

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

27 July 2010

Dear Sirs and Mesdames

**Submission to Senate Finance and Public Administration Committee in relation to the Australian Privacy Principles Exposure Draft**

Thank you for the opportunity to comment on the first and most fundamental part of the re-written Privacy legislation.

I am pleased to provide you with a Submission on the Australian Privacy Principles Exposure Draft on behalf of Coles Supermarkets Australia Pty Ltd, Liquorland (Australia) Pty Ltd and Eureka Operations Pty Ltd trading as Coles Express (collectively Coles).

If you have any questions or wish to raise any aspects of this submission please contact Robert Hadler, General Manager Corporate Affairs on (03) 9829 3534 or the undersigned.

Yours Sincerely

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## **COLES' SUBMISSION TO SENATE FINANCE AND PUBLIC ADMINISTRATION COMMITTEE IN RELATION TO THE AUSTRALIAN PRIVACY PRINCIPLES EXPOSURE DRAFT JULY 2010**

### **Executive Summary**

Coles Supermarkets Australia Pty Ltd, Liquorland (Australia) Pty Ltd and Eureka Operations Pty Ltd trading as Coles Express (Coles) is generally in favour of the changes provided by the proposed Australian Privacy Principles.

The reservations held by Coles are principally related to the practical and administrative burden placed on Australian businesses that some of the changes from the National Privacy Principles to the proposed Australian Privacy Principals impose.

### **Australian Privacy Principle 5 (APP 5) and Australian Privacy Principle 8 (APP8)**

Coles agrees in principle with the need to inform a person that their personal information is being collected. Coles currently has a Privacy Policy that sets out the kind of personal information it collects about people and the purposes for which the information is collected and used and, in general terms, to whom that information is likely to be disclosed.

Coles outsources a number of its services and re-tenders for those services on a regular basis to ensure their competitive nature. Our contracts require that personal information is handled in accordance with the requirements of Australian Privacy Laws and a right to audit the service provider's compliance with its contractual obligations. Whether Coles is likely to disclose a person's personal information to overseas recipients and the locations of those countries may change over time depending on the service provider's operations and infrastructure arrangements. The obligation to inform customers or suppliers of this possibility on an ongoing basis depending on our internal systems requirements and selection of service provider is administratively burdensome. It may potentially compel disclosure of information Coles treats and considers to be commercial in confidence about how it resources its operations. Such disclosure may not allay individuals' concerns about the disclosure of their personal information because it explains where the information is going and not how it will be treated or dealt with.

An alternative approach would be to have a requirement that any third party recipients of personal information, irrespective of their location, be required to observe the obligations of Australian Privacy Laws and be subject to a right of audit to check their compliance with such obligations. The primary obligation for privacy compliance could remain with the contracting principal in the event that information is held, used or disclosed in an overseas location.

### **Australian Privacy Principle 7 (APP 7)**

APP 7 imposes significant restrictions on the circumstances in which personal information may be used or disclosed for direct marketing purposes. Direct marketing is also not defined in the Australian Privacy Principles. Most of these issues can be overcome by seeking consent - express or implied - to the collection of an individual's personal information for direct marketing purposes.

However, APP7(4) requires that an organisation be capable of identifying the source of the personal information if a person seeks this information after the collection has occurred. Coles collects personal information from a variety of sources and its systems do not currently enable us to identify where such information may have originally come from. For example, information about an individual may have been collected from in-store transactions, emails, internet, written correspondence, loyalty programs and competitions. With the exception of written correspondence, each point of contact has had a privacy notice attached to it so that the individual is made aware of Coles' policy regarding collection, use and disclosure of their information. However, once the information is collected, it is no longer possible for Coles to determine the source of collection. Changing the IT systems Coles uses for its operations to ensure that the source of each piece of personal information can be identified is likely to be impractical and prohibitively expensive to implement as it imposes a higher administrative requirement than the architecture of the systems can provide - even for those systems considered to provide World's best practice in their field. APP7(5) does provide an exemption from this obligation but this exemption is as yet unclear as to whether not keeping track of such information will be sufficient for reliance on an ongoing basis or whether an organisation will be required in future to change its systems or selection of its systems to ensure compliance with APP(4) going forward. This is likely to impose a significant administrative and costs burden on organisations.

APP7(6) is designed to act as an anti-overlap provision. APP 7 is not to apply to the extent that the *Do Not Call Register Act 2006*, the *Spam Act 2003* or any other Commonwealth legislation apply. There is no current equivalent in the National Privacy Principles. APP7(6) suggests that an organisation will not be required to deal with personal information in accordance with APP 7 for direct marketing activities like emails, faxes and telephone contact provided that the activities are done with the individuals consent as these activities are otherwise dealt with under the *Spam Act 2003* or the *Do Not Call Register Act 2006*. As each regime requires a different approach to the handling and use of personal information, this is likely to increase the likelihood of confusion arising and the incorrect regime being applied to the handling and use of the information.

APP7(5) could be amended to provide a further exemption that identification of the source of the personal information will not be required if the specific source of the information is not traceable provided that the organisation can identify the possible or likely sources of collection.

The potential confusion that may arise due to the different obligations applying to personal information in the context of direct marketing could be addressed by incorporating the obligations of the *Spam Act 2003* and the *Do Not Call Register Act 2006* in the re-write of the new Privacy Act. This would reduce the complexity of the law in this area and reduce the likelihood of unintentional inappropriate use of personal information in the area of direct marketing activities.

### **Australian Privacy Principle 10 (APP 10) and Australian Privacy Principle 13 (APP13)**

Coles relies on information that it collects being accurate at the time of its collection. It has processes that enable individuals to contact Coles or access Coles' systems to correct errors in their personal information. APP13(1) requires an organisation to correct information if it is satisfied the information is inaccurate. The size of Coles operations is likely to make it impractical for Coles to check the ongoing accuracy of personal information it has collected. The obligation to advise individuals and third parties of corrections under APP13(3) is also likely to be administratively burdensome for large organisations with automated systems and raises real concerns regarding compliance and the cost of compliance with these obligations for organisations like Coles.