

Mr LIONEL BOWEN (Attorney-General)(4.49) —I move:

That the Bill be now read a second time.

The first purpose of this new Privacy Bill is, like its 1986 predecessor, to regulate the collection, handling and use by Commonwealth departments and agencies of information about individuals. The Privacy Bill will establish an independent privacy guardian, the Privacy Commissioner, within the Human Rights and Equal Opportunity Commission, to oversee these matters and handle complaints. In addition, the Bill provides guidelines for the collection, storage, use and security of tax file number information which all tax file number information users are required to comply with.

At the present time, our privacy rights are protected by various existing branches of the law which provide limited protection. The laws on defamation, breach of confidence, copyright and passing off can be used to prevent unauthorised circulation of personal information or comment in various circumstances. Also, statutory secrecy provisions in Commonwealth legislation such as section 16 of the Income Tax Assessment Act 1936 and the vigilance of parliamentary bodies and other community groups have been important in maintaining and promoting the individual's right to privacy.

The enormous developments in technology for the processing of information are providing new and, in some respects, undesirable opportunities for the greater use of personal information. These developments have focused attention on the need for the regulation of the collection and use of personal information by government agencies and for an independent community spokesperson for privacy. The Privacy Commissioner will ensure that some balance is brought to the debate as to the desirability of using the opportunities provided by new information technology to their fullest extent.

There is no doubt that with the greater range of services being provided, governments are accumulating more personal information about individuals in order to provide those services efficiently and effectively. This, together with the ever-increasing capacity of modern computers to search and process information, offers significant potential for invasion of personal privacy by misuse. Also, the legitimate needs of agencies in acquiring personal information and the use made of it must be balanced against the need to sustain personal privacy. It is now clear that legislation is necessary to meet the challenge that information technology is posing for the individual's right to retain some measure of personal privacy. Again, the Privacy Commissioner will have a role in providing advice to government in this area.

Internationally, there is an increasing trend for governments to enact privacy legislation. The Council of Europe's Convention on Data Protection and the Organisation for Economic Cooperation and Development (OECD) guidelines on personal privacy have been developed to encourage countries to take privacy protection measures. Australia has formally signified its intention to adhere to the guidelines and in so doing to take into account in any privacy legislation the principles set out in those guidelines. Most European countries, the United States of America and Canada have enacted privacy protection legislation. It is now an appropriate time for Australia to enact such legislation.

The Government has been giving detailed consideration for some time to comprehensive information privacy protection legislation. In December 1983 a very detailed report and recommendations were received from the Law Reform Commission following a reference to the Commission in 1976. The recommendations included draft legislation which drew on the OECD guidelines. In 1986 this Government introduced privacy legislation. There has been considerable comment and debate on the proposals contained in that Bill. The Government has taken account of those comments in formulating the current Bill.

The scheme of the Privacy Bill is to enunciate a series of rules, called information privacy principles, which are based on the principles recommended by the Law Reform Commission in its draft legislation. Under the principles, Commonwealth agencies must have a lawful purpose for collecting personal information, and the purpose must be related to the functions or activities of the collector. An agency collecting personal information from the individual to whom the information relates must see that that person is generally aware of such things as the purpose for which the information is being collected, whether it is compulsory to supply that information and the collector's usual disclosure practices in relation to that information. The principles require agencies, when both collecting and retaining information, to see that it is relevant to the purpose of collection, up-to-date and complete. Before using any information, agencies must also check its accuracy. 'Personal information' is widely defined to include anything-act, true or false, or opinion-that reasonably identifies an individual.

The principles require agencies to store information records securely against loss or misuse. They are to provide information about the types of personal information they hold. Subject to the Freedom of Information Act 1982 exemptions they are to provide an individual with access to his or her personal information records and to make corrections for accuracy, relevance and completeness. Subject to certain specific exceptions, notably for law enforcement and preservation of life, information may not be used for a purpose or disclosed to a person other than with the agreement of the individual concerned. The exceptions recognise that any claim for privacy by an individual must be considered against equally justified claims by other individuals and the community.

This legislation also recognises the special nature of medical research, in particular epidemiological research. To that end provision has been made to give the Privacy Commissioner and the National Health and Medical Research Council a role in the development and approval of privacy guidelines in the conduct of such research. Commonwealth agencies will be required to comply with the information privacy principles. A breach of the principles will be deemed by the Bill to be an 'interference with privacy'. Under the Bill an individual will be able to complain to the Privacy Commissioner about alleged interferences with privacy, who will attempt to resolve the allegations by conciliation and, failing that, make binding determinations against agencies, including determinations for compensation and costs. In effect, the Privacy Commissioner will be the means by which there will be accountability to the public on the use by government of their personal information.

