



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

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MEDIA RELEASE

Anti-Privacy Bill should be scrapped

The Government's *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*, introduced to Parliament today, is a backward step in Australia's privacy protection, not an improvement.

The Australian Privacy Foundation (APF), Australia's leading privacy protection organisation for the past 25 years, urges the Opposition, Greens and Independents to reject the Bill completely. It should be scrapped.

Some key deficiencies of the Bill are:

- Not one of the 13 new Australian Privacy Principles (APPs) is an improvement on the existing NPPs and IPPs, and 8 of 13 are worse for privacy protection.
- For example, the existing right to anonymous transactions has been destroyed.
- The consumer's right to ask 'Where did you get my name?' can be avoided wherever it is 'impracticable' for a business to do provide an answer.
- The personal information of any Australians can now be sent to countries with no privacy laws at all, with victims required to prove breaches occurring there.
- Exemptions from some of the APPs can be created by the Privacy Commissioner without any public hearings, notice or opportunity for public scrutiny, unlike the existing Public Interest Determination procedures.
- The improvements concerning the Privacy Commissioner are of little use unless complainants can require that the Commissioner make formal decisions under s52 of the Act. The Commissioner has made one s52 decision in 6 years, and says complainants have no right to formal decisions. Government

proposals to allow such complainants to go direct to the Federal Court have been dropped.

- The credit reporting industry is being given the right to share information about Australians who have never had a credit default, a backward step for the privacy of every person who has ever had a loan or a credit card.
- Codes of Conduct have completely failed for 12 years, yet the government is embarking on a futile effort to breathe more life into their corpse, instead of concentrating on genuine reforms.
- The Commissioner can refuse to investigate complaints wherever he thinks investigation ‘is not warranted’, an unwarranted and unappealable discretion.
- The Commissioner can recognise another dispute resolution scheme to substitute for the Privacy Act, even if it provides lesser remedies than the Act.
- The Commissioner’s powers to require Privacy Impact Assessments (PIAs) from agencies are defective in not requiring an independent or public PIA.
- The ALRC’s proposed requirement on businesses to notify consumers and the Commissioner of any massive breaches of data security is not included.
- Removal of unjustifiable exemptions from the Act (‘small’ business; employment records; and political matters), proposed by the ALRC, is omitted.

The Bill does not even implement many of the key recommendations of the Australian Law Reform Commission (ALRC). The government has ‘cherry picked’ the recommendations and brought forward many that are most unfriendly to privacy, ignoring the ALRC’s better recommendations. The credit industry gets what it wants, but ordinary Australians will wait forever for a second reform Bill – there should be one comprehensive Bill including all reforms.

This incomplete and consumer-hostile Bill should be rejected, says the Privacy Foundation. The government should bring back to the Parliament a Bill that comprehensively improves the Privacy Act.

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How the 13 Australian Privacy Principles (APPs) go backwards

The APPs are not an improvement on the existing NPPs and IPPs. They are worse.

APP 1: Openness

This APP fails to require disclosure of the destination and recipients of personal information sent overseas.

APP 2: Anonymity and pseudonymity

The existing right to anonymous transactions is destroyed by this amendment.

APP 3: Collecting solicited information

Existing limitations on collection have been abandoned, with a raft of new exemptions.

APP 4: Receiving unsolicited information

This APP is no worse than the existing principles.

APP 5: Notification of collection

The improvements here are insufficient, particularly the failure to require disclosure of overseas recipients.

APP 6: Use and disclosure

This APP has the same raft of new exceptions as APP3, and is also worse than the existing principles in that it excludes the operation of the direct marketing and identifier principles.

APP 7: Direct Marketing

This APP should apply to direct marketing by government as well. The consumer's right to ask 'Where did you get my name?' can be avoided wherever it is 'impracticable' for a business to do provide an answer.

APP 8: Cross-border disclosure

The personal information of any Australians can now be sent to countries with no privacy laws at all, with victims required to prove breaches occurring there. The existing inadequate principle needed strengthening, but it has been made worse.

APP 9: Government identifiers

Protection against private sector misuse of government identifiers has now been removed.

APP 10: Quality

APP 11: Security and deletion

APP 12: Access

APP 13: Correction

The last four APPs are no worse than the existing principles.