



28 July 2010

Senate Finance & Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Australian Institute of Credit Management Submission re the Australian Privacy Principles Exposure Draft

The Australian Institute of Credit Management (AICM) welcomes the release of the Australian Privacy Principles Exposure Draft.

However AICM believes that it is essential to state that the piecemeal release of the proposed reforms to the *Privacy Act 1988* (Cth) is disappointing given the interrelationship between the Australian Privacy Principles (APPs) and the remaining matters which will be subject to separate releases namely:

- The introduction of comprehensive credit reporting
- The provisions relating to health information
- The provisions to strengthen the Privacy Commissioner's powers and
- The integration of the Privacy Commissioner's role within the Office of the Australian Information Commissioner

In addition AICM's ability to effectively comment on the proposed reforms is impeded not only by the lack of information relating to the additional matters cited above but also by the absence of at least an acknowledgement of the direct interrelationship between the Privacy reforms and other recent legislative reforms such as the Personal Property Securities Reforms and the *National Consumer Credit Protection Act 2010*.

Taking the above into account AICM would make the following comments in relation to the specific APPs.

Overall comments

AICM supports the proposed combination of both the current National Privacy Principles and the Information Privacy Principles into the Australian Privacy Principles. It is AICM's view that this will result in a consistent approach to the management of personal information irrespective of the nature of the entity that is managing the personal information. Further it will facilitate an individual's understanding of how their personal information is to be managed.

In addition AICM supports the extension of the use of personal information to circumstances relating to the location of missing persons, civil aid, humanitarian assistance, medical or civil emergency or disaster relief.

AICM welcomes the application of principles-based law which is technology neutral in the domain of privacy law. However this philosophy must be underpinned by the prompt release by the Office of the Australian Information Commissioner of rules and guidance as to how the principles are to be applied once the legislative reforms are completed.

Australian Privacy Principle 1 – open and transparent management of personal information

This Principle is supported as it will serve to clarify an organisation's obligations from a macro perspective in relation to the management of personal information. The concepts set out in this Principle will serve to ensure an integrated approach to the management of personal information across an entire organisation.

Australian Privacy Principle 2 – anonymity and pseudonymity

AICM understands the purpose behind this Principle however as it is not possible to establish a credit relationship anonymously AICM declines to comment on the Principle.

Australian Privacy Principle 3 – collection of solicited personal information

AICM welcomes the concept of distinguishing between the collection of *solicited* and *unsolicited information*. However AICM is disappointed that *sensitive information* is no longer a separate principle. AICM recommends that the management of sensitive information should still be addressed in its own right. It is unfortunately the situation that on occasions organisations do not always recognise that information that is necessary to an entity's functions or activities may fall within the category of 'sensitive' and thus should be managed with considerable care.

The interrelationship between sensitive information and health information in AICM's view should be considered independently. This is a matter of particular concern to AICM which is best clarified by way of example:

It is not uncommon for a debtor to unintentionally fall behind in their obligations and this may be due to health related issues. Responsible credit management practice embraces taking a factor such as ill health either on the part of the debtor or a family member into consideration when considering how to manage the credit relationship. This then raises the somewhat vexed issue of how much or indeed how little health information may be recorded and is compounded when the advice is received from a person who is not the debtor.

Therefore AICM recommends that the consultative documentation relating to health information should be released as soon as practicable.

Australian Privacy Principle 4 – receiving unsolicited personal information

AICM supports the proposed Principle as it will clarify how an organisation should address the management of unsolicited personal information.

Australian Privacy Principle 5 – notification of the collection of personal information

The proposed Principle goes beyond the current requirements as set out in the National Privacy Principles. The enhanced concept of notification should serve to alleviate the concerns of individuals as to how their personal information will be managed. However from AICM's perspective there will be in the short term, additional compliance burdens on organisations when implementing the completed privacy reforms. Thus AICM would suggest that a phased introduction of this Principle would be beneficial.

Australian Privacy Principle 6 – use or disclosure of personal information

This Principle enshrines what is currently common practice within the credit industry. However, the concept of a *secondary purpose* does not seem to be defined within the Exposure Draft of the Bill. AICM is concerned that unless clear guidance is provided as to what could constitute a *secondary purpose* use disadvantageous outcome to both the organisation and the individual may arise.

For instance an organisation may not maintain effective communication with a customer on the basis that it is uncertain whether or not the communication would be deemed to be a secondary purpose (excluding direct marketing). Equally an individual may not receive relevant information for an organisation with which they have a relationship due to a lack of clarity as to what constitutes a secondary purpose.

Australian Privacy Principle 7 - direct marketing

Whilst it is important to ensure that direct marketing is respectful and undertaken in an appropriate manner it would appear that the interrelationship between this Principle and the *Spam Act 2003* and the *Do Not Call Register Act 2006* should be clarified. The draft provision in s8 (6) states that:

"...This principle does not apply to the extent that any of the following apply..."

this could lead to uncertainty and confusion as to how this Principle would operate.

Further s8(2)(d) states that:

"...the individual has not made such a request to the organisation..."

does not readily make sense. It may be that this sub-clause should be reordered so that a logical process of receipt and *opting-out* is available or this may be

intended to address circumstances where an individual never wishes to receive direct marketing information. It is AICM's view that while ever a clause is unclear the drafting should be reviewed and that this is the case with this sub-clause.

Australian Privacy Principle 8 – cross-border disclosure of personal information

AICM welcomes the enhancement of the current National Privacy Principles in relation to cross-border disclosure. It is AICM's perspective that this Principle will significantly ameliorate concerns regarding the management of personal information in an international context.

Australian Privacy Principle 9 – adoption, use or disclosure of government related identifiers

AICM supports this Principle.

Australian Privacy Principle 10 – quality of personal information

AICM supports this Principle.

Australian Privacy Principle 11 – security of personal information

AICM supports this Principle.

Australian Privacy Principle 12 – access to personal information

AICM supports this Principle.

Australian Privacy Principle 13 – correction of personal information

AICM supports this Principle.

Conclusion

Whilst AICM supports the overall intention and direction of the Exposure Draft Australian Privacy Principles there are several issues which AICM believes would benefit from clarification in the draft and reserves its final comments on the Australian Privacy Principles until the remaining components of the Privacy reform package is released.

Yours sincerely



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