



INTERNET ASSOCIATION OF AUSTRALIA
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To: The Attorney General's Department

By Email: privacyactreview@ag.gov.au

INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia (IAA) perspective on the *Privacy Act 1988 Review Discussion Paper* (Discussion Paper). Many of IAA's members are small to medium sized internet service providers (ISPs). This submission will largely focus on small business exemptions and the impact of the privacy reforms on small businesses.

Overall, IAA agrees with the necessity of this review. Considering the increasing use of online services by individuals in today's digital age, there is a large amount of personal information being captured and handled by businesses online. IAA and its members recognise the paramount importance of individuals' privacy and that ensuring privacy in turn also protects businesses. However, we believe it important that the privacy regime not be disproportionately burdensome and hence result in adverse consequences for both businesses and individuals.

In that light, IAA supports balancing the interests of businesses to allow for their efficient and effective operation, as well as public interest to protect the privacy of individuals in a proportional, reasonable and legitimate manner. Furthermore, it is our belief that these interests are not necessarily counterposed. IAA believes that an effective privacy regime can preserve individuals' privacy and control over their data whilst simultaneously encourage innovation and new technologies to serve the public in the continuously evolving digital age.

IAA RESPONSE

SMALL BUSINESS EXEMPTIONS

IAA strongly supports the continuation of the small business exemption to the *Privacy Act 1988* (the Act), especially as it can reduce compliance costs for smaller businesses. Our members recognise the importance of community confidence that business will work to foster a healthy and safe digital economy. IAA does not agree that small business exemptions undermine this trust. It was also noted that small business representatives acknowledged that although they should follow best practices when working with personal information, learning new principles and procedures is not a simple process. The experiences of our members align with this, especially given their limited financial, time and human resources. Instead of prescribing requirements under the Act, IAA believes it would be more useful to proactively engage with small businesses and implement incentives which encourage best practice.

What support for small businesses would assist with adopting the privacy standards in the Act and realising benefits of improved privacy practices? How can small businesses be encouraged to adopt best practice information collection and handling?

IAA supports the suggestions provided within the Discussion Paper of a rewards-based approach to encourage small businesses to adopt appropriate privacy standards. Initiatives provided by the UK Information Commissioner's Office, including a live chat service, helplines, and step-by-step guides for small to medium enterprises could be useful measures that could be adopted by the OAIC. Other incentives could include refundable tax credits, government grants, and exemptions or protections from certain privacy-related lawsuits.

Would the introduction of a voluntary domestic privacy certification scheme be useful to small businesses that wish to differentiate themselves based on the privacy practices?

IAA supports the introduction of a voluntary scheme and notes that it could be useful. IAA recognises that a better privacy policy also assists small businesses so that they do not become targets for data-related attacks. However, it is important that specialised resources and guidance are provided to small businesses to support them in their compliance with the privacy regime. In addition, IAA notes that any breaches by small businesses should be handled proportionately in a facilitative manner rather than applying the same punitive measures which would exist under the Act.

Would requiring consent to be ‘voluntary, informed, current, specific and unambiguous’ address concerns about the privacy risks associated with the consent provisions of the small business exemptions?

IAA extends its support to the definition of consent so that it is ‘voluntary, informed, current, specific and unambiguous.’ As it applies to the small businesses exemption for businesses who trade in personal information, IAA believes that this definition could provide a safeguard against risks to better protect the privacy of consumers. However, IAA would prefer that the compliance requirements placed on small businesses in obtaining this consent must not be too onerous. Again, greater resources and guidance should be provided to small business to assist in making the necessary adjustments according to any new consent provisions. Furthermore, in the interests of the wider public, including both businesses and individuals, consent must be relevant for the context and must also be able to be withdrawn.

OTHER EXEMPTIONS

IAA supports narrowing the scope of the political exemption and the imposition of certain APPs to political parties such as including information on how individuals can make a complaint about breaches of any relevant privacy regime requirements, and the application of data security obligations. Given the gravity of the issue of voter manipulation, placing greater restrictions on political parties to ensure transparency is important and likely to result in greater public confidence.

IAA similarly supports the application of security obligations under APP 11 to journalists. However, any application of the privacy regime on journalism must be in an appropriate balance of public interest which upholds the freedom of press and speech as a fundamental cornerstone of Australia’s democracy whilst also protecting individuals.

OTHER PROPOSALS

IAA cautions against the proposed amendment to the definition of ‘personal information’ and the inclusion of a non-exhaustive list of potential types of information. A broader definition is believed to be unlikely to result in greater benefits for consumers and may cause greater confusion for businesses and consumers alike. IAA warns that this instead would result in substantial costs for businesses, which are likely to be passed on to consumers. Furthermore, IAA opposes the inclusion of any technology specific list which is highly likely to become outdated in the context of our rapidly evolving technological landscape. IAA believes in a technology-neutral principles-based

approach. Any expansion to include technical information should have a contextual basis so that it only applies when the information will actually constitute personal information. Technical information is often gathered in the context of ensuring network performance, and held independent of usual personal identifiers.

IAA opposes the re-introduction of the *Privacy Amendment (Re-Identification) Offence Bill 2016* (the Bill). We note the concerns that were raised in the Bill's initial introduction and believe it will result in greater harms than benefits in the interests of data security and civil society.

IAA also opposes the introduction of a statutory tort of privacy and direct right of action. Any breaches of an individual's privacy should be handled and remediated appropriately in recognition of the importance of privacy rights. However, it is believed that a statutory tort and direct action are not the appropriate or effective measures to ensure compliance and proper remediation to best serve individuals, businesses or the federal courts system and will instead prove to be lengthy and resource draining for all parties.

IAA extends support for the principles-based framework of the Act as noted in the Discussion Paper. Furthermore, IAA believes that both the definition of 'technical information' and APPs should remain technology neutral and any Codes should be developed by industry members.

IAA also supports the Attorney General's Department establishing a working group to harmonise privacy laws and create guidelines for agencies developing new-privacy obligations. IAA recognises that an approach that is well harmonised with other jurisdictions is potentially of great benefit to IAA members in that it should reduce the overall compliance burden.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the review of the *Privacy Act 1988*. We look forward to representing our members and the broader public interest in continued engagement with the Attorney General's Department, as well as other stakeholders, to ensure the development of a measured, effective and practical privacy regime to benefit all individuals and entities for today's digital age, and beyond.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running and lowest cost Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark

Chief Executive Officer

Internet Association of Australia