



9 April 2013

Mr. Timothy Pilgrim

Privacy Commissioner

Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

Dear Mr. Pilgrim

Re: Draft Guidelines for Developing Codes

Thank you for the opportunity to provide feedback on the draft Guidelines for Developing Codes under part IIIB of the *Privacy Act 1988* ("code development guidelines").

Clubs Queensland is the Privacy Code Administrator of the Queensland Club Industry Privacy Code ("Industry Privacy Code"). The Industry Privacy Code was developed in 2001 to assist member clubs to proactively comply with the 10 National Privacy Principles (NPPs) under the *Privacy Act 1988*. The Industry Privacy Code is Queensland's first privacy code and the nation's second privacy code to be approved by the Privacy Commissioner.

To date, 58 community clubs have subscribed to the Industry Privacy Code. This is a monumental achievement as it represents close to 95% of non-exempt community clubs that fall under the jurisdiction of the Privacy Act (i.e. they have gross annual turnover of more than \$3 million). The remainder of the industry (approximately 1,350 community clubs) use the privacy code as best practice – a usage that is codified if they have gaming machines and must apply sound privacy principles when complying with the anti-money laundering and counter-terrorism financing laws.

Privacy is a key business concern because community clubs are member-based social enterprises. Any person who wants to access a community club must provide basic personal details and it is incumbent on community clubs to ensure personal information is collected, used, disclosed and stored appropriately. As the peak industry association, Clubs Queensland has used its leadership position to continually educate community clubs on the importance of safeguarding privacy.

Based on the above industry experience, Clubs Queensland submits that the code development guidelines should be a targeted document. The code development guidelines in its present form takes a 'catch all' position and includes requirements that are indiscriminate to the different types of organisations that may want to develop a privacy code. Additionally, the code development guidelines include information that are not needed if certain conditions are met e.g. if an entity decides to develop a privacy code on its own accord (part 2 of the guidelines), then it does not need information on circumstances when the Privacy Commissioner requests that a privacy code should be developed (part 3 of the guidelines). A better approach would be to issue separate code development guidelines for different sectors (e.g. a guide for not-for-profit sector) that specifically addresses issues relevant to that sector.

While the code development guidelines makes it clear that the privacy code is a legally binding document under the Privacy Act, there is no demarcation between what are the minimum legislative standards and other matters that can be incorporated in the privacy code. This demarcation is important because it is often the case that an entity such as a peak industry association develops a privacy code to address the specifics of that industry. A clear separation of issues in this regard will not only ensure proactive compliance but encourage industry best practice. An outstanding example of this approach is the *Queensland Responsible Gambling Code of Practice* (available at www.olgr.qld.gov.au) which clearly conveys some parts of the code are voluntary best practice.

Finally, there appears to be a number of contradictions in the code development guidelines. The code development guidelines, for example, advocate the development of privacy codes but state in paragraph 1.5 that "Codes do not replace the relevant provisions of the Privacy Act, but operate in addition to the requirements of the Act". The rationale for the Industry Privacy Code is to replace the 10 National Privacy Principles with equivalent industry principles that are easier for member clubs to understand and comply with as part of their business i.e. the Industry Privacy Code makes it clear that member clubs that voluntarily subscribe to the privacy code must comply with industry-specific principles contained in the Privacy Code, instead of the generic National Privacy Principles (NPPs)". If code members have to refer to the Privacy Act provisions, it then defeats the purpose of developing a privacy code.

In **summary**, the code development guidelines are necessary to inform and assist entities that want to develop privacy codes for a range of reasons (including a sense of ownership of privacy obligations and to promote industry awareness on the importance of safeguarding privacy as in the case of the Industry Privacy Code) but they need to be kept simple, targeted and consistent. The fact that there are now only two privacy codes operating in Australia (the Industry Privacy Code being one of them) is a testimony that the code development guidelines need to be updated in order to encourage more entities to embrace the privacy code as a useful compliance tool. It is hoped that this review of the code development guidelines will result in a progressive regulatory model that is flexible, balanced, cost-effective, and one that is clearly understood by the industry.

I hope the above comments are of assistance and please do not hesitate to contact me should you require more information or clarification on the matters raised in this submission.

Yours sincerely

Chief Executive Officer