



SUBMISSION

Inquiry into the Privacy Act 1988

Version 1.0
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EXECUTIVE SUMMARY

Australian Communication Exchange (ACE) commends the Commonwealth Government for initiating this important inquiry.

ACE hopes that the Senate Committee will take the important role of the National Relay Service (NRS) into consideration when it makes its recommendations as a result of the inquiry.

ACE provides the National Relay Service under contract to the Department of Communications Information Technology and the Arts.

The National Relay Service (NRS) is defined by section 95 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* as a service that provides persons who are deaf, or have a hearing and/or speech impairment, with access to a standard telephone service on terms, and in circumstances, that are comparable to those on which other Australians have access to a standard telephone service.

On occasion, callers who make their telephone calls via the NRS experience call refusals and the *Privacy Act 1988* is sometimes given as the reason for refusing the call.

The NRS relay officer who relays the call is an integral part of the telecommunications infrastructure and facilitates telephone calls arising from all aspects of life, including calls to banks and financial institutions.

Privacy legislation needs to accommodate the fact that the NRS relay officer is an integral part of the telephone call and not 'acting on behalf of', or 'seeking information' about the person using the NRS.

INTRODUCTION

Since the introduction of the National Privacy Principles in 2000, ACE became aware of a growing trend of NRS calls being refused by various businesses and organisations across Australia on the basis of privacy legislation. Complaints on this topic have also been raised by consumers, community organisations and at forums held by Australian Communication Authority (ACA) / ACE.

Although the Australian Banker's Association (ABA) included information about the NRS in its Automated Telephone Banking Standard published in 2002, consumers who call some banks via the NRS still experience call refusals.

The Human Rights and Equal Opportunity Commission (HREOC) assisted the ABA to produce the Automated Telephone Banking Standard in an effort to assist the banking industry to meet its obligations under the Disability Discrimination Act.

EFFORTS TO RESOLVE THIS ISSUE

Since 2001, ACE has been proactive in addressing the escalating issue of NRS call refusals with various industry representatives and related community organisations such as, but not limited to, the following:

- Australian Banker's Association
- Australian Securities and Investments Commission
- Human Rights and Equal Opportunity Commission
- Department of Communications Information Technology and the Arts
- Australian Finance Conference
- Australian Communications Authority
- Office of the Federal Privacy Commissioner
- Australian Association of the Deaf
- Deafness Forum
- Various bank/finance institutions

The aim of ACE has been to address regulatory issues in a systemic way. ACE has approached banking and financial services industry bodies and regulators to identify potential barriers that may cause NRS refusals and identify possible solutions.

Specifically, to address the privacy related concerns given by banks/financial institutions as the reason to refuse calls via the NRS, a meeting was held between the Human Rights and Equal Opportunity Commission (HREOC) Deputy Disability Discrimination Commissioner, the Deputy Privacy Commissioner and Chief Executive Officer of ACE.

As a result of the meeting, the Office of the Federal Privacy Commissioner (OFPC) released an open letter in January 2003 confirming that the National Privacy Principles did not prevent financial institutions from accepting calls via the NRS.

Specifically the letter stated *"In my view, where a customer chooses to telephone his or her financial institution via the NRS, the customer is impliedly consenting to the financial institution disclosing his or her information as required for the purpose of the call."*

This was an excellent example of the co-operation that ACE has received when it has raised the issue of NRS call refusals with regulators (eg HREOC and OPFC).

More recently the Australian Finance Conference wrote to the OFPC to enquire specifically about Section 18N of the *Privacy Act 1998* in relation to calls made via the NRS.

As ACE facilitates relay calls with a voice and/or text component between the A-Party and the B-Party to the call, the reply from the OFPC to the Australian Finance Conference suggested:

- S18N(1)(GA)(ii) permits the disclosure of a credit report or related information to a person (in this case the operator of the NRS) when the operator is authorized, in writing by the individual, to have access to the report or the information disclosed by the credit provider; and
- A definition 'in writing' could include text to the NRS relay officer as there is no requirement for the credit provider to have a copy of the written authorization.

