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Invitation by the Australian Bureau of Statistics to discuss an update to the Privacy Impact Assessment for the Multi-Agency Data Integration Project (MADIP)

The APF is the nation's preeminent civil society body concerned with privacy – namely – community data protection, privacy and information security expectations.

The Foundation has recurrently expressed concern regarding project creep in relation to MADIP, which potentially encompasses a very wide range of data provided by Australians on a mandatory basis, with little transparency about how the data is used within the Australian Bureau of Statistics (ABS) and by ABS partners, supported by inadequate governance. Those concerns are salient given the expansion of the broader Commonwealth (and state/territory) data sharing regime – problematized by inadequate governance – and the current review of the *Privacy Act 1988 (Cth)*^{1,2} alongside the fast-tracked introduction of other Commonwealth legislation that serves to erode privacy.

Consultations by the ABS have increasingly had the character of 'consultation theatre', where the appearance of consultation obfuscates the disregard of substantive engagement. This feedback reflects criticism by the former Chief Statistician and others regarding the erosion of the Bureau's ostensible independence.^{3,4}

The Foundation is thus uncomfortable about accepting your invitation to participate in the stakeholder consultations to discuss an update to the Privacy Impact Assessment (PIA) for the MADIP, scheduled for January 2022, because our pro bono expertise is unlikely to receive the level of engagement required from the pertinent data stewards and custodians.

Foundation consultation policy is publicly available and attached to this letter.⁵ Based on our consultation experience of March 22, 2021, about the MADIP PIA, supporting a data integration project run by the ABS, we are concerned that this consultation did not comply with APF policy. Notably:

1. Upon our request for a transcript or recording of the consultation more than a month later, we received email from Michael Holt, on July 30, 2021, that said despite recording "... *all PIA consultation sessions for the purpose of writing the stakeholder summary report* (attached to the

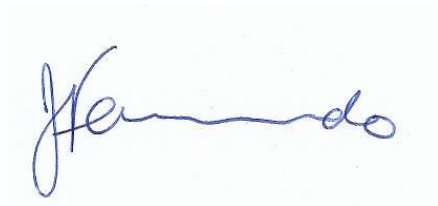
email) ... were deleted after we received stakeholder comments on the report. There was no transcript from any of the [consultation] meetings.” It is disquieting that the ABS appears committed to a ‘black box’ consultation and the Foundation strongly urges the Bureau to engage in transparency.

2. The stakeholder summary report does not demonstrate accommodation of the perspectives of the APF representatives regarding the assimilation of impact avoidance and mitigation measures into MADIP design and implementation activities. Where Foundation feedback is noted, this is summarily dismissed in the *Draft NHMS PIA Consultation Report 14 April 2021*. The ABS response to Section 3.24.4 - Problems in effectively combining the consent to participate in the NHMS and the consent to integrate data, within the first tier of consent, perturb us.

3. No assimilation of the information provided by privacy advocates is embodied in either the *Draft NHMS Report* or the final *MADIP Privacy Impact Assessment Update*.⁶

Should our impression, that the stakeholder consultations scheduled for January 2022 will disregard substantive APF engagement regarding the MADIP PIA, be mistaken, please do not hesitate to update me so we can review the Foundation’s position.

Yours sincerely



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REFERENCES

1. AustLII. Commonwealth Consolidated Acts, the Privacy Act 1988. Available from http://www5.austlii.edu.au/au/legis/cth/consol_act/pa1988108
2. Australian Government Attorney General’s Department. Online Privacy Bill Exposure Draft. <https://consultations.ag.gov.au/rights-and-protections/online-privacy-bill-exposure-draft/>
3. Austin, A. The Bureau of Statistics misleads Australians on the economy, Independent Australia, 14 June 2021. <https://independentaustralia.net/politics/politics-display/the-bureau-of-statistics-misleads-australians-on-the-economy.15187>
4. Burgess, V. The once-great ABS is brought to its knees, Financial Review, 17 August 2016. <https://www.afr.com/opinion/the-once-great-abs-gets-brought-to-its-knees-20160817-gqumg4>
5. Australian Privacy Foundation (APF). Consultations Policy Statement. Available from <https://privacy.org.au/policies/consultations/>
6. Australian Bureau of Statistics (ABS) Implementation Report, MADIP Privacy Impact Assessment Update, November 2020
[https://www.abs.gov.au/websitedbs/d3310114.nsf/0/9c4ba5a3db3c06afca2581f000237b62/\\$FILE/MADIP%20PIA%20Update%20-%20Implementation%20Report%20November%202020.pdf](https://www.abs.gov.au/websitedbs/d3310114.nsf/0/9c4ba5a3db3c06afca2581f000237b62/$FILE/MADIP%20PIA%20Update%20-%20Implementation%20Report%20November%202020.pdf)

