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Via email to: Roger.Clarke@xamax.com

Thank you all for your combined letter dated 19 October 2011 requesting that I publish Guidance about the promotion of biometric products by technology companies.

You expressed the view that 'the personal data aspects of biometric schemes fall within [my] formal powers' and you suggested that guidance material should acknowledge 'aspects [of biometrics] that threatened privacy of the physical person and privacy of personal behaviour'. I acknowledge that not only do biometric systems collect and process personal and health information but that they also represent a physical intrusion upon the person (particularly the use of retina and iris scanning, vein marking, body part measurement, fingerscanning and DNA fingerprinting) and that the use of biometrics can inhibit behaviour and thus restrict the free movement of individuals.

I am therefore broadly supportive of your request for Guidelines to be issued by Privacy Commissioners throughout Australia. I would envisage that such Guidelines should:

- identify the types of biometrics currently in use and explain how biometric technologies work and how they impact upon the privacy of the individual;
- explain how and why data obtained from biometric technologies might be gleaned by less intrusive methods (such as the use of swipe cards rather than fingerscanning);
- describe how the collection of personal or health information via biometrics by NSW public sector agencies (as defined) must comply with the privacy and health principles under NSW privacy laws;
- advise that the intended use of biometrics in NSW should only occur once a Privacy Impact Assessment (PIA) (involving broadscale public consultation) has been undertaken and which should be published to the world at large;
- recommend that the operation of the biometric should be tested/audited on a regular basis against the privacy protections identified in the PIA;
- recommend that the results of the audit be published to the world at large including the incidence of false negative and false positive results;

- advise that there should be strict prohibition on the secondary use of the personal or health information obtained via the biometric
- advise that personal and health information collected via a biometric must be encrypted at the point of collection

I am cognisant of the fact that certain organisations operating biometric systems in New South Wales have opted into the Biometrics Code¹ made under the Privacy Act 1988 (Cth) and that other organisations using biometrics in New South Wales may be bound to comply with the National Privacy Principles in that Act, however I retain the power to deal with privacy matters generally in New South Wales, as evidenced in the powers granted to me as Privacy Commissioner under section 36 of the PPIP Act such as the power:

- to prepare and publish guidelines relating to the protection of personal information and other privacy matters, and to promote the adoption of such guidelines,
- to provide advice on matters relating to the protection of personal information and the privacy of individuals,
- to receive, investigate and conciliate complaints about privacy related matters
- to conduct such enquiries and make such investigations into privacy related matters as I think appropriate

As you may know my tenure as Acting Privacy Commissioner will come to an end as of 6 November 2011, after which Dr Elizabeth Coombs will take up her appointment as Privacy Commissioner. I remain committed to issuing guidelines on use of biometrics in NSW and will be recommending to Dr Coombs that this matter be a priority for our Office.

Thank you for raising this matter with me.

Yours sincerely

John McAteer
Acting Privacy Commissioner
Information and Privacy Commission

¹ <http://www.biometricsinstitute.org/displaycommon.cfm?an=1&subarticlenbr=8>