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AIIA urges Government to not water down privacy protections.

Time has come for clear liabilities to be set and backdoors like small business exception to go.

The Australian Information Industry Association (AIIA) urges the Albanese Government to accept the recommendations from its own review into the Privacy Act when it releases legislation next month. The latest cyber-attack on MediSecure in which half of Australian's personal and health data was stolen is disconcerting and reinforces the need for a cyber secure economy.

Cyber criminals do not discriminate between company size, so any personal and sensitive data needs to be protected and this should include SMEs that make up 97% of the Australian economy. The AIIA calls for the Government to accept recommendations from its own review of the Privacy Act for the removal of the SME carve out and inserting a clear distinction and liability assigned between data controllers and processors.

Australians rightly demand modern and strong privacy protections and the process to modernise the Privacy Act has been years in the making. We urge the Government and Attorney-General the Hon Mark Dreyfus KC to not be sidetracked by noisy small business lobbyists. Good privacy controls and cyber security is good for SMEs, good for their customers and the economy.

The AIIA accepts that not all SMEs will be subject to broader provisions however those with health, financial, and personally identifiable information should not be exempt from the Privacy Act just because they have a smaller turnover.

The industry is keen to see these protections enacted following five years of Government consultations and a multitude of breaches in recent years. Cyber security is of paramount importance against a background of nefarious State and private attackers. Small businesses, such as smaller professional services, health and accounting firms, often hold highly sensitive personal information. We are concerned about the potential risks if these small businesses fail to safeguard it properly.

We firmly believe that removing the small business exemption from *Privacy Act 1988* would yield a significant return on investment, both in terms of public and industry sentiment. It would also create a more consistent and predictable environment for investment and development in the technology sector. The Government should proceed with this change, as avoiding it due to perceived difficulty is detrimental to our economy's health and growth.

Regarding the control and transparency of personal information handling, we emphasise the need for clear obligations. For this reason, the absence of a controller/processor distinction such as that exists in the EU's GDPR regime in the updated legislation is concerning and needs to be addressed.

We also stress the importance of interoperability with international privacy frameworks, especially the GDPR. We strongly caution the Attorney General's Department against deviating from well-established international standards, which could lead to confusion and reduced trust in Australia's privacy regulations.

AIIA CEO, Mr Simon Bush said, “The AIIA supports the updating of the Privacy Act and bringing in into the digital age to support our digital economy. There is a serious potential for ongoing harm when personal data is stolen, ranging from identity theft to scams to extortion. We believe the digital economy is as strong as the weakest link and the small business exemptions is that weakest link. SMEs, like General Practitioners and accountants, can hold sensitive personal data and constitute 97% of all Australian businesses. Exempting them is essentially leaving a gaping backdoor open and we are a global outlier in having such a privacy exemption.”

“Coupled with the lack of distinction and liability assigned between data controllers and processors, Australian businesses are left confused on who is responsible for what and what remedial actions must be taken quickly. The industry has waited for the Privacy Act review for five years to set clear expectations and support mechanism to help both large companies and SMEs to meet these expectations,” he added.

The AIIA submission to the Privacy Act review can be found here: <https://aiia.com.au/wp-content/uploads/2023/04/7-4-23-AIIA-Submission-Final-Report-Privacy-Act-1988-FINAL.pdf>

Media

Siew Lee Seow

General Manager, Policy and Media

E: siewlee@aiia.com.au

M: 0435 620 406