

INTERNET INDUSTRY PRIVACY CODE OF PRACTICE

Consultation Draft 1.0
- European Extension Version -

14 August 2001

A CODE FOR INDUSTRY CO-REGULATION IN THE AREA OF PRIVACY

NOTE:

THIS VERSION OF THE CODE IS INTENDED FOR PUBLIC, INDUSTRY AND REGULATORY CONSULTATION AND COMMENT PRIOR TO ITS REGISTRATION WITH THE PRIVACY COMMISSIONER. WRITTEN COMMENTS IDENTIFYING AUTHOR AND, WHERE APPLICABLE ORGANISATION, ARE TO BE PROVIDED TO THE IIA NO LATER THAN 5 OCTOBER 2001 AND MAY BE DONE SO BY EMAILING:
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The Internet Industry Association is Australia's national Internet industry organisation. Members include telecommunications carriers, content creators and publishers, web devel-opers, e-commerce traders and solutions providers, hardware vendors, systems integrators, banks, insurance underwriters, Internet law firms, ISPs, educational and training institutions, Internet research analysts, and a range of other businesses providing professional and technical support services. On behalf of its members, the IIA provides policy input to government and advocacy on a range of business and regulatory issues, to promote laws and initiatives which enhance access, equity, reliability and growth of the medium within Australia.

1. PREAMBLE

- 1.1 Since its inception as a national industry body in 1995, the Internet Industry Association (IIA) has worked to define and implement best practice standards for its members and industry as a whole. In relation to the protection of personal information, the IIA believes that industry adherence to ethical privacy practices is a necessary precondition for consumer confidence and for the long term success of e-commerce generally. Permission-based dealings with Personal Information based on an ethos of prior informed consent is, in the view of the IIA, more conducive to the creation and preservation of positive customer relations, than that which occurs without the knowledge and consent of users.
- 1.2 Amendments to the Privacy Act made on 21 December 2000, and largely endorsed by the IIA, require industry participants to provide protection for Personal Information collected and used by them. In most cases, these take effect from 21 December 2001. To assist members in preparing for these new obligations, and to develop a culture of privacy protection in the Australian Internet industry, the IIA has created this Privacy Code.
- 1.3 The Code aims to balance the responsibilities of government and industry within a co-regulatory framework. This method of shared responsibility is supported by the IIA as a flexible means of maintaining relevant and enforceable best practice standards within a rapidly changing communications and commercial environment.
- 1.4 The Code was approved by the Privacy Commissioner on **[date]**.
- 1.5 The parties listed in section 4 have contributed to the consultation process for the development of the Code. In this regard, reference was had to:
 - (a) the Privacy Act;
 - (b) the OECD Guidelines on the Protection of Privacy;
 - (c) the National Principles for the Fair Handling of personal information;
 - (d) the European Directive 95/46; and
 - (e) the OECD Draft Recommendation of the Council Concerning Guidelines for Consumer Protection in the Context of Electronic Commerce [[hyperlink http://www.oecd.org](http://www.oecd.org)];
- 1.6 The Code is administered by the Code Administrator of the IIA under direction of the IIA Board, and is subject to independent review by the Independent Code Review Panel.
- 1.7 Members of the industry who choose to adhere to the Code are entitled to indicate that commitment by use of an Approved Designation. The use of an Approved Designation will not only signify an undertaking to comply, but will also serve as a means by which the public can better understand the operation of the regime and their rights and responsibilities under it.
- 1.8 This "European Extension" version of the Code has also been drafted with an intention of providing IIA members with safe harbour in respect of their dealings with residents of the European Union.

2. OBJECTIVES

- 2.1 The aims of this Code include:

- (a) to facilitate the protection of Personal Information;
- (b) to bridge any discrepancies between the privacy compliance requirements in Australia and those in the European Union;
- (c) to enhance the protection of Personal Information from or about children;
- (d) to restrict online direct marketing to those individuals who have expressly consented to receive it; and
- (e) to allow IIA member small business operators who are otherwise not subject to the Privacy Act to benefit from compliance with industry best practice in relation to the collection and use of Personal Information.

