

**SENATE STANDING COMMITTEE ON
FINANCE AND PUBLIC
ADMINISTRATION**

LEGISLATION COMMITTEE

**Exposure Drafts of Australian Privacy
Amendment Legislation**

SUBMISSION

SUBMISSION NUMBER: 33

SUBMITTER

Australian Privacy Foundation



**Australian
Privacy
Foundation**

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18 August 2010

Senator H. Polley
Chair
Senate Finance and Public Administration Committee
P.O. Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Polley

Re: Exposure Draft of Australian Privacy Amendment Legislation

The Australian Privacy Foundation (APF) is the primary advocacy organisation in the area, and has, during the last 20 years, provided evidence to a great many Senate Committees. A standard background paper is attached.

I refer to the Committee's current Inquiry into the above matter, and regret that we have been unable to send this submission earlier.

The APF has serious concerns about many aspects of the Exposure Draft.

1. Process Matters

Details of the Exposure Draft have not been negotiated with a body that includes representatives of all interested parties.

Instead, the detailed drafting strongly reflects interests of government agencies, and of business; and it consequently contains many privacy-hostile features.

2. Lack of a Complete Package

Privacy Principles may be the centrepiece of the proposed legislation, but they are far from the whole story.

It is not feasible to conduct analysis and form a reliable opinion, when only part of the draft legislation is made available.

3. Exemptions and Exceptions

The existing privacy laws are grossly undermined by the raft of exemptions and exceptions.

The Exposure Draft not only sustains the existing exemptions and exceptions, but also extends the list, in accordance with special pleadings made by various agencies and industry groups behind closed doors and without the involvement of civil society.

It is unacceptable for any organisation to be exempted from privacy laws.

The appropriate approach is to impose obligations in relation to personal data on all organisations, and then construct enforcement regimes that reflect the somewhat different contexts of, for example, law enforcement agencies.

4. Considerable Weakening of Existing Privacy Principles

Far from enhancing privacy, the new Principles further weaken privacy protections.

This applies in particular to Collection (3), Use and Disclosure (6), Cross-Border Disclosure (8), and Government Identifiers (9).

All of these contain very serious reductions in the existing legal protections, which should not be passed by the Parliament.

5. Further Empowerment of the Direct Marketing Industry

The legislation of 2000 provided legal authorisation for many practices of the direct marketing industry that represent breaches of privacy and are highly unpopular with consumers. The Exposure Draft goes even further.

Firstly, it establishes a framework, but then fails to create obligations, sanctions and enforcement mechanisms.

Secondly, it elevates Direct Marketing to a 'Privacy Principle' (APP 7) – a corruption of the notion of privacy law that deserves, and would inevitably result in, even more public cynicism about the purpose of so-called 'privacy law' and the power of the industry over the Parliament.

6. Detailed Drafting


(Prof) Graham Greenleaf and former Deputy Privacy Commissioner Nigel Waters are both longstanding APF Board members. The APF is aware of the submission authored by them and submitted on behalf of the UNSW Cyberspace Law & Policy Centre (CLPC).

The APF supports both the general points and the many specific points made in the CLPC submission.

The APF's position is that enactment of legislation based on the Exposure Draft would represent a very substantial further reduction in the power of consumers against corporations, and of citizens against government.

The APF submits that the Parliament needs to return the document to the Government and indicate that engagement with relevant civil society organisations is essential during the preparation of such a document, and that a large range of major changes are necessary in order to convert it into a statute that provides privacy protections.

Yours sincerely


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Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF's Board comprises professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by a Patron (Sir Zelman Cowen), and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87)
<http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90)
<http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07)
http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-)
<http://www.privacy.org.au/Campaigns/Media/>