

Subject: Submission from the National Relay Service to the proposed amendments to the Australian Privacy amendment legislation
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To whom it may concern.

The National Relay Service [NRS] made a submission to the Australian Law Reform Commission in December 2007 in relation to the Review of the Privacy Act 1988.

We have worked consistently since then with the Office of the Privacy Commissioner and subsequently with the Office of the Australian Information Commission.

The focus of this has been to clarify the role of a relay officer. [See more about relay officers at www.relayservice.com.au and particularly <http://www.relayservice.com.au/making-a-call/making-a-call-with-little-or-no-speech/is-the-nrs-right-for-me/#2>] in relation to privacy legislation.] In particular, this work has focussed on credit reporting matters.

We were heartened to see the Government's response to the ALRC Recommendation 59-3. Specifically, the comment in the response indicating that the Government notes that the recommendation is 'not intended to make onerous restrictions on those third parties who are assisting individuals with a credit reporting agency or a credit provider [such as through a translator or the National Relay Service]'. We note that the ALRC suggested that OPC guidance on third party representatives should make reference to NRS service and the **consensual basis** on which they operate.

The NRS is now concerned that Clause 192 [Meaning of access seeker] of the credit reporting provisions in the exposure draft of the Australian Privacy Amendment Legislation could be interpreted to cover someone in the role of a relay officer. If this is so, it would imply that the NRS caller would need to provide prior written permission to the credit provider for the relay officer to be on the line because the relay officer would, in fact, be the 'access seeker'.

The NRS believes this would create an onerous restriction on individuals [which the Government - in its response to ALRC recommendations - specifically said was not its intent]. We believe it would also be impractical and are also concerned that it could reduce the NRS's ability to achieve its legislated intent.

Some scenarios and questions may be useful to explain this.

PERSONALLY ONEROUS

An NRS user calls a credit agency and cannot proceed with the call because the credit agency is unsure about need for written authorisation. Whether written authorisation can be obtained during the phone from the customer via the NRS relay officer will depend on the call type the customer uses.

- In **Type and Read, Type and Listen, and internet relay** calls, customers type what they want to say (either on a special phone called a TTY, or using the internet), and the NRS relay officer reads it to the other party (that is, the credit provider). Because the individual is writing text during the NRS call, they are able to give written [typed] consent via the NRS relay officer. Organisations would need to consider whether accepting the NRS relay officer's confirmation that consent has been given in writing as sufficient evidence of written consent.
- In **Speak and Read, and Speak and Listen** calls, customers use their own speech. Because the individual does not write during these calls they cannot give written consent via the NRS relay officer. For these types of calls, **written consent will be required before making a call for credit information purposes through the NRS**. Under the current Privacy legislation, the time delay in accessing, completing and returning an authorisation form is onerous and often severely disadvantages the NRS caller. This would also be the case if a relay officer is considered an 'access seeker' under the proposed Australian Privacy Amendment Legislation. As well as the time delay, some NRS callers [particularly Speak and Listen callers who often have multiple disabilities] may need assistance completing and signing an authorisation form.

OPERATIONALLY IMPRACTICAL

- At this point, NRS is unclear whether such authorisation forms need a specific named individual or whether wording such as the following would be suitable: 'any person employed in the role of Relay Officer by the party contracted by the Commonwealth to provide the Relay Service'. If a specific named individual is required, this would be prohibitive as any of 120 relay officers may take the call.
- In addition, all relay officers use pseudonyms to protect their anonymity; their real names are kept

confidential. We are unsure if the provision of a pseudonym would meet authorisation requirements

POTENTIALLY CONFLICTING

If a relay officer is considered 'an access seeker', it may work against the legislated intent of the NRS – that the Relay Officer is a silent/ hidden/ minor party in the conversation and only relays what is said by either of the two parties.

[Note that the Telecommunications (Consumer Protection and Service Standards) Act 1999, Part 3, Division 1 states that “..the NRS provides persons who are deaf or who have a hearing and/or speech impairment with access to a standard telephone service on terms, and in circumstances, that are comparable to the access other Australians have to a standard telephone service.”]. The NRS is concerned that the need for authorisation of a relay officer could reduce trust in the NRS – and, overall, reduce the NRS's ability to achieve its legislated intent.

I would be happy to speak further to these issues should you require more information

Yours Sincerely

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