3. ELIGIBILITY AND SCOPE

- 3.1 Eligibility to become a Code Subscriber is restricted to IIA members in good standing, regardless of their size or annual turnover, and includes small business operators who are members of the IIA.
- 3.2 Eligibility for IIA membership is open to businesses and organisations who:
- (a) provide services on or through the Internet from a location within Australia, or
 - (b) are engaged in an Internet related business, or
 - (c) are directly or indirectly commercially interested in the Internet.
- 3.3 This Code will apply to those businesses and organisations who are eligible to become Code Subscribers and who agree to be bound by the Code.
- 3.4 This Code is voluntary, but is binding on those Code Subscribers who agree to be bound by it in accordance with the procedures set out in the Code.
- 3.5 This Code covers the processing of all Personal Information by a Code Subscriber including:
- (a) employee records exempted by the Privacy Act; and
 - (b) information collected for inclusion in a generally available publication.
- 3.6 Nothing in this Code applies in respect of the collection, holding, management, use, disclosure or transfer of Personal Information by an individual or Personal Information held by an individual only for the purposes of, or in connection, his or her personal, family, or household affairs.
- 3.5 It is important to note that the authorised use of an Approved Designation by a Code Subscriber does not indicate a warranty or endorsement by the IIA of the compliance by that Code Subscriber with this Code.

4. CONTRIBUTORS

- 4.1 The following parties provided the IIA with submissions which were taken into account in the drafting of this Code:

[parties who have submitted to the IIA during the consultation process]

5. TERMINOLOGY

5.1 Other than as defined below, words used in this Code have the meaning defined in the Privacy Act.

“Approved Designation”	means any or all of the following: <ol style="list-style-type: none"> (a) the symbol or symbols and accompanying text where applicable approved by the IIA Board from time to time as indicating agreement to comply with the Code; (b) a form of words approved for that purpose by the IIA Board; (c) any other designation approved for that purpose by the IIA Board.
“child”	means an individual who has not attained the age of thirteen years.
“Code Administrator”	means the person established under subclause 7.1.
“collect”	means the act of gathering, acquiring, or obtaining Personal Information from any source, including third parties, by any means but does not include the receipt of unsolicited information and “collection” has a corresponding meaning.
“Code”	means this Privacy Code of Practice.
“Code Subscriber”	means an organisation that has agreed to comply with the Code and has been approved by the Code Administrator in accordance with clause 10.
“disclose”	means make Personal Information available through any medium to others outside the Code Subscriber or as contemplated in s 13B of the Privacy Act, other than the individual to whom the information relates and “disclosure” has a corresponding meaning.
“Independent Code Review Panel”	means the body established under subclause 8.1.
“Internet”	means the global network known by that name connecting many separate computer networks and based on a common addressing system and communications protocol called TCP/IP.
“IIA”	means the Internet Industry Association (ACN 071 075 575).
“IIA Board”	means the Board of Directors of the IIA.
“online environment”	means services or facilities made available by use of the Internet.
“person”	includes an organisation and the Crown.

“Privacy Act”	means <i>Privacy Act 1988 (Commonwealth)</i> as amended.
“Privacy Commissioner”	means the Federal Privacy Commissioner.
“Public Register”	means the register maintained by the Code Administrator in accordance with subclause 10.15.
“sensitive information”	means: <ul style="list-style-type: none">(a) information or an opinion about an individual’s:<ul style="list-style-type: none">(i) racial or ethnic origin;(ii) political opinions;(iii) membership of a political association;(iv) religious beliefs or affiliations;(v) philosophical beliefs;(vi) membership of a professional or trade association;(vii) membership of a trade union;(viii) sexual preferences or practices; or(ix) criminal record,that is also Personal Information;(b) health information; and(c) Personal Information from or about a child.
“third party”	means, in relation to personal information, a person other than the Code Subscriber holding the information and the individual to whom the information relates.
“user “	means a user of the Internet who is resident within Australia.
“working day”	means any day Monday to Friday, excluding public holidays.

