not been incorporated into Australian law. The High Court held that, where a decision-maker proposes to make a decision which is inconsistent with such a legitimate expectation, procedural fairness requires that the person affected by the decision be given notice and an adequate opportunity to put arguments on the point. The High Court made clear that such an expectation cannot arise where there is either a statutory or executive indication to the contrary.

3. It is a longstanding principle that the provisions of a treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into domestic law by statute. The High Court in the *Teoh* case affirmed that principle but at the same time gave treaties an effect in Australian law, as described in the previous paragraph, which they did not previously have. The Government is of the view that this development is not consistent with the proper role of Parliament in implementing treaties in Australian law. Under the Australian Constitution, the Executive Government has the power to make Australia a party to a treaty. It is for Australian parliaments, however, to change Australian law to implement treaty obligations.

4. The purpose of this statement is to ensure that the executive act of entering into a treaty does not give rise to legitimate expectations in administrative law.

5. The act of entering into a treaty is unlike the considered statements of public policy which previously had been held by the courts to give rise to a legitimate expectation in administrative law. The prospect was left open by the *Teoh* case of decisions being challenged on the basis of a failure sufficiently to advert to relevant international obligations including where the decision-maker and person affected had no knowledge of the relevant obligation at the time of the decision. This is not conducive to good administration.

6. Therefore, we indicate on behalf of the Government that the act of entering into a treaty does not give rise to legitimate expectations in administrative law which could form the basis for challenging any administrative decision made from today. This is a clear expression by the Executive Government of the Commonwealth of a contrary indication referred to by the majority of the High Court in the *Teoh* Case.

7. Subject to the next paragraph, the executive indication in this joint statement applies to both Commonwealth and State and Territory administrative decisions and to the entry into any treaty by Australia in the future as well as to treaties to which Australia already is a party. In relation to administrative decisions made in the period between 10 May 1995 and today reliance will continue to be placed on the joint statement made by the then Minister for Foreign Affairs and the then Attorney-General on 10 May 1995.

8. Where a State or Territory government or parliament takes, or has taken, action to displace legitimate expectations arising out of entry into treaties in relation to State or Territory administrative decisions this statement will have no operation in relation to those decisions.

9. The Government will also introduce legislation to provide that the executive act of entering into a treaty does not give rise to legitimate expectations in administrative law.

ALEXANDER DOWNER DARYLWILLIAMS

Government Opposes Privacy Regime for Private Sector

In this section of the last issue of *Admin Review* it was reported that the Attorney-General's Department had released for comment a discussion paper concerning privacy protection in the private sector.

The Prime Minister has now announced that the Commonwealth Government opposes the proposals. The Prime Minister's Press Release dated 21 March 1997 says

> "I took the opportunity of today's Premiers Conference to raise the Commonwealth's concerns regarding proposals to implement a privacy regime for the private sector. The Commonwealth op-

poses such proposals which will further increase compliance costs for all Australian business, large and small.

At a time when all heads of government acknowledge the need to reduce the regulatory burden, proposals for new compulsory regimes would be counter-productive. On those grounds, the Commonwealth will not be implementing privacy legislation for the private sector.

I asked the Premiers and Chief Ministers not to introduce legislation on this matter within their own jurisdictions. Both the Northern Territory and Queensland have agreed not to introduce such legislation. Other States have indicated that they will consider the Commonwealth's request. I will be writing to the States on this matter.

I noted to the Premiers the Commonwealth's offer of services of the Federal Privacy Commissioner to assist business in the development of voluntary codes of conduct and to meet privacy standards."

In April 1997, the Privacy Commissioner, Moira Scollay, released the following information note:

"Privacy protection in Australia

Background information from the Federal Privacy Commissioner

April 1997

The Federal Government recently announced that it does not intend to introduce laws to protect the privacy of personal information held by businesses about their customers and employees. Current legislation only protects personal information held by the Federal and ACT Governments, and credit reporting and tax file number information.

I and others who have called for wider coverage for privacy laws have done so for a variety of reasons, and over the last few years a significant consensus has emerged about the desirability of protecting the privacy of personal information, wherever it is held.

Consumers want to know how the information they give to business will be used, and want to be confident that their information will be protected against misuse. Businesses want to build loyalty and trust with their customers by assuring them that their information will be protected; and to be certain that their competitors will not either undermine the image of their industry, or put them at a commercial disadvantage, by misusing personal information. Other businesses want to be able to exchange personal information with Europe, New Zealand, Hong Kong and other countries that have laws in place to protect customer and employee privacy. Businesses wanting to encourage their customers to use rapidly expanding new technologies, such as electronic commerce, also want to assure them that their privacy will not be eroded.

