



Optus Submission
to the OAIC's consultation on the draft
Guidelines for developing codes

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Section 1. Overview

- 1.1 Optus appreciates the opportunity to provide this submission to the Office of the Australian Information Commissioner (OAIC) in response to its consultation on the Guidelines for developing codes (the Guidelines), issued under Part IIIB of the *Privacy Act 1988* (the Act).
- 1.2 Optus has over 15 years' experience with the self-regulatory telecommunications regime and takes an active role in the upkeep and development of industry guidelines and codes. As such, Optus is well placed to provide valuable insight into this consultation.
- 1.3 Optus considers it critical to the success of any code or guidance paper to have a clear method for development, refinement and delivery. The critical factors for success are to have established clear terms of reference, and a clear timeframe for the development lifecycle from establishing a working group through to publication. There also must be clear means to resolve disputes, appropriate levels of interest from affected parties and a commitment to the outcome sought.
- 1.4 Having clear guidance available to those involved in code development is invaluable, and we commend the OAIC for making these revised Guidelines available so soon after the new Act was introduced.
- 1.5 Optus' interest in these Guidelines is due to both its current interest and involvement in the development of the Credit Reporting Code (CR Code) and the potential future development of additional privacy codes.
- 1.6 As a general comment, we note that the Guidelines refer only to registered codes. We query whether any options exist, as they do in other industries, for codes to be developed voluntarily by industry, but not registered, thereby encouraging minimum standards by an industry sector but without mandating those standards on those industry providers. The introduction of guidelines can also be an important step towards code development.

Section 2. Consideration to be given to existing regulatory obligations

- 2.1 As the OAIC is aware, telecommunications providers are already subject to a large amount of regulation, and therefore we also have a keen interest in ensuring that any new regulation (including codes of practice) takes into account existing legal and regulatory obligations and does not duplicate existing requirements or impose conflicting obligations on industry.
- 2.2 The Guidelines, as currently drafted, do not seem to include such a consideration. We believe this is important and should be reflected in the document. We have therefore listed below specific sections in the Guidelines where we believe such a consideration should be included.

Section 3. Assessing the need for an APP code

- 3.1 In addition to those items listed in paragraph 2.6 of the Guidelines, Optus suggests that APP entities should also consider whether a registered code is required, or whether some other form of guidance would be sufficient.
- 3.2 Whilst the final bullet point in paragraph 2.6 recommends consideration of whether there is an existing code that may be suitable for adoption, Optus recommends that this be expanded to suggest consideration of any other existing legislation, regulation or codes that cover the same or similar topics, as these may also negate the need for development of a new code.

Section 4. Entities bound by APP codes

- 4.1 Paragraphs 2.14 and 2.17 require online registers to be maintained of each and every entity that is bound by an APP code, including the names of any subsidiary companies, and each company's legal and trading names.
- 4.2 Optus queries whether this is a practical obligation where codes apply to a large number of entities. For example, were there to be a proposal to develop an APP code that applied to as broad an audience as the credit providers bound by the CR Code, or even to all telecommunications providers (which number over 1000), this requirement would be impractical if not impossible to meet. In fact, it could potentially prove to be a more onerous obligation than those imposed by the code itself, and could deter from the development of such codes.

Section 5. Options for privacy complaint handling and reporting

- 5.1 Paragraph 2.25 of the Guidelines refers to ensuring consistency relating to complaint handling in the CR Code. As noted in section 2 above, this needs to take into account existing regulation that applies to the various industries subject to the CR Code, as several already have obligations in this space – such as telecommunications, banking and finance.
- 5.2 Therefore, consistency in the processes to be followed might practically have to vary between industries, although it would be possible to agree on minimum standards that are contained in existing regulatory requirements.

Section 6. Development of codes by the Commissioner

- 6.1 This section of the Guidelines does not indicate whether the OAIC is subject to the Regulation Impact Statement requirements that apply to other government agencies.
- 6.2 If the Commissioner is required to submit a Regulation Impact Statement to the Office of Best Practice Regulation before developing (or approving) a code, it would be appropriate to refer to this in the Guidelines.
- 6.3 The analysis required for a Regulation Impact Statement will be particularly important for APP codes, given that they can impose obligations additional to those contained in the APPs.

Section 7. Openness and transparency

- 7.1 Optus fully supports the principles of openness and transparency, especially in relation to our customers' privacy and the protection of their personal information. We do query, however, the value in requiring entities bound by privacy codes to have information available on their websites about the code, including a link to the code.
- 7.2 Entities such as Optus, who operate in highly regulated markets, are already subject to a multitude of obligations which all contain mandatory customer information requirements, many of which appear to be similar "set and forget" requirements. These all add up overtime, contributing to the great difficulty providers face in keeping their websites simple, accessible and valuable for consumers.
- 7.3 We submit that it is much more likely for consumers to look at the website of the OAIC if they have an interest in understanding what regulations exist in this space, than going to the website of their provider.

Section 8. Developing procedures for internal handling and reporting of privacy complaints

- 8.1 Similar to our feedback in section 5 above, Optus believes that it is important to consider existing regulations on complaint handling in the development of any such obligations in a privacy code.
- 8.2 The Guidelines state in paragraph 5.8 that "In order to keep the [complaint handling] procedures simple and ensure that they can be easily interpreted, the Commissioner suggests that internal privacy complaint handling procedures [in a privacy code] cover all Privacy Act related privacy complaints rather than just complaints concerning breaches of the Code." In our view, this approach seems to assume that there is no pre-existing regulation relating to complaint handling, and that this would be the only privacy code with such requirements that would apply to an organisation.
- 8.3 In fact, we foresee that it could be possible for an entity to be bound by several privacy codes – as well as existing industry-specific complaint handling obligations – and therefore it would not be practical or useful for each of them to impose new complaint handling obligations covering all Privacy Act complaints (as opposed to simply dealing with breaches of that particular code). For example, telecommunications providers are already subject to the complaint handling obligations for all complaints (including Privacy Act complaints) under the Telecommunications Consumer Protections (TCP) Code, and will soon be subject to additional (hopefully non-conflicting) complaint handling obligations under the new CR code, so expanding other privacy codes to cover off all privacy complaints processes would prove incredibly problematic.
- 8.4 Due to this, Optus recommends that this section of the Guidelines retains the Commissioner's recommendations regarding complaint handling, but note that this may not be appropriate where there is overlap with other privacy codes or existing regulation that applies to the entities that will be bound by the code.

Ends.