

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
SUPPLEMENTARY BUDGET ESTIMATES 2011-2012

Attorney-General's Portfolio

Department/Agency: Attorney-General's Department
Outcome/Program: 1.1.4
Topic: APEC Cross Border Privacy Rules system

Senator: Senator Rhiannon
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Question:

How does the government anticipate the APEC Cross Border Privacy Rules system will work in relation to Australian businesses, in the context of compliance with the Privacy Act Transborder Data Flow Principle NPP9 and the proposed replacement Australian Privacy Principle APP 8?

Answer:

Both NPP 9 and APP 8 provide mechanisms to permit the cross-border disclosure of personal information to a recipient who is bound by a binding scheme.

NPP 9 permits an organisation to make a transborder transfer of personal information if the organisation reasonably believes the recipient is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the personal information that are substantially similar to the NPPs.

The Australian Privacy Principles Exposure Draft contains APP 8, which will apply to cross-border disclosures of personal information. APP 8(1) permits cross-border disclosures on the basis that an agency or organisation remains accountable for any such disclosures, by specifically requiring the agency or organisation to take steps that are reasonable in the circumstances to ensure the recipient does not breach the APPs (such as entering a contract setting out the obligations). APP 8(2)(a) states that these requirements do not continue to apply where an entity reasonably believes that:

- (i) The overseas recipient is subject to a law or binding scheme that has the effect of protecting the information in a way that, overall, is at least substantially similar to the way in which the APPs protect the information; and
- (ii) There are mechanisms that the affected individual can access to take action to enforce that protection of the law or binding scheme

The APEC CBPR system establishes binding arrangements on participating organisations that will be supported by a network of regulators from participating APEC member economies. Organisations are required to meet minimum standards in relation to their privacy policies and practices and there are certification, monitoring and complaints handling processes established as part of the CBPR system.

Practical implementation of the CBPR system, including the establishment of necessary mechanisms and governance structures to run the system, are scheduled to occur during 2012.