.</p>
49 - OPC	<i>The Office will review existing information sheets and develop information sheets on key issues identified in submissions.</i>	<b>Noted.</b>
50 - OPC	<i>The Office will develop strategies for communication with stakeholders, including establishing a privacy contact officer network for private sector organisations.</i>	<b>Noted.</b>
<i>Small business exemption</i>		
51	The Australian Government should consider retaining but modifying the small business exemption by amending the Privacy Act so that the definition of small business is to be expressed in terms of the ABS definition, currently 20 employees or fewer, rather than annual turnover.	<b>Not agree.</b> While the Government supports the retention of the small business exemption, redefining the small business exemption in this way could capture some small operators currently not required to comply with the Act and would increase their costs. It is also inconsistent with cutting regulatory 'red tape' and with workplace reform.
52	The <b>Attorney-General</b> should consider using the power to prescribe under section 6(E) of the Privacy Act, the tenancy databases and telecommunications sectors including Internet Service Providers and Public Number Directory Producers as businesses to be covered by the Act. (See recommendations 9 and 15.)	<b>Noted</b> (see response to Recommendations 9 and 15).
53	The Australian Government should consider amending the Privacy Act to remove the consent provisions (sections 6D(7) and 6D(8)).	<b>Not agree.</b> The Act currently provides a mechanism for dealing with situations in which the consent provisions should not operate.
<i>Private sector contracting</i>		
54	The Australian Government should consider amending NPP 4 to impose an obligation on an organisation to ensure personal information it discloses to a contractor is protected.	<b>Noted.</b> The Government notes Recommendation 56 and that amending National Privacy Principle 4 is a matter that could be considered in the Australian Law Reform Commission's review (see response to

		Recommendation 1).
55	The Australian Government should consider, in the context of the wider review of the Privacy Act (see Recommendation 1) whether there should be a distinction between data controllers and data operators.	<b>Noted.</b> This is a matter that could be considered in the Australian Law Reform Commission's review (see response to Recommendation 1).
56 - OPC	<i>The Office will amend the Guidelines to the NPPs to clarify that businesses that give personal information to contractors for the purpose of performing a function on their behalf should impose contractual obligations on the contractor to take reasonable steps to protect the information.</i>	<b>Noted.</b>
57	The Australian Government should consider amending the NPPs to take into account the practice of due diligence.	<b>Not agree.</b> The Government notes that there have been no complaints about breaches of privacy during the due diligence process. At this time, it appears appropriate to monitor the matter, noting that the Office of the Privacy Commissioner could amend its guidance material so that the material is as clear and comprehensive as possible.
<i>Media Exemption</i>		
58	The Australian Government should consider amending the Privacy Act so that: <ul style="list-style-type: none"> <li>• the Australian Broadcasting Authority (ABA) and media bodies must consult with the Privacy Commissioner when developing codes that deal with privacy and</li> <li>• the term 'in the course of journalism' is defined and the term 'media organisation' is clarified.</li> </ul>	<b>Not agree.</b> The Government is of the view that the appropriate course of action is as outlined in Recommendation 59.
59 - OPC	<i>The Office will, in conjunction with the ABA, provide greater guidance to media organisations as to appropriate levels of privacy protection, especially in relation to health issues, and make organisations aware that the media exemption is not a blanket exemption.</i>	<b>Noted.</b>
<i>Research</i>		
60	As part of a broader inquiry into the Privacy Act (see Recommendation 1), the Australian Government should consider: <ul style="list-style-type: none"> <li>• how to achieve greater consistency in regulating research activities under the Privacy Act</li> <li>• whether regulatory reform is needed to address the issue of</li> </ul>	<b>Noted</b> (see response to Recommendation 1).

	<p>de-identification in the context of research and the handling of health information.</p> <ul style="list-style-type: none"> <li>• where the balance lies between the public interest in comprehensive research that provides overall benefits to the community, and the public interest in protecting individuals' privacy (including individuals having choices about the use of their information for such research purposes)</li> <li>• whether there is a need to amend NPP 2 to permit the use and disclosure of personal information for research that does not involve health information</li> <li>• undertaking further research and education work with the broader community to ensure that the balance between research and privacy accords with what the community expects and understands.</li> </ul>	
61 - OPC	<i>The Office will issue guidance in relation to NPP 2 to clarify that organisations can disclose health information for the management, funding and monitoring of a health service.</i>	<b>Noted.</b>
62 - OPC	<i>The Office will work with the NHMRC to simplify the reporting process for human research ethics committees under the s95A guidelines.</i>	<b>Noted.</b>
<i>Decision making where capacity impaired</i>		
63	<p>The Australian Government should consider, in order to ensure that the Privacy Act does not prevent individuals with a decision-making disability from receiving a range of utilities and other services, amending NPP 2 to permit the disclosure of non-health information to a class of persons the same, or similar, to that described in NPP 2.5, where an organisation considers the disclosure to be necessary for the management of the person's affairs in a way that their financial or other interests are secured or safeguarded.</p> <p>It would be appropriate to consider developing such an amendment in consultation with the Australian Guardianship and Administration</p>	<p><b>Noted.</b> While the Australian Government acknowledges that use and disclosure of personal information about adults with decision-making disabilities raises particular difficulties, it also notes that handling this information requires sensitivity from the time of collection, and in other facets of privacy, such as access. This suite of issues is one that is best considered further in the Australian Law Reform Commission's review (see response to Recommendation 1). In the meantime, the Government notes that the Commissioner has identified in her report a range of options that may go some way to addressing the practical issues faced by adults with decision-making disabilities, including use of a Public Interest Determination, and working with the NSW Privacy Commissioner to adapt the NSW office's Best Practice Guide: privacy and people with decision-making disabilities.</p>

