

9 July 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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PRIVACY AMENDMENT (ENHANCING PRIVACY PROTECTION) BILL 2012

The Fundraising Institute Australia (FIA) is the professional organisation for charitable fundraising. FIA welcomes the opportunity to make a submission in relation to the above Bill, particularly relating to the proposed Australian Privacy Principle 7 – direct marketing.

About Fundraising Institute Australia (FIA)

Established in 1968, FIA's purpose is to make the world a better place by advancing professional fundraising through promotion of standards, professional development pathways and measurable credentials so that members can achieve best practice.

The FIA has developed the Principles & Standards of Fundraising Practice as the professional fundraiser's guide to ethical, accountable and transparent fundraising. The Principles & Standards are vital to how the fundraising profession is viewed by donors, government and the community.

Summary

Adequate privacy laws to protect donors' personal data are an essential component of charitable fundraising in this country. FIA basically supports the Privacy Amendment Bill under review believing that the proposed new Australian Privacy Principles achieve their stated aim of updating Australia's data protection regime.

We do, however, have major problems with two aspects of APP7. Specifically there is confusion around the prohibition on direct marketing and lack of clarity around the new requirement for opt-out in each direct marketing communication.

FIA is also disappointed at the continuing uncertainty surrounding the Statutory Cause of Action for Serious Invasion of Privacy. Comment on this was sought in a discussion paper released late last year at a difficult time for the charitable sector because it coincided with a crucial period in the Not-for-Profit reform process.

FIA submits that the Committee should recommend that the Government use the opportunity of Parliamentary consideration and debate on privacy to clarify that the tort of privacy is no longer a policy option.

Prohibition on direct marketing

FIA asserts in the strongest possible terms that the above statement which appears at the beginning of APP7 should be deleted as it is both unnecessary and unnecessarily confusing.

Charitable fundraising depends on direct marketing techniques to raise the funds necessary to deliver services and provide succour to those in need. We are advised there may be some technical legal reason for drafting APP7 this way, but it flies in the face of common sense and will cause confusion and distress in the fundraising community, particularly among smaller charities.

FIA has a membership in common with the Australian Direct Marketing Association, with some of the larger charities being members of both. FIA's membership includes large and small charities as well as a range of individuals and smaller not-for-profit entities which may, for instance, engage in only one fundraising activity a year. FIA is already receiving calls from members worried about their ability to continue their normal fundraising activities utilising direct marketing methods.

The Committee's attention is drawn to the speech by the Assistant Treasurer, Hon David Bradbury, on 17 May 2012 – Progressing Not-for-profit Sector Reform – in which he said:

“I know that every minute spent reading a discussion paper or preparing a submission means the diversion of precious resources away from vital service delivery; or the selfless donation of time above and beyond the call of duty.”

FIA submits that the confusion in the Bill as it currently stands is an illustration of the Minister's point.

FIA urges the Committee to recommend removal of the confusing and unnecessary references to 'prohibition' of direct marketing both in the italicised heading to APP7 and in 7.1. FIA supports the specific amendment put forward by ADMA.

Opt-out requirement in each direct marketing communication

The lack of clarity around APP7.3(d) is another example of uncertainty injected into the Australian Privacy Principles at the last minute when stakeholders thought such matters had been settled.

Fundraisers use mail and telephony extensively for soliciting donations but are rapidly adopting email and digital channels. While there is no problem with providing opt-out details with mail, this is not the case with the new social media.

FIA believes that there has not been sufficient consultation with this latest iteration of the APP7 and that it is not technology neutral. There is clearly a case for further amendment to ensure that the Principle will apply in all circumstances, with provisions for specific channels being worked out with the Privacy Commissioner in codes and/or guidelines to ensure technological neutrality.

If the Bill becomes law in its current form, FIA anticipates considerable difficulty in advising members what they can and cannot do.

In additional to being concerned about the lack of clarity around opt out requirements for digital and social media already in existence, FIA believes there has not been sufficient consideration of how this might cause further confusion as even newer channels emerge in this rapidly changing environment.

FIA will be available to participate in public hearings if required.

Yours sincerely,

Rob Edwards
Chief Executive Officer