

Article:	Government won't rush into privacy changes for employee records
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The Federal Government has signalled it will defer consideration of the contentious Australian Law Reform Commission recommendations which would effectively introduce a range of new privacy restrictions on employee records.

In its 2,700-page report delivered this week, the ALRC recommended the removal of the privacy exemption for employee records, which allows private sector employers to retain a wide range of information about staff members, without a duty to protect individual privacy.

This exemption means private sector employers are able to pass on information about current and former workers to other parties, including recruitment companies, as long as this is done for reasons relating to employment.

The ALRC report said the lack of privacy protection for the 84% of Australians who worked for private employers was "unjustifiable", and fell short of privacy standards in comparable countries such as the UK and New Zealand.

"There is no sound policy reason why privacy protection for employee records only is available to public sector employees and not private sector employees."

(Public sector employers are not subject to the employee records exemption.)

Special Minister of State John Faulkner said given that the report contained 295 recommendations, the Government would address these in two stages, and would not look at the removal of exemptions until the second stage. He did not give a time frame for the Government's response.

Stronger privacy regulations will encourage better HR practices: ALRC

The Commission noted that the Australian Chamber of Commerce and Industry had raised concerns, in its submission to the privacy review, that removing the exemption would undermine effective HR management for some organisations.

The Commission said that "on the contrary, good information-handling practices would assist organisations [in] making sound business decisions based on accurate and up-to-date information".

It said that the RCSA had submitted that if the exemption were removed, "specific exceptions should be enacted to permit an employer or a recruitment company to collect, use or disclose an individual's personal health information without consent in certain circumstances".

The RCSA said this should only happen in situations where the individual would "reasonably expect" an employer or recruitment company to handle his or her information.

However the Commission said it didn't agree that there should be a specific exception for organisations to collect health information "without the applicant's consent, for the purposes of assessing his or her suitability to perform particular types of work".



Employers should be able to refuse access to references

Although the Commission called for the exemption to be removed, it also proposed an exception that would allow employers to deny individuals' requests for access to references given about them.

This was in line with existing law covering employees of Government agencies, the Commission noted.

"The referee should be able to provide an honest evaluation about the individual's merits without fear of that evaluation being made available to the individual concerned," it said.

Referees were subject to defamation law, the Commission said, and therefore if faced with the possibility of legal action brought by disgruntled ex-staff, "employers may cease to provide references, or use a disclaimer".