6. CODE RULES

Privacy Principle 1 - Collection

- 6.1 A Code Subscriber must not collect Personal Information unless the information is necessary for one or more of its functions or activities.
- 6.2 A Code Subscriber must collect Personal Information only by lawful and fair means and not in an unreasonably intrusive way.
- 6.3 At or before the time a Code Subscriber collects Personal Information from an individual, the Code Subscriber must take reasonable steps to ensure that the individual is aware of:
- (a) the identity of the Code Subscriber and how to contact it; and
 - (b) the fact that he or she is able to gain access to the information; and
 - (c) the purposes for which the information is collected; and
 - (d) the Organisations (or the types of organisations) to which the Code Subscriber usually discloses information of that kind; and
 - (e) any law that requires the particular information to be collected; and
 - (f) the main consequences (if any) for the individual if all or part of the information is not provided.
- 6.4 Where direct marketing is the primary purpose of collection, Personal Information may only be collected with the consent of the individual concerned.
- 6.5 If it is reasonable and practicable to do so, a Code Subscriber must collect Personal Information about an individual only from that individual.
- 6.6 If a Code Subscriber collects Personal Information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 6.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

Privacy Principle 2 - Use and Disclosure

- 6.7 Sensitive information must not be used or disclosed without the individual's consent (or, in the case of Personal Information from or about a child, the consent of the relevant child's legal guardian) unless:
- (a) it is impracticable for the Code Subscriber to seek the individual's consent (or in the case of Personal Information about a child, the consent of the relevant child's legal guardian) before the use or disclosure; and
 - (b) the use or disclosure is conducted in accordance with guidelines approved by the Privacy Commissioner, and
 - (c) in the case of disclosure, the Code Subscriber reasonably believes that the recipient of the information will not disclose it.
- 6.8 A Code Subscriber must not use or disclose Personal Information (other than sensitive information) about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless:
- (a) both of the following apply:

- (i) the secondary purpose is related to the primary purpose of collection and, if the Personal Information is sensitive information, directly related to the primary purpose of collection;
 - (ii) the individual would reasonably expect the Code Subscriber to use or disclose the information for the secondary purpose; or
- (b) the individual has consented to the use or disclosure;
- (c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:
 - (i) subject to subclause 6.9, it is impracticable for the Code Subscriber to seek the individual's consent before that particular use; and
 - (ii) the Code Subscriber will not charge the individual for giving effect to a request by the individual to the Code Subscriber not to receive direct marketing communications; and
 - (iii) the individual has not made a request to the Code Subscriber not to receive direct marketing communications; and
 - (iv) in each direct marketing communication with the individual, the Code Subscriber draws to the individual's attention, or prominently displays a notice, that he or she may express a wish not to receive any further direct marketing communications; and
 - (v) each written direct marketing communication by the Code Subscriber with the individual (up to and including the communication that involves the use) sets out the Code Subscriber's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the Code Subscriber can be directly contacted electronically; or
- (d) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:
 - (i) it is impracticable for the Code Subscriber to seek the individual's consent before the use or disclosure; and
 - (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A of the Privacy Act for the purposes of this subparagraph; and
 - (iii) in the case of disclosure, the Code Subscriber reasonably believes that the recipient of the health information will not disclose the health information, or Personal Information derived from the health information; or
- (e) the Code Subscriber reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - (i) a serious and imminent threat to an individual's life, health or safety; or
 - (ii) a serious threat to public health or public safety; or
- (f) the Code Subscriber has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the Personal Information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
- (g) the use or disclosure is required or expressly authorised by a conflicting legal obligation; or

- (h) the Code Subscriber reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter Code Subscribers from lawfully co-operating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 6.5 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 6.5 requires a Code Subscriber to disclose personal information; a Code Subscriber is always entitled not to disclose Personal Information in the absence of a legal obligation to disclose it.

