

Submission on the Privacy Amendment (Enhancing Privacy Protection) Bill 2012

Microsoft Australia (**Microsoft**) welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*.

Following a review of the proposals contained in the Bill and having regard to the operation of Privacy Laws around the globe, Microsoft recommends to the Committee that the Bill should be progressed.

The Bill is the product of a lengthy process of law reform and consultation that commenced in early 2006 when the then Attorney-General requested the Australian Law Reform Commission to undertake a review of Australian privacy laws.

Microsoft considers the proposed changes to Australia's privacy laws are on balance a positive move in that they will enable individuals, organisations and government to adopt, adapt and benefit from emerging ICT opportunities. In particular, the Bill will establish a strong applicable privacy regime that will condition the provision of cloud-based computing services for Australians. This is an important step forward that highlights the capacity of Government to provide, through principles based legislation, certainty and confidence to users of cloud services whose personal information is stored and secured in best practice facilities residing both inside and outside of Australia's territorial boundaries.

It demonstrates the capacity of Government to shape the environment for the delivery of cloud services without recourse to arbitrary geography based concepts that are not related to standards for the security and privacy protection of personal information.

Microsoft considers that maintaining and developing effective privacy laws is a key issue for the maturation of the digital economy in Australia and around the world and welcomes this Bill as a further step in that direction.

Microsoft's commitment to privacy - accountability

Microsoft has established over several decades a comprehensive and enduring commitment to privacy. We work to protect individual privacy by helping people exercise control over their personal data when they use our products and services.

We are transparent about how we use personal data and by employing internal controls and processes to monitor that use. Within our products and services we provide privacy enhancing tools and features that help empower individuals to block unwanted communications, protect them from potentially dangerous online content, and control the details of their online activities.

Microsoft was one of the first technology companies to appoint a Chief Privacy Officer, and we have made privacy a corporate priority over the past decade as an essential pillar of our Trustworthy Computing Initiative.

At the core of our privacy program is the concept of accountability. Accountability is an approach to privacy that requires companies and organisations to bear the primary burden for data protection and responsible data use, rather than placing the onus on individuals to make appropriate privacy choices every time they interact with a product or service.

Accountability requires organisations to implement programs that foster compliance with globally accepted data protection principles, and to be transparent about how those programs provide the required protections.

This approach obligates organisations to take responsibility for the safe and appropriate processing and storage of data, wherever it occurs. It requires organisations to analyse and understand the risks that data use raises for individuals, and to take necessary and appropriate steps to mitigate those risks.

The principles implemented in the proposed Australian Privacy Principles are, in Microsoft's view, in line with international best practice and reflect Microsoft's thinking and approach to privacy protection.

Accountability often involves external verification that privacy principles are being adhered to. Customers of our cloud computing services often rely on Microsoft to store and process mission-critical data about their end users and constituents. These customers want more than simple promises that their information will be secure and responsibly managed.

This is why both Office 365 and the underlying network of Microsoft data centres that host our cloud service have been certified as compliant with the highly regarded ISO/IEC 27001 standard for information security management systems.

The Bill will enhance Australian privacy laws and increase accountability

In Microsoft's view, if the Bill is enacted, Australia's privacy laws will be clarified and thereby strengthened. Entities regulated by the Bill (in the private and public sectors) will, as a result, be more likely to:

- be held to account if breaches occur; and
- foster compliance with the privacy principles.

The changes to the powers of the Commissioner in particular will give the Commissioner much greater ability to hold regulated entities to account by matching appropriate sanctions with the significance of breaches and the culpability of those who are responsible for protecting the privacy of individuals. Organisations that hold the private information of individuals do so, on trust. Breaches of privacy are ultimately breaches of trust. The proposed changes to the Act will in Microsoft's view foster a more sophisticated culture of trust between Australian citizens and the companies and other entities that hold their information.

Online users care about privacy

A recent Microsoft commissioned study of attitudes, beliefs and behaviours of online users in relation to privacy demonstrates that:

- People care about online privacy, but don't understand how their information is used.

90% of people surveyed were either very concerned or quite concerned about the protection of their personal information online, while only 6 per cent of respondents believe they knew exactly how their personal information is used.

- Online privacy is important to people but the process of confirming that importance is too complicated for individuals such that they are prepared to concede their privacy for the ability to obtain desired services.

74% of respondents either agreed or strongly agreed that online privacy policies are usually too long and complicated for respondents to be bothered reading. Most people find privacy policies too long and difficult to read.

- People don't consider fully the consequences of handing personal information over.

62% per cent of respondents either agree or strongly agree that they don't feel as though they have a choice over how their personal information is used by online companies because ticking the privacy policy is the only way to get the products and services they want.

88% per cent agreed or strongly agreed that there should be more transparency about the way companies use people's personal online information. More transparency on privacy policies would be welcomed.

If enacted, the Bill will assist to foster a culture of valuing privacy which will, in turn, make businesses and government agencies more inclined to recognise the benefits of modifying their processes, conduct and products so as to address privacy issues.

While clearly providing significant and important progress, the Bill will not fully address all of the issues raised by these findings. Microsoft would encourage continued consideration for the development of next-generation privacy protections that respond to increasingly complex uses and re-uses of data.

Summary

In summary Microsoft supports the passage of the Bill and welcomes the explicit support within the terms of the Bill for the use by Australians of well-constructed cloud based services that deliver high levels of privacy protection (and security) for the personal information of Australians.

Microsoft encourages the Government and the Parliament to continue to focus on the standards of security and privacy delivered by cloud service providers as the basis of a public policy framework. Cloud services offer significant potential economic benefits for Australian businesses and individuals. Laws that facilitate Australian participation in this cloud-enabled, global economy will be critical to positioning Australia and Australians for future success and prosperity.

Contact

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