SENATE STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION

LEGISLATION COMMITTEE

Exposure Drafts of Australian Privacy Amendment Legislation

SUBMISSION

SUBMISSION NUMBER: 32

SUBMITTER

Public Interest Advocacy Centre LTD

Senator Helen Polley
Chair
Senate Finance and Administration – Legislation Committee
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17 August 2010

Dear Senator Polley

Exposure Drafts of Australian Privacy Amendment Legislation

PIAC welcomes the opportunity to comment on the Exposure Drafts of Australian Privacy Amendment Legislation.

PIAC made a submission to the Department of Prime Minister and Cabinet in February 2009 on the draft Unified Privacy Principles (UPPs), circulated by the Australian Law Reform Commission. PIAC attaches that submission as part of our response to the Senate Committee terms of reference.

The matters raised in that submission inform PIAC's response to the Exposure Draft. This submission will raise issues referred to in that submission.

PIAC takes this opportunity to raise again the following issues:

Australian Privacy Principle 3- imminent serious threat's to life, health and safety
As set in PIAC's 2009 submission at page 6, PIAC submits that the word 'imminent' should precede the word 'serious ' in Principle 3 (3) (b) (i). PIAC adheres to the reasons for this proposed change set out at page 8 of the 2009 submission.

Australian Privacy Principle 7 – Direct marketing to minors
PIAC notes with alarm the removal of the reference to children under 15 years of age found in the UPP 6 but not in the draft Australian Privacy Principle 7 (APP 7). PIAC believes that direct marketing to children under 15 years of age should be prohibited (with the possible exceptions of existing customers and targeted public health and safety campaigns). The reasons for this position, and the implications of this for any set of privacy principles are set out at pages 10 and 11 of PIAC's 2009 submission.

Australian Privacy Principle 8 – Cross-Border data flows
In the 2009 Submission PIAC submitted that an individual should not have to take action in another jurisdiction against a third party in order to protect rights afforded by Australian privacy law. However, this situation has not been changed by the redrafting of UPP11 as APP8. PIAC's submission on this point is set out on pages 12 and 13 of the 2009 submission.

Australian Privacy Principle 10 – Data quality
PIAC submitted in 2009 that this principle should apply not only to data collected, used or disclosed by an entity, but also to data in the control of the entity. The reasons for PIAC's position on this issue are found at page 11 of the 2009 submission.

Express and informed consent
PIAC still maintains that the phrase 'express and informed consent' should be used when the APPs refers to consent.

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The use of the words 'practicable' and 'impracticable'
PIAC, in the 2009 submission raised its concern about the use of words like 'practicable' and 'impracticable'. This is also an issue PIAC has raised in earlier submissions. These words can be given a very broad meaning, and give individuals and organisations far too broad a discretion.

Clarity and accessibility
In its 2009 submission, PIAC suggested that the Federal Government, in redrafting the privacy principles, should ensure that the outcome is a clearer and more accessible document. This has not been achieved. The draft document reads as highly legalistic, and is not designed for easy access by the public. The draft UPPSs was approximately 10 pages long. The exposure draft is a 41-page document, reading often like the most complicated sections of the taxation law. Whilst it does appear that the Government has admirably adopted many suggestions made in the consultation process, thereby making the document more complex and qualified, the purpose of having clear privacy principles now appears lost. A plain English redraft is clearly needed.

One way to do this would be to take up PIAC's suggestion made in the 2009 submission (at pages 2 and 3) to clearly set out and delineate the rights and obligations of the different stakeholders in information privacy in a set of clear and accessible privacy principles.

If you would like any clarification or further information, please contact Peter Dodd, Solicitor, on 02 8898 6523 or pdodd@piac.asn.au.

Yours sincerely

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Encl: PIAC submission, *Unified Privacy Principles- the right way ahead*, 2 February 2009.