

4 August 2010

The Secretary
Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

BY EMAIL fpa.sen@aph.gov.au

Dear Secretary

Australian Privacy Principles

The Westpac Group appreciates the opportunity to provide a submission to the Senate Committee on the Exposure Draft of the new Australian Privacy Principles (the Principles). We also thank the Committee for the extension of time to respond, which has allowed us to more fully consider the operation of the Principles and to provide meaningful feedback for policy development.

The Westpac Group ("Westpac") includes Westpac Banking Corporation, St George Bank, BankSA and RAMS, as well as the wealth management businesses of BT and Asgard.

Westpac's previous support of the Australian Law Reform Commission's review and the Government's efforts to modernise Australian privacy law continues in this submission, and we will continue to engage with the Government to ensure appropriate outcomes are reached for the mutual benefit of Australian consumers and businesses.

In addition to the views expressed in this submission, as a member of the Australian Bankers' Association we support the ABA's submission. Our submission focuses on the Principles that we believe can be improved by amendments we outline.

Transitional arrangements

We believe that appropriate transitional arrangements are the most important issue in the implementation of the new Principles. Appropriate transitional arrangements comprise two key elements:

- A suitable transitional period that takes account of the particular changes required to companies' privacy policies and systems. The transition period should also be set in the context of the significant regulatory change experienced across the financial services industry in the past 18 months and expected to continue for the foreseeable future such as the National Consumer Credit Protection reforms, the implementation of the Australian Consumer Law and Personal Property Securities amendments. Each of these reforms on their own represents significant change in financial services. We believe twelve months is an appropriate transition period.

- Clear guidance as to how the Principles apply to personal information collected prior to the commencement of the amended Privacy Act.

OUR VIEWS ON THE PRIVACY PRINCIPLES

Australian Privacy Principle 1 – Open and transparent management of personal information

Principle 1(2) requires an entity to “*take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the entity’s functions and activities that:*

...

(b) will enable the entity to deal with inquiries or complaints from individuals about the entity’s compliance with the Australian Privacy Principles.”

While Westpac supports the policy objectives of openness and transparency with respect to personal information, we wish to clarify the extent to which the requirement to provide information about privacy law compliance in Principle 1 (2) (b) applies to an entity.

In our view, to avoid abuse of this requirement, we would propose an amendment that would require a nexus between an individual and an entity in the circumstances where an individual makes an inquiry or a complaint about that entity’s compliance with the Principles. This doesn’t abrogate an entity from the responsibility to provide information about its privacy law compliance but, given the costs in complying with this obligation, it does reasonably limit its legal duty to provide this information to a person who has a connection to the entity, such as being a customer (actual or potential) or a member of that entity.

Australian Privacy Principle 4 – Receiving unsolicited personal information

In Westpac’s view, the policy focus of this principle should be on the ‘use’ of the information, rather than merely receiving or collecting the information.

To illustrate this issue, consider the example of a customer who has contacted a Westpac call centre (where it is standard practice to record telephone conversations for training and other purposes) and volunteers personal information that is superfluous to Westpac’s requirements. To be clear, the customer offers personal information that is not solicited by Westpac. Principle 4 requires Westpac to begin a process of determining whether the information could have been collected under Principle 3 as if it had been solicited. If it is then determined that the entity could not have collected that information, Westpac would then be required to, as soon as practicable, destroy or de-identify the information.

The difficulty of isolating such information from electronic recording would make its deletion almost impossible, requiring Westpac to rely on this activity being not “reasonable” in accordance with Principle 4 (4).

Given the risk in this approach, Westpac recommend that the principle is instead amended to focus on the subsequent ‘use’ of such information.

Principle 7 – Direct marketing

We refer to our comment above regarding “Transitional arrangements” and highlight that despite a lengthy transitional arrangement the requirement to know the source of personal information currently held by the Bank could not be retrospectively applied. Further, given the number of sources of personal information for new Westpac customers, establishing IT infrastructure to record such information (and the contact information for those sources to be updated of any change) would prove highly difficult, and extremely expensive, to the Bank.

On this basis we support the ABA’s practical suggestion that the requirement to record the source of information received from third parties for the purposes of direct marketing (and informing those third parties of any change to the information held by Westpac) be limited to non-existing Westpac customers.

Principle 8 – Cross-border disclosure of personal information

In addition to the position outlined in the ABA submission, to assist Australian companies to comply with their privacy law obligations we recommend the Office of the Privacy Commissioner (OPC) develop and publish for industry use a list of countries that it considers has privacy legislation equivalent to Australia's regime. This mirrors an approach used by some international jurisdictions in relation to Anti-Money Laundering legislation.

Principle 12 – Access to personal information / Principle 13 – Correction of personal information

Westpac notes and supports the approach of "reasonableness" when determining a timeframe for a response to an individual, in preference to setting a specified period in which to comply.

In developing guidance for industry regarding reasonable response times, we recommend the OPC engage closely with industry to develop flexible and appropriate guidance.

Conclusion

Westpac commends the consultative approach taken by the Government, which builds on the approach taken by the Australian Law Reform Commission. We look forward to constructive ongoing discussions regarding continuing reform of privacy laws in Australia.

Yours sincerely,

Ryan Bloxsom

Senior Manager – Group Government & Industry Affairs
Corporate Affairs & Sustainability