



Australian Privacy
Foundation

FINANCIAL YEAR
2019 ANNUAL
REPORT

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Our Vision

An Australia which values privacy as a human right, and integrates respect for that right into all aspects of government, business and community life.

Our Objectives

1. To protect the privacy rights of Australians, by means of research, awareness, education, the highlighting of privacy risks in all forms of technology and practices, and campaigns for new laws, regulations, codes, policies and practices, and amendments to existing laws, regulations, codes, policies and practices.
2. To focus public attention on emerging issues and technologies that pose a threat to the freedom and privacy of Australians.
3. To collaborate with consumer organisations, civil liberties councils, professional associations and other community groups on specific privacy issues.
4. To participate in and contribute to other national and to international privacy protection organisations and initiatives.
5. To provide information to corporations, associations and government agencies, and to cooperate with them wherever practicable, but to remain independent of them, and to be critical of them where necessary.
6. To pursue such additional objects and purposes as may facilitate the achievement of the preceding objects and purposes.

Our History

The Australian Privacy Foundation was founded on 28 July 1987 as the vehicle for the defeat of the Australia Card national identity system.

The Australian Privacy Foundation was one of the first privacy specific advocacy organisation to be formed anywhere in the world.

Since formation, now for over 30 years, the Foundation has been advocating for the privacy rights of all Australians.

A Word from the Chair

The year covered by this report saw a continuation of the breaches and problems noted in the year before, and a growing public and regulatory response which came to be called the 'techlash' in its EU and US manifestations. While in Australia the ACCC manifestation of this development was less widespread, it helped to articulate the flaws in the model of data use and abuse which has developed in the last decade, and this in turn helped to encourage more scrutiny of other types of personal information threat.

APF campaigns and external submissions of note included:

- The continuing My Health Record saga saw great efforts from Bernard, Bruce and the health committee, with belated legislative changes responding to some of the issues which we drew attention to (such as the need for an Opt Out mechanism for those who were not told that a record was being made for them without consent) but failing to restore public trust, and nearly two million Australians discovering they could refuse to have this deeply flawed, low integrity medical data record created for them -- and doing so.
- Monique led APF's May 2019 submission to the review of the Telecommunications and Other Legislation Amendment Act (Assistance and Access) Act 2018 (Cth) ('AA Act'), drawing particular attention to the governance and transparency flaws of this regime
- The 'Consumer Data Right', Open Banking Report, and the Data Sharing and Release proposals drew further attention from Kat, Bruce and others,
- I contributed to the ACCC's Digital Platforms Inquiry, whose final report was largely consistent with our perspectives on the inadequate privacy and data protection model for Facebook and Google, and the lack of effective privacy remedies
- APF supported the right of Chelsea Manning to visit Australia to talk about mass surveillance after her imprisonment was ended
- Various board members contributed on biometrics and surveillance, particularly the biometrics hub and related issues in early 2019
- The UN Special Rapporteur on Big Data and Open Data and Privacy, Joe Canatacci (mentioned in the last Annual Report) drew attention to some of key problems in data protection in Australia during and after this visit, which APF supported.
- APF collaborated with a number of data and online rights advocacy organisations to raise the profile of data protection and online rights in the 2019 election

Internal

- The new web site was further bedded in by Liam, Roger and the technical committee, with most of the gaps left from the previous year's transition gradually filled and more current work appearing
- Kat, Bruce, David and Monique contributed to coordination efforts internally
- The back office relied on work by Mark (who retired shortly after the period of this report, after a long period in this role), Kat and others
- I continued playing a liaison role on the AMSRO code compliance committee (marketing and social research industry co-regulatory scheme), AUSTRAC, NSW Law Society and others.

As before, the Foundation continues to engage on privacy and data protection issues on many fronts, relying on the contribution of members of the board and those helping through committees and other support. A growing awareness across many industries and sectors of the community that 'business as usual' is not going well has to some extent made it a little easier

to have our submissions and approach accepted, and opened the opportunity to revisit some problems long left on the shelf; while the sheer extent of the challenges, and ongoing demands from families and day jobs at a time of widespread restructuring raise new challenges for sustaining our efforts. We look forward to 2020 to rejuvenate both the policy domain and our work.

