

**Government Response to the
Senate Legal and Constitutional
References Committee Report**

*The Real Big Brother: Inquiry into the
Privacy Act 1988*

2006

Government Response to Recommendations of the Senate Legal and Constitutional References Committee Report *The Real Big Brother: Inquiry into the Privacy Act 1988*

Number	Recommendation	Response
<i>Comprehensive Review</i>		
1	The committee recommends that the Australian Government undertake a comprehensive review of privacy regulation, including a review of the <i>Privacy Act 1988</i> in its entirety, with the object of establishing a nationally consistent privacy protection regime which effectively protects the privacy of Australians.	Agree. The Government has given a reference to the Australian Law Reform Commission (ALRC) 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 committee recommends that the Australian Law Reform Commission undertake the review proposed in recommendation 1 and present a report to Government and to Parliament.	Agree (see response to Recommendation 1 above).
<i>Consistency</i>		
3	The committee recommends that the review by the Australian Law Reform Commission, as proposed in recommendations 1 and 2, examine measures to reduce inconsistency across Commonwealth, state and territory laws relating to, or impacting upon, privacy.	Noted.
4	The committee recommends the development of a single set of privacy principles to replace both the National Privacy Principles and Information Privacy Principles, in order to achieve consistency of privacy regulation between the private and public sectors. These principles could be developed as part of the review by the Australian Law Reform Commission, as proposed in recommendations 1 and 2.	Noted.
<i>Emerging Technologies</i>		
5	The committee recommends the Privacy Act be amended to include a statutory privacy impact assessment process to be conducted in relation to new projects or developments which may have a significant impact on the collection, use or matching of personal information.	Not agree. The Government notes that the Privacy Commissioner is developing a privacy impact assessment process for use by agencies and considers that at this time

		a statutory process is not appropriate.
6	The committee recommends that the review by the Australian Law Reform Commission, as proposed in recommendations 1 and 2, examine the definition of 'personal information' in the <i>Privacy Act 1988</i> , and also any amendments to the definition which may reflect technological advances and international developments in privacy law.	Noted.
<i>Genetic Information</i>		
7	The committee recommends that the Australian Government responds to, and implements, the recommendations of the <i>Essentially Yours</i> report into the protection of genetic information by the Australian Law Reform Commission and the Australian Health Ethics Committee of the National Health and Medical Research Council, as a high priority.	Noted. It is noted that the <i>Privacy Legislation Amendment Act 2006</i> implemented some of the recommendations of the ALRC Report <i>Essentially Yours</i> . (This was done by amending the <i>Privacy Act 1988</i> to include genetic information in the definitions of sensitive and health information. The amendment also provides for the disclosure of genetic information when there is a serious risk to the health of an individual.)
<i>Other Technologies</i>		
8	The committee recommends that the review by the Australian Law Reform Commission, as proposed in recommendations 1 and 2, include consideration of the privacy implications of new and emerging technologies with a view to ensuring that these technologies are subject to appropriate privacy regulation.	Agree. The ALRC has been asked to consider the privacy implications of the rapid advances in information, communication, storage, surveillance and other relevant technologies as part of its privacy review.
9	The committee recommends that the review by the Australian Law Reform Commission, as proposed in recommendations 1 and 2, consider the interaction of the <i>Privacy Act 1988</i> and the <i>Telecommunications Act 1997</i> with a view to recommending measures to reduce inconsistency between these pieces of legislation and to ensure that privacy is adequately protected in the	Noted.

	telecommunications area.	
<i>Private sector provisions</i>		
10	The committee recommends that the Australian Government responds to, and implements, the recommendations of the review of the private sector provisions by Office of the Privacy Commissioner as a high priority.	Noted.
<i>Exemptions</i>		
11	The committee recommends that the review by the Australian Law Reform Commission, as proposed at recommendations 1 and 2, examine the operation of, and need for, the exemptions under the <i>Privacy Act 1988</i> , particularly in relation to political acts and practices.	Noted.
<i>Small Business</i>		
12	The committee recommends that the small business exemption be removed from the <i>Privacy Act 1988</i> .	Not agree. The Government considers that the small business exemption strikes an appropriate balance between the risk of privacy breaches and over regulation of small businesses. Removal of the exemption would be inconsistent with the Government's commitment to workplace reform and cutting red tape.
<i>Employment records</i>		
13	The committee recommends that the privacy of employee records be protected under the <i>Privacy Act 1988</i> .	Noted.
14	The committee recommends that the review by the Australian Law Reform Commission, as proposed at recommendations 1 and 2, should examine the precise mechanisms under the Privacy Act to best protect employee records.	Noted.
<i>Direct Marketing</i>		
15	The committee recommends that the review by the Australian Law Reform Commission, as proposed at recommendations 1 and 2, consider the possibility of an 'opt in' regime for direct marketing in line with the <i>Spam Act 2003</i> .	Not agree. The appropriate mechanism for dealing with privacy issues raised by direct marketing is a matter that could be considered as

		part of the ALRC review.
<i>EU Adequacy</i>		
16	The committee recommends that the review by the Australian Law Reform Commission, as proposed at recommendations 1 and 2, examine measures that could be taken to assist recognition of Australia's privacy laws under the European Union Data Protection Directive.	Not agree. International negotiations are a matter for the Australian Government and negotiations with the European Union are ongoing.
<i>Credit Reporting</i>		
17	The Committee recommends that the Privacy Act not be amended to allow the introduction of positive credit reporting in Australia.	Not agree. Review of the credit reporting provisions in the Privacy Act is a matter that could be considered as part of the ALRC review.
<i>Health information & medical research</i>		
18	The Committee recommends that the Australian Government, as part of a wider review of the Privacy Act, determine, with appropriate consultation and public debate, what is the appropriate balance between facilitating medical research for public benefit and individual privacy and the right of consent.	Noted.
<i>Resourcing & powers of the OPC</i>		
19	The committee recommends that the Australian Government provide an immediate allocation of additional funding to the Office of the Privacy Commissioner to enable it to more efficiently and effectively fulfil its mandate and to ensure genuine and systemic improvements to its operation, both now and into the future.	Noted. 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 the administration of the Office of the Privacy Commissioner, including decisions about the allocation of resources, is a matter for the Office itself.