



24 February 2005

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Submission to the Inquiry into the Privacy Act 1988

Dear Committee Secretary,

The Australian Entertainment Industry Association (AEIA) is the peak body for live entertainment in Australia. We represent companies in the commercial and subsidised sector, including employers involved in theatre, opera, ballet, dance, circus, festivals, rock and roll, venues, orchestras, comedy and variety, ticketing, events, promotion, production, cinema exhibition, crewing, sound and lighting, service supply and exhibition. We thank you for the opportunity to make a submission on the effectiveness and appropriateness of the *Privacy Act 1988 (the Act)*.

Most of AEIA's members became subject to the Privacy Act when the Privacy Amendment (Private Sector) Act 2000 came into force on 21 December 2001. AEIA developed member guidelines to the National Privacy Principles in association with Abbott Tout Solicitors, to which members refer regularly. AEIA members have developed privacy policies as required by the Act. These are conveyed to patrons via written notices, phone recordings and member websites.

AEIA's brief submission will address the aspects of the Terms of Reference which are of greatest interest to our members; namely, the effectiveness of extending the privacy scheme to the private sector and any changes which may enhance its effectiveness. There are two key privacy issues faced by AEIA members, and I will deal with each in turn.

The collection of personal information

While CVs collected during the audition process are often destroyed, some organisations want to keep information about unsuccessful auditionees on file, particularly where they

have only narrowly missed out on being successful. Under NPP 1.3, an individual has the right to gain access to the information collected about them by an organisation. AEIA has advised members that NPP 1.3 would appear to permit auditionees to access the notes made about them during the audition process. While the principles are designed to protect the privacy of the individual, this arguably occurs at the expense of the privacy of the author of the notes, who is also an individual. AEIA believes that the privacy of the author should also be taken into consideration in this part of the Act.

Control, use and disclosure of data between agents and principals

Personal information is collected by venues and ticketing agencies during the course of the ticketing transaction. This information is of great use to the producer or promoter of the event to gain a better understanding of their audience and for future marketing purposes. Use of this information for marketing is obviously subject to the consumer consenting to their details being used for this purpose. Misunderstandings continue to exist between members regarding who has the right to use information collected during the ticketing transaction.

Currently, the Privacy Act treats each organisation as a separate collector and user of personal information. Only a contractor “in the services of” the principal is considered to do things entirely on behalf of the principal. The Privacy Act takes a narrow definition of “in the services of” and does not generally consider that an agent/principal relationship exists when a ticketing company or venue provides services to a promoter or producer. The exception to this is where the ticketing company is a subsidiary business of the producer. Given that the organisation selling the tickets is acting on behalf of the producer or promoter, it seems incongruous that notices and consents must be obtained before the information collected during the transaction can be disclosed to the producer or promoter. AEIA believes that where an organisation is providing ticketing services to another organisation, regardless of whether or not a recognised agency/principal relationship exists, the Privacy Act should treat both organisations as having equal rights and responsibilities over the information collected during the transaction.

General comments


AEIA does not have a view to express on the capacity of the current legislative regime to respond to the new and emerging technologies identified in the Inquiry’s Terms of Reference. The specific emerging technologies identified by the Inquiry are unlikely to have a significant impact upon our industry.

There has also been little need for AEIA members to deal with the Federal Privacy Commissioner since the scheme was extended to the private sector. We can comment that the Office’s website and fact sheets are a useful source of information. If any changes were to be made to the Act, we would be in favour of the resources of the Office being increased

in order to ensure that organisations do not face barriers in obtaining the advice and information they require.

If you have queries regarding this submission, please contact the author on 03 9614 1111 (ext 6) or via email at sdaley@aeia.org.au.

Yours sincerely,

A handwritten signature in black ink that reads "Suzanne Daley". The signature is written in a cursive, slightly slanted style. Below the name, there is a short horizontal line.

Suzanne Daley
Policy and Strategy Advisor