

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

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Question No. 30

Senator Stott-Despoja tabled the following question at the hearing on 23 May 2007:

Fraud control

When Australians sign up to use PayPal for online purchases (e.g. E-Bay) they agree (in the conditions, which they are assumed to have read) that the contract will be bound by the laws of the USA and Singapore. Is the AG concerned by this? Is Australians financial information adequately protected during transfer? Does the AG have any plans to legislate that online contracts entered into by Australians must be also bound to the laws of Australia?

The answer to the honourable senator's question is as follows:

Where Australians sign up for online purchases that are governed by foreign laws, the *Privacy Act 1988* (Cth) applies to the transfer of financial information by organisations, including financial institutions that are covered by the Act. The National Privacy Principles (NPPs) in the Act impose privacy obligations on these organisations in relation to the collection, use, disclosure and handling of personal information. The NPPs extend to certain acts and practices that these organisations undertake outside Australia.

NPP 9 only permits the transfer of personal information by an organisation in Australia to a recipient in a foreign country if:

- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for the fair handling of the information that are substantially similar to the National Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual;
 - (ii) it is impracticable to obtain the consent of the individual to that transfer;
 - (iii) if it were practicable to obtain such consent, the individual would likely to give it; or
- (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

The Australian Prudential Regulation Authority has prudential standards that contain requirements relating to the security and confidentiality of information in any off-shoring agreement, and has released a prudential practice guide on off-shore outsourcing (PPG 231 – Outsourcing) for banks building societies and credit unions which is consistent with the NPPs.

The Australian Law Reform Commission (ALRC) is conducting a comprehensive review of Australia's privacy laws and this includes looking at the issue of whether organisations should be required to inform individuals that their personal information is being transferred outside Australia, and if so, what form such notification should take. The ALRC is due to release its discussion paper in September 2007 and the final report is due 31 March 2008. The Government will consider any recommendations made in relation to transborder data protection.

The Attorney-General's Department is not aware of any plans to legislate in the area of online contracts.