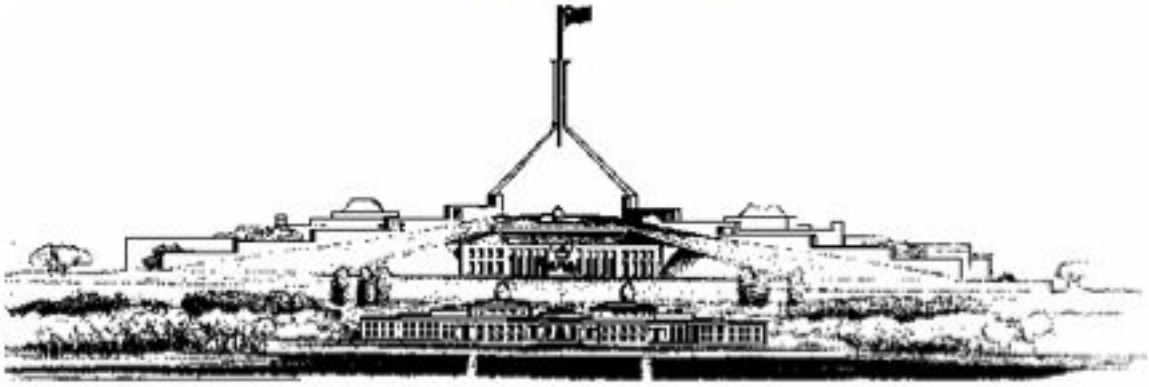
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PRIVACY AMENDMENT (PRIVATE SECTOR) BILL 2000

Second Reading

SPEECH

Tuesday, 7 November 2000

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Tuesday, 7 November 2000	**Source**	House
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Questioner		**Responder**	
Speaker	Albanese, Anthony, MP	**Question No.**	

Mr ALBANESE (Grayndler) (6.14 pm)—I rise today to bring to the House's attention the gross abuse of privacy currently occurring within the Australian real estate industry via the operation of tenancy databases. The Privacy Amendment (Private Sector) Bill 2000, which we are debating today, does not even go close to addressing the real concerns of the tenants of Australia. Indeed, the legislation, which in the government's own words provides a `light touch' regulatory regime, does virtually nothing to protect the growing number of Australians in private rental accommodation. Article 17 of the International Covenant of Civil and Political Rights stipulates that:

> ... no one shall be subjected to arbitrary interference with his or her privacy ...

And it requires that individuals should have:

> the right to the protection of the law against such interference.

Under the current act, government agencies and instrumentalities are regulated regarding the collection of personal information; the storage of and security surrounding such information; the notification of the existence of record systems; the ability for individuals to access their own records; the accuracy and completeness of personal information; and the use of personal information and its disclosure to third parties. But this sensible government regulation of what information can or cannot be gained and stored about individuals is regulation only applied to the government sector. The current act extends these principles into the private sector only in the very limited area of the consumer credit industry and to restrict the use of tax file number information.

In March 1997, the Prime Minister announced that the government would not legislate at the national level to protect private information in the private sector. Instead, the Prime Minister wanted the Privacy Commissioner to liaise with industry bodies with a view to establishing what the government calls a `coregulatory' scheme but which in effect is nothing more than voluntary self-regulation. There are a number of reasons why the government's scheme is a gross dereliction of duty to the Australian public. First, why should private sector companies or interests be less regulated than the government sector when it comes to storing personal information about Australian citizens? Of course, the answer to that is pure ideology.

Especially in the age of the Internet, the access private companies have to information about individuals is quite phenomenal. A well-known example of such a private company database is that held by the Packer--Andrew Robb consortium, Acxiom. This database contains the personal information of over 15 million Australians, gathered without permission through the merging of personal information obtained from numerous Internet sites. Why should private sector companies be given the freedom to self-regulate while government agencies follow the rules?

That brings me to my second point. Self-regulation never works the way imposed government regulation works. No industry is going to set up stringent guidelines to follow, then throw the book at itself if breaches occur. It is unconscionable that, on an issue as fundamental as the right to privacy, the Prime Minister could suggest that there be one rule for government agencies and another for the private sector. Both are capable of holding large amounts of personal information about the Australian populace and both should be treated equally. However, the Prime Minister did not totally get his own way on this issue. The bill being introduced today gives limited effect to national privacy principles which will set out standards of how businesses and other private sector organisations should collect, use, disclose and maintain private information about individuals.

The reason the government has labelled the legislation `soft touch' legislation is that the bill still allows individual businesses to set up their own privacy codes. These codes need to be approved by the Privacy Commissioner and have at least as much privacy protection as the national principles dictate. The issue I am most concerned about in my capacity as Labor's parliamentary secretary for housing is that of tenancy databases. This bill utterly fails the private tenants of Australia. Currently in New South Wales alone, there are five tenancy databases operating. The two largest—Tenancy Information Australasia Holdings Pty Ltd, TICA, and Rentcheck

—between them claim to have over half a million tenants on their databases. Just think about that figure—half a million tenants. The fact that they are able to collect such large listings is partly to do with the myth making that pervades the real estate industry about the numbers of `high risk' tenants in the community who need to be guarded against at all costs. If one compares the numbers of tenants listed on New South Wales databases to the numbers of landlords who claim to have had a big problem with a tenant in the last year, the discrepancy is huge.

