



Our reference: 96-377-01

Dr Roger Clarke
Chair, Australian Privacy Foundation
GPO Box 1196
SYDNEY NSW 2001

Dear Dr Clarke

ANONYMOUS USE OF PUBLIC ROADS AND PUBLIC TRANSPORT

I refer to your letter of 23 September 2008 to the Privacy Commissioner, on behalf of the Australian Privacy Foundation, regarding the use of electronic tags and chip-enabled tokens, such as e-tags and public transport smartcards, by toll road operators and public transport providers. The Commissioner has asked me to reply on her behalf.

I note that your letter sites the decision by the NSW Government to remove cash booths from the Sydney Harbour Bridge and suggests that, as a consequence, the ability of individuals to travel anonymously has been undermined.

The Office of the Privacy Commissioner's (the Office) jurisdiction in relation to these issues is limited. However, the Office's general view reflects National Privacy Principle ('NPP') 8 in the *Privacy Act 1988* ('the Privacy Act') i.e. that individuals should be given the option of interacting with an organisation anonymously where this is lawful and practicable. What is practicable will vary given the particular circumstances of an organisation and the activity it is engaged in. The Office encourages all organisations to consider this principle carefully before embarking on the development of major projects involving personal information collection and handling.

The jurisdiction of the Privacy Act is important when considering the application of NPP 8 to the matters you have raised. The NPPs do not apply to state or territory authorities or their contractors (including subcontractors). Further, not all states have binding privacy regulation, or regulation that includes provisions similar to NPP 8. For example, the Office notes that while NSW has dedicated privacy legislation for its agencies, it does not include an anonymity principle.

In this context, the Office submitted to the Australian Law Reform Commission (ALRC), as part of their recent review of privacy law, that legislative measures should be pursued to ensure that state and territory contractors are bound by the Privacy Act or equivalent legislation¹.

In its final report *For Your Information: Australian Privacy Law and Practice* (ALRC 108), the ALRC has recommended to the Australian Government that state and territory privacy legislation should include provisions relating to state and territory contractorsⁱⁱ. The ALRC has also recommended that all states and territories should have legislation that regulates the handling of personal information in their public sector and that the legislation should apply the proposed Unified Privacy Principles (UPPs), which would include the principle of anonymity.ⁱⁱⁱ

The Australian Government is currently considering its response to the ALRC's report.

In addition, the NSW Law Reform Commission, in its recent discussion paper on privacy law reform, has proposed that 'Reforms of New South Wales privacy law should aim to achieve national uniformity'^{iv}.

Yours sincerely



Timothy Pilgrim
Deputy Privacy Commissioner

22 December 2008

ⁱ http://www.privacy.gov.au/publications/submissions/alrc_72/PartC.html#aqu1

ⁱⁱ <http://www.austlii.edu.au/au/other/alrc/publications/reports/108/3.html>

ⁱⁱⁱ <http://www.austlii.edu.au/au/other/alrc/publications/reports/108/3.html#Heading8>

^{iv} http://www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_cp3chpl#P1