To date my office has devoted considerable effort to assisting those business and industry sectors which have taken steps to introduce good privacy practices on a voluntary basis. There have been some successes, which I would like to build on. While there are concerns about compliance costs for business, I would like to explore this issue further. There are already companies implementing good privacy practices, both here and overseas, for whom benefits are seen to outweigh any costs incurred.

However, there have been cases in which the results have fallen short of the standards which individuals should be able to expect. The process has been piecemeal, slow, and resource-intensive, as for each case there is a need to identify appropriate standards, training requirements and dispute resolution mechanisms. Concerns also remain about industry-wide compliance with a voluntary code.

My office has, for some years, argued that uniform national privacy legislation is the best way to implement a scheme of privacy protection which will meet the needs of both business and

consumers, and it remains my view that a legislatively based 'co-regulatory' approach would best achieve this result. I believe it should be possible to devise a statutory regime which is neither onerous nor costly for business.

In the meantime, the most constructive way forward is to work with business and others in the community. I am confident we could develop a voluntary scheme which both achieves adequate privacy standards and minimises red tape for business. We will be reliant on goodwill on all sides to achieve this. While the scheme would be developed for voluntary application and self regulation in the first instance, it must, in my view, be of a standard equivalent to international best practice (including being able to meet the terms of the European Union's Directive), and be able to be given statutory effect if, and when, any of the Australian legislatures decide to pursue this route. This approach would also ensure a level of national consistency which has been requested by business and which is clearly desirable for consumers.

As a starting point for the development of a voluntary scheme, I want to initiate a range of meetings with both business and consumer groups. I have in mind to use as the basis for the discussions a set of principles such as those outlined in the National Standard of Canada entitled "Model Code for the Protection of Personal Information". This code, issued by the Canadian Standards Association in March last year, is a consensus document developed with the involvement of business groups, community and consumer groups and government agencies. The Canadian Federal government has subsequently proposed that the model code form the basis of a statutory regime. The Canadian Code has also been suggested as the basis for an international standard.

Why do we want privacy protection in Australia – What are we trying to achieve?

In the information age, we find that we have less and less control over what others know about us particularly large businesses and bureaucracies that often see us as units rather than as individuals. More and more personal information is available, and its value, for both commercial and public interest purposes, is increasingly recognised. Advances in new technology are making it possible to aggregate data about individuals in ways that have never before been possible. For example, smart cards can be used to track the spending patterns of consumers. It is clear that many people are concerned about the implications of this trend for their personal privacy, and want reassurance that adequate protections are in place.

Protecting privacy is more than guaranteeing confidentiality. The aim of privacy protection in Australia should be to ensure that individuals are informed about what is happening to their information, and are able to participate in decisions about what is collected, who collects it, and why. For Australians to be certain that their privacy is protected, all government agencies, private businesses, non government organisations, community groups and other organisations which handle personal information need to do so fairly and responsibly.

Allowing for some exceptions where there are legitimate business and public interests at issue, fair and responsible handling of personal information means:

- Collecting only information necessary for specified purposes;
- Informing people about why their personal information is being collected and what it is to be used for;
- Allowing people to access information about them which has been collected, and to correct it if it is inaccurate or out-of date;
- Making sure that the information is securely held and cannot be tampered with, stolen or improperly used; and
- Limiting the use and disclosure of personal information for other purposes without the consent of the person affected.

It is also important that people whose information is not handled responsibly can do some-

thing about it. To earn the confidence of all those affected by a voluntary scheme it will need to be perceived as providing a workable mechanism for ensuring compliance with the standards it sets out, and for resolution of complains. Exactly how this is to be achieved will, of course, be a matter for consultation with both business and industry groups, and consumer organisations.

The way ahead now is to begin these consultations as soon as possible, and seek to provide adequate levels of privacy protection with minimal red tape."

On a related point, the Minister for Finance, the Hon John Fahey MP, dealt with the issue of privacy in contracting out in his Media Release of 25 April 1997 (16/97) concerning outsourcing of information technology. The text of that statement follows:

"Outsourcing of Information Technology Infrastructure

I am pleased to announce the Government's in-principle approval to outsource its Information Technology (IT) Infrastructure, subject to the successful completion of competitive tendering processes. This will apply to the Commonwealth Government's IT infrastructure covering computer mainframes through to desktop equipment.

This initiative will generate competition through multiple tenders and deliver economies of scale from aggregating services within – and across – budget-funded agencies. The competitive tendering process will largely be completed within two years.

