



Draft Privacy (Private Sector) Amendment Regulations 2007

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Foundation**

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**Australian Privacy Foundation submission to the
Commonwealth Attorney-General's Department**

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The Australian Privacy Foundation

The Australian Privacy Foundation (APF) is the leading non-governmental organisation dedicated to protecting the privacy rights of Australians. We aim to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians.

Since 1987 the Australian Privacy Foundation has led the defence of the rights of individuals to control their personal information and to be free of excessive intrusions. We use the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed.

For further information about the organisation, see www.privacy.org.au

Submission

We note that these Regulations deal with only one recommendation of the Ministerial Working Party report – as the Attorney said in his October 2006 Media release: "The application of the Privacy Act to all tenancy database operators will supplement the uniform State and Territory legislation that is being developed".

We look forward to seeing that draft model legislation as soon as possible.

We note that the Regulations, while welcome, do nothing to remedy the other defects in the Privacy Act scheme exposed by the Privacy Commissioner's 2004 Determinations in relation to the TICA tenancy database (e.g. inability to prescribe acceptable acts and practices – can only proscribe those which breach the NPPs). We note that this generic issue is now under consideration by the ALRC in its Review of Privacy Law.

We have specifically been invited to comment the potential for the regulations to unintentionally capture parties other than RTDs. We are more concerned about the opposite risk – of the regs as drafted not capturing all operators of RTDs. We understand the need for a provision along the lines of Reg 3AA(3) to avoid capturing databases held by individual rental agencies, but what is the meaning of 'subscribers' – if this is read as meaning a particular payment model it could severely limit the potential reach of the Regulations – allowing their effect to be evaded by use of different terminology or business models. We suggest a more neutral and universal term is used to describe the users of shared residential tenancy databases.

In relation to commencement, our view is that this should be a matter of months at most - not years – tenancy databases operators have had plenty of notice of regulation and time to prepare for compliance.

Please note that postal correspondence takes some time due to re-direction – our preferred mode of communication is by email, which should be answered without undue delay.