



Internet Society of Australia
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Ms Joan Sheedy
Assistant Secretary, Privacy and FOI Policy Branch
Department of Prime Minister and Cabinet
PO Box 6500
ACT 2600
By email: joan.sheedy@pmc.gov.au

Dear Ms Sheedy

**Internet Society of Australia Comments on the Australian Law Reform
Commission (ALRC) Report: FOR YOUR INFORMATION: AUSTRALIAN PRIVACY
LAW AND PRACTICE**

**The Internet Society of Australia (ISOC-AU) welcomes this opportunity to provide
comments on the ALRC Report on Australian Privacy Law and Practice.**

**ISOC-AU is a non-profit society founded in 1996 which promotes the Internet
development in Australia for the whole community – private, academic and
business users: the Internet is for everyone! ISOC-AU is a chapter of the
worldwide Internet Society and is a peak body organisation, representing the
interests of Internet users in this country. We have a longstanding and ongoing
commitment to the effective representation of these interests in regulatory and
self-regulatory processes in the telecommunications, domain name and Internet-
related services industries.**

**We acknowledge that the Government's response to the ALRC will be in two
phases, with the first phase addressing recommendations on the proposed unified
privacy principle (UPPs), credit reporting, health and new technologies. ISOC-AU
comments in this submission are confined generally to the proposed UPPs and
new technologies, and are as follows;**

Unified Privacy Principles (UPPs)

**ISOC-AU supports the adoption of high level, technology neutral privacy
principles that apply consistently at all levels of government. We also
recommend that any legislation or guidelines arising from the report or developed
by the Office of the Privacy Commissioner (OPC) should be, as far as possible,
technology neutral. However, the OPC should also publish guidelines detailing
how it will apply the technologically neutral principles to specific commonly used
technologies. These guidelines should be updated from time to time as new
technologies are adopted.**

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We do have concerns with Recommendation 5-1 which would allow the UPPs to be amended by regulations that impose 'more or less stringent requirements'. This suggests that regulations could derogate from the privacy protections provided by the UPPs. As well as sharing the concerns expressed by the Office of Parliamentary Counsel and others set out in paragraphs 5.51 to 5.55 of the ALRC report, ISOC-au is concerned that regulations are not necessarily made through a process that is transparent or open. Accordingly we believe that any changes to the legislated UPPs (in particular to impose less stringent requirements) should only occur after an open and transparent Parliamentary process.

Recommendation: That any change to the UPPs must only occur after an open and transparent Parliamentary process.

Definition of personal information

Recommendation 6-1 of the ALRC report recommends that personal information should be defined as 'information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified or reasonably identifiable individual'.

Recommendation: That the proposed wording of the definition of personal information should be reviewed to ensure is sufficiently broad to cover all information that can be used to identify a person, including new technologies such as biometrics.

Privacy Impact Statements

ISOC-AU supports both Recommendations 47-4 and 47-5 that allow the Privacy Commissioner to direct an agency to provide a Privacy Impact Statement for a new project or development that may have a significant impact on the handling of personal information, and require the OPC to develop Privacy Impact Statement Guidelines for organizations. The recommendations also suggest that the OPC, five years later, review whether the Commissioner's directions power should cover organisations.

As new technologies are introduced, privacy impact statements should be used. This is to avoid the need to retrofit privacy protection into new technologies introduced both by agencies and organisations. Because Privacy Impact Statements require privacy to be considered at the design stage of new technologies, privacy protections can be built into new technologies, rather than relying consumers to understand and use what steps are available, if any, to protect their privacy.

Recommendation: That the Government adopt Recommendation 47-4. The Government should also consider extending that power to give directions to organizations (but subject to suitable administrative review), phasing in its application over a relatively short span of time.

Data matching

Existing privacy legislation does not permit data matching among agencies (based on the collection and use principles). However, the prohibition is subject to a wide range of exemptions, with no further requirements relating to those exemptions. Previously, an individual's personal information that was collected by an agency was not matched with data held by another agency or agencies

simply because such matching would be too difficult and time consuming. The use of computers and related technology has made and is continuing to make data matching a far speedier and easier task, and it is no longer clear the extent to which data matching has or is occurring.

Recommendation: That there should be minimum limits on data matching that apply to all agencies. The OPC should be requested to investigate and report to Parliament on current data matching activities undertaken by all agencies such as the Australian Taxation Office, the Department of Social Services (and Centrelink), Austrac, Australian Customs, the Australian Federal Police and national security agencies and that report should be made public. The report may include a confidential volume where dealing with confidential law enforcement and national security agencies and activities. That confidential volume should be summarised in a non-confidential précis that can be made publicly available. It is important that there be informed Parliamentary oversight of governmental activities undertaken in the name of law enforcement or national security which may impinge upon citizens' right to privacy.

Cross Border data flows:

Recommendation 31-2 proposes that an agency or organisation that transfers personal information outside of the Australian jurisdiction remain accountable for that personal information unless, inter alia, the agency or organisation reasonably believes that the recipient of the information is subject to privacy law substantially similar to the model UPPs. That assumes that agencies or organisations have sufficient knowledge of privacy protection in other jurisdictions to make that judgment. In the case of smaller agencies and organisations that is not a realistic assumption. As those agencies and organisations would remain accountable for personal information transferred outside of Australia, this could act as a barrier to interaction with overseas jurisdictions where the level of privacy protection available is not known or easily discovered.

Recommendation: That the OPF develop and make publicly available a list of foreign jurisdictions which are deemed to have privacy protections similar to the proposed UPPs.

OPC Resources

The ALRC recommends that, for many issues, the OFC undertake research and develop guidelines. This is particularly true for the Report's sections on new technologies and the Internet. The Report also suggests new powers and functions for the OPC for enhanced privacy protections.

Recommendation: That the Office is adequately resourced both to continue its existing tasks and undertake new tasks proposed by the ALRC report

OPC Technology Advisory Group

Recommendation 46-5 of the Report would empower the OPC to establish expert panels to advise the Commissioner. Elsewhere, the Report makes a number of recommendations to address both new technologies and the Internet. The majority of those recommendations are for the development of guidelines and educational material

Recommendation: That the OPC establish an advisory group with the technical expertise and consumer focus to advise the Commissioner in the development of materials and guidelines on new technologies and the Internet. ISOC-AU would be happy to serve on such an advisory group.

Process for Implementation of the ALRC Report:

At its meeting with consumer groups, the Department of Prime Minister and Cabinet suggested that, following the completion of Phase One's consultation and drafting, an exposure draft of resulting legislation be released. We would strongly support that suggestion.

Yours sincerely

**Holly Raiche
Executive Director, ISOC-AU**