Australian Privacy Foundation Policy Statement on Consultations

The Australian Privacy Foundation (APF) comprises professionals who have background in a wide variety of professions, industries and technologies. They bring their expertise to bear on proposals and issues by gathering evidence, drawing evidence-based conclusions, and providing verbal and written submissions. Moreover, APF members generally perform this work *pro bono*, as volunteers, in the public interest. Organisations that listen, and use the information provided, achieve high returns on their investment.

The APF participates in consultations with proponents of projects that have potentially negative privacy impacts. Where possible, it also works with proponents of privacy protective measures, including laws, codes, organisational measures, business processes, system design features and privacy enhancing technologies (PETs).

The APF undertakes consultations with organisations of many kinds. These include corporations (e.g. Google), industry and professional associations (e.g. Communications Alliance, Universities Australia, Media Alliance), oversight agencies (e.g. the Australian Privacy Commissioner), government agencies in all jurisdictions (e.g. the Office of Transport Security, the Commonwealth Attorney-General's Department, Centrelink, Queensland Transport, Penrith City Council) and multigovernmental organisations (e.g. the National eHealth Transition Authority – NEHTA).

However, to commit the time, effort and opportunity-cost involved in participating in consultations, APF members expect that the organisation sponsoring the project will be committed and that the process will be effective. Unfortunately, that has not always been the case.

This Policy Statement identifies the key features of effective consultations, and aspects that undermine them.

Positive Indicators of Effective Consultations

Initiation

- Initiation by the sponsoring organisation
- Evidence of executive commitment to identify and address privacy concerns
- Active effort by the sponsoring organisation to identify and gain the involvement of the relevant privacy advocacy organisations

Conduct

- Provision to privacy advocacy organisations of sufficiently comprehensive and clear information about the proposal
- Provision of information in advance of meetings, rather than in the meeting itself
- Provision of short, verbal briefings to supplement the previously-distributed information
- A practical approach to any confidentiality and security issues
- Facilitation of interactions among stakeholders to identify concerns, clarify issues, define problems and come up with ways to avoid or, at least, mitigate negative privacy impacts
- Documentation of the outcomes of consultations
- Progressive development of an 'issues register' to record problems and their potential and agreed solutions
- Progressive development of a 'privacy design features paper', showing which features are intended to avoid or mitigate which privacy issues

Results

- Outcomes that demonstrate accommodation of the perspectives of the consultees, e.g. assimilation of impact avoidance and impact mitigation measures into subsequent rounds of documentation and into design and implementation activities
- Specific commitments to avoidance and mitigation measures as part of the design
- Control mechanisms to ensure carry-through on the commitments

Negative Indicators

- Provision of information only in meetings, rather than in advance of them
- Communication-avoidance behaviours, such as non-response to communications, slow responses or vague responses that fail to address the questions asked
- Engagement-avoidance behaviours, such as the absence of key staff from meetings, and the use of consultants not only as facilitators and advisors but also as a shield between the organisation and the consultees
- Unwillingness to provide travel expenses and *per diems* to ensure that the appropriate people can participate in events
- Stage-managed meetings that are dominated by briefings and 'talking at' participants and that limit the air-time for participants to enquire, discuss and suggest
- Defensive behaviours, such as unrealistic or excessive approaches to confidentiality or security issues, ill-justified denial of information, or the ruling of relevant aspects of the matter to be off the agenda
- Commitment-avoidance behaviours, such as statements to the effect that the organisation reserves the right to cancel the process or ignore the outcomes, or that staff present at meetings do not have the authority to bind the organisation
- Inadequate follow-up to meetings
- Absence of effort to sustain corporate memory through the process, e.g. through staff-turnover without strong handover/takeover procedures, inadequate follow-through on commitments made.

Results

- Little or no assimilation of the information provided by privacy advocates
- Changes limited to marketing communications rather than being embedded in the scheme's design.