



Australian Information Industry Association

Submission on

Privacy and Other Legislation Amendment Bill 2024

11 October 2024

Introduction

The Australian Information Industry Association (AIIA) welcomes the opportunity to contribute to the Senate Legal and Constitutional Affairs Legislation Committee's Inquiry into the Privacy and Other Legislation Amendment Bill 2024 ('Bill'). The AIIA has been actively engaged in this process for at least four years, consistently contributing through numerous submissions^{1 2 3} as part of the ongoing effort to update the Privacy Act. Given the extended duration of this reform process, the AIIA has a strong and established position on this matter. We have long advocated for the modernisation of Australia's Privacy Regime to better reflect the digital age, with a focus on safeguarding citizen privacy and clearly allocating responsibilities under an updated framework.

The government's apparent proposal to introduce two tranches of reforms, with the present Bill representing the first tranche, is a cautious step forward. However, we remain concerned that deferring critical reforms to a potential second tranche has fostered cynicism within the industry. As we highlighted in our [media release](#), this approach has been viewed as timid and insufficient in addressing the pressing need for comprehensive privacy reforms. The delay in updating the Privacy Regime risks leaving Australian citizens vulnerable to privacy breaches, while businesses are left without clear guidance on their obligations.

Bill's Missing Key Amendments for Strong Citizen Privacy Protections

While the Bill introduces a range of important reforms, it nonetheless leaves numerous 'agreed in-principle' proposals from the Privacy Act Review Report unaddressed. As such, the AIIA acknowledