



**Australian
Privacy
Foundation**

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<http://www.privacy.org.au/About/Contacts.html>

18 August 2014

Mr D. Tehan MP
Chair, Parliamentary Joint Committee on Intelligence and Security
P.O. Box 6021
Parliament House
Canberra ACT 2600
pjcis@aph.gov.au

Dear Mr Tehan

Re: National Security Legislation Amendment Bill (No. 1)

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

APF was unable to conduct sufficient analysis in order to provide a Submission to the current Inquiry. The reasons for this were:

- APF has limited resources, and has to assign them in an efficient manner
- APF has many commitments, most of which have reasonable periods of notice
- submissions were open for a period that was so short as to be seriously unreasonable
- analysis required review of very large documents including the Bill, the Explanatory Memorandum, a Committee Report Chapter, and APF's submission to the previous review
- the proponents of the Bill failed to provide a copy of the relevant legislation as it would appear if the Bill were passed in its current form, which significantly slows analysis of the proposal
- insufficient time was available to enable discussion with other civil society organisations

APF has now had the opportunity to scan the submissions of some other civil society organisations. In addition, APF's Chair appeared before the Committee on Monday 18 August – although in his role as a Life Member and sometime Board member of Electronic Frontiers Australia (EFA).

APF makes the following submissions to the Committee:

1. APF rejects the suggestion of one member of the Committee to the effect that the privacy interest is argued by EFA, APF and other organisations to be more important than the physical safety of undercover operatives. To our knowledge, no such position has ever been adopted by any such organisation. Nor could it be. Privacy has multiple dimensions, of which the most fundamental is privacy of the physical person, which encompasses personal safety
2. APF strongly supports the expressions of concern and the recommendations contained in the submissions of the Law Council of Australia, Electronic Frontiers Australia, the six Civil Liberties Councils, and the UNSW Centre for Public Law

3. APF highlights the need for an agreed evaluation process, or a set of criteria for such processes. In that regard:

- we attach a copy of APF's Meta-Principles, as tabled with you by EFA. This document identifies 8 criteria, and provides c. 20-word explanations of each
- we draw attention to the more detailed specification of Principle 5: Proportionality, which appears as an Appendix to the submission of the Civil Liberties Councils

We submit that these form a foundation for a suitable evaluation process for initiatives that have potentially significant negative impacts on human rights, including privacy

APF requests that you accept this brief Submission, notwithstanding the organisation's inability to comply with the very tight submission deadline.

Thank you for your consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roger Clarke', with a long horizontal stroke extending to the right.

Roger Clarke
Chair, for the Board of the Australian Privacy Foundation
(02) 6288 6916 Chair@privacy.org.au

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

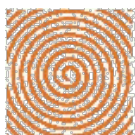
The Board is supported by Patrons The Hon Michael Kirby and Elizabeth Evatt, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>



**Australian
Privacy
Foundation**

The association that campaigns for privacy
protections

Meta-Principles

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[Resources](#)

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Do?](#)

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APF's Meta-Principles for Privacy Protection

APF has worked on a wide variety of issues over more than a quarter-century. Its Policy Statements and its Submissions reflect the following set of ground rules, or meta-principles, which APF submits must be generally applied.

1. Evaluation

All proposals that have the potential to harm privacy must be subjected to prior evaluation against appropriate privacy principles.

2. Consultation

All evaluation processes must feature consultation processes with the affected public and their representative and advocacy organisations.

3. Transparency

Sufficient information must be disclosed in advance to enable meaningful and consultative evaluation processes to take place.

4. Justification

All privacy-intrusive aspects must be demonstrated to be necessary pre-conditions for the achievement of specific positive outcomes.

5. Proportionality

The benefits arising from all privacy-intrusive aspects must be demonstrated to be commensurate with their financial and other costs, and the risks that they give rise to.

6. Mitigation

Where privacy-intrusiveness cannot be avoided, mitigating measures must be conceived, implemented and sustained, in order to minimise the harm caused.

7. Controls

All privacy-intrusive aspects must be subject to controls, to ensure that practices reflect policies and procedures. Breaches must be subject to sanctions, and the sanctions must be applied.

8. Audit

All privacy-intrusive aspects and their associated justification, proportionality, transparency, mitigation measures and controls must be subject to review, periodically and when warranted.

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Created: 10 March 2013 - Last Amended: 28 April 2013 by Roger Clarke - Site Last Verified: 11 January 2009

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