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10 August 2012

Senator T. Crossin
Chair
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Dear Senator Crossin

Re: Privacy Amendment (Enhancing Privacy Protection) Bill 2012

Supplementary Submission

We refer to our previous submission of 20 July.

We attach a brief Supplementary Submission, containing several corrections and one additional submission.

Thank you for your consideration.

Yours sincerely

Roger Clarke
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Australian Privacy Foundation

Privacy Amendment (Enhancing Privacy Protection) Bill 2012

Supplementary Submission to the Senate Legal and Constitutional Affairs Committee

Corrections and an Addition to the Submission of July 2012

1. These corrections are primarily matters that have already been detailed in the text of our Submission but which we omitted to single out as formal submissions which we recommend the Committee should adopt. We therefore wish to add them as formal submissions. The final correction is not of that nature – it is an additional point to add to the Submission already made.

2. Concerning APP 7 (pgs 16-17) we wish to add:

   'Submission: The exception from the requirement to answer 'where did you get my name?' provided in APP 7.7 where it is 'impractical and unreasonable' to answer should be deleted. The exemptions from APP 7 for charities and political parties should also be deleted.'

3. Concerning APP 8 (pgs 17-19), we wish to add before the paragraph commencing 'Another weakness':

   'Submission: The Commissioner should be required to issue guidelines concerning model clauses or a model contract before any organisation can rely on a contract as meeting the 'reasonable steps' test in APP 8.1. Section 20 should be amended to the effect that there is rebuttable presumption that a breach of an APP by an overseas recipient of personal information has occurred if personal information has been exported overseas, and the individual concerned can show that they have suffered damage which on the balance of probabilities has resulted from use of personal information of the type exported overseas by some party. We have included in a previous submission a draft cl 20(3) suggesting more detailed wording. South Korea's data protection legislation is an example of such presumptions being included in existing legislation.'

4. Concerning our final current submission on APP 8 we wish to amend the reference to 'two key changes' to refer to 'three key changes' and to add the words 'and (iii) a rebuttable presumption of breach by the overseas recipient when it is shown that damage occurs.'

5. Concerning our submissions on appeals against the making of a s52 determination by the Commissioner (pgs 4-5), we wish to add a further detail to our existing submission concerning the need to provide for the Commissioner to be required by complainants to make a s52 determination (decision):

   'Submission: Where the Commissioner is required to make a determination under s52, the Commissioner should be required to make such a determination within 60 days of such a requirement arising. As a example of such a time limit, South Korea's data protection legislation requires mediation proposals to be completed by its dispute resolution body within 60 days.'