Note 3: A Code Subscriber is also subject to the requirements of Privacy Principle 9 if it transfers Personal Information to a person in a foreign country.

- 6.9 For the purposes of subclause 6.8(c)(i), it shall in all circumstances be deemed practicable for a Code Subscriber to seek the individual's prior express consent to use Personal Information for the secondary purpose of direct marketing in an online environment.
- 6.10 If a Code Subscriber uses or discloses Personal Information under subclause 6.8(h), it must make a written note of the use or disclosure.
- 6.11 Subclause 6.8 operates in relation to Personal Information that a Code Subscriber that is a body corporate has collected from a related body corporate as if the Code Subscriber's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.
- 6.12 Despite subclause 6.8 and subclause 6.10, a Code Subscriber that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:
- (a) the individual:
 - (i) is physically or legally incapable of giving consent to the disclosure; or
 - (ii) physically cannot communicate consent to the disclosure; and
 - (b) a natural person (the carer) providing the health service for the Code Subscriber is satisfied that either:
 - (i) the disclosure is necessary to provide appropriate care or treatment of the individual; or
 - (ii) the disclosure is made for compassionate reasons; and
 - (c) the disclosure is not contrary to any wish:

- (i) expressed by the individual before the individual became unable to give or communicate consent; and
 - (ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and
- (d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).
- 6.13 For the purposes of subclause 6.12, a person is responsible for an individual if the person is:
- (a) a parent of the individual; or
 - (b) a child or sibling of the individual and at least 18 years old; or
 - (c) a spouse or de facto spouse of the individual; or
 - (d) a relative of the individual, at least 18 years old and a member of the individual's household; or
 - (e) a guardian of the individual; or
 - (f) exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or
 - (g) a person who has an intimate personal relationship with the individual; or
 - (h) a person nominated by the individual to be contacted in case of emergency.
- 6.14 In subclause 6.13:
- (a) child of an individual includes an adopted child, a step-child and a foster-child, of the individual;
 - (b) parent of an individual includes a step-parent, adoptive parent and a foster-parent, of the individual;
 - (c) relative of an individual means a grandparent, grandchild, uncle, aunt, nephew or niece, of the individual;
 - (d) sibling of an individual includes a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster-brother and foster-sister, of the individual.

Privacy Principle 3 - Data Quality

- 6.15 A Code Subscriber must take reasonable steps to make sure that the Personal Information it collects, uses or discloses is accurate, complete and up-to-date.

Privacy Principle 4 - Data security

- 6.16 A Code Subscriber must take reasonable steps to protect the Personal Information it holds from misuse and loss and from unauthorised access, modification or disclosure.
- 6.17 A Code Subscriber must take reasonable steps to destroy or permanently de-identify Personal Information if it is no longer needed for any purpose for which the information may be used or disclosed under Privacy Principle 2.

Privacy Principle 5 - Openness

- 6.18 A Code Subscriber must set out in a document clearly expressed policies on its management of personal information. The Code Subscriber must make the document available to anyone who asks for it.

- 6.19 On request by a person, a Code Subscriber must take reasonable steps to let the person know, generally, what sort of Personal Information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

Privacy Principle 6 - Access and Correction

- 6.20 If a Code Subscriber holds Personal Information about an individual, it must provide the individual with access to the information on request by the individual, irrespective of the individual's nationality or place of residence, except to the extent that:

- (a) in the case of Personal Information other than health information, providing access would pose a serious and imminent threat to the life or health of any individual; or
- (b) in the case of health information, providing access would pose a serious threat to the life or health of any individual; or
- (c) providing access would have an unreasonable impact upon the privacy of other individuals; or
- (d) the request for access is frivolous or vexatious or, in the case of requests for access by non-Australian citizens, unduly onerous; or
- (e) the information relates to existing or anticipated legal proceedings between the Code Subscriber and the individual, and the information would not be accessible by the process of discovery in those proceedings; or
- (f) providing access would reveal the intentions of the Code Subscriber in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
- (g) providing access would be unlawful; or
- (h) denying access is required or authorised by or under law; or
- (i) providing access would be likely to prejudice an investigation of possible unlawful activity; or
- (j) providing access would be likely to prejudice:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or
 - (iii) the protection of the public revenue; or
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders;by or on behalf of an enforcement body; or
- (k) an enforcement body performing a lawful security function asks the Code Subscriber not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

- 6.21 However, where providing access would reveal evaluative information generated within the Code Subscriber in connection with a commercially sensitive decision-making process, the Code Subscriber may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.

Note: A Code Subscriber breaches subclause 6.20 if it relies on subclause 6.21 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.19 does not apply.

- 6.22 If the Code Subscriber is not required to provide the individual with access to the information because of one or more of subclause 6.20(a) to (k) (inclusive), the Code Subscriber must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.
- 6.23 If a Code Subscriber charges for providing access to personal information, those charges:
- (a) must not be excessive; and
 - (b) must not apply to lodging a request for access.
- 6.24 If a Code Subscriber holds Personal Information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, the Code Subscriber must take reasonable steps to correct the information so that it is accurate, complete and up-to-date.
- 6.25 If the individual and the Code Subscriber disagree about whether the information is accurate, complete and up-to-date, and the individual asks the Code Subscriber to associate with the information a statement claiming that the information is not accurate, complete or up-to-date, the Code Subscriber must take reasonable steps to do so.
- 6.26 A Code Subscriber must provide reasons for denial of access or a refusal to correct personal information.

Privacy Principle 7 - Identifiers

- 6.27 A Code Subscriber must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by:
- (a) an agency; or
 - (b) an agent of an agency acting in its capacity as agent; or
 - (c) a contracted service provider for a Commonwealth contract acting in its capacity as contracted service provider for that contract.
- 6.28 However, subclause 6.27 does not apply to the adoption by a prescribed Code Subscriber of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before those matters are prescribed: see subsection 100(2) of the Privacy Act.

- 6.29 A Code Subscriber must not use or disclose an identifier assigned to an individual by an agency, or by an agent or contracted service provider mentioned in subclause 6.27, unless:
- (a) the use or disclosure is necessary for the Code Subscriber to fulfil its obligations to the agency; or
 - (b) one or more of subclauses 6.8(e) to (h) (inclusive) apply to the use or disclosure; or
 - (c) the use or disclosure is by a prescribed Code Subscriber of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsection 100(2) of the Privacy Act.

- 6.30 In this clause:

“identifier” includes a number assigned by a Code Subscriber to an individual to identify uniquely the individual for the purposes of the Code Subscriber’s operations. However, an individual’s name or ABN (as defined in the A New Tax System (Australian Business Number) Act 1999) is not an identifier.

Privacy Principle 8 - Anonymity

6.31 Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with a Code Subscriber.

Privacy Principle 9 - Transborder Data Flows

6.32 A Code Subscriber in Australia or an external Territory may transfer Personal Information about an individual to someone (other than the Code Subscriber or the individual) who is in a foreign country only if:

- (a) the Code Subscriber reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and the Code Subscriber, or for the implementation of pre-contractual measures taken in response to the individual’s request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the Code Subscriber and a third party; or
- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual;
 - (ii) it is impracticable to obtain the consent of the individual to that transfer; or
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it.