This initiative will build on the experiences of other governments and private sector organisations, here and internationally, who have already successfully outsourced.

The Government is committed to achieving the best value for its information technology dollar, to support the delivery of services at the lowest cost to the taxpayer.

This initiative creates substantial opportunities for small to medium-sized Australian enterprises. Partnering arrangements with vendors will be encouraged. This will enhance the international competitiveness of local companies through the opportunities created to work with leading edge outsourcers. Small to medium enterprises are also expected to fulfil a significant role in the provision of regional support services which will still be required under outsourcing, particularly for desktop services.

The industry has already indicated there is strong potential for growth in areas such as new data processing capabilities in Australia, scaled to include opportunities in the Asia/Pacific region. Other potential growth areas include new or expanded call centre-type operations in Australia to provide help-desk support services. Employment generating opportunities in regional Australia will be an important factor in the competitive tendering process.

In addition, this initiative will address two other priority matters. First, to ensure the privacy of personal and other sensitive information through stringent contractual conditions; and second, to ensure fair and equitable outcomes for employees so that they are able to make timely and well informed decisions in their own best interest about their career paths.

Discussions about employee transition conditions will continue with agencies, their staff and their representatives. A significant majority of the 2800 employees currently working in mainframe, mid-range and desktop areas will be able to enhance their career opportunities by transferring to private sector suppliers.

The move to more open, competitive processes for delivery of IT infrastructure services is in keeping with the Government's election commitment to streamline the administration of Government and apply the principles of competitive neutrality to improve the management of IT services.

The consolidation and outsourcing of the Government's IT infrastructure represents a fundamental change from twenty years of vertical, agency-focussed IT development. The Gov-

ernment will become a purchaser and not a provider of IT infrastructure, with services supplied by providers whose business - and core competency - is IT."

Customer Service Charters for Commonwealth Agencies

On 26 March 1997, the Minister for Small Business and Consumer Affairs, the Hon Geoff Prosser MP, announced that all Government departments, agencies and business enterprises who deal with the public will be required to develop customer service charters under principles which the Minister has released.

Those principles are contained in a guide called *Putting Service First – Principles for Developing a Service Charter*, which was launched by the Minister at a seminar organised by the Society of Consumer Affairs Professionals in Business Australia, the Commonwealth Ombudsman's Office, the Department of Industry, Science and Tourism and the Australian Competition and Consumer Commission.

Mr Prosser said

> "...the guide will assist continuous service improvement in the Public Service.
>
> This guide is part of our communication to improve the quality of services to the public and ensure public funds are spent in an efficient and effective manner," he said.
>
> It will place customers squarely at the forefront of public service provision.
>
> I expect to announce a timetable for service charter implementation by June 30 this year, and I have asked the Small Business Division within my Department to implement this initiative by giving practical help in the development of service charters and the development of best practice.
>
> I will be taking a personal interest in cross-agency performance in this area, and am especially keen to ensure that there is a rigorous but flexible approach to service charters across the APS.

The service charter principles are available on the Internet at

http://www.dist.gov.au/consumer/charters

or by writing to the Service Charters Implementation Unit, Small Business and Consumer Affairs Division, Department of Industry, Science and Tourism, Lionel Murphy Building, Blackall St Barton ACT 2600 (ph. (06) 250 6959).

The Ombudsman, Philippa Smith, was a key speaker at the seminar and her speech is a Focus Article in this edition of *Admin Review*.

Law and Justice Legislation Amendment Act 1997

The Law and Justice Amendment Bill 1996 was introduced into the Commonwealth Parliament on 12 December 1996 and passed on 26 March 1997. Most of the provisions commenced on Royal Assent, on 17 April 1997 (Act No 34 of 1997). However the provisions relating to the establishment of the Small Taxation Claims Tribunal (discussed below) will commence on proclamation, probably in July this year.

The *Law and Justice Legislation Amendment Act 1997* amends a number of Acts coming within the Attorney-General's portfolio and two Acts within the responsibilities of the Assistant Treasurer and the Minister for Finance.

The following summary of amendments which will be of interest to *Admin Review* readers has been provided by Deborah Turner from the Courts, Tribunals and Administrative Law Branch of the Attorney-General's Department.

The amendments to the *Administrative Appeals Tribunal Act 1975* (AAT Act) will, when they commence, establish a Small Taxation Claims Tribunal within the Administrative Appeals Tribunal (AAT). Rather than creating a separate structure, the Taxation Appeals Division of the AAT is to be known as the Small Taxation Claims Tribunal when it is exercising powers under the new Part IIIAA of the AAT Act.