

Submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Privacy and Other Legislation Amendment Bill 2024 [Provisions]

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Introduction

This submission addresses the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the *Privacy and Other Legislation Amendment Bill 2024 [Provisions]*. This Bill represents a critical first step in modernising Australia's privacy laws by introducing reforms to the *Privacy Act 1988* and new legal frameworks to address significant privacy issues in the digital landscape. The Bill seeks to offer stronger protections for individuals, particularly with the introduction of a statutory tort for serious invasions of privacy and targeted criminal offences to address the harmful practice of doxxing.

This submission will provide commentary on the key provisions of the Bill, highlighting its potential impact on individuals and businesses, and offering recommendations to ensure the legislation is effective in safeguarding privacy while balancing the needs of innovation and public interest.

Overview of the Privacy and Other Legislation Amendment Bill 2024

The *Privacy and Other Legislation Amendment Bill 2024* introduces critical reforms based on the Australian Government's response to the *Privacy Act Review* of September 2023. The Bill encompasses three main areas:

- Amendments to the Privacy Act 1988:** Strengthening protections for personal data, providing individuals with more control over their information, and increasing penalties for organisations that breach privacy laws.
- Introduction of a Statutory Tort for Serious Invasions of Privacy:** Establishing a legal mechanism for individuals to seek redress for serious breaches of their privacy rights.
- Targeted Criminal Offences for Doxxing:** Introducing criminal penalties for doxxing, the practice of maliciously publishing private information with the intent to harm or harass.

1. Amendments to the Privacy Act 1988

The amendments to the *Privacy Act 1988* are designed to modernise Australia's data protection laws in response to the growing risks posed by technology. Key features of the Bill include:

- **Enhanced Data Protection Obligations:** Organisations will face more stringent requirements for how they collect, use, and store personal information, with a stronger emphasis on obtaining informed consent and maintaining transparency.
- **Stronger Enforcement Powers and Penalties:** The Bill significantly increases penalties for serious breaches of privacy, thereby creating stronger incentives for compliance and accountability. This is particularly important given the frequency and scale of recent data breaches in Australia.
- **Updated Definition of Personal Information:** The Bill expands the definition of 'personal information' to cover metadata and other forms of information that can be used to identify individuals indirectly. This change aligns Australia's privacy laws with global best practices and addresses the complexities of data in the digital age.

While these amendments are a welcome step, it is crucial that the government provides clear guidance to businesses, particularly small and medium-sized enterprises, to ensure compliance. Resources should also be allocated to the Office of the Australian Information Commissioner (OAIC) to support enforcement efforts.

2. Statutory Tort for Serious Invasions of Privacy

The introduction of a **statutory tort for serious invasions of privacy** marks a significant development in Australian privacy law. This provision allows individuals whose privacy has been seriously violated to seek compensation and other remedies.

- **Scope of the Tort:** The Bill outlines that the tort will cover intrusions into an individual's seclusion and the misuse of private information. For the tort to apply, the invasion must be deemed 'highly offensive' to a reasonable person, ensuring that only severe breaches are actionable.
- **Need for Legal Recourse:** In the digital age, where unauthorised data collection, surveillance, and breaches of privacy are increasingly common, this tort provides an essential legal avenue for individuals to defend their privacy. Victims of non-consensual image sharing, for example, now have a direct legal remedy.
- **Balancing Privacy and Free Speech:** While the tort is necessary, care must be taken to balance privacy rights with other essential rights, such as freedom of expression and the public's right to know. Safeguards should be incorporated to ensure that legitimate journalistic activities, whistleblowing, or matters of public interest are not unduly impacted by privacy claims.

The statutory tort is a critical step in holding organisations and individuals accountable for egregious invasions of privacy, but it must be implemented carefully to ensure that it does not impede other important social and legal interests.

3. Targeted Criminal Offences for Doxxing

The Bill introduces **criminal penalties for doxxing**, addressing the increasingly prevalent issue of online harassment through the malicious publication of personal information.

- **Definition and Rationale:** Doxxing, which involves publicly disclosing someone's private information with the intent to harm, intimidate, or harass, has become a widespread issue, particularly on social media. The Bill recognises the need for criminal sanctions to deter this harmful behaviour.
- **Proportionality of Penalties:** The criminalisation of doxxing includes penalties proportionate to the harm caused. This is a necessary measure to protect individuals, especially vulnerable populations, from the devastating consequences of doxxing, such as threats to safety, emotional distress, and reputational damage.
- **Clear Exemptions for Legitimate Use:** It is important that the Bill clearly distinguishes between malicious doxxing and legitimate uses of personal information, such as those involved in investigative journalism or public interest reporting. This distinction will prevent the law from being misapplied in cases where the disclosure of information serves a valid societal purpose.

By addressing doxxing through criminal penalties, the Bill acknowledges the serious nature of online harassment and provides much-needed protections for individuals. However, it is essential that enforcement agencies have the resources and training required to identify and respond to doxxing effectively.

Recommendations

While the *Privacy and Other Legislation Amendment Bill 2024* introduces essential reforms, several refinements are recommended to ensure that it achieves its intended goals:

1. **Clear and Practical Compliance Guidance:** The government should develop accessible guidance for businesses and organisations on how to comply with the new privacy obligations, particularly for smaller entities that may lack legal expertise.
 2. **Balanced Application of the Statutory Tort:** The courts should be provided with clear criteria for balancing privacy claims against free speech and the public interest to avoid unintended restrictions on legitimate journalistic or public interest activities.
 3. **Support for Enforcement:** Adequate funding and resources must be allocated to the OAIC and law enforcement bodies to ensure that they can effectively enforce the new provisions, particularly in relation to serious privacy breaches and criminal offences like doxxing.
 4. **Public Education Campaigns:** A public awareness campaign should be launched to inform individuals of their rights under the updated privacy laws and the steps they can take to protect their personal information in a digital environment.
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Conclusion

The *Privacy and Other Legislation Amendment Bill 2024* is a timely and necessary reform that addresses the growing challenges of privacy in the digital age. By modernising the *Privacy Act 1988*, introducing a statutory tort for serious invasions of privacy, and criminalising doxxing, the Bill provides stronger protections for individuals while acknowledging the complexities of data use in a modern society.

However, these reforms must be implemented carefully, with clear guidance, robust enforcement, and a balanced approach to ensure that privacy rights do not unduly restrict freedom of expression or public interest activities. The recommendations outlined in this submission aim to refine the Bill to achieve a balanced, effective, and forward-thinking privacy framework for all Australians.

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