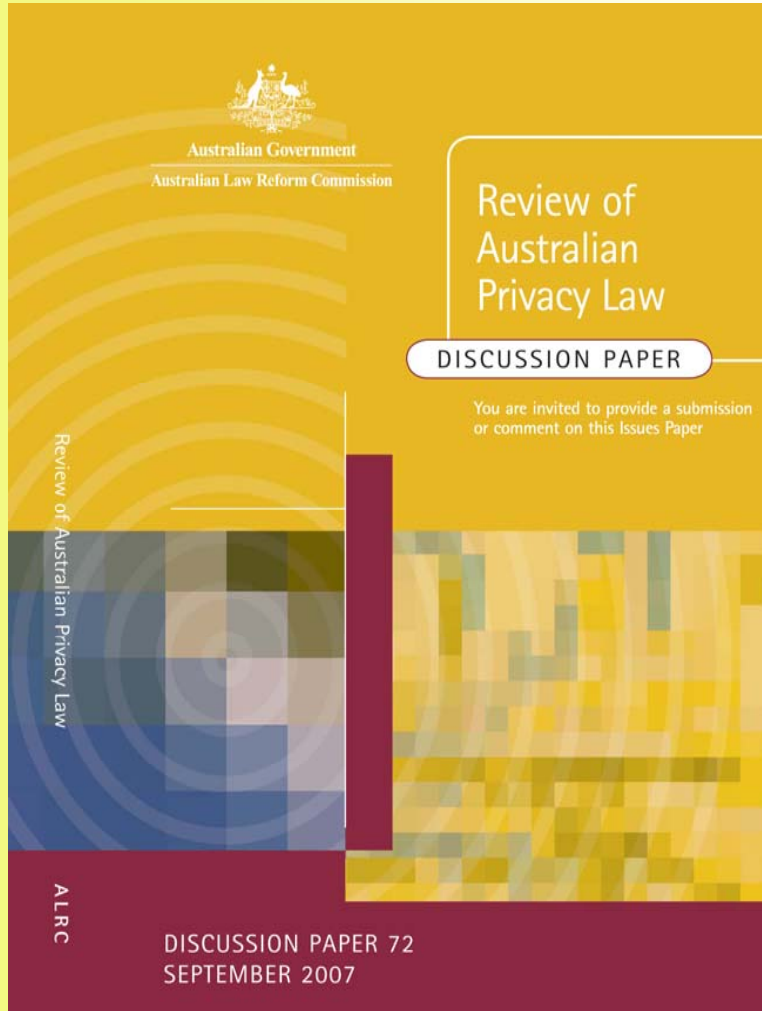


# Release of ALRC Discussion Paper 72: *Review of Australian Privacy Law*



**Media Briefing**  
11 September 2007

by

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**Commissioner**



Australian Government  
Australian Law Reform Commission

# Focus of Presentation

- Overview of the ALRC Privacy Inquiry
- Dealing with the complexity of privacy regulation
- Data breach notification
- Enforcing the *Privacy Act*
- Comprehensive (positive) credit reporting
- Statutory cause of action for invasion of privacy



# ALRC Discussion Paper 72

**Three volumes consisting of 10 parts, 64 chapters and 301 proposals**

- ❖ Part A - Introduction
- ❖ Part B - Developing Technology
- ❖ Part C - Interaction, Inconsistency and Fragmentation
- ❖ Part D - Unified Privacy Principles
- ❖ Part E - Exemptions
- ❖ Part F - Office of the Privacy Commissioner
- ❖ Part G - Credit Reporting Provisions
- ❖ Part H - Health Information and Research
- ❖ Part I - Children, Young People and Adults Requiring Assistance
- ❖ Part J - Telecommunications



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# Community Concern

- Complexity of privacy regulation
  - Handling of personal information often can be subject to 2 or, in the case of health information, 3 separate privacy regimes
  - B.O.P.T.A (Because of the Privacy Act – refusal to disclose)  
'Because of the *Privacy Act*'
  - Compliance burden on individuals and businesses – particularly businesses operating nationally