Privacy Principle 10 - Sensitive Information

6.33 A Code Subscriber must not collect sensitive information about an individual unless:

- (a) the individual has consented, or, in the case of Personal Information from or about a child, the relevant child’s legal guardian has consented; or
- (b) the collection is required by law; or
- (c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - (i) is physically or legally incapable of giving consent to the collection; or
 - (ii) physically cannot communicate consent to the collection; or
- (d) if the information is collected in the course of the activities of a non-profit Code Subscriber, the following conditions are satisfied:
 - (i) the information relates solely to the members of the Code Subscriber or to individuals who have regular contact with it in connection with its activities;

- (ii) at or before the time of collecting the information, the Code Subscriber undertakes to the individual whom the information concerns that the Code Subscriber will not disclose the information without the individual's consent; or
 - (e) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.
- 6.34 Despite subclause 6.33, a Code Subscriber may collect health information about an individual if:
 - (a) the information is necessary to provide a health service to the individual; and
 - (b) the information is collected:
 - (i) as required by law (other than the *Privacy Act*); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the Code Subscriber.
- 6.35 Despite subclause 6.33, a Code Subscriber may collect health information about an individual if:
 - (a) the collection is necessary for any of the following purposes:
 - (i) research relevant to public health or public safety;
 - (ii) the compilation or analysis of statistics relevant to public health or public safety;
 - (iii) the management, funding or monitoring of a health service; and
 - (b) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and
 - (c) it is impracticable for the Code Subscriber to seek the individual's consent to the collection; and
 - (d) the information is collected:
 - (i) as required by law (other than the *Privacy Act*); or
 - (ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the Code Subscriber; or
 - (iii) in accordance with guidelines approved by the Commissioner under section 95A of the *Privacy Act* for the purposes of this subparagraph.
- 6.36 If a Code Subscriber collects health information about an individual in accordance with subclause 6.35, the Code Subscriber must take reasonable steps to permanently de-identify the information before the Code Subscriber discloses it.
- 6.37 In this clause:

“non-profit Code Subscriber” means a non-profit Code Subscriber that has only racial, ethnic, political, religious, philosophical, professional, trade, or trade union aims.

7. ADMINISTRATION

Code Administrator

- 7.1 The IIA will establish a Code Administrator comprising:
- (a) IIA's Chief Privacy Officer; and
 - (b) such other persons as the IIA Board may from time to time nominate.
- 7.2 The Code Administrator will be funded by the IIA in such manner as the IIA Board considers appropriate, having regard to the resource requirements necessary for the effective execution of its tasks.
- 7.3 The Code Administrator will meet not less than once every three months.

Tasks of Code Administrator

- 7.4 The Code Administrator will perform the following tasks:
- (a) manage the registration of Code Subscribers
 - (b) publish and maintain an accurate, up to date, and easily accessible public register of Code Subscribers
 - (c) report on the operation of the Code in accordance with the requirements of the Privacy Act and any applicable guidelines; and
 - (d) perform such other tasks as the IIA Board considers necessary or desirable for the effective operation of the Code.

8. REVIEW**Establishment and Constitution of Independent Code Review Panel**

- 8.1 The IIA will establish an Independent Code Review Panel comprising:
- (a) an independent chairperson; and
 - (b) such other persons as the IIA Board may from time to time nominate.

Tasks of Independent Code Review Panel

- 8.2 The Independent Code Review Panel will:
- (a) monitor the operation of the Code;
 - (b) within 3 years after registration of this Code, produce a report on:
 - (i) the effectiveness of the Code; and
 - (ii) statistics on complaints referred to the Code Administrator.which shall together provide a basis for assessing Code compliance generally.

Consultation

- 8.3 In conducting the review under subclause 8.2, the Independent Code Review Panel will seek the views of users, government agencies and consumer groups, and other persons or bodies as appropriate in Australia and internationally, regarding the operation of the Code and in relation to suitable revisions and amendments.

Source of Amendments

- 8.4 The Independent Code Review Panel may recommend amendments of the Code on request or by its own initiative.

