内閣官房 IT総合戦略室 パーソナルデータ関連制度担当室宛

「パーソナルデータの利活用に関する制度改正大綱」に対する意見

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御意見 (Public Comment)

・該当箇所（どの部分についての御意見が、該当箇所がわかるように明記してください。）

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・意見内容 (Comment)

This submission, on the following pages, concerns the entirely of the document.

・理由（可能であれば、根拠となる出典等を添付又は併記してください。）

Reason (If possible, please attach or record the basis for your public comment below)

The basis for the submission is in the document on the following pages.

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International credibility at risk: Submission on Japan's proposed changes to its data privacy law

The Australian Privacy Foundation (APF) is making this submission regarding Japan's proposed changes to its data privacy law[1] via APF's International Committee**. Like Japan, Australia is an APEC Member economy, and a potential participant in the APEC CBPRs, and therefore has a direct interest in the strength and credibility of Japan's data privacy laws, because they have the potential to affect Australian citizens and consumers. The APF is Australia's only non-government organisation dedicated to privacy advocacy, operating since 1987. Background on the APF is available at www.privacy.org.au.

The APF makes the following submissions concerning Japan's proposals:

1.Japan's *Personal Information Protection Act* (PIPA) has the weakest privacy principles of any Asia-Pacific country that has a data privacy law. These proposals will, overall, weaken the principles in Japan's law, although they do have some positive aspects. To obtain international credibility for its privacy laws, Japan needs to move its law more in line with the

[1] Government of Japan, Strategic Headquarters for the Promotion of an Advanced Information and Telecommunications Network Society (IT Strategic Headquarters) 'Outline of the System Reform Concerning the Utilizationof Personal Data' (24 June, 2014) <http://kipis.sfc.keio.ac.jp/wp-content/uploads/2014/07/English-Translation-of-Japanese-Government-Proposal-on-Privacy.pdf>

** The members of the International Committee include Chris Connolly (Chair), Prof Graham Greenleaf, Nigel Waters, Prof Roger Clarke (APF Chair), Prof Dan Svantesson, , David Vaile and Prof Lee Bygrave.

103 other countries with data privacy laws, rather than aligning itself with the isolated United States position of no comprehensive privacy law. Suggested improvements to privacy principles are in the following submissions.
2.The proposal to remove most privacy protections from supposed 'reduced identifiabilty' data will depart from current international standards for 'personal data' and put Japan out-of-step with other countries, rather than in advance of them. No standards for de-identification are proposed, and it will be essentially a self-regulatory system, No penalties are proposed against any party if data is in fact re-identified. This is simply a 'best efforts' approach with no consequences for 'failure' to de-identify. It will destroy protections for consumers (and consumer confidence in e-commerce), and pose a moral hazard to businesses. Japan can find better ways to improve socially valuable utilization of personal data than this ill-considered approach. These proposed changes will provide little benefit to most Japanese businesses, and will primarily benefit US business interests.
3. Japan already has very weak limitations on both change of use (to 'duly related' uses) and disclosure to third parties (an 'opt out' procedure – see PIPA art. 23). The proposal to have an 'opt out' for any change of use, without need to directly notify individuals (a notification to the DPA and publication may suffice) is not found in any other country's law, will reduce consumer protection, and may not comply with the OECD Guidelines.
4. No requirement of deletion of personal data at any time is in the current PIPA, or is proposed (although business might be required to publish deletion / retention periods). Almost all countries now require deletion when use is completed, including 7/11 Asian jurisdictions with data privacy laws.
5. It is not clear under PIPA how a consumer is able to insist on their rights of access or correction, which is a unique deficiency in data privacy laws. The proposals imply that this will be corrected, and such correction is welcome and necessary. It is desirable that the right of access, and all other individual rights, should be enforceable by the new DPA ('3rd party organization), and also by judicial bodies.
6. PIPA does not at present include any definition of, or special rules about, 'sensitive information'. The proposals to define categories of 'sensitive information' and give them additional protections are desirable, provided that protections for other personal data are not weakened.
7. The proposals to have rules under the law made by 'multi-stakeholder' processes (MSPs) which will include businesses, government, experts and consumers are not in the interests of consumers. MSPs are inherently unbalanced because business and government can always afford to better represented, to attend more meetings, and to do so at remote locations. It will be difficult to make MSPs work for anyone other than business in the Japanese context.