	Committee	
64 - OPC	<i>The Office will, in recognition that disclosures of health information under NPP 2 are appropriately permitted in law but may not occur in practice, develop further and more practical guidance.</i>	<b>Noted.</b>
<i>Law Enforcement</i>		
65- OPC	<i>The Office will work with the law enforcement community, private sector bodies and community representatives to develop more practical guidance to assist private sector organisations to better understand their obligations under the Privacy Act in the context of law enforcement activities.</i>	<b>Noted.</b> The <i>Anti-Terrorism Act 2005</i> , which commenced on 15 December 2005, inserted a new Division 4B to Part IAA of the <i>Crimes Act 1914</i> to include a new 'notice to produce' regime to facilitate lawful Australian Federal Police requests for information and documents that will assist with the investigation of terrorism and other serious offences.
66	The Australian Government, through the Attorney-General, should consider requesting that SCAG consider the issues raised by the Australian Institute of Private Detectives (AIPDs) as they are broader than the Privacy Act.	<b>Agree.</b>
<i>Alternative Dispute Resolution Schemes</i>		
67	The Australian Government, in recognising the important role played by Alternative Dispute Resolution (ADR) schemes, and in an attempt to formalise advice already given by the Office, should consider: <ul style="list-style-type: none"> <li>• amending NPP 2 to enable use and disclosure of personal information to ADR schemes in the course of handling disputes</li> <li>• amending NPP 10 to enable collection of sensitive information where it is necessary for the investigation and resolution of claims under an ADR scheme</li> <li>• defining the term 'Alternative Dispute Resolution Scheme' for these purposes in the Act.</li> </ul>	<b>Noted.</b> This is a matter for consideration by the Australian Law Reform Commission's review (see response to Recommendation 1).
<i>Large scale emergencies</i>		
68	Privacy laws should take a common sense approach. There needs to be an appropriate balance between the desirability of having a flow of information and protecting individual's right to privacy. In developing an exception to disclosure for cases of national emergencies, consideration	<b>Agree in principle.</b> The Attorney-General announced on 29 November 2005 that the Government will amend the Privacy Act to enhance information exchange between Australian Government agencies, state and territory governments, non-government organisations and the private sector in an

	<p>should be given to the seriousness of the privacy breach versus that of protecting privacy.</p> <p>In large scale emergencies, the consequences of disclosure should be compared to the consequences of non-disclosure. Consideration also needs to be given to the potential identity fraud that may occur during such a time, especially if disclosure is allowed to the media.</p> <p>The Australian Government should consider:</p> <ul style="list-style-type: none"> <li>• amending NPP 2 to enable disclosure of personal information in times of national emergency to a ‘person responsible’</li> <li>• extending the NPP 2.5 definition of ‘person responsible’ to include a person nominated by the family to act on behalf of the family</li> <li>• amending the Privacy Act to enable the Privacy Commissioner to make a Temporary Public Interest Determination without requiring an application from an organisation</li> <li>• defining ‘National Emergency’ as ‘incidents’ determined by the Minister under section 23YUF of the <i>Crimes Act 1914</i>.</li> </ul>	<p>emergency or disaster situation. To implement this decision, the <i>Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006</i> was introduced in the Senate on 13 September 2006. The Privacy Commissioner has been consulted.</p>
<i>New Technologies</i>		
69	<p>The Australian Government should consider, in the context of a wider review of the Privacy Act (see recommendation 1) reviewing the National Privacy Principles and the definition of personal information to assess whether they remain relevant in the light of technological developments since the OECD principles were developed. This should ensure that the private sector provisions remain technologically neutral and relevant to protect data privacy in the main contexts in which information about people is currently collected, used and disclosed.</p>	<p><b>Noted.</b> This will be considered in the Australian Law Reform Commission’s review (see response to Recommendation 1).</p>
70	<p>The Australian Government should consider initiating discussions through appropriate international forums about how to deal with major international jurisdictional issues arising from global reach of new technologies such as Voice over Internet Protocol (VoIP).</p>	<p><b>Noted.</b></p>
71	<p>The Australian Government should</p>	<p><b>Agree in principle.</b> The Government will</p>