Amendment Procedure

- 8.5 To amend the Code, the Independent Code Review Panel must complete the following steps:
- (a) consult with industry, government, users, user representatives and the general public regarding the proposed amendment;
 - (b) resolve the terms of any proposed amendment;
 - (c) give notice of the terms of the proposed amendment to each Code Subscriber, users and the general public;
 - (d) allow 60 days to provide comments to Independent Code Review Panel;
 - (e) receive comments from Code Subscribers;
 - (f) adopt or reject the proposed amendment with or without modifications (not including modifications that would make the substance of the proposed amendment substantively different to the substance originally proposed);
 - (g) obtain the approval of the IIA Board; and
 - (h) give notice of the Code as amended to each Code Subscriber and to the general public.

Time for Amendments

- 8.6 Amendments to the Code will come into effect 45 days after completion of the step described in subclause 8.5(h).

9. COMPLAINTS

Internal Complaint Handling Procedures

- 9.1 Code Subscribers will ensure that they have in place publicly available procedures for dealing with complaints from inception to satisfaction or determination which comply with the Australian Standard on Complaints Handling AS 4269-1995 and which are available to any individual (irrespective of nationality or place of residence) about whom Personal Information is processed.

Time for Resolution and Referral to Privacy Commissioner

- 9.2 If complaints cannot be resolved to the satisfaction of the complainant within a reasonable time, either the complainant or the Code Subscriber may refer the complaint to the Privacy Commissioner.

10. REGISTRATION AND DEREGISTRATION UNDER THE CODE

Application to become a Code Subscriber

- 10.1 Persons eligible to be Code Subscribers may make application to the Code Administrator in accordance with the procedures established by the Code Administrator and approved by the IIA Board from time to time.
- 10.2 If an applicant intends that its registration as a Code Subscriber is to cover one or more subsidiaries, then, subject to each subsidiary being eligible for registration, the applicant must provide the names of each subsidiary organisation in its application.
- 10.3 The application shall be in a form prescribed by the Code Administrator and approved by the IIA Board from time to time and will include a duly authorised and signed statement by the applicant that it agrees to be bound by the Code.
- 10.4 The Code Administrator will within a reasonable time:
- (a) confirm receipt of all applications;
 - (b) assess the eligibility of the applicant for approval as a Code Subscriber; and
 - (c) upon satisfying itself that an applicant is eligible for approval as a Code Subscriber, recommend to the IIA Board that the relevant application be approved.
- 10.5 Where, in the course of assessing an application under subclause 10.4, the Code Administrator finds an applicant to be ineligible for approval, the Code Administrator will notify the applicant setting out the reasons for their ineligibility.
- 10.6 An applicant who is notified of their ineligibility under subclause 10.5 shall have the opportunity of rectifying their ineligibility and reapplying for approval.
- 10.7 The IIA Board will periodically consider all recommendations for approval of applications by the Code Administrator and will notify the Code Administrator of its decision to ratify or otherwise reject each application.
- 10.8 If the IIA Board decides not to ratify the Code Administrator's recommendation under subclause 10.4(c), it shall provide the Code Administrator with reasons, whereupon the Code Administrator will notify the applicant of its unsuccessful application, together with reasons.
- 10.9 Neither:
- (a) refusal by the IIA Board to ratify an application; nor
 - (b) deregistration in accordance with subclause 10.20,
- will prevent a person from reapplying at a later stage for registration, provided that:
- (c) such application is made in good faith;
 - (d) in the case of re-registration, the applicant satisfies the IIA Board that:
 - (i) it is willing to comply with the Code;
 - (ii) it has adequate procedures in place to do so; and
 - (iii) it has taken all reasonable steps to ensure that is capable of complying with the Code.

Procedure Upon Approval

- 10.10 Upon approval of an application, the Code Administrator will:

- (a) notify the applicant of the approval;
- (b) provide the applicant with a written authorisation to use an Approved Designation, subject to the terms or conditions governing such use;
- (c) add the name of the applicant to the Public Register.

