



Improved complaint handling and enforcement

Improved complaint handling

The *Privacy Act* provides an avenue for individuals to complain about the acts or practices of an agency or organisation that they believe may be interfering with their privacy interests. The ALRC heard concerns about delays in investigating and resolving complaints under the *Privacy Act*.

The ALRC recommends the streamlining of procedures for handling complaints about alleged privacy breaches. ALRC President, Professor David Weisbrot, noted that current limitations on the Privacy Commissioner's ability to dismiss minor or stale matters hamper her capacity to deal swiftly with complaints from the public.

"The right balance needs to be struck between addressing individual complaints and allowing the Privacy Commissioner sufficient time and resources to investigate major breaches and address broader, systemic issues.

"We recommend a number of simple changes to the *Privacy Act* to assist with this process. For example, the Privacy Commissioner should have the power to decline to investigate a complaint where the matter is being handled by an appropriate external dispute resolution scheme.

"The ALRC also recommends changes to ensure that the process for conciliation is more simple, efficient and transparent. Where the Privacy Commissioner determines that a person's interests have been interfered with, the Commissioner should be empowered to issue a notice requiring the agency or organisation to take specified action within a specified period to ensure compliance with the *Privacy Act*. The Privacy Commissioner also should have the power to approach a federal court for an order enforcing that notice."

Stronger penalties

There are currently no civil penalties available for serious contraventions of the *Privacy Act*, and criminal penalties only exist—but rarely are used—for credit reporting and Tax File Number offences.

"The ALRC found that the *Privacy Act* lacked an appropriate range of penalties to be applied when an organisation or agency failed to comply with the Act," said Commissioner in charge of the Privacy Inquiry, Professor Les McCrimmon.

"The ALRC recommends that the penalty regime be strengthened by allowing the Privacy Commissioner to seek a civil penalty in the federal courts where there is a serious or repeated interference with the privacy of an individual."

Professor McCrimmon noted that "Where there has been a flagrant, serious or repeated breach of the *Privacy Act*, financial penalties will be an appropriate and effective punishment. Even more importantly, the threat of significant financial penalties also provides a strong incentive for organisations to comply with the *Privacy Act* in the first place."

For more information on the ALRC's recommendations on complaint handling and enforcement, see Chapters 46–50 of *For Your Information: Australian Privacy Law and Practice* (ALRC 108, 2008).