



INTERNET ASSOCIATION OF AUSTRALIA
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To: Department of Home Affairs

By submission: <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/data-security/submissions-national-data-security-action-plan>

RE: National Data Security Action Plan

INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia's (IAA) perspective on the National Data Security Action Plan. Many of IAA's members are small to medium sized Internet Service Providers (ISPs) who are also NBN Retail Service Providers (RSPs). Our response is primarily to represent the perspective of our members, as well as in support of the general well-being of the Internet.

IAA acknowledges and supports the initiative of the government to clarify the current landscape of data security measures in Australia to implement a cohesive and effective action plan. We commend adoption of a multistakeholder and cross-border approach in developing the National Data Security Action Plan. IAA and our members recognise the growing perceived and actual threat to Australia's data security in recent times and the importance of protecting the nation's data security to ensure the resilience and growth of Australia's economy.

However, we also note that this initiative is taking place simultaneously with other regulatory and legislative changes and consultations that are currently under review or being implemented for or concerning the telecommunications sector, which overlaps with data security. These include the Consumer Data Rights expansion, Privacy Act Review, and Critical Infrastructure instruments, amongst many others, which have a specific data security focus such as the recent 2020 Cyber Security Strategy.

We appreciate that this confusing policy context has been acknowledged by the government and welcome the consultation discussion paper's mention of the government's intention to clarify this context. However, we note that IAA along with various other internet and telecommunications industry representatives, has responded to many of these consultations, recommending changes and expressing concerns about the potentially adverse impact of the proposed measures on the internet industry, which have not yet been finalised or not adequately responded to.

Moreover, we also note that the recent change in government may also affect the future development of Australia's data security strategy, and the approach taken to many of the initiatives and measures under review.

Due to this, we believe some of the issues raised in the Discussion Paper seem to be too high level or premature for IAA to provide a response. We reiterate the concerns of industry regarding many of the government's recent regulatory and legislative changes, which we believe require further consideration in order to ensure secure and resilient national data security. As such, we recommend that this is a good opportunity for the government to review many of the recently proposed regulation and legislation and engage in good faith with Australian industry, academia, and civil society to develop an effective, efficient and measured National Data Security Action Plan that is widely supported.

IAA RESPONSE

BUILDING A COMMON UNDERSTANDING

IAA welcomes the government's recognition of the importance of viewing Australia's national data security amidst the wider international context. We reiterate that the cross-border nature of our contemporary digital economy and business operations necessitates this international perspective. As such, IAA supports harmonisation of Australia's laws in line with international standards.

In general, IAA opposes data localisation. We believe that data localisation impedes the openness and accessibility of the Internet, which by its very nature, is an open and transnational network. While we understand the intention to ensure the security of Australian data, we believe that rather than increasing security, greater constrictions will lead to a less resilient and efficient network. Moreover, this could conversely present a greater risk for Australia's cybersecurity through targeted attacks or in the case of natural disasters. As above, we reiterate the increasingly global nature of our lives, and particularly the Internet, which fundamentally is an open and global network.

GOVERNMENT'S ROLE

IAA strongly supports the harmonisation and standardisation of data security policy across jurisdictions as it pertains to the telecommunications sector. Due to the nature of business operations of many of our members, inconsistent laws between Australian states and territories, as well as international regimens, can pose great difficulty for entities. Moreover, the telecommunications sector has seen a large number of new regulatory and legislative changes in recent times, particularly as government has attempted to keep up to date with technology changes. As such, IAA supports principles-based, technology neutral regulation to assist businesses with compliance, particularly the smaller members we represent who lack the resources to keep track of the numerous changes.

Furthermore, we believe that an appropriate standardised security classification system and processes could assist industry, and such processes could even be potentially adopted by the private sector, thereby resulting in improved trust by the public in both government and industry.

CLARITY AND EMPOWERMENT FOR BUSINESS

From the outset, IAA emphasises that IAA and our members recognise the utmost importance of ensuring the security of Australia's data, as it is also critical for business operations and

maintaining the trust of consumers. We are committed to cooperating with government in pursuit of these legitimate objectives.

To that effect, IAA recommends greater and more meaningful consultation and engagement processes with the telecommunications industry. As above, we reiterate the great amount of new legislation and regulatory changes concerning data security that have been implemented in recent years. Moreover, it is widely perceived by industry representatives that feedback and concerns have not been afforded sufficient consideration or response. It is imperative that government works to maintain industry-government trust. Indeed, we believe this could be one of the limiting factors preventing the Australian internet industry from effectively implementing an enhanced data security regime. Many of the measures implemented, such as the Critical Infrastructure instruments, seem under-developed and overly proscriptive without undergoing sufficient review or uptake of industry feedback.

Furthermore, many of IAA's members are smaller CSPs who require greater support and resources to better assess their data security risks and comply with the government data security regime. As such, we reiterate our position in our response to the Privacy Act 1988 Review and Critical Infrastructure Legislation consultations that the regulation approach taken should be collaborative and aimed to encourage compliance rather than being punitive for non-compliance.

In addition, in consideration of our smaller members, we recommend that while there should be general guidelines and overarching guidance on securing data for businesses, that certain rules and obligations should be proportionate to the size of the entity.

EMPOWERING AND EDUCATING CITIZENS AND CONSUMERS

IAA also recommends that the government commits to a thoroughly multi-stakeholder approach in the development of the National Data Security Action Plan to include civil society and consumers. We believe that this will be important to improving public trust in both government and business but also necessary in ensuring the resilience of Australia's data security.

To that effect, we believe that greater overall accountability mechanisms and oversight of government agencies in relation to data security is of paramount importance. As was noted in NetThing's response to the 2020 Cyber Security Strategy consultation, there is an inherent conflict of interest whereby the "government agency responsible for surveillance and national security is simultaneously responsible for cyber security." As noted above, we emphasise that industry-government trust has suffered as a result of various proposals which potentially would and do indeed grant government overreaching powers that pose great risk to the freedoms and privacy of Australian citizens and impedes the operation and growth of Australian industry.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the National Data Security Action Plan. We emphasise our genuine commitment to collaborating with the government, as well as other stakeholders, to ensure the protection and resilience of Australia's data security. However, as noted throughout our response, we believe that there is a serious impetus for the government to engage in meaningful consultation with industry and civil society to develop an action plan that is effective, comprehensive and one that has wide support. To that effect, we recommend that the

government engages in sector specific consultations, as well as hold multi-stakeholder forums to better inform the development of Australia's National Data Security Action Plan. We sincerely look forward to ongoing consultation and engagement with the government and other stakeholders in this process.

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 carrier neutral 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