The Commissioner will be empowered to undertake random audits of agencies' databases to ensure their adherence to the information privacy principles. To help agencies achieve compliance with the principles, the Privacy Commissioner will be able to give advisory opinions, issue guidelines and examine proposed enactments for privacy implications. Where an agency believes that a current or proposed practice that may breach the principles is nevertheless essential to its operations, it will be able to seek from the Commissioner a determination allowing the practice to continue or go ahead without risk of its being found to be an interference with privacy. Such a determination may be granted only if the Commissioner is satisfied that the public interest in permitting the practice substantially outweighs the public interest in adherence to the principles. Such determinations will be able to be disallowed by the Parliament. The information privacy principles in the Privacy Bill will apply to Commonwealth departments and agencies to the same extent that the Freedom of Information Act applies to them.

Since the 1986 Bill the Government has introduced the tax file number legislation which has substantial penalties for unauthorised requests for, recording and disclosure of tax file numbers. The Privacy Bill supplements those protections by providing additional privacy protections by way of requiring that tax file number users comply with statutory guidelines. The Privacy Commissioner, in consultation with the proposed Privacy Advisory Committee, will issue guidelines for the collection, storage, use and security of tax file number information to assist the Commissioner of Taxation and all bodies and individuals lawfully using tax file numbers on what measures should be taken to protect privacy interests. These guidelines will be reviewable by the Parliament which will be able to disallow them.

To ensure that tax file number legislation does not come into operation without adequate privacy protection measures being in place, the Bill includes interim guidelines. These are expressed in broad and general terms, and it is expected that after consultation they will be replaced by more specific guidelines.

The Privacy Commissioner will be able to investigate complaints about alleged misuse of tax file numbers and attempt to conciliate and, failing that, make determinations, including a determination for compensation or costs. Such determinations will not be formally binding as between the parties. If compliance with the Privacy Commissioner's determination is not forthcoming, either the Privacy Commissioner or the complainant will be able to apply to the Federal Court of Australia to have the determinations enforced. Where a complaint is made and the Privacy Commissioner considers that there may be a breach of the offence provisions of the Taxation Administration Act 1953, the Privacy Commissioner is required to inform the appropriate law enforcement authorities of the complaint and suspend his investigations until the relevant law enforcement processes are completed.

I turn to the Government's approach to privacy regulation in relation to the private sector. As I have indicated, the information privacy principles apply only to Commonwealth agencies. Unlike the tax file number guidelines they do not apply to the private sector. The Privacy Commissioner is required to encourage corporations to develop programs for the handling of records of personal information that are consistent with the OECD guidelines on personal privacy. The Commissioner is required to report annually to the Government on the success of these arrangements. The Commissioner will be available to advise private sector bodies on privacy measures and it is hoped that corporations will take significant steps in the future in this regard. The Government will reassess this approach following advice from the Privacy Commissioner. Of course, the tax file number guidelines will apply to the private sector.

I mentioned earlier that the law of confidence is an important existing means of protecting privacy in some circumstances. The Bill includes some limited extensions of the law of confidence recommended by the Law Reform Commission which will further enhance privacy protection. The Bill also includes amendments of the Freedom of Information Act to extend the opportunities for individuals to have access to their personal affairs records and establishes the requirement for such individuals to be alerted to requests for access to those records by others. It also makes essentially machinery amendments to ensure that privacy complaints wrongly directed to other agencies are transferred to the Privacy Commissioner for investigation under the Privacy Bill without inconvenience to the complainant. The Office of Privacy Commissioner, to be established under the Privacy Bill, is expected to have a direct cost to the Government of around \$970,000 in a full-year operation.

The Privacy Bill is the first legislation in Australia to establish a comprehensive code of privacy protection and to provide an enforceable right to privacy. It will provide a practical means for persons who have been adversely affected by a failure to comply with those standards to seek redress. It will also provide an effective mechanism for safeguarding the rights of individuals in relation to the tax file number scheme. I commend the Bill to the House and I present the explanatory memorandum to the Bill.

Debate (on motion by Mr Braithwaite) adjourned.