

Woolworths Group Limited (Woolworths) submission on the Privacy Act Review

November 2020

Introduction

As an Australian retailer, Woolworths understands that customer privacy is essential to maintaining customer trust. At Woolworths we take our obligations under consumer and privacy laws very seriously and we continue to focus on maintaining and building trust with our customers.

We are grateful for the opportunity to participate in the Attorney General's Department's Privacy Act Review, which commenced on 30 October 2020.

Woolworths believes that when our customers choose to share their personal information with us, we have a responsibility to protect it, and to ensure they understand how it will be used. Both considerations should be paramount in the design of any privacy regulation.

At the same time, we are pleased that the Review's terms of reference recognise the importance of carefully designed and proportionate privacy regulation in ensuring Australia remains commercially successful, innovative and internationally competitive. The innovative and responsible use of data can create great benefits for shoppers in the form of personalised and satisfying retail experiences, more tailored communications and improved products and services.

It is also crucial that any new privacy regulation should not add unnecessary friction into the customer experience, which might frustrate Australians, without meaningfully informing or empowering them. In this vein, we would encourage consideration of consumer views and expectations, particularly noting consumer value, as well as the potential for differences between consumers' stated preferences on privacy and their actual behaviour.

Scope of submission

The purpose of this submission is to provide Woolworths' high-level perspectives on some of the issues raised in the Issues Paper.

This submission is by no means exhaustive or final, and Woolworths looks forward to continuing to participate in this review process as it progresses.

Technical and inferred information

Woolworths supports measures that ensure the definition of 'personal information' keeps pace with technological developments.

However, a new definition of 'personal information' should not introduce greater uncertainties than currently exist, against the backdrop of rapidly changing technological and data science capabilities and practices, and consumer expectations.

It is our view that the extension of the definition of 'personal information' to expressly include technical and inferred information is one of the more complex areas surfaced in the Issues Paper, in particular given the speed and complexity of change within the technological and data landscape and the potential for unintended consequences. In light of this, Woolworths would like more time to consider the topic in detail and to provide further input as the review progresses.

De-identified, anonymous and pseudonymous information

The careful and ethical use and sharing of de-identified and anonymised data is a central feature of the data economy which creates significant consumer and economic benefits. Australia's

competitiveness in a future data economy will depend on its businesses, governments and academic institutions being able to use and combine de-identified and anonymised datasets to solve problems and improve goods and services.

At the same time, Woolworths supports measures to raise industry-wide data governance standards and to minimise re-identification risks. We believe these risks are best mitigated through a blend of high quality standards and frameworks which take account of ever-changing data science practices and technologies.

Consents and choices

Woolworths believes that all reasonable efforts should be taken to ensure that consumers understand how their data will be collected and used.

Our customers are looking for clear, flexible and simple-to-execute choices, while minimising consent fatigue and task overload. Long and complex opt-in processes or regular, repeated consents injected throughout a typical customer journey, both carry risks of driving customer frustrations and disengagement with privacy communication and consents overall.

Woolworths is working to continually enhance the opt-in and opt-out options we provide to our customers. We believe this will drive simple to understand, enhanced ongoing optionality for our customers whilst avoiding customer frustration with repeated opt-ins on matters to which they have already consented. The overuse of consent may have a counterproductive effect and reduce consumer engagement while adding undesirable friction to the customer's experience.

Simplifying disclosures

Woolworths notes the Issues Paper's reference to the fact that many consumers do not read lengthy and complex policies and terms and conditions.

We are aligned with this observation and we are working to simplify our policies to make it easier for our customers to understand our data and privacy practices. For example, we are aiming to use more accessible language and minimise jargon, simplify navigation and reduce repetition to avoid overload.

In terms of the extent of information provided to customers on data use and sharing, it is worth noting that there are data security, cyber-security and fraud considerations that mean businesses should be reluctant to disclose a full list of partners with whom they might need to share personal information.

Further, large businesses work with many technology and data partners and suppliers, with changes over time, which makes continual updating onerous with no demonstrable consumer benefit.

In most instances, consumers will be assisted by receiving information about the types of companies to which data may be provided, with illustrative examples provided where relevant.

Withdrawal of consent/'right to be forgotten'

The topic of the 'right to be forgotten' is another of the more complex areas raised in the Issues Paper. As Woolworths considers these issues further, we may provide further input as the review progresses

For the present though, the current review should consult widely on these issues. Some of the complexities which will need to be carefully considered are the requirements for businesses to comply with regulatory obligations, retention of data required for matters in the public interest and where data retention is required in connection with legal claims.

The OAIC has previously noted that a 'right to be forgotten' arrangement has the potential to require significant resourcing, and that a careful balancing of the rights of individuals to privacy and the right of business to use data has to be undertaken. We are aligned with this observation, as well as the

need for care to be taken to avoid disincentives to innovation and beneficial uses of data along with unnecessary costs and complexities in respect of requirements to delete already de-identified data.

Further consultation

We thank you for the opportunity to submit to the Government's review. As noted, the content we have shared is not in any way exhaustive. We look forward to continuing to engage with, and provide feedback to, the Attorney General's Department in the context of the Privacy Act Review and any future developments.