10.11 the steps referred to in subclauses 10.10 (a) to (c) shall constitute registration of a Code Subscriber, and shall take effect from the date that the IIA Board directs the Code Administrator to add the name of a Code Subscriber to the Public Register.

Designation of Code Subscribers

10.12 Code Subscribers may represent their agreement to comply with this Code by use of an Approved Designation.

10.13 The IIA Board may from time to time make at its discretion vary rules governing the use of an Approved Designation.

10.14 Code Subscribers shall abide by these rules as a condition of use of an Approved Designation or, in the case of variation of the rules, their continued use.

10.15 The Code Administrator will ensure that Code Subscribers are made aware of these rules at the time of their approval or, where the rules are varied, following any such variation.

10.16 The IIA does not, by authorising use of an Approved Designation by a Code Subscriber, warrant the compliance of that Code Subscriber with the Code.

Public Information Resource

10.17 The Code Administrator shall cause to be published on the Internet an easily accessible public information resource which contains:

- (a) a public register of current Code Subscribers;
- (b) samples of Approved Designations;
- (c) information about the Code;
- (d) a copy of the most current version of the Code;
- (e) information about making complaints in relation to matters contained in the Code;
- (f) contact details of the Office of the Federal Privacy Commissioner; and
- (g) any other information which the Code Administrator considers relevant to the efficient functioning of the Code.

Breaches of the Code

10.18 If a Code Subscriber acts in a manner which, in the IIA Board's discretion, constitutes a breach of the Code, then the IIA Board shall direct the Code Administrator to notify the Code Subscriber of the breach.

10.19 Within 7 working days of receipt of such notification, the Code Subscriber must

- (a) take all reasonable steps to rectify the breach; and
- (b) notify the Code Administrator of the steps taken to rectify the breach.

10.20 If the Code Subscriber fails to comply with subclause 10.19, then the IIA Board will issue a final notice requiring the Code Subscriber to rectify the breach within 7 days.

Revocation of Authorisation

10.21 Where:

- (a) a Code Subscriber fails to act in accordance with the final notice under subclause 10.20; or
- (b) the IIA Board, in its discretion, considers that a Code Subscriber has acted in breach of this Code to an extent warranting the removal of the Code Subscriber from the Public Register, or
- (c) a Code Subscriber advises the IIA Board by written notice to the Code Administrator that it wishes to be no longer bound by the Code;

then the IIA Board shall:

- (d) by written notice revoke the Code Subscriber's authorisation to use an Approved Designation, and, except in response to a request under subclause 10.21(c), setting out the reasons for the revocation; and
- (e) direct the Code Administrator to remove the name of a Code Subscriber from the Public Register; and
- (f) direct the Code Administrator to notify the Privacy Commissioner that the relevant Code Subscriber's authorisation to represent itself as a Code Subscriber has been revoked.

10.22 The steps referred to in subclauses 10.21(d) to (f) shall constitute deregistration of a Code Subscriber, and shall take effect from the date that the IIA Board directs the Code Administrator to remove the name of a Code Subscriber from the Public Register.

Code Subscriber's Obligations on Deregistration

10.23 On deregistration, the Code Subscriber must:

- (a) immediately cease using an Approved Designation;
- (b) within 7 working days notify its users that it has ceased to be a Code Subscriber; and
- (c) make no further representation that it complies with the Code.

Appeal

10.24 A Code Subscriber who has been deregistered in accordance with subclause 10.20 may, within 7 working days of receipt of the notice referred to in subclause 10.20(d), by written notice appeal the decision to the Chairperson of the Independent Code Review Panel.

10.25 The Chairperson of the Independent Code Review Panel shall give the deregistered Code Subscriber an opportunity to be heard and shall make a final determination.

Unauthorised Use of an Approved Designation

10.26 Code Subscribers acknowledge that unauthorised use of an Approved Designation or other representation of compliance with or subscription to this Code may render a Code Subscriber liable under the *Trade Practices Act 1974*.