

Privacy Act Review

Dear Attorney General,

I thank you for the opportunity to provide input into the Privacy Act Review.

The opportunity to contribute review this act is welcomed, and I would welcome far more frequent reviews in the future as part of Parliament ensuring that the act is fit for purpose and monitoring how Australia's human rights are protected.

Gaps in law and/or capability to enforce information privacy laws in Australia have seen the Australian public exploited for far too long.

I've only chosen to address a few topics in this public submission.

I can only hope that we see Australian's privacy protection improved; while definitions from the Californian Consumer Privacy Act (CCPA) are useful; the CCPA appears to have been significantly weakened as the request of various organisations.

Yours Sincerely,



Objectives of the Privacy Act

Question 1 – Should the objects outlined in section 2A of the Act be changed ? If so, what changes should be made and why ?

I would suggest that a far stronger focus on the protection of people’s privacy is required; as the ability of large companies to exploit gaps tips any “balance” so far in their favour that the current law is only of any use for a limited set of paper records.

Definition of personal information

Question 2 – What approaches should be considered to ensure that Act protects an appropriate range of technical information ?

Easier for individuals to access the benefits.

The current law makes it all but impossible for individuals to access the benefits in regards to online platforms; as the barrier to accessing these benefits is prohibitive – IT experts, Lawyers, et al.

Anti-evasion provisions.

Given the resources available to large multi-nationals and others, as part of ensuring the Privacy Act is fit for purpose into the future, there is a need to ensure that it can’t be readily evaded.

Some organisations are deleting part of the information that enables them to link information to an individual in attempts to avoid having to comply with the act, while retaining the benefits of the personal information.

Interaction between the Act and other regulatory schemes

66. Should there continue to be separate privacy protections to address specific privacy risks and concerns?

Yes. However using the privacy act to ensure that organisations and individuals are aware of these acts is something that I would support.

67. Is there a need for greater harmonisation of privacy protections under Commonwealth law? a. If so, is this need specific to certain types of personal information?

Yes.

Despite Section 275A of the Telecommunications Act, Grubb v Telstra didn’t result in the promotion of good privacy practices in Australia that it should have:

275A Location information

(1) For the purposes of this Part, information about the location of:

- (a) a mobile telephone handset; or
- (b) any other mobile communications device;

is taken to be information that relates to the affairs of the customer responsible for the handset or device.

I would also suggest that the Commonwealth consider the Surveillance Devices Act and *data surveillance devices* as certain widely used software could be considered a data surveillance device. This could create numerous problems for the Commonwealth Government.

Added to this, there numerous state based laws that deal with various aspects of privacy – Crimes Acts and accessing / modifying information on computers , Surveillance Devices Acts that cover digital surveillance devices that record people’s actions.

68. Are the compliance obligations in certain sectors proportionate and appropriate to public expectations?

No.

Commonwealth Government

Firstly, I would suggest that the Commonwealth Government because of it’s position and resources should be held to a higher standard than many commercial organisations.

Added to this, it is difficult to see why Section 6A(2) seems to protect the Commonwealth Government in relation to Contracted Service Providers:

Section 6A(2)

- (2) An act or practice does not ***breach*** an Australian Privacy Principle if:
 - (a) the act is done, or the practice is engaged in:
 - (i) by an organisation that is a contracted service provider for a Commonwealth contract (whether or not the organisation is a party to the contract); and
 - (ii) for the purposes of meeting (directly or indirectly) an obligation under the contract; and
 - (b) the act or practice is authorised by a provision of the contract that is inconsistent with the principle.

Complaints about the Commonwealth Government need to be made under Section 95(B). It seems odd that the Commonwealth Government should be provided with such a “loop hole”.

Section 95B Requirements for Commonwealth contracts

- (1) This section requires an agency entering into a Commonwealth contract to take contractual measures to ensure that a contracted service provider for the contract does not do an act, or engage in a practice, that would breach an Australian Privacy Principle if done or engaged in by the agency.

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