

**PRIVACY AMENDMENT (ENHANCING PRIVACY PROTECTION)
BILL 2012**

SECOND READING SPEECH

The Privacy Amendment (Enhancing Privacy Protection) Bill 2012 is one of the most significant developments in privacy reform since Labor introduced the Act in 1988.

With this Bill, the Gillard Labor Government has implemented more than half of the Australian Law Reform Commission's recommendations in the 2008 *"For Your Information"* Report.

This Bill will bring Australia's privacy protection framework into the modern era. Labor is protecting the privacy of working families.

In an online world, we are increasingly sharing our personal information on social networking sites and paying our bills and buying footy tickets over the internet.

While these technological changes bring immense benefits to working families – there are risks. That's why Labor is tightening up the rules around how companies and organisations can collect, use and disclose personal information.

For the first time, new Australian Privacy Principles will apply to both the private and public sectors. The Principles will continue to deal with the

collection, storage, security, use, disclosure, access and correction of personal information.

But we are introducing a new Privacy Principle for direct marketing and stronger protections for consumers when companies disclose personal information overseas. The new Direct Marketing Privacy Principle will more tightly regulate the use of personal information for direct marketing.

Put simply, it will give working families more power to opt out of receiving direct marketing materials. The onus will be on companies to provide a clear and simple way of opting out of receiving direct marketing materials.

Labor is also extending privacy protections to unsolicited information and introducing stronger and clearer rules around data quality and data correction.

There will be a new requirement in the Privacy Principles for organisations and companies to develop detailed privacy policies – and make them clear and easily accessible to consumers. Labor is shifting power away from big companies – back to working families.

There will be stricter rules about sending a families' personal information outside of Australia. Specifically, privacy policies will need to include whether a company or agency is likely to disclose information to overseas recipients, and if so, which countries the information is likely to go to.

In addition, before a company or government agency discloses personal information to an overseas recipient, the company must take reasonable steps to make sure the overseas recipient does not breach the Australian Privacy Principles. Privacy entities will continue to be accountable for information that is sent overseas.

The Australian Privacy Principles will also require a higher standard of protection to be afforded to "sensitive information" – which includes health related information, DNA and biometric data.

The Government is aware that Senators and Members receive numerous letters and emails about credit reports. Australia's complex and often confusing credit reporting system is being reformed.

In addition to the Gillard Government's responsible lending reforms in the *National Consumer Credit Protection Act (2009)*, we are making it easier for consumers to access and correct their personal credit information.

It is the first major reform since Labor introduced credit reporting in 1990. This Bill modernises credit reporting provisions and will make the credit reporting regime more flexible and less prescriptive by emphasising industry-led complaint resolution.

Banks and financial institutions will be able to see more accurate and positive information about:

1. the types of accounts that families have and when they were opened and closed;

2. the current credit limits of each account (but obviously not the day to day balance, to protect privacy); and
3. positive information about repayment history. For example, when a credit card was paid off on time, not just information about overdue payments.

These reforms will mean more families can access credit. And it will mean the banks can assess credit risks more accurately.

These reforms will be good for business. The finance and credit industry have been heavily involved in developing these reforms. They know – as does this Labor Government – that these reforms will enhance responsible lending in Australia.

It was Labor who supported Australia's economy through the Global Financial Crisis. We supported small business and created three quarters of a million jobs.

These reforms will give the Australian finance and credit industry more information – with the appropriate privacy protections – so that they can make more accurate risk assessments. More information – which will need to be more up to date and accurate under this Bill – will assist both consumers and the credit reporting industry.

It is expected that these reforms will lead to decreased levels of over-indebtedness and then lower credit default rates.

For Australian businesses and the credit industry more comprehensive credit reporting will enable better management of capital and growth targets, improve credit decisions and enhance the effectiveness of how credit reporting agencies collect data.

It is also expected to lead to more competition and efficiency in the credit market, which may in turn lead to more affordable credit and mortgage insurance for families and first home buyers.

Credit providers will now have *positive* obligations to help consumers correct their credit information. It will be easier to make complaints about incorrect credit reporting information. The Bill will also prohibit the collection of credit reporting information about individuals reasonably known to be under the age of 18.

Businesses will get more information, particularly in relation to repayment history – but Labor will protect the privacy of this information. For example, given the sensitive nature of repayment history information, this information will only be available to credit providers who are subject to responsible lending obligations under the *National Consumer Credit Protection Act (2009)*.

In addition, repayment history information can only be retained for a rolling two year period, rather than five years like most of the other information in the credit reporting system.

For families to fully utilise these new powers, they need to be able to get an enforceable remedy. That's why the Gillard Labor Government is

enhancing the powers of the Australian Privacy Commissioner to improve the Commissioner's ability to resolve complaints, conduct investigations and promote privacy compliance.

Under this Bill, the Privacy Commissioner will be able to make a determination to direct an organisation to take specific steps to stop certain conduct, or take reasonable action to redress any loss or damage suffered.

The Commissioner will also be able to obtain enforceable undertakings from an organisation. A Court can then make appropriate orders, including orders for compensation.

The Commissioner will also be able to apply to the court for a civil penalty order against organisations. Penalties range from 200 penalty units – \$22,000 for an individual and \$110,000 for a company – to 2,000 penalty units, which is \$220,000 for an individual and \$1.1m for a company. For serious and repeated breaches of privacy, the penalty will be 2,000 penalty units. This is another remedy for consumers and will encourage compliance with the Privacy Act.

The Privacy Commissioner will also be able to direct agencies to perform a Privacy Impact Assessment, and will be able to conduct Privacy Performance Assessments to check that agencies and organisations are complying with the Australian Privacy Principles.

This Bill will make dispute resolution simpler, quicker and cheaper. The Commissioner will have a new power to recognise and approve an

external dispute resolution scheme for credit reporting disputes. There are new conciliation provisions, so that conciliation can be a dispute resolution option.

In essence, the Australian Privacy Commissioner will have new powers, including the power to seek enforceable remedies for consumers who have had their privacy breached. These are major reforms.

They are major reforms which will help working Australians in practical ways – from correcting their credit information when they apply for a loan, to making a complaint against a bank or telecommunications company. Labor is giving more power to working families.

The Government is allowing industry and government agencies nine months to review and update their privacy policies and practices. That's why the Bill will commence nine months after Royal Assent.

Finally, I would like to thank all of the stakeholders who have worked so hard on these reforms since 2008. The Government is looking forward to continuing to work with them on the Regulations and the Credit Reporting Code.