



**Australian
Privacy
Foundation**

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<http://www.privacy.org.au/About/Contacts.html>

18 January 2011

Mr David Shoebridge MLC
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Mr Shoebridge

Submission to the Draft NSW Human Rights Bill

Thank you for inviting the Australian Privacy Foundation (APF) to attend the forum to discuss the draft NSW Human Rights Bill on 10 December 2010.

The Australian Privacy Foundation (APF) is the main non-government organization dedicated to protecting the privacy rights of Australians. Relying entirely on volunteer effort, the APF aims to focus public attention of existing and emerging issues that pose a threat to freedom, increase awareness of risks and promote compliance with privacy protection legislation in Australia. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions including surveillance. For information about the APF please refer to <http://www.privacy.org.au>.

Although we acknowledge there are numerous significant issues related to a Human Rights Act we wish to make submissions only on Section 12 - Privacy and Reputation.

We note that Section 12 is cited from Article 17 of the International Covenant of Civil and Political Rights (ICCPR) and included in the Commonwealth Privacy Act 1988. However, we do not believe that the ICCPR formulation alone is adequate, and the NSW Human Rights Bill represents an excellent opportunity to strengthen Australia's protection of fundamental human rights.

In December 1994 the Australian Privacy Charter Council, chaired by the then Justice Kirby, published the Australian Privacy Charter. A copy can be downloaded from <http://www.privacy.org.au/About/PrivacyCharter.html>. The Charter includes 18 Privacy Principles, many of which were adopted in the Commonwealth Privacy Act 1988.

We are concerned that unlike the other Rights included in the Bill, the right of privacy is expressed as a negative. Drawing upon the Australian Privacy Charter Council, we would prefer the following: "Everyone has a right to the privacy of their own body, private space, privacy of communications, information privacy (rights concerning information about a person), and freedom from surveillance".

"Everyone has the right to privacy including the right to freedom from:

- (a) unlawful or arbitrary interference with their family, home or correspondence
- (b) unlawful attack on his or her reputation."

"Privacy includes the right to anonymous transactions, and no disadvantage or denial of goods or services because they chose to exercise a right to privacy."

Good privacy practice includes:

- (a) Public justification for exceptions to interfere with rights to privacy
- (b) Minimal collection and retention of data including that on public registers
- (c) Fairly obtaining informed consent to collect and use data and openness about its existence, disclosure and purpose
- (d) Access and correction to data collected
- (e) Adequate and appropriate redress to interferences resulting from breaches of privacy.”

For further references about the inclusion of privacy within Human Rights legislation please refer to submissions included on our website:

- July 2010 to Senate L&C Committee on the Commonwealth Bill
http://www.privacy.org.au/Papers/HoR_Scrutiny_of_Bills_subm_201007.pdf
- April 2010 to Scrutiny of Bills Committee <http://www.privacy.org.au/Papers/Sen-BillScrutiny-100406.pdf>
- June 2009 to National Human Rights Consultation
<http://www.privacy.org.au/Papers/HumanRts090615.doc>

Do not hesitate to contact us if you have any queries.

Yours sincerely



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