

**SENATE STANDING COMMITTEE ON
FINANCE AND PUBLIC
ADMINISTRATION**

LEGISLATION COMMITTEE

**Exposure Drafts of Australian Privacy
Amendment Legislation**

SUBMISSION

SUBMISSION NUMBER: 28

SUBMITTER

Deloitte Touche Tohmatsu

13 August 2010

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

Dear Sir/Madam

Re: Australian Privacy Principles Exposure Draft

We appreciate the opportunity to respond to the Federal Government's Australian Privacy Principles Exposure Draft and Companion Guide.

Overall, we are supportive of the development of the Australian Privacy Principles (APPs). We do have a number of comments that we have set out below.

Australian Privacy Principle 5

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Accordingly, Deloitte Australia recommends the omission of section 6(2)(j) from APP5.

Sections 20 and 9

Deloitte Australia submits that it is unclear how sections 20 and 9(1) interact. If a disclosing entity took the reasonable steps required by section 9(1) to ensure that an overseas recipient did not breach the APPs, but if the overseas recipient, despite these steps, engaged in non-compliant conduct, it appears that under section 20 the disclosing entity would be liable for the non-compliance just as if the disclosing entity had taken no reasonable steps at all. Although we support the accountability principle, we submit that the inconsistency identified above should be removed so that the disclosing entity would be liable under section 20 only if it did not take the reasonable steps required by section 9(1). In this context, we note that:

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- the ALRC report 108 *For Your Information: Australian Privacy Law and Practice* recommended that an entity should not remain accountable for information that is subject, among other things, to a contract that effectively upholds privacy protections substantially similar to the UPPs (now referred to as the APPs) (at 31.120); and
- under the APEC Privacy Framework, the accountability principle requires the consent of the individual to cross-border transfers or the exercise of due diligence and the taking of reasonable steps by the disclosing entity to ensure that the recipient person or organisation will protect the information consistently with the APEC Privacy Framework (at 26).

We would also submit that, further to section 9(2)(a), the Office of the Privacy Commissioner may wish to consider publishing a list of laws or binding schemes that operate in a way substantially similar to the way in which the APPs operate. In this respect, we submit that APP8 should expressly recognise that section 9(2)(a) is satisfied if the applicable law or binding scheme is on that list.

Please do not hesitate to contact me on (02) 9322 7875 if you have any queries about our comments.

Yours sincerely

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