



Mr Timothy Pilgrim
Australian Privacy Commissioner

Via email: consultation@oaic.gov.au

29 April 2013

Dear Mr Pilgrim,

Re: Guidelines for developing codes – issued under Part IIIB of the Privacy Act 1988

The Association of Market and Social Research Organisations (AMSRO) commends the Office of the Australian Information Commissioner on their *Guidelines for developing codes* and appreciates the invitation to comment.

AMSRO is the peak body for Australia's leading market and social research companies. The Association has 98 Australian member companies representing approximately 70% of total employment across an industry that generated a turn-over of \$794 million (exc. GST) in 2011.

AMSRO is the administrator of the *Market and Social Research Privacy Code* (M&SRPC). The M&SRPC was introduced following public consultation in 2003 and immediately expanded the scope of the privacy measures available to companies and participants in the industry, going far beyond the privacy protection mechanisms available by relying on the private sector provisions of the Privacy Act.

The Market and Social Research Privacy Code (M&SRPC) reflect the industry's longstanding commitment to protecting the public's confidentiality. Since its inception ten years ago, the code has provided on-going protection for research participants and provided the force of law to the industry's existing Code of Professional Behaviour, further protecting the confidentiality and anonymity of research information. During this time there has not been a single breach of the Privacy Act involving a company of AMSRO and the Australian Privacy Commissioner has not been required to intervene and resolve a claim.

Recently the M&SRPC was independently reviewed by Dr Terry Beed (in accordance with the terms of the Code¹) and you noted AMSRO's intention to accept most of the review recommendations, but to make no change to the Code itself (your letter February 19, 2013²).

In accordance with the amendments of the Privacy Act and the new process for developing privacy codes, AMSRO plans to re-develop the current M&SRPC in accordance with the incoming Australian Privacy Principles (APP's) and seek approval of the redeveloped code under Part IIIB of the amended Privacy Act 1988.

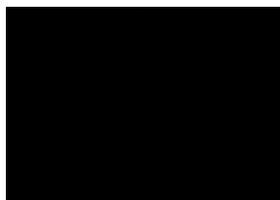
For the purpose of this submission AMSRO intends to comment on the following sections of the guidelines:

- **Part 2 - Deciding and planning to develop a code**
- **Part 4 – Developing Codes**
- **Part 5 – Handling and reporting of privacy complaints**
- **Part 6 – Applying for registration of a code**
- **Part 7 – Reviewing and varying registered codes and removing registered APP codes**

In the first instance however AMSRO notes that the *Guidelines for developing codes* provide instruction for developing new codes but do not include any reference to organisations currently administering and operating a registered code. Given AMSRO's long-standing success³ including the complete lack of any breach during the past ten years, we would welcome the opportunity to discuss an option whereby current and proven administrative bodies are granted relief from some of the requirements in the registration process.

Our comments relating to the sections above are provided over the following pages and we look forward to meeting with the OAIC to discuss further at your convenience.

Yours sincerely,



President
AMSRO

¹ Section G.3 Independent Code Review Panel (Market and Social Research Privacy Code)
www.amsro.com.au/privacy

² OAIC correspondence (19/4/13) Review of the Market and Social Research Privacy Code

³ M&SRPC winner of the Australian Privacy Award 2009 - Community and NGO Category

Part 2 – Deciding and planning to develop a code

Guidelines: 2.9 The Commissioner generally expects that governance arrangements will also include the establishment and appropriate funding of a code administrator and/or code administration committee to oversee the regular operation of a code once it has been registered. Code administrators or code administration committees are bodies established to oversee the ongoing administration of the code, including any need for variations, the maintenance of an accessible record of code members (paragraphs 2.12–2.18), monitoring and reporting compliance (paragraphs 2.26–2.29) and instigate regular independent reviews of codes to ensure they operate effectively and remain relevant (paragraphs 7.1–7.6).

AMSRO supports the Commissioner’s governance expectations and recommends having a committee of representatives oversee the regular operation of a code. One of the undertakings AMSRO made as part of its first Review of The Privacy Code (2007) was to establish a Privacy Compliance Committee (PCC). PCC members include representatives from industry and consumer sectors who report to the AMSRO Board. The role of the Privacy Compliance Committee (PCC) is to ensure that the Board is up to date with developments and to comment on changes in the legal framework as they emerge. The PCC also manages all member privacy queries, a query and compliant register and in the recent M&SRPC review acted in an advisory capacity as part of the independent code review panel (mindful not to conflict with the Reviewer’s charter of independence).

Part 4 – Developing Codes

Guidelines: 4.23 The Commissioner expects the code developer to bring the draft of the code to the attention of stakeholders to ensure that they are aware of the public consultation period. Relevant stakeholders include:

- entities that may have an interest in being bound by the code
- individuals and entities that may be impacted by the code
- relevant community and industry associations.

AMSRO acknowledges these requirements, however given the significant outlay of resources required, AMSRO requests the OAIC grant current code administrators some dispensation when applying to register a redraft of a developed code that has been recently given extensive public review of the type anticipated in 4.23. It should be noted that the terms of M&SRPC required AMSRO to conduct an extensive public consultation and stakeholder engagement plan at the outset of developing the M&SRPC code (2003) which was repeated for the first code review in 2007 and again in 2012.

