

Review of the Privacy Act 1988

Submission on Issues Paper

Organisation: Records and Information Management Professionals Australasia

Contact Name: Anne Cornish

Contact Number: 0419 366 109

The Records and Information Management Professionals Australasia (**RIMPA**) is the longest serving peak body for information management industry practitioners in the southern hemisphere. RIMPA actively promotes best practice, sets industry standards and fosters professional development across all business sectors and educational institutions.

Established in 1969, RIMPA is a not for profit company that represents over 1850 professionals and organisations in the private sector, Commonwealth, Federal, State and Local Governments. RIMPA's vision is to advance, connect and encourage excellence in records and information management while advocating the values of the profession. Many of our members interpret, apply and implement compliance with respect to Australian Privacy Principles (APP) in their respective organisations, the vast bulk of which are APP entities, alongside other record keeping and statutory compliance requirements.

	Issue	Submission
1.	Scope and Application of the Privacy Act 1988	
	General Comment on the need for a clear and practical definition	<p>RIMPA welcomes efforts to more clearly set out the definition of personal information contained within the Privacy Act 1988.</p> <p>It is critical that Personal Information is clearly defined and identified in a practical way so that not only adequate safeguards can be established by practitioners within organisations applying APP but individuals have a clear sense of the kind of information that may give rise to their right to privacy.</p> <p>Rights and obligations around individual's information being inappropriately shared or handled must be clearly explained, removing all complexity.</p>
	General Comment on the desirability of uniform definitions	<p>Records practitioners administering an APP entity's information policies apply multiple statutory frameworks to deal with information appropriately. A uniform definition of Personal Information reflected across the Commonwealth and State jurisdictions in similar contexts such as Freedom of Information legislation and State and Commonwealth Archival legislation is desirable.</p> <p>A uniform definition would both be simpler and more efficient for practitioners to interpret and comply with but also be more convenient for people seeking to understand the scope of their privacy protections under Australian legislation.</p>

		The definition should adopt contemporary language that is easy to understand for non-legal audiences.
	What approaches should be considered to ensure the Act protects an appropriate range of technical information?	
	Should the definition of personal information be updated to expressly include inferred personal information?	<p>The current definition of Personal Information does not include de-identified information. However, in a world of e-commerce and algorithms, the obtaining and retention of meta-data at scale can present significant privacy concerns due to the ability to re-identify persons through the combination of datasets and analytic technology. However, these concerns should be balanced against the improvements to service provision, consumer choice and product design that are obtained by private and government organisations obtaining a more accurate picture of consumers circumstances.</p> <p>The design of specific measures to safeguard obtaining and retention of inferred personal information should not become a disproportionate burden on organisations seeking to comply with APP.</p>
	Should there be additional protections in relation to de-identified, anonymised and pseudonymised information? If so, what should these be?	<p>Further study should be done on the costs to data-holder organisations of a compliance requirement to anonymise rather than merely de-identify data generated by consumers. A balance needs to be struck between compliance costs of additional procedures to anonymise data and the benefit gained by data holders through obtaining large data sets and inferential data.</p> <p>More precise guidance should be provided either through legislation or guideline as to the requirements for holding de-identified, anonymised and pseudonymised information.</p>
	Personal Information and Privacy of Deceased Persons	Record keepers in government organisations are familiar with secrecy

		<p>provisions in Freedom of Information regimes that provide against the unreasonable disclosure of personal information of deceased individuals in response to requests for access to government documents.</p> <p>We make the further observation that in the experience of our members, inappropriate disclosure of personal information relating to deceased persons can have a serious impact in different cultural contexts. Among Aboriginal and Torres Strait Islander people the disclosure of personal information of a deceased person may cause significant harm to close relatives.</p>
Safeguards vs. flexibility		
	<p>General Comment on underutilisation of Codes and Guidelines</p>	<p>RIMPA would encourage the Information Commissioner to take the opportunity to formulate guidance, such as for example Codes and Guidelines, to accompany the amended APP provisions in collaboration with peak industry groups.</p> <p>Soft law such as Codes and Guidelines provide specificity and precision for decision makers in data holder organisations trying to make sense of and apply compliance requirements under APP.</p>
	<p>Is the framework of the Act effective in providing flexibility to cater for a wide variety of entities, acts and practices, while ensuring enough clarity about protections and obligations?</p>	<p>We support the proposal to allow the Information Commissioner to request peak industry groups to develop codes for relevant sectors.</p> <p>The use of APP Codes along with clearer definitions of Personal Information will allow for detailed guidelines on how to deal with kinds of Personal Information industries or professions.</p> <p>Soft law, in the form of Codes, and check lists and 'how to' instructions will provide clear guidance to record keepers within data keeper organisations to establish routine procedures to comply with APP requirements.</p>

Notice		
	Does notice help people to understand and manage their personal information?	<p>Provision of notice by APP entities as to the collection, use and disclosure of Personal Information is a crucial and proportionate safeguard protecting an individual's privacy.</p> <p>However, the efficacy of notice is compromised by the limitations on human attention and comprehension with respect to vast quantities of information. The use of legal terminology, verbose language and long sentences may be a barrier for understanding.</p> <p>Notice should be provided in a way that an ordinary person would be able to make sense of it and understand the scope of information that will be collected, used and disclosed.</p> <p>Particular attention must be paid to vulnerable groups including children, individuals from culturally and linguistically diverse backgrounds and others. Where there is an expectation that children are more likely to be engaging with a Notice, it is reasonable to expect more from data holders in order to comply with APP. APP entities should adopt 'plain English' style and draft notices in a clear and direct way that will be easy for an ordinary individual to understand.</p>
	What matters should be considered to balance providing adequate information to individuals and minimising any regulatory burden?	<p>We agree with the concerns expressed around the information burden caused by individuals having to engage with unreasonably large amounts of information. Information burden is a real reason why individuals may not engage closely with notices. As stated, above notices should be drafted in 'Plain English' style and be drafted concisely.</p> <p>The Information Commissioner should use Codes and Guidelines to circulate model and best practice notices relevant to industries.</p>
	The impact of the notifiable data breach scheme and its	Clearly established lines of accountability within an organisation in

	effectiveness in meeting its objectives	<p>the form of designated roles like Data Officer, Data Controller and Data Processor helps to identify roles and associated responsibilities. APP requirements currently stipulate any data breach within the scope of APP must be notified immediately or within an agreed timeline. Clear lines of accountability, designated roles within organisations and clear record-keeping, data-management and information-security policies and procedures allow individuals in these kinds of roles to promptly produce this information when requested. Both data controllers and data processors could consider: pseudonymisation and encryption of PI, also implement a process of regular testing, and auditing (assessing and evaluating the effectiveness) of measures in place.</p>
	Australian privacy certification scheme proposals	<p>We welcome any proposed consumer awareness scheme for the Australian government to develop a privacy Trustmark, as a web-seal to reassure individuals that a website is compliant with APP obligations. A public awareness campaign explaining the APP requirements and the layout of the Australian web-seal would promote a wider conversation around these issues and assist with promoting an understanding of key concepts like Personal Information and the standards required under APP.</p>