



13 July 2007

Dr Ian Holland
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Dear Dr Holland,

**Inquiry into the provisions of the Communications Legislation
Amendment (Information Sharing and Datacasting) Bill 2007**

My submissions and recommendations in relation to the privacy implications of this bill are set out below.

Section 3 – ‘authorised disclosure information’

This definition is extremely broad and includes any information that the Australian Communications and Media Authority (ACMA) collects in connection with the performance of any of its powers, including information that is collected in confidence and through its coercive powers. As a consequence, this definition extends to ‘personal information’ as provided for under the *Privacy Act 1988 (Commonwealth)*.

Significantly, ACMA handles complaints from individuals in relation to its own functions as well as radiocommunications, television broadcasting, email and mobile spam and internet content. In order to make a complaint to ACMA, an individual is directed to a form where they are required to provide personal information. Further, as a consequence of collecting information from Corporations, ACMA will necessarily collect personal information.

Section 59D – Disclosure to certain authorities

This section authorises ACMA to disclose authorised disclosure information to a broad list of authorities including state and territory authorities and foreign authorities. State, territory and foreign authorities may not be subject to privacy regulation that is similar to the protection afforded by the *Privacy Act 1988*. I recommend that a provision be inserted to ensure that consideration of trans-border data flows occurs.¹

Section 59E – Disclosure with consent

This section enables an “ACMA official” to “disclose authorised disclosure information that relates to the affairs of a person if (a) the person has consented to the disclosure; and (b) and the disclosure is in accordance with that consent.” “Information that relates to the affairs of a person” is not defined.

The Explanatory Memorandum refers to the intention that to the extent that authorised disclosure information is ‘personal information’ under the *Privacy Act 1988*, that act prevails. The current wording does not emphasise this intention.

To reflect the intention that the *Privacy Act 1988* apply, I recommend that:

1. “information that relates to the affairs of a person” be substituted with “personal information”; and
2. “Personal information” be defined in section 3 as having the same meaning as in section 6 of the *Privacy Act 1988*.

Section 59 F – Disclosure of publicly available information

“Publicly available information” is not defined in this bill. In its current form, this section is extremely broad and potentially extends from any authorised disclosure information, including personal information, that is printed in a popular newspaper, to information that a person may be able to find from a complex ‘google’ search.

The intention of the section is not clearly expressed and I recommend that its inclusion in the amendment be reconsidered.

If the section is to remain then I recommend that:

1. the wording be amended to refer to a “generally available publication”; and
2. “generally available publication” be defined in the Act²

Section 59H – Disclosure authorised by regulations

This section refers to the regulations authorising disclosures of authorised disclosure information in “specified circumstances”. The “specific circumstances”

¹ See *Privacy Act 1988 (Cth)* Schedule 3, National Privacy Principle 9 – Transborder data flows

² See, for example, the definition of “generally available publication” *Privacy Act 1988 (Cth)* s 6

envisaged by this section should be clearly expressed in the Act, as in its current form, there is no limit on what information may be disclosed in what circumstances. In particular, the disclosure of authorised disclosure information that is also personal information should be specifically excluded from this provision.

Intention for the *Privacy Act 1988* to apply

As noted above, the Explanatory Memorandum states that it is the legislature's intention for the provisions of the *Privacy Act 1988* to apply to personal information that is also authorised disclosure information. To prevent any ambiguity in interpretation of this bill, I recommend the insertion of a provision stating that it is the intention for the *Privacy Act 1988* to apply.

Please contact Thaedra Frangos, Manager, Policy on 03 8619 8737 should you require any further information.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Helen Versey', written in black ink.

HELEN VERSEY
Privacy Commissioner