According to research undertaken by the Department of Fair Trading in New South Wales, on average 27,500 landlords claimed that they were experiencing a significant problem regarding their tenants each year. Why this means that it is necessary for tenancy databases to keep tabs on over half a million private citizens is anyone's guess. The other point to be made here is that, of the complaints between tenants and landlords that do come before the Residential Tribunal in New South Wales, 95 per cent are solved by either conciliation or a simple hearing. Landlords overestimate the need for tenancy databases to police bad tenants. Most orders from the tribunal are complied with. Indeed it is harder to get ordered moneys from a landlord than it is from a tenant as, unlike tenants, landlords post no bond. There is no objective evidence of significant levels of default by tenants who have losses sustained by landlords. But, of course, tenancy databases, by their very existence, have a built-in incentive to maximise the number of so-called bad tenants. If they say everyone is a good tenant, they go out of business. So you have a built-in profit motive to exaggerate the need for these databases and to include as many citizens as possible. As the Tenants Union of New South Wales stated in its submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into this bill:

> ... what the figures do demonstrate, is that landlords have more than equitable access to the residential tribunal and that the vast majority of problems are easily resolved, by consent or order. Database listing is unlikely to be justified in more than a thousand instances a year—nothing like the hundreds of thousands currently adversely listed.

The reason tenancy databases so desperately need to be regulated is that the self-regulation of the industry has allowed for some very questionable practices regarding what exactly constitutes the criteria for black-listing a tenant. When does someone become a bad tenant, and in whose opinion? Is it a subjective or an objective test? There are no safeguards to ensure that tenants are not listed simply for trivial or malicious reasons. There are no requirements that the allegation be backed up by evidence or that the tenant have a right of reply to his or her adverse listing. The listing is made at the complete discretion of the landlord or real estate agent. This means that the tenant's fear of being black-listed can become a significant weapon in a landlord's armoury. Tenants may avoid raising issues or seeking remedies for disputes for fear of being black-listed.

Tenancy database organisations are now also becoming involved in the policing of tenancy arrears. The Tenants Union of New South Wales is increasingly getting inquiries from tenants who have been sent threatening letters on the 15th day of being overdue with their rent. In all situations there was no courtesy call or inquiry as to the reason why the rent was late. One standard letter, issued by TICA, is particularly severe. It says:

> It is with regret that we are forced to advise you that due to your debt your default has been recorded on our national default tenancy database.
>
> Due to your actions you may now find difficulties in freely obtaining rental accommodation due to the large membership of TICA throughout Australia and New Zealand.
>
> We advise that your debt will now be reported to TICA members advising them of your breach and the date it occurred. We will also advise them of the details of your managing agent.
>
> As a direct result of your actions our member may also commence recovery proceedings which may result in a garnisheeing of your income, thus involving your employer. The matter could then be brought to the attention of the Credit Reference Association of Australia (CRAA). A listing with CRAA would have an effect on your ability to obtain future credit.
>
> A default recorded against your rental history and your credit history is not something which should be taken lightly or disregarded. Your tenancy history and credit history is your responsibility to promote.
>
> We advise that until such time as your debt is cleared your details will remain on the database.
>
> We trust you will appreciate the position in which you have placed yourself. Should you wish to discuss this matter further you can call TICA on the number below.

This letter directly threatens the tenant's ability to find rental accommodation in the future, it threatens to involve the tenant's employer in recovery proceedings and it threatens the tenant's ability to obtain future credit.

But that is not the worst aspect of the letter. The number that the tenant is asked to call if they want to discuss the matter further or perhaps defend themselves against false allegations is charged at a rate of $4.95 per minute. A five-minute conversation would cost a tenant $25—$25 to clear your name of a false allegation, $25 to explain that you had been out of town but would be paying double the rent this week. These letters are automatically triggered and are sent to people that are 15 days late in paying their rent.

However, there is some light at the end of the tunnel, courtesy of the ACCC. In September this year, the ACCC found that a Cairns based real estate agency using letters very similar to the one I have just described had engaged in `false or misleading representations and may have engaged in undue harassment or coercion in relation to the payment for goods and services'. The real estate agency was forced to provide court -enforceable undertakings that admitted its harassing conduct and admitted that in sending the letters the agency was likely to have breached the Trade Practices Act 1974. The agency was then required to make a commitment that it would not repeat the misrepresentations. It had to agree to the implementation of a trade practices compliance program and was forced to send corrective letters of apology to the two tenants concerned. The ACCC findings demonstrate more than ever why it is so important that the federal government regulate tenancy databases.