8. Enforcement of PIPA is minimal.[2] No Ministerial orders or prosecutions occur. Industry complaints bodies do very little. No clear procedures for individual complaints to be made There is little transparency, and in particular no published results of complaints. Individuals cannot enforce PIPA in court to obtain compensation for breaches (Tokyo High Court decision). As a result, individuals have no effective enforceable rights under Japan's law. This means it is a law which does not meet international standards. Strong reforms, including a central Data Protection Authority (DPA), enforceability and transparency are needed if Japan wants global credibility for its law. The following submissions suggest improvements needed to the government proposals in relation to enforcement.

9. The proposal to create what is called a '3rd Party Organisation', but would elsewhere be called a data protection authority (DPA is the term used in this submission), is desirable if the DPA has strong enough powers and responsibilities. A strong DPA is necessary to give central coordination, direction and consistency, and a central locus for individual complaints and remedies. Japan's current decentralized dispersal of authority between Ministries, local government bodies, and many semi-official industry and consumer bodies, is not effective.

10. The DPA needs to at least have powers to issue administrative fines, and to investigate and order remedies in relation to individual complaints (or refer such cases to an independent tribunal for final decision). These are the bare minimum requirements for any other DPA in the world (92 countries have DPAs plus many sub-national DPA)s. If Japan is going to create a DPA, it should aim for a DPA which meets international standards and has credibility.

11. It is clear from the government's proposals that at least some Ministries are trying to retain as much of their sectoral powers as possible, and are attempting to ensure that any '3rd party' DPA does not have any serious powers within their sectors. These attempts should be resisted by the government, because the feudal Ministry-centred nature of Japan's privacy law has made it ineffective. Business and consumers need consistent central guidance.

12. Government Ministries and agencies are also resisting having a DPA with enforcement powers over complaints against public sector agencies. Japanese citizens need an effective avenue to pursue public sector privacy complaints, which they do not have at present. If Japan does create a DPA, but it has no jurisdiction over Japan's public sector privacy laws (except perhaps the ID number), it will be the only DPA in the world in such an invidious situation. This will not assist the international reputation of Japan's law. The government should insist that the DPA covers the whole public sector in all its activities.

13. Individuals have at present no right to sue in court for damages for breaches of PIPA. Most data privacy laws give a right to damages from either a court or DPA, including all European laws, and all data privacy laws in Asian countries except Malaysia and Japan. The

[2] G Greenleaf and F Shimpo 'The puzzle of Japanese data privacy enforcement' *International Data Privacy Law (2014) 4 (2): 139-154 < http://idpl.oxfordjournals.org/content/4/2/139.abstract>.*

proposals should include a right to obtain damages (including for non-pecuniary harm) from either the DPA or a court (or preferably either).
14. The proposals do not include any requirements of transparency of enforcement by publication of the outcomes of individual complaints. Other DPAs, in Asia (eg Hong Kong, Korea, Macau) publish such case summaries, as do many in other jurisdictions including the USA's FTC. Publication of such summaries, not just statistics, should be required.
15. In conclusion, the APF gives strong support to the Japanese government taking this opportunity to revise its data privacy law after a decade of operation. However, while it is desirable to make the law more clear in its operation, to assist businesses, this should not involve weakening protections for consumers, because both the principles and the enforcement of the law need strengthening in consumer and citizen interests. The international credibility of Japan's data privacy law also needs to be strengthened by bringing it more into line with standards adopted internationally, and in other countries in the Asia-Pacific, and by making its enforcement more transparent. In particular, it will not assist Japan to make a radical departure from the meaning of 'personal information' that has evolved over the past 30 years.