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24 August 2023

Jasmina Joldić PSM
Acting Director-General
Department of Justice and Attorney-General
1 William Street,
Brisbane QLD 4000

Dear Ms. Joldić,

RE: Proposed amendments to the *Right to Information Act 2009 (QLD)* and the *Information Privacy Act 2009 (IP Act)*

The Australian Privacy Foundation (APF) is the nation's pre-eminent civil society body concerned with privacy. We appreciate your invitation to contribute to proposed amendments to the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act), the IPOLA Bill (2023) (IPOLA).

The APF is pleased to see efforts to simplify and harmonise privacy regulation, and also that our recommendation of 2017, to ensure the IP Act is aligned with the *Privacy Act (1988)* (Cth), is being followed up.¹

¹ <<https://www.justice.qld.gov.au/media/internet/pdf/community-engagement/rtiip-review/2017/01-australian-privacy-foundation.pdf>>.

While efforts to simplify and harmonise privacy regulation are to be lauded there are however elements of Commonwealth law that require fixing, rather than emulation, in order to promote strong and effective privacy practice.² The Office of the Australian Information Commissioner (OAIC) has abjectly failed to establish 'baseline security protections', despite specific submissions to it over the last decade asking them to do so.³ So we would be interested to understand whether your office has engaged with the current, seemingly endless Commonwealth review, which is hopefully reaching a conclusion.

Releasing 6 years of recommendations in one block to advance the consultations on the IPOLA has proved challenging for us; we suspect many may have preferred to respond to the changes more quickly in tranches. Nonetheless, we support in principle the direction of the changes because harmonisation (unless on a bad standard) is generally better than pointless fragmentation of jurisdictional details in this area.

We offer the following observations:

1. **The right to information** about yourself is critical, and to the extent that this improves the position, is a very welcome addition to the IPOLA. The APF asks about the degree to which '**data minimisation**' is recognised by IPOLA as the only effective solution to data breach, proliferation risk. We invite you to consider how the current review could promote this in the face of all the industry pressures for data maximisation and no regulation.
2. **The definition of Private Information** should confirm this includes all sorts of metadata and similar fragments that are generated by and through the actions of individuals, and while not instantly identifiable in situ, can be potentially re-identified by certain parties or with access to certain tools or

² <<https://privacy.org.au/2023/02/21/proposed-privacy-reforms-could-help-australia-play-catch-up-with-other-nations-but-they-fail-to-tackle-targeted-ads/>>, <<https://privacy.org.au/2023/02/17/governments-privacy-review-has-some-strong-recommendations-now-we-really-need-action/>>.

³ <<https://privacy.org.au/Papers/OAIC-InfoSecy-1301.pdf>>, <<http://www.rogerclarke.com/DV/OAIC-ISGuide-130104.pdf>>, <<http://www.rogerclarke.com/EC/SSACS.html#App2>>, <<https://privacy.org.au/wp-content/uploads/2021/04/OAIC-SecGuide-210311.pdf>>

other data. The definition should presume that over time more of such data will become PI.

3. The APF generally supports **QPPs based on APPs**.
But we suggest the use of 'permitted general situations' where activities otherwise in breach are allowed should be subject to periodic public review, with a presumption that these categories should be reduced over time because the QPPs are flexible enough, and practices malleable enough, to avoid reliance on such exemptions to be entrenched.
4. The QPP **codes** should include a role for several lay members from expert or public interest bodies on the code compliance panel. The APF's experience with sitting on the oversight and compliance committee of the one Code registered under the federal act (on market and social research, with the industry body (formerly AMSRO) is that this can work well where the host body is serious about encouraging creative and diligent efforts among those entities affected.
5. **Own motion investigations** for the Information Commissioner to respond to privacy breaches look like a useful basis for a more robust privacy protection stance, especially the option to report to the Speaker of parliament.
6. We note the Information Commissioner will be expected to become an **amicus**, rather than intervene (as a party), in proceedings. A party, who is subject of a complaint, should not be able to exclude the commissioner unless there is some drastic misbehaviour.
A role for amici other than the commissioner should also be contemplated, including public interest organisations and experts.
7. While the proposed reforms look like useful improvements in most cases, we flag the urgent need for a citizen-centric **private right of action**, with strong enforcement options for the individual concerned.
8. Speed in notifying people potentially affected by a privacy event is of the essence, and needs to be emphasised in the **Mandatory Data Breach Notification (MDBM)** process. Notification delay negates most of the possible limited benefits of notification.


9. The APF is concerned about **the abuse of publicly available information**. There is growing evidence of abuse of, for example, court, family law matters and bankruptcy lists by those wishing to exploit the vulnerable identified by these sources. To the extent that information they rely on to identify targets was publicly available, this should trigger regular reviews about the terms or even feasibility of public release of that data, and also improve processes for identifying and suppressing abuse.
10. Note also that the use of information online should as a matter of course be protected from use by 'Artificial Intelligence' bots like ChatGPT. And the risks of so-called 'Open Data' increasing in the future should be acknowledged now, and feature in a more restrictive approach to publication of information that has been ostensibly de-identified, since re-identification gets easier over time.

Thank you for your consideration of this position.

Yours sincerely,



David Vaile, Chair
Australian Privacy Foundation



Dr Juanita Fernando, Vice Chair
Australian Privacy Foundation