David Vaile, Chair

Our People

Board

Name	Position
David Vaile	Chair
Bruce Baer Arnold	Vice-Chair
Kat Lane	Vice-Chair
Mark Walkom	Secretary/Treasurer
Roger Clarke	Board member
Monique Mann	Board member
Jake Goldenfein	Board member
Graham Greenleaf	Board member
Deborah Lupton	Board member (retired late 2018)
Katina Michael	Board member
Liam Pomfret	Board member
Holly Raiche	Board member
Bernard Robertson-Dunn	Board member
Katharine Kemp	Board member
Samantha Floreani	Board member
Ashley Schofield	Board member

Patron and Advisory Panel

Name	Position
The Hon Michael Kirby	Co-Patron
The Hon Justice Elizabeth Evatt AC	Co-Patron
Father Frank Brennan AO	Advisory Panel
Julian Burnside AO QC	Advisory Panel
The Hon Fred Chaney AO	Advisory Panel
Eva Cox AO	Advisory Panel
Prof Julian Disney AO	Advisory Panel
The Hon John O'Dowd AO QC	Advisory Panel
Dr Anna Funder	Advisory Panel
Prof Ashley Goldsworthy AO	Advisory Panel
OBE KM FTSE FCIE	
Geoff Huston	Advisory Panel
The Hon Dr. Barry Jones	Advisory Panel
Mary Kostakidis	Advisory Panel
Dr Kristine Klugman OAM	Advisory Panel
Scott Ludlam	Advisory Panel
Terry O'Gorman AM	Advisory Panel
Dr Mary O'Kane AC FTSE	Advisory Panel
Christopher Puplick AM	Advisory Panel
Geoffrey Robertson AO QC	Advisory Panel

The Hon Jon Stanhope AO
Natasha Stott Despoja AM
Louise Sylvan AM
Prof Gillian Triggs
Prof George Williams AO

Advisory Panel
Advisory Panel
Advisory Panel
Advisory Panel
Advisory Panel

What do we want?

The Foundation is continually working on privacy advocacy. We want the following improvements in privacy for all Australians:

1. A bill or charter of human rights at the federal level (which would cover the right to privacy as a human right)
2. A privacy tort or cause of action for serious invasions of privacy
3. Improve and increase Australian human rights education at all levels, including schools and workplaces
4. Review the Privacy Act 1988 to ensure it meets international best practice on privacy
5. Increase funding to the Office of the Australian Information Commission to enable them to undertake their statutory functions
6. Improve access to justice for privacy disputes by requiring all organisations regulated by the Privacy Act 1988 to provide access to a free external dispute resolution scheme
7. Propose ethical technologic creation (including assurances that technology is not built with intentional security weaknesses) and destruction guidelines which incorporate human rights protections
8. Implement principles of privacy-by-design and data-protection-by-design and default
9. Recognise that a loss of privacy (as a fundamental and foundational right) has further impacts, for example, the discriminatory impacts of data collection and use targeted towards vulnerable groups and the information security impacts of weakening encrypted form of communication
10. Acknowledge that the development, creation and disposal of technology has an international environmental and social consequence
11. Encourage and promote Indigenous Data Sovereignty initiatives and associated principles in the collection and use of information concerning Australia's Indigenous Peoples.

Privacy Advocacy

ACCC Digital Platforms Inquiry

The ACCC has commenced a review of Digital Platforms. A preliminary report was issued by the ACCC on 10 December 2018. The APF responded to the preliminary report with a detailed submission. The submission is available on our website.

The APF strongly supported the ACCC's recommendation of economy-wide privacy reforms. The APF regards the reforms as crucial to the effectiveness of broader digital initiatives including e-health and digitisation of Government services at the national and state/territory levels.

The APF also supported recommendations to address the market power of Google and Facebook.