The concept of the NRS using a pre-determined script, as a short-term 'fix', to satisfy requirements of any legislation that requires permission to be provided in writing was discussed at a meeting with representatives from:

- Australian Securities and Investments Commission
- Banking and Financial Services Ombudsman
- Australian Finance Conference
- Australian Communications Authority
- Australian Communication Exchange

Subsequent discussions with the Australian Finance Conference have revealed that to satisfy the requirements of different legislation and each bank/financial institution, the wording may become cumbersome and lengthy and may not suit:

- All communication options via the NRS e.g. speech-to-speech relay does not contain a text component; and
- The legal/policy positions of all banks/financial institutions, thus rendering it confusing and ineffective.

ACE outlined the following in a letter to the OFPC specifically in relation to Section 18N on the *Privacy Act 1988* in July 2004:

- It is the observation that legislation is often written without taking into account the role of the NRS in facilitating telephone calls for people who are deaf or have a hearing or speech impairment. ACE is reluctant to be seen in any way to be 'seeking information about', or 'being the agent of' a person with a disability, as the NRS does not participate in the decision making process with, or for, that individual. The NRS keeps no records of the content of the telephone call between the person who is deaf or has a hearing or speech impairment, and the bank/financial institution. When using the NRS, the A-Party and B-Party to the call are communicating directly with each other.
- This position was reinforced when ACE successfully sought amendments to the draft *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill* as it did not want to be seen as 'being a third party to', 'seeking information about', 'operating on behalf of' or 'being the agent of' a person. ACE sought the amendments to the draft legislation to prevent any unintended consequences to ACE as a result of facilitating a telephone conversation between two people using the NRS. Without the amendments, the legislation could have had the unintentional outcome resulting in criminal charges being

applied to the relay officer for relaying a call via the NRS (i.e. doing their job) if a crime was being committed.

Subsequently the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004* was passed with a defense that prevents NRS relay officers from being penalized for acting in good faith in the course of the person's duties as an employee.

The NRS needs to be careful that it is consistently viewed in the community as a telecommunications facilitator only - not 'an agent of', or 'seeking information about' a person.

ACE has observed that banks/financial institutions often request their customers to ask ACE to sign an authority form giving the NRS permission to seek information about them. ACE has refused to sign these forms to date.

SEEKING THE ASSISTANCE OF THE SENATE COMMITTEE

At the time of writing, ACE continues to experience NRS call refusals.

The credit reporting provisions under Part IIIA Section 18N of the *Privacy Act 1988* continue to cause a barrier to using the NRS. It appears that some organisations have interpreted the mandatory requirement in a way that has resulted in calls via the NRS being refused - even though that may not have been the intention - as the *Privacy Act 1988* was enacted prior to the introduction of the NRS in 1995.

An amendment to the *Privacy Act 1988* to incorporate the role of the NRS would improve the current regime as it would clarify the role of the NRS and alleviate any privacy barriers or concerns that may cause organizations to refuse calls via the NRS.

It would also be ideal if the Senate Committee would ensure that the role of the NRS and the relay officers was taken into consideration at the time of drafting any new legislation (eg. via a general request to the Attorney General's Office of Legislative Drafting), so that no unnecessary and unintentional legal barriers are created, that could subsequently be interpreted by organisations as the reason for refusing calls via the NRS.

CONCLUSION

ACE has made a concerted effort over the past four-five years, to engage decision makers, policy advisors, regulators and legislators within industry and government about the issue of NRS call refusals.

The NRS is part of the national telecommunications infrastructure provided to benefit the community.

Given that the NRS is an Australian Government initiative required by legislation, ACE is seeking support from the Senate Committee to implement a top-down approach to ensure that the NRS is continually recognized in a way that prevents competing legislation adversely impacting on the delivery, credibility, performance and integrity of the NRS.

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