



Rationalisation and clarification of exemptions to the *Privacy Act*

Many agencies and organisations currently are excluded, either wholly or partially, from the application of the federal *Privacy Act*. In the ALRC's view, these exemptions lead to the undesirable fragmentation and complexity of privacy protection. In order to promote a clear and comprehensive privacy regime, the ALRC recommends that a number of these exemptions be removed or modified.

ALRC President, Professor David Weisbrot, said "The literature sometimes draws an analogy between privacy laws and Swiss cheese. If you picture the substantive privacy requirements as the cheese, and the exemptions as the holes, the *Privacy Act* is sometimes accused of being more holes than cheese. The ALRC recommends that exemptions be permitted only where there is a compelling policy justification, and we found that some of the existing exemptions do not meet this benchmark—in particular, the exemptions for small businesses and for political parties."

Small business exemption

Unlike any other comparable jurisdiction, the Australian *Privacy Act* includes an exemption for small businesses—broadly defined in the Act as organisations with an annual turnover of \$3 million or less. The ALRC recommends that this exemption be removed.

The Commissioner in charge of the Privacy Inquiry, Professor Les McCrimmon, said that "The ALRC's recommendation to remove the small business exemption responds to a clear message from consumers that they expect their personal information to be accorded an appropriate degree of privacy, regardless of the size of the organisation that is handling it. Removing the exemption also would bring Australia's privacy laws into line with those in the United Kingdom, Canada and New Zealand, and could facilitate international trade by helping to ensure that Australia's privacy laws are recognised as 'adequate' by the European Union."

The ALRC recognises, however, that the removal of the small business exemption will have cost implications for the sector—although an independent research study commissioned by the ALRC indicated that this would be nowhere near as great as business groups have suggested. In order to minimise this impact, the ALRC also recommends a number of initiatives to support small businesses in complying with their obligations under the *Privacy Act*, including asking the Privacy Commissioner to develop educational materials and templates for preparing privacy policies, and providing a national hotline for small businesses.

Political parties, acts and practices exemption

As in other western countries, Australian political parties compile sophisticated databases that contain a great deal of personal information about individual voters. These include such diverse information as voters' contact details, concerns and voting preferences. However, registered political parties and the political acts and practices of certain organisations are specifically exempted from the requirements of the *Privacy Act*.

Professor Weisbrot said that "The political exemption raises a number of concerns, including that individuals do not know what information has been collected about them by political parties, information obtained from third parties might be inaccurate, and individuals have no right to access or correct the personal information held in these political databases.

"While a very high degree of respect must be given to the independence of political parties in a democratic society, it's also the case that public confidence in the political process is promoted where those who seek or exercise political power must adhere to the same standards required of the rest of the community. The experience in New Zealand and elsewhere suggests that asking political parties to abide by the *Privacy Act* does not compromise their ability to raise funds or conduct campaigns, while respecting personal privacy".

For more information on exemptions to the *Privacy Act*, see Part E (Chapters 32-44) of *For Your Information: Australian Privacy Law and Practice* (ALRC 108, 2008).