



Australian Government

Office of the Privacy Commissioner

Australian Government Electoral Reform Green Paper- Donations, Funding and Expenditure

**Submission to the
Department of Prime Minister &
Cabinet**

February 2009

KEY RECOMMENDATIONS

The Office of the Privacy Commissioner makes the following recommendations:

- The Office suggests lessening the amount of personal information available online about individual donors, for example, by ensuring that an individual donor's street address is not accessible on the Australian Electoral Commission website.
- The Australian Electoral Commission should develop privacy guidelines to apply to entities not currently covered by the *Privacy Act 1988 (Cth)*, which handle individual donors' personal information.
- A Privacy Impact Assessment should be conducted to help identify and address potential privacy issues associated with any proposed reforms to the electoral system.

OFFICE OF THE PRIVACY COMMISSIONER

The Office of the Privacy Commissioner ('the Office') is an independent statutory body whose purpose is to promote and protect privacy in Australia. The Office has responsibilities under the *Privacy Act 1988 (Cth)* (the 'Privacy Act').

The Privacy Act contains eleven Information Privacy Principles ('IPPs') which apply to Australian and ACT Government agencies. It also includes ten National Privacy Principles ('NPPs') which generally apply to all businesses with an annual turnover of more than \$3 million (and some small businesses), but which do not apply to certain exempt organisations including political parties¹.

The coverage of the Privacy Act is limited to 'personal information'. This is defined in section 6 (1) of the Act as information or an opinion, whether true or not, about an individual whose identity is apparent or can be reasonably ascertained from that information.

¹ Information relating to the operation of the Privacy Act can be found on the Office's website at www.privacy.gov.au. Specific information outlining the privacy provisions covering private sector organisations and Australian government agencies can be found at: www.privacy.gov.au/business/index.html for businesses www.privacy.gov.au/government/index.html for government. Specific information outlining exemptions to the private sector provisions can be found at: http://www.privacy.gov.au/publications/IS12_01.html

BACKGROUND

The Office welcomes the opportunity to provide comments on the Electoral Reform Green Paper- Donations, Funding and Expenditure, December 2008 (the 'Green Paper').

The Office understands that the Green Paper is an important part of the Australian Government's plan to facilitate a more open, transparent and accountable government. Its main purpose is to encourage public debate about options for improving and modernising Australia's federal electoral system in areas including public funding for political parties and candidates to contest elections, disclosure obligations associated with private funding, and caps and bans on private funding².

The Office is pleased to note that the Green Paper refers to privacy considerations³, which, in the Office's view, are particularly relevant to any review of donation disclosure obligations. The Office also agrees that it is desirable to have a transparent and open electoral system and recognises that the right to privacy is not absolute and needs to be balanced with other important public interests⁴.

The Australian Government has sought to address some of the issues with the current electoral system identified in Chapter 1 of the Green Paper, by introducing the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* (the 'Political Donations Bill') into the Senate in May 2008. If passed, amongst other things the Bill would lower the threshold above which donations need to be disclosed and ban the acceptance of foreign donations⁵.

DISCLOSURE- WHICH INFORMATION SHOULD BE DISCLOSED, AND BY WHOM? (Chapter 6)

Personal information handling

The Office notes that a significant amount of personal information is currently handled under the Election Funding and Financial Disclosure provisions in Part XX of the *Commonwealth Electoral Act 1918 (Cth)* (the 'Electoral Act'). For example, individuals who make donations over \$10,900 to political parties are required to lodge Annual Financial Disclosure Returns with the Australian Electoral Commission (the 'AEC'), listing the individual's name, address and amount donated⁶. Political parties are also required to lodge Annual Financial

² See page 4 of the Green Paper.

³ See paragraphs 2.1- 2.6, 6.41- 6.42 and 6.73- 6.74 of the Green Paper.

⁴ See section 29 (a) of the Privacy Act.

⁵ Senator John Faulkner, *Transcript- Amendments to the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, 3 December 2008, Available [online] http://www.smos.gov.au/transcripts/2008/tr_20081203_electoral_amendments.html (9 February 2009).

⁶ See section 305B of the Electoral Act.

Disclosure Returns with the AEC identifying the value of any donation received over \$10,900 and the donor's name and address⁷.

The amendments proposed in the Political Donations Bill would likely increase the amount of personal information handled by political parties and the AEC. For example, the Bill would reduce the monetary threshold for donation disclosure from \$10,900 (indexed annually) to \$1,000 (non-indexed), with the likely result that more disclosure returns may be lodged with the AEC⁸.

The Green Paper also discusses options which may increase the amount of personal information handled by the AEC, political parties and other entities. For example:

- Requiring donors to disclose donations to Senate groups, associated entities, third parties and MPs⁹.
- Broadening the types of private funding which need to be disclosed, such as contributions to fundraising events¹⁰.
- Banning or capping private funding by corporations, as occurs in some overseas jurisdictions¹¹.

The Office notes the sensitivity that may attach to personal information about a person's political opinion. This is reflected in the Privacy Act, which defines information about a person's political opinions as 'sensitive information'¹².

