20 June 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Via email: legcon.sen@aph.gov.au

ACCAN welcomes the opportunity to comment on the Privacy Amendment (Privacy Alerts) Bill 2013 (the Bill). We have previously provided comments to the Attorney-General's Department on the 2012 discussion paper on this issue[1] as well as the Exposure Draft Bill released for consultation in early 2013.

ACCAN strongly supports the Bill. The requirement to report any unauthorised access, disclosure or loss of personal information and credit information represents a clear benefit to consumers both by providing information about organisations with histories of poor data handling practices and by providing an incentive for organisations to improve their data handling practices. The reporting requirement may also lead to competitive advantages for organisations who can demonstrate a commitment to, and successful implementation of, proper information handling practices.

The Bill is of particular interest to consumers of telecommunications, as a number of significant breaches have occurred in recent years involving telecommunications providers or online services. In 2012, AAPT's servers were attacked by the group "Anonymous".[2] In late 2011, over 700,000 Telstra customer records were made publicly accessible over the internet.[3] In early 2011, the Sony Playstation Network was compromised, with approximately 77 million customers affected worldwide.[4] In late 2010, a mailing list error resulted in 220,000 letters with incorrect mailing addresses being mailed to Telstra customers.[5] In 2009, a design flaw resulted in the online chat transcripts of a depression counselling service being made publicly accessible.[6] Most recently, almost

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[1] ACCAN, *Data breach notifications*, submission to the Attorney-General's Department, November 2012, <http://accan.org.au/files/notification_submission_accan_23_11_2012.pdf>.
[2] Office of the Australian Information Commissioner, *AAPT Anonymous hack*, 6 August 2012, <http://www.oaic.gov.au/news/statements/statement_120806_aapt_melb_it.html>.
[3] Office of the Australian Information Commissioner, *Telstra Corporation Limited*, June 2012, <http://www.oaic.gov.au/publications/reports/own_motion_telstra_bundles_June_2012.html>.
[4] Office of the Australian Information Commissioner, *Sony PlayStation Network/Qriocity*, 29 September 2011, <http://www.oaic.gov.au/publications/reports/own_motion_sony_sep_2011.html>.
[5] Office of the Australian Information Commissioner, *Telstra Corporation Limited (Telstra)*, 7 July 2011, <http://www.oaic.gov.au/publications/reports/own_motion_telstra_May_2011.html>.
[6] Sophie Scott, *Probe into depression chat leaks*, ABC News, 11 December 2009, <http://www.abc.net.au/news/2009-12-11/probe-into-depression-chat-leaks/2572248>.

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10,000 Telstra customer records were made public on the internet, in circumstances similar to the 2011 incident.[7] Incidents such as these expose individuals' personal information, contact details, passwords, credit card numbers, health information, and other sensitive information, and subject people to risks of reputational, financial, and physical injury.

Telecommunications companies would be subject to the requirements of the Bill both as entities subject to the Australian Privacy Principles (APP entities) and as credit reporting entities. A data breach notification requirement as set out in the Bill would therefore be of significant benefit to telecommunications consumers.

It is entirely possible that there have been a great many more incidents that have gone unreported, leaving consumers with no knowledge that their personal information has been mishandled or accessed without authorisation, and unable to seek any redress or take action to limit possible damage arising from these breaches. In an increasingly online world the risks to personal information arising from poor information handling practices, software errors and malicious activities are likely to continue to increase. A mandatory reporting requirement such as the one set out in the Bill would ensure that consumers receive the necessary information about how their personal information is being protected.

We note that ACCAN and others have expressed concerns about various aspects of the Bill. In particular, there has been concern that the threshold test for the requirement ('real risk of reasonable harm') allows enough interpretation that too few incidents would be reported—or alternatively, that too many might be reported. We acknowledge that this test leaves room for interpretation. However, the test has been considered and recommended by the Australian Law Reform Commission, and it is used in the Office of the Australian Information Commissioner's data breach notification guidelines. While it may be necessary to introduce a different test if evidence emerges that the proposed test is inappropriate, we suggest that a 'real risk of serious harm' is suitable in the absence of any evidence to the contrary.

ACCAN encourages the Senate Committee to endorse the Bill. The mandatory notification requirement is long overdue, and represents a significant benefit to consumers. I am happy to discuss ACCAN's recommendations at any time, and look forward to learning the outcome of this inquiry.

Yours sincerely,

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ACCAN

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[7] Grubb B, *Oops: Google search reveals private Telstra customer data*, Sydney Morning Herald, 16 May 2013, <http://www.smh.com.au/it-pro/security-it/oops-google-search-reveals-private-telstra-customer-data-20130516-2jnmw.html>. This incident was also reported on Telstra's blog; see Jamieson P, *Customer information and the importance of privacy*, Telstra Exchange, 16 May 2013, <http://exchange.telstra.com.au/2013/05/16/customer-information-and-the-importance-of-privacy/>.