State governments have tenancy tribunals and laws to ensure that bad or defaulting tenants are evicted or forced to pay their arrears. There is strong legal protection for the owners of rental property. Although no-one is disputing a landlord's right to check out the credentials of prospective tenants, that does not give landlords a right to put on a database, without regulation and with impunity, private information about individuals. For the first time in Australia's history, home ownership has fallen below 70 per cent. More and more Australians rely upon the private rental market for both their short-term and, increasingly, their long-term accommodation needs. As the Tenants Union of New South Wales said in its submission:

> ... where the satisfaction of the human right and need for housing is at stake, competent and authoritative regulation is needed, to protect individuals from unwarranted discrimination and to protect our community from the adverse impacts of increased housing hardship and the social costs of dislocation and homelessness.

The union therefore believes that the principles applied to tenancy databases should ensure that: tenants are only listed in justifiable and verified circumstances; tenants are informed that they have been listed and why they have been listed; tenants are able to easily and freely correct wrong information; standards of security of information are developed; there is accessible legal redress available to tenants wrongly listed; and suitable penalties apply to database operators to ensure compliance with privacy guidelines.

The government's bill today addresses none of these concerns. Labor has therefore moved amendments to ensure that tenancy databases are more effectively covered by this bill. Labor, unlike the government, believes that the growing numbers of residential tenants in Australia deserve to have their privacy protected. Labor does not believe the rhetoric of a minority of extremists in the real estate industry that private renters are all potential criminals who need to have their lives and pay packets closely monitored at all times. Labor believes that tenants must be able to access the same privacy protection procedures as any other citizen. Labor defines tenancy information as `information or an opinion about an individual collected in connection with the provision of residential accommodation to the individual that is also personal information'. Labor's amendments ensure, therefore, that tenancy databases do not come under the small business exemption. The small business exemption allows the bill not to apply to small business for 12 months after the legislation commences. It also allows certain small businesses to continue to be exempt from the legislation unless they maintain certain sorts of information, as defined by the act.

Sitting suspended from 6.30 p.m. to 8.00 p.m.

Mr ALBANESE—Labor's amendments to the Privacy Amendment (Private Sector) Bill 2000 ensure that this exemption does not apply to operators of tenancy databases. Under the bill, if a small business disclosed `personal information about another individual to third parties for a benefit, service or advantage', or if a small business collects `personal information about another individual from third parties by providing a benefit, service or advantage', then a small business is not exempt from the operation of the act. If Labor's amendments are successful, operators of tenancy databases will be amongst those small businesses that are forced to comply with the act. However, this compliance may not be too taxing as this bill as presently drafted has no effective application to existing databases. Section 16C excludes the application of privacy principle 2, which relates to the use and disclosure of personal information to existing databases. The same section provides that privacy principle 6, which relates to access and correction of personal information, will also not apply to existing databases. This

means that any tenant who suffers damage as a result of inaccurate information currently held on them will be unable to do anything about it.

This bill allows for the perpetuation of inaccurate and prejudicial information already collected. It seems bizarre that the bill draws the line so arbitrarily between personal information collected before and personal information collected after the commencement of the act. Surely all personal information, no matter when it was collected, should be subject to the same privacy regulation and laws. The law should be about consistency across the board, not chronological discrepancy as allowed for in this bill. Labor has therefore moved amendments that ensure that privacy principles 2 and 6 will immediately apply to existing data, with an exception where it is administratively impossible for the organisation to provide such access. This exception is unlikely to apply to tenancy databases as their business depends on the ready and speedy provision of tenancy database information. Labor's amendments, if passed, will mean that people will be able to seek access to and correct existing tenancy database information.

Labor's commitment to fairness for the private tenants of Australia is not restricted to moving amendments to this bill. At the ALP national conference in Hobart this year, Labor included as part of its national housing strategy the introduction of national tenancy standards. This inclusion is the first time that Labor's platform has committed us to such a measure. It states:

National tenancy standards that will provide for security of tenure and consumer safeguards for tenants including caravan park residents and boarders and lodgers. As a condition of funding under the CSHA, state and territory governments will be required to comply with national tenancy standards designed to protect tenants' rights. These standards will ensure that tenants' rights are protected in relation to matters such as eviction, unfair rents, repairs and maintenance, quality of rental accommodation, appeals and bond security.

The platform also pledges Labor to:

. the development of a national rental housing standards code in consultation with non-government tenancy organisations. This code will outline best practice legislative standards required by the Commonwealth;

. ensuring that all states and territories have independent review mechanisms for resolving tenancy disputes; and

. supporting the regulation of tenant databases through stronger privacy protection including independent monitoring of compliance and access to affordable dispute resolution processes.

This bill represents a wasted opportunity. In the era of information technology and the World Wide Web, government needs to ensure that, more than ever, the privacy of its citizens is protected. This bill allows the private sector to be treated with a softer touch than government agencies and allows current tenancy databases to continue unregulated and unchecked. This bill fails the growing number of private tenants in Australia. I urge the government to support Labor's amendments. *(Time expired)*