**Australian
Privacy
Foundation**

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Digital Economy Future Directions

Consultation Draft Paper

Submission to the Department of Broadband, Communications and the Digital Economy

February 2009

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

Submission

We welcome the opportunity to respond to the consultation draft paper, and the initiative to provide an overall strategic framework for the future of the digital economy. We have a number of concerns which we explain below:

Open Access to PSI (Topic 1) – APF supports this in principle subject to appropriate limitations on access to third parties' personal information. It is disappointing that the privacy issue is not even recognised in the Questions.

Digital Confidence (Topic 2) – There is a good general acknowledgement of security and privacy issues, but more specific action is needed on definitions and principles to cope with online privacy issues (e.g. definition of personal information and addressing issue of 'bundled' consent – we refer to the submissions by the Cyberspace Law and Policy Centre to government on the ALRC privacy recommendations that address these issues, which the APF endorses. These submissions are available on-line at http://www.cyberlawcentre.org/ipp/index.html

Included in the Centre's UPP submission is a call for data security breach notification requirements to be brought forward to the first stage of privacy law reform.   We support this and also endorse the Centre's call for improvements in the privacy enforcement regime to make it more consistent with Spam, Do Not Call and Telecommunications Act privacy protections. For example, the government needs to address disparity in enforcement strength – notices and

large fines under Spam and Do Not Call Acts contrasted with a history of mild 'slaps on the wrist' and minimal compensation for arguably more serious privacy breaches under the Privacy Act.

Regulatory framework (Topic 4) – See our submission above concerning the need for consistency – we support the Cyberspace Centre's submission on the ALRC recommendations that there is a need to fill gaps in the 'responsive regulation' pyramid for privacy, and this applies as much to the Telecommunications specific privacy related legislation as to the Privacy Act itself.

We also caution against disproportionate measures to enforce copyright and censorship restrictions which might involve privacy intrusion i.e. through monitoring of online behaviour. Any such monitoring should be very much an exception, based on justifiable suspicions of illegality, rather than either speculative fishing expeditions or routine universal surveillance. We have severe reservations about the current direction of the government in relation to Internet content restrictions, including mandatory ISP level filtering.

Measuring (Topic 6) – We submit that there is a need to include surveys of privacy and security concerns. The periodic surveys by the Office of the Privacy Commissioner are helpful, but these issues should also be included in the mainstream survey programmes of the Department, the Australian Media and Communications Authority, and the Australian Bureau of Statistics.

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