



19 May 2009

Senator the Hon John Faulker
Cabinet Secretary
Privacy & FOI Policy Branch
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA 2600

Via email: foiconsultation@pmc.gov.au

Dear Senator Faulkner

The Australian Direct Marketing Association (ADMA) is the national organisation representing organisations whose common purpose is information-based marketing. In relation to the *Information Commissioner Bill 2009* ADMA is principally concerned with those aspects which impact on the *Privacy Act 1988* and the Office of the Privacy Commissioner (OPC).

The rationale for co-locating the privacy and FOI functions in a single office can, no doubt, be justified on both policy and administrative grounds. Notwithstanding the reservations expressed below, ADMA supports in principle the intention, as stated in the Companion Guide, to 'strengthen and elevate the role and importance of privacy laws'.

Technological innovation and the need for organisations to be more accountable are driving businesses and not-for-profit organisations to interact more directly with existing and potential customers and stakeholders. However, unless individuals are confident that those of their personal details they regard as private can be protected, the potential of technology and objective of business efficiency will not be fully realised.

ADMA's 2008 Consumer Insights survey demonstrates that individuals particularly those under 40 are more comfortable than they were when questioned in the previous survey in 2005 with providing their personal details to organisations they know and trust. In part this is due to the protection provided by the Privacy Act.

Due to a number of factors the OPC has not always been an effective guardian of those protections. For instance, there have been occasions when complaints have taken in excess of six months to be considered. In addition, at a policy level the OPC has not had the standing within the Commonwealth, State and Territory bureaucracies to impose uniform definitions and standards.

If, as is clearly the current Government's intention, the proposed Office of the Information Commissioner incorporating the present OPC improves the effectiveness of privacy protection and administration, it will be a welcome development.

In relation to the matters included in the Companion Guide to the Exposure Drafts, ADMA has the following two concerns:

1. Consultation

The Guide outlines how the Information Commissioner will be 'assisted by an advisory committee comprised of senior officers across key agencies'.

As is frequency the case, specific provision is made for the new organisation to consult with other government organisations but consultation with non-government bodies is vague and non-specific. As part of the ALRC recommendations it is proposed to introduce a new Privacy Principle for direct marketing but there is no matching recommendation for consultation with direct marketers.

ADMA suggests that this omission should be addressed in the context of the establishment of the umbrella organisation, the proposed Office of the Information Commissioner.

2. Enforceable right of privacy

Under 'Privacy Reform' on page 14 of the Companion Guide reference is made to the Government's proposal to 'enact an enforceable right of access to, and correction of, an individual's own personal information, rather than maintain this right through the FOI Act'. The Guide goes on to state that this measure will be included in the forthcoming exposure draft Privacy Bill.

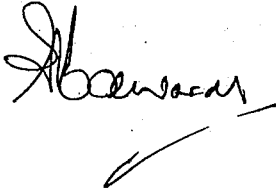
It is ADMA's understanding that the ALRC's proposal for the introduction of a 'tort of privacy' will not be included in the exposure draft of the new privacy legislation scheduled for release later this year. Further, the 'tort of privacy' recommendation has not been included in the consultation conducted by the Department of Prime Minister and Cabinet.

ADMA seeks clarification on the proposed 'enforceable right' of access and correction.

The details requested are:

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Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Edwards', with a long horizontal flourish extending to the right.

Rob Edwards
ADMA CEO