



**Australian  
Privacy  
Foundation**

email: [mail@privacy.org.au](mailto:mail@privacy.org.au)

website: [www.privacy.org.au](http://www.privacy.org.au)

## **Guidelines for developing codes**

*Issued under Part IIIB of the Privacy Act 1988 – Consultation  
draft*

**Submission to the Office of the Australian  
Information Commissioner**

**April 2013**

### ***The Australian Privacy Foundation***

The Australian Privacy Foundation is the main non-governmental organisation dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. Since 1987, the Foundation has led the defence of the right of individuals to control their personal information and to be free of excessive intrusions. The Foundation uses the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed. For further information about the Foundation and the Charter, see [www.privacy.org.au](http://www.privacy.org.au)

Please note that APF does not have a single postal address – we prefer communication by e-mail. If a postal address is required please contact the signatory.

### ***Publication of submissions***

We have no objection to the publication of this submission in full. To further the public interest in transparency of public policy processes, APF strongly supports the position that all submissions to public inquiries and reviews should be publicly available, except to the extent that a submitter has reasonable grounds for confidentiality for all, or preferably only part of, a submission.

### ***Submission***

The bulk of our submission takes the form of comments annotating the attached pdf version of the consultation draft Guidelines. We have used the 'comments' function in Adobe Reader X, alongside highlighted text passages and hope that these are visible and readily understood – please advise if not and we will arrange for a different format.

The only other main point we wish to make is that experience under the existing Part IIIA suggests that there may not be much demand for Codes initiated by industry sectors or groups of regulated entities (other than the Credit Reporting (CR) Code which is effectively mandatory). There will continue to be significant costs associated with developing and administering a Code, and little practical advantage – the 'reasons' suggested in paragraph 2.5 of the Guidelines are worthy and aspirational but unlikely in our view to appeal to many regulated entities. If anything, the process involved in developing a Code will be

more extensive and onerous than under the existing Part IIIA and we know that those industry associations that have developed codes to date expended significant resources. Two of those associations – the Insurance Council of Australia and the Biometrics Institute subsequently withdrew their Codes – in at least the first case partly due to a negative cost-benefit calculation.

The APF believes that the most valuable potential use of the revised Part IIIA will be by the Information Commissioner, requesting a Code Developer to develop a Code and/or, in certain circumstances, developing a Code on her/his own initiative. In this context, we note that the Act does not require a Code Developer requested by the Commissioner to actually respond in any way, let alone deliver a satisfactory product. Given the costs and dubious benefits to regulated entities, it may be that the only significant potential use of Part IIIA will be in relation to Codes developed and made by the Commissioner. Whether this potential is realized will of course depend on availability of resources, which we know to have been a significant constraint on all Privacy and Information Commissioners to date, and is likely to remain a constant constraint.

In this context, while APF welcomes the provision in the revised Part IIIA for Commissioner initiated Codes, we are sceptical about how useful this will be in practice, despite the many circumstances where we think a Code supplementing and interpreting the APPs may be in the public interest.

Notwithstanding our skepticism, Code Development Guidelines are necessary in the event that a Code Developer either volunteers or responds to a request from the Commissioner, and a version of the Guidelines will also be relevant to any Code developed by the Commissioner. It is in this context that we offer the attached comments on the draft Guidelines.

For further information please contact:

Nigel Waters 02 4981 0828 [board5@privacy.org.au](mailto:board5@privacy.org.au)

Board Member  
Australian Privacy Foundation

APF Web site: <http://www.privacy.org.au>

*Please note that APF's preferred mode of communication is by email, which should be answered without undue delay. APF does not have an organisational postal address. If postal communication is necessary, please contact the person named above to arrange for a postal address.*