	consider developing specific enabling legislation to underpin any national electronic health records system. The legislation should be consistent with the National Health Privacy Code, but also include enhancing protections for matters such as the voluntariness of the system and limitations upon the uses of people's health records.	consider this in developing national e-health policy and implementing the HealthConnect initiative. Specific consideration will be given to the legislative framework required to support a national system of shared electronic health records, including national health identifiers. This consideration will take into account the initiatives being progressed by the National E-Health Transition Authority in these areas.
72 – OPC	<i>The Office will issue further guidance, consistent with the current law, on what is personal information which takes into account the fact that in the current environment it is more difficult to assume that any information about people cannot be connected.</i>	<b>Noted.</b>
73 - OPC	<i>The Office could use, if necessary, any new powers to develop binding codes (see recommendation 7) to deal with technologically specific situations.</i>	<b>Noted</b> (see response to Recommendation 7).
NPP 1.3(d)		
74	The Australian Government should consider amending NPP 1.3(d) to make clear that an organisation collecting personal information from an individual must take reasonable steps to notify them of likely disclosures generally, including to public sector agencies of the Australian Government, state or local governments, other bodies and private individuals.	<b>Agree.</b>
Reasonable steps for NPP 1.3 & 1.5		
75	The Australian Government should consider amending NPP 1.3 and NPP 1.5 to make clear that there are situations in which the reasonable steps an organisation might take to provide notice to an individual may equate to no steps.	<b>Agree in principle.</b> Specific consultation regarding notice requirements will be considered in light of the outcome of the Government's taskforce on reducing the regulatory burden on business.
NPP 1.5 Someone		
76	The Australian Government should consider amending NPP 1.5 to remove the term 'someone', and to make clear that an organisation has an obligation to take reasonable steps to provide notice to an individual when collecting their personal information indirectly, from any source.	<b>Noted.</b> This recommendation raises issues that cut across direct marketing activities and will be considered in the Australian Law Reform Commission's review (see response to Recommendation 1).
77 - OPC	<i>The Office will work with the health sector to develop further guidance</i>	<b>Noted.</b>

	<i>about the operation of NPP 2 as it specifically relates to the issue of primary and secondary purpose in health care.</i>	
78 - OPC	<i>The Office will provide clearer guidance on the operation of NPP 2 to give more effective and practical assistance to demonstrate how the principle operates. This will take into account the range of relationships between health services and individuals, particularly where individuals agree to a holistic approach to the delivery of a health service.</i>	<b>Noted.</b>
79 - OPC	<i>The Office will provide further guidance to organisations about their obligations under NPP 3, particularly to ensure they take a proportional approach to complying with the principle. This will include guidance about organisations taking into account whether or not there are good privacy reasons for seeking to update an individual's personal information.</i>	<b>Noted.</b>
<i>Identifiers</i>		
80	The Australian Government should consider using the existing regulation-making mechanism under NPP 7 to address circumstances such as those identified by Centrelink regarding concessional entitlements.	<b>Agree.</b> The Government has used the regulation-making mechanism under NPP 7 to support Centrelink's Customer Confirmation eServices, which allow concession providers to determine a customer's eligibility to concessional entitlements on-line.
<i>NPP 10 Public Interest Determinations</i>		
81	The Australian Government should consider amending NPP 10 to include an exception that mirrors the operation of Public Interest Determinations 9 and 9A.	<b>Noted.</b> This matter will be considered in the Australian Law Reform Commission's review (see response to Recommendation 1).
82	The Australian Government should consider undertaking consultation on limited exceptions or variations to the collection of family, social and medical history information, particularly with regard to genetic information and the collection practices of the insurance industry.	<b>Noted.</b> This matter will be considered in the Australian Law Reform Commission's review (see response to Recommendation 1).
<i>NPP10.2(b)</i>		
83	The Australian Government should consider amending NPP 10.2 to permit the collection of health information (under NPP 10.2(b)(i)) 'as authorised	<b>Agree.</b> The Government notes the strong social interest in the effective and streamlined delivery of health services to health consumers. The <i>Privacy Legislation Amendment Act 2006</i> gives

	by law’ in addition to ‘as required by law’.	effect to this recommendation.
84	The Australian Government should consider amending NPP 10.2(b) (ii) to clarify the nature of the binding rules intended to be covered by this provision, particularly with regard to the substantive content of such rules.	<b>Noted.</b> This matter will be considered in the Australian Law Reform Commission’s review (see response to Recommendation 1).
<i>Deceased Persons</i>		
85	<p>If the National Health Privacy Code is adopted into the Privacy Act (see recommendation 13), then protection for health information under these provisions would extend to deceased persons. Also, the Australian Government’s response to the Australian Law Reform Commission and the Australian Health Ethics Committee’s inquiry into the protection of human genetic information in Australia may have implications for the Privacy Act.</p> <p>In addition, the Australian Government should consider as part of a wider review (Recommendation 1) whether the jurisdiction of the Privacy Act should be extended to cover the personal information of deceased persons.</p>	<p><b>Noted.</b></p> <p><b>Agree in principle</b> (see response to Recommendation 1).</p>