In view of the significant amount of personal information handling outlined above, the possible sensitivity of this information and the many technological changes that have occurred since Part XX of the Electoral Act commenced in 1984, the Office suggests it would be timely to review whether there is an appropriate level of privacy protections.

Donation disclosure by individual donors

The Office understands that disclosure returns have been published on the AEC website since 1999¹³. In some cases, these contain an individual's name, address and the amount the individual has donated to a political party. As noted above, some of the options in the Green Paper (and changes proposed in the Political Donations Bill) may increase the number of disclosure returns lodged with the AEC and then available online.

⁷ See section 314AC of the Electoral Act. See also sections 304, 305A, 314AE, 314AEA and 314AEC of the Electoral Act.

⁸ See clauses 23- 28 and 30- 35 of the Political Donations Act.

⁹ Under the current Electoral Act, donors only need to disclose donations to political parties and candidates. See paragraph 6.38 of the Green Paper.

¹⁰ See paragraph 5.15 of the Green Paper.

¹¹ See paragraph 7.34 of the Green Paper.

¹² See section 6(1) of the *Privacy Act 1988 (Cth)*. Under NPP10, sensitive information is given a higher level of privacy protection than other types of personal information

¹³ See http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm. Disclosure returns are also accessible in hard copy at the AEC's principle office in Canberra under section 320 of the Electoral Act.

The Office considers that online personal information may be vulnerable to misuse, as it is more easily aggregated, collated, searched and manipulated than paper records.

While the Office recognises the importance of a transparent political donation scheme, it suggests consideration be given to limiting the amount of personal information available online. For example, it may be sufficient to only include an individual donor's name, suburb, postcode, state and the amount donated in any disclosure return accessible online, but not the individual donor's street address¹⁴. The individual's address could still be viewed by accessing the paper record maintained by the AEC under section 320 of the Electoral Act.

Donation disclosure by Candidates

The Green Paper seeks comments on whether candidates for election should be required to disclose all personal debts, as this may be used as 'undue influence or leverage against political parties and candidates'¹⁵.

The Office supports comments in the Green Paper that this measure may be intrusive and may discourage candidates from standing for election. Accordingly, the Office would be interested in more fully understanding to what extent candidates' failure to disclose personal debts is, or is perceived to be, a problem by the broader community.

ISSUES FOR DISCUSSION AND COMMENT (Chapter 11)

Political parties

The Green Paper seeks comment on whether the laws and regulations covering political parties and the way they are administered and organised should be changed¹⁶.

The Office considers that the Australian Law Reform Commission's recommendations to amend the Privacy Act in its Report 108 '*For Your Information: Australian Privacy Law and Practice*' (the 'ALRC Report'), may be relevant to discussions about amending the political donations scheme. The Australian Government is currently considering these recommendations.

In particular, the Privacy Act does not currently cover the handling of personal information by registered political parties. This includes their handling of donor information. In its report, the ALRC recommended removing the exemption for registered political parties from the Privacy Act¹⁷. The ALRC also recommended changes to how government agencies collect 'sensitive

¹⁴ The Office understands that the *Elections Canada* website (<http://www.elections.ca/scripts/webpep/fin/welcome.aspx?lang=e>) provides this information about individual political donors.

¹⁵ See paragraph 6.58 of the Green Paper.

¹⁶ See page 84 of the Green Paper.

¹⁷ See paragraphs 41.54- 41.61 and Recommendation 41- 2 of the ALRC Report. (<http://www.austlii.edu.au/au/other/alrc/publications/reports/108/>)

information¹⁸, such that agencies may be subject to the same restrictions as currently apply to organisations under NPP10. The Office believes it would be useful to consider the Australian Government's response to the Privacy Act review in subsequent discussions on these issues.

The Office suggests that where Privacy Act exemptions apply to entities' handling donors' personal information, privacy guidelines should be developed by the AEC. These guidelines could facilitate good privacy handling practices by, amongst other things, requiring recipients to clearly inform individual donors of how their personal information will be used (including the details that will be forwarded to the AEC), and allowing individuals to access and correct any incorrect personal information held about them by the recipient.

PRIVACY IMPACT ASSESSMENT

Finally, the Office suggests that a Privacy Impact Assessment ('PIA') be conducted to help identify and address potential privacy issues associated with any proposed changes to the political donations scheme.

A PIA allows agencies to identify and analyse privacy impacts during a project's design phase. A project that underestimates privacy impacts can place its overall success at risk by breaching privacy legislation or by not meeting the expectations of the community as to how personal information may be handled. The Office considers that it would be good privacy practice to undertake a PIA even where reforms only appear to affect organisations that are currently exempt under the Privacy Act.

The Office has developed a Privacy Impact Assessment Guide providing Australian Government and ACT Government agencies with an introduction to the PIA process¹⁹. The Guide describes the purpose and general features of a PIA. A PIA would help to identify the various information flows relating to any proposed reforms and how privacy regulation might apply to them.

¹⁸ See paragraph 22.19 and Recommendation 22-1 of the ALRC Report.

¹⁹ See <http://www.privacy.gov.au/publications/pia06/index.html>