# Dealing with Complexity of Privacy Regulation - ALRC Proposals

- ***Privacy Act (Cth)*** to apply to Cth public sector and private sector, to exclusion of state and territory privacy legislation
- **Consolidating the IPPs and NPPs** into one set of privacy principles (UPPs) – apply to Cth, states and territories
- **Redraft *Privacy Act (Cth)*** – high level principles in Act, detail in specific regs (eg credit reporting, health), codes (binding and industry), OPC guidance



# Regulatory Framework

## One Set of High Level Privacy Principles

- 1 Anonymity and Pseudonymity
- 2 Collection
- 3 Specific Notification
- 4 Openness
- 5 Use and Disclosure
- 6 Direct Marketing
- 7 Data Quality
- 8 Data Security
- 9 Access and Correction
- 10 Identifiers
- 11 Transborder Data Flows

**OPC  
Guidance**

## Regulations

- can impose more specific, and more or less stringent, requirements

## Industry codes

- deal with operational matters



# Community Concern

- Individuals want to know when their personal information has been compromised
  - Fear of increased risk of identity fraud
  - Electronic databases can be breached – eg hacking
- Businesses are concerned about the costs associated with breach notification – particularly when the risk of harm is small



# Data breach notification – ALRC proposals

- Business or gov't agency required to notify affected individuals and the Privacy Commissioner when there has been unauthorised acquisition of personal information
- Prerequisites to notification
  - Real risk of serious harm to affected individuals
  - Personal information was not encrypted adequately



# Community Concern

- Privacy Commissioner lacks the power to enforce compliance with the *Privacy Act*
  - While most businesses and gov't agencies try to 'do the right thing', the Privacy Commissioner should have more effective powers to deal with those that 'do the wrong thing'



# Enforcing the *Privacy Act* – ALRC Proposals

- Privacy Commissioner should have the power to:
  - Issue a notice to comply to a business or gov't agency if the Commissioner determines that the business or gov't agency has interfered with an individual's privacy
  - Commence proceedings in the Federal Court to enforce the notice
- Civil penalties may be imposed where there is a serious or repeated interference with an individual's privacy



# Comprehensive Credit Reporting

- Australia currently has a ‘negative’, or ‘delinquency based’ credit reporting system – only allows information that detracts from a person’s credit worthiness (eg loan defaults) to appear on a credit file
- Strong push by a large number of credit providers and credit reporting agencies to expand categories of information on a credit reporting file to include ‘positive’ information



# Comprehensive Credit Reporting - Possible Additional Information

- Information about an individual's current loans or credit facilities, including the limits and balances
- An individual's repayment history
- Further information than is currently permitted under the *Privacy Act* relating to overdue or defaulted payments



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# Comprehensive Credit Reporting - ALRC's Proposal

- Expansion of information currently permitted:
  - Type of each current credit account opened (eg mortgage, personal loan, etc)
  - Date on which each current credit account opened
  - Limit of each current credit account
  - Date on which each current account was closed
- Strikes an appropriate balance between enhanced accuracy of credit risk assessment and an individual's right to privacy



# Community Concern

- Currently unclear whether individuals can sue in Australia for intrusions into their private lives or affairs
- Many of those consulted and making submissions argued that privacy is a human right, individuals should be protected from unwarranted intrusions and a statutory cause of action is the best way to ensure such protection
- Some, and in particular media organisations, were concerned about the effect such a cause of action would have on freedom of expression



# Statutory Cause of Action for Invasion of Privacy – ALRC’s Proposals

- A statutory cause of action for invasion of privacy should be provided for in the *Privacy Act*
- To succeed, an individual would have to show that there was a reasonable expectation of privacy in all the circumstances, and that the invasion was sufficiently serious to cause substantial offence
- A number of defences should apply - including that the information disclosed was a matter of public interest or a fair comment on a matter of public interest



# Further Information

ALRC website: consultation papers and past reports available (free) at:

Web: [www.alrc.gov.au](http://www.alrc.gov.au)

Email: [info@alrc.gov.au](mailto:info@alrc.gov.au)

Post: GPO Box 3708, Sydney, NSW, 2001

Submissions on DP 72 close: **7 December 2007**



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