

Tuesday 17 July 2012

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
CANBERRA 2600

Dear Ms Dennett,

Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012

Australia's credit reporting bureaus, Dun & Bradstreet (D&B), Experian and Veda, write to express our concern on the proposed contents of 20M of the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 and specifically the introduction of rules for de-personalised data.

If passed, this will be Australia's first piece of legislation, outside of health, to regulate how de-personalised information is collected, used or disclosed.

It is also likely a world first, as it appears to be without precedent in other OECD economies. We note New Zealand recent privacy changes, which included a move to comprehensive credit reporting, did not include regulation of depersonalised data. Similarly the European Union 2012 new data protection rules did not introduce rules on depersonalised data.

Australia will therefore simultaneously introduce the OECD's most prescriptive rules on credit reporting – and go further with de-personalised data subject to a slew of rules, regulation and prescription.

As such, this issue is the highest priority concern for Australia's credit reporting bureaus (CRBs), and we are calling for significantly more consideration to be given to the question of whether this legislation is appropriate or necessary for one part of the information economy.

We note the Australian Law Reform Commission report of 2008, after a two year review process of privacy, did not recommend regulation of de-personalised data.

It was the Commonwealth Government in October 2009 that recommended, without support from the ALRC review, that the OAIC develop a comprehensive set of rules on depersonalised data, including but not limited to:

- How the research is conducted
- Who is consulted about the research
- The purpose of conducting the research
- The kinds of de-identified information that may or may not be used or disclosed

Considerable economic and social benefit is gained from data analysis of de-personalised data, including statistical modelling, current trends and historic insights.

Credit reporting information is part of the information economy and as such there is enormous value derived from depersonalised data and the risk and probability models data analysis can provide, a fact evident in fraud detection and analysis, where CRBs are being consulted by the Attorney General's Department over the development of a potential new national fraud initiative.

As members of other industry groups, e.g. AFC and ARCA, the CRB's have had input into submissions made by these parties. It is without doubt a matter of concern for industry members. The information economy revolves around research using de-personalised information. Before parliament decides to restrict one part of the information economy from using de-personalised data, industry believes it appropriate to consider the value and role that research brings.

We therefore recommend that if Government remains fixed on its' view to restrict the use of de-identified information, a referral to the Productivity Commission, with its findings to be considered in conjunction with recommended rules (if any) from the OAIC.

We believe the Productivity Commission can further assist the parliament to inform it of the impact such a comprehensive list will have on research, innovation or commercial sensitivities.

Finally we note the Explanatory Memorandum states:

"there can be concerns about the effectiveness of methods used to de-identify personal information and the risks of the information subsequently being linked again to individuals in a way that allows them to be identified"

To address this concern, CRBs believe the legislation should introduce an appropriate penalty for breach, rather than prescribing how industry should conduct research using de-personalised data.

Your consideration is appreciated.

Regards

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D&B

Sharon Booth
Head, Legal & Compliance
Experian

Nerida Caesar
Chief Executive Officer
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