Part 5 – Handling and reporting of privacy complaints

Developing procedures for internal handling and reporting of privacy complaints

Guidelines: 5.7 The Commissioner encourages code developers to consider developing and including in a code, provisions for the internal handling of privacy complaints and reporting to the Commissioner on those complaints (ss 26C(3)(c)–(d) (APP codes) and 26N(3)(b)–(c) (CR code)).

These procedures would be implemented by all the entities bound by the code to ensure a consistent approach to the internal handling of privacy complaints.

AMSRO supports the guidelines for provisions regarding internal handling of privacy queries, complaints and reporting to the Commissioner. (This is consistent with the M&SRPC's current procedure⁴).

Part 6 – Applying for registration of a code

Application for registration of a code 6.1 – 6.7

Guidelines: 6.1 A code is binding and comes into force once it is registered by the Commissioner. Code developers must apply to the Commissioner for the registration of a code (ss 26F(1) (APP codes) and 26Q(1) (CR code)). The registration of a code is at the discretion of the Commissioner (ss 26H(1) (APP codes) and 26S(1) (CR code)). Each code will be assessed by the Commissioner on its merits.

AMSRO commends the OAIC on the application guidelines and notes that each code will be assessed by the Commissioner on its merits however requests the Commissioner consider our recommendation to enable administrators with approved codes⁵ to apply a streamlined approach to re-registering developed codes. AMSRO acknowledges that the Part IIIB introduces a new process for developing new privacy codes; however, apart from ensuring the APP's are reflected in the M&SRPC, AMSRO does not propose significant changes to the administration, operation or review process of its current code and therefore suggests a less stringent, resource heavy approach is considered by the Commissioner for existing registered codes which have met all previous requirements to a high standard.

Part 7 – Reviewing and varying registered codes and removing registered APP codes

Review of registered codes initiated by the code administrator

Guidelines: 7.1 The Commissioner expects that the governance arrangements for registered codes will include code administrators initiating regular independent reviews of the operation of the code to ensure that it remains effective and relevant (see paragraph 2.9). The Commissioner expects that a code review would generally be overseen by a suitably independent person and where practicable supported by a steering group which would include at least one representative from a relevant consumer group.

7.2 The Commissioner expects that an independent review of a code would:

- **occur at regular intervals, at least every 5 years, and have a scope broad enough to capture all potential issues related to the codes effectiveness and relevance[22]**
- **include a public consultation process (including with relevant stakeholders e.g. entities bound by the Code, individuals who transact with those entities)**

- **result in a report made publicly available online which outlines:**
 - **the issues raised by the review**
 - **the findings of the review**
 - **the actions taken, or that will be taken, by the code administrator and/or the entities bound by the code to address issues identified by the review.**

⁴ Section H. M&SRPC Complaints - Improper Conduct www.amsro.com.au/privacy

⁵ OAIC Correspondence – Review of the Market and Social Research Privacy Code (19th April 2013)

Under the terms of the M&SRPC⁶ AMSRO's Independent Review process is as follows:

Tasks of Independent Code Review Panel

1. The Independent Code Review Panel will:
 - 1.1 within 3 years after registration of this Code, and once every three years thereafter, produce a report on the operation of the code, which will be submitted, along with the Code Administrator's written response to this report, to the Privacy Commissioner within 30 business days of the report's being finalised; and
 - 1.2 recommend amendments to the Code, at any time that it considers them necessary or desirable for the effective operation of the Code, on request or by its own initiative; and
 - 1.3 where an amendment has been recommended, complete the steps necessary to make an amendment to the Code referred to in subclause G.6.
2. The steps referred to in subclauses G.3.1 to 3.3 shall together provide a basis for ensuring that the Code is meeting its objectives and remains relevant and up to date.

Given that the M&SRPPs are functioning well and the significant resources required by an independent review, AMSRO believes that the proposed 'five year review' process (five years being the maximum period) is an appropriate time frame which would work well for administering bodies and subscribers based on the proviso that a steering group committee is established to maintain and monitor subscribers compliance and any industry or regulatory changes.

AMSRO also recommends the OAIC consider an additional mechanism be included in a code to allow the Commissioner the opportunity to grant a 'streamlined' review approach. The decision would be based on industry compliance and entirely at the Commissioners discretion. It would however enable industry bodies operating compliant and successful codes the opportunity to conduct the review process with minimal impact on member resources.

AMSRO welcomes any initiative by the OAIC which provides encouragement and support for those organisations that have committed to improving their privacy regimes through the production and maintenance of their own privacy codes.

Conclusion

AMSRO would like to thank the OAIC for the opportunity to comment on the guidelines. AMSRO acknowledges that the guidelines are a helpful source of information for organisations developing new codes.

AMSRO believes the M&SRPC represents an excellent and rare example of industry self-regulation and we accept that with the amendments to the Privacy Act there are changes required to our current code that need to be addressed. We trust however that by continuing to work in consultation with the Commissioner we can redevelop and register the M&SRPC code in a timely and efficient manner thus meeting guideline obligations as an existing code administrator.

⁶ The Market and Social Research Privacy Code (M&SRPCC) www.amsro.com.au/privacy