The APF continues to campaign to strengthen protections in the Privacy Act.

Mandatory Data Retention

In 2015, the Australian Government amended the Telecommunications (Interception and Access) Act 1979 (Cth) to introduce a statutory obligation for telecommunication and Internet service providers (ISPs) to retain the metadata of their subscribers for a period of two years. Metadata can be used to identify a person (sender or receiver), their location and other identifying information.

The Foundation has strongly objected to the retention of individuals' data who have no connection to any investigations concerning serious crime or national security is unnecessary and the government would be better served utilising targeted investigation techniques.

The operation of the Mandatory Data Retention legislation was reviewed in 2019 by the Parliamentary Joint Committee on Intelligence and Security. The Australian Privacy Foundation lodged a submission (Submission 30) with the Inquiry.

Our submission, in summary stated that mandatory data retention is an abuse of privacy because:

1. It indiscriminately collects personal information from and about everyone regardless of whether they are completely innocent of any crime or not.
2. It collects data to be accessed for crimes or infractions people would consider minor and would not cause significant threat to others, for example, illicit drug use or council fines.
3. There are almost no limits on access or independent prior scrutiny such as by warrants.
4. There are no enforceable limits on use. It is unknown how the information is used.
5. Despite Government submissions pointing to serious offences, it allows law enforcement to trawl through data indiscriminately on a particular person, which could lead to absurd situations where a person is charged for another low-level crime of no consequence to public safety.
6. It effectively enables tracking and surveillance citizens who have been accused of no crime.
7. There is no independently tested evidence on whether it is effective; most of the figures and anecdotes provided in Government submissions record activity, not

effectiveness compared to other less intrusive traditional police and intelligence tools, or necessity.

8. The retention of the data represents a data breach risk for everyone, a series of massive “honeypots”. With data breaches it is not “if” but “when”.
9. The data could be obtained by the Government to track, for example, immigrants, visitors or those working for them or with them, with no way to know this has been done.

The committee is due to report on the review in April 2020.

My Health Record

There were two main events in the year. The first was the move of My Health Record from its original design of Opt-In to Opt-Out. As was expected the main arena was social media (primarily Twitter), the mainstream media and much of our effort was reactive.

The second was a Performance Review of My Health Record by the Australian National Audit Office.

The Move to Opt-Out

We created a page on our website (privacy.org.au/campaigns/myhr/) that provided background and commentary on the initiative, as well as a single source of the media coverage. The page included sections on:

- Comments and Information on My Health Record
- How to opt-out of My Health Record.
- Why you might consider opting out
- Alternatives to Opting Out
- Security
- Privacy
- The legal basis of My Health Record
- Links to resources that you may use to decide if you wish to opt-out, which said:

The government is only giving you one side of My Health Record – what they think the benefits are. Have a look at what they tell you about the costs, risks and potential disadvantages to minority communities in Australia. Can you find anything? No. There isn't anything.

We also provided links to more information to balance out the government's spin:

- Australian Privacy Foundation Material
- Coverage of the Senate Inquiry (which was conducted in September 2018)
- Comments on the Report from the Senate Inquiry (October 2018)
- Other Media

By the end of the opt-out period there were well over 250 links in the above section.

Additional information included:

- The Parliamentary Paper (which caused controversy because there were reports that the Health Department disagreed with some of its content. We provided copies of the original and revised versions as well as media coverage.
- Alternative Solutions/Approaches to My Health Record
- Point of care, Clinical Decision Support rather than Health Records
- Other issues about Health Data/Medical and about Trust which included links to satire and cartoons, of which there were more than a few. The Chaser and Shaun Micallef

We included a pointer to a blog run by Dr David More, a member of the Health Committee and a tireless advocate for common sense in Health IT.

At the end of the opt-out period (which ended up being over twice as long as intended) our campaign webpage had 36,788 hits, mostly at the start but with small peaks each time the period was extended.

Bernard made a submission to the Senate Inquiry into the Opt-Out initiative and was invited to give evidence before the committee.

A number of APF representatives appeared on radio and TV commenting on the Opt-Out initiative.

Performance Review by the National Audit Office.

In August 2017 David More and I submitted a request to the ANAO asking for a review of the My Health Record. This was the last paragraph of their response:

The draft 2017-18 Work Program, which was published on the ANAO website inviting public comment, included the topic Implementation of My Health Record. After consideration of feedback received, particularly in regard to the recent changes in the operations and expansion of the My Health Record program, a decision was made to defer inclusion of the topic in the 2017-18 Work Program and consider including it in the 2018-19 Work Program.

It is probable that this and similar requests from others resulted in the 2019 review.

The APF made a number of submissions to the inquiry. The ANAO has yet to release its findings. They are expected by the end of 2019.

Consumer Data Right (Open Banking)

The APF has been continuously involved in providing submissions and campaigning to ensure that open banking has sufficient privacy safeguards in place.

Unfortunately, a major problem with the entire process was that Treasury (Cth) decided not to do a Privacy Impact Assessment until a Bill was introduced into Parliament. Treasury then did an internal Privacy Impact Assessment (PIA) even when the guidance from the Office of the Australian Information Commissioner required an independent external PIA. The internal Treasury PIA was released for consultation just before the festive season break.

The APF and many other organisations objected to the internal PIA and the consultation process. Despite this, the consumer data right legislation passed Parliament. Finally, Treasury decided to engage external consultants to do an independent PIA. That process remains ongoing.

It will be of great interest to see whether the external PIA leads to legislative change. The APF maintains that the best approach is a privacy by design approach and unfortunately this did not occur with open banking. The APF remains concerned that people using open banking do not have adequate privacy protections enshrined in the law. A particularly serious failure is ensuring that people have the right to delete the personal information provided.

Financial Statements

FOR THE YEAR ENDED 30 JUNE 2019

Revenue from Membership, Donations and Interest	\$3,354
Expenses for Travel reimbursement and Subscriptions	\$527
Surplus	----- \$2,827 -----
Bendigo Cash Management account	\$3,487
Bendigo Savings account	\$20,121
Total Assets	----- \$23,608 -----

The Financial Statements should be read in conjunction with the accompanying notes.

Notes to and forming part of the Financial Statements

30 June 2019

NOTE 1: STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

The policies adopted are in accordance with accounting principles generally accepted in Australia.

a. Basis of Preparation

In the opinion of the Board, the Foundation is not a reporting entity. These Financial Statements have been drawn up as a special-purpose financial report for distribution to the members and for the purpose of fulfilling the requirements of the Associations Incorporation Act.

The financial statements have been prepared on a cash basis, using the going concern assumption. They do not take into account changing money values or current valuations of non-current assets. Except where noted, the accounting policies have been consistently applied.

An exception has been made in respect of life memberships, for which the accrual basis of accounting has been adopted, as defined in AAS 6, Accounting Policies - Determination, Application and Disclosure. See also Note 3 below.

These Financial Statements have been prepared in accordance with the requirements of the Associations Incorporation Act and all Australian Accounting Standards that have a material effect with the following exceptions:

AAS28 Statement of Cash Flows

b. Going Concern

The future viability of the Association is dependent upon continued financial support from its members.

NOTE 2: LIFE MEMBERSHIP INCOME

For many years, the Board adopted a policy of allocating life membership income over a period of 5 years. However, at some time during the last few years, this policy appears to have been changed. The funds received from Life Memberships each year are now recognised in full in the financial year in which they are received.

NOTE 3: MORTGAGES, CHARGES, OTHER SECURITIES AND TRUSTS

The Foundation has no mortgages, charges and other securities affecting the property of the association and no trusts of which the association is trustee.

Acknowledgments

The Foundation gratefully acknowledges the donations received from members of the public, and their contribution to our understanding of how privacy issues affect people in real life.

We also thank our members for their ongoing support.

Members of other organisations have also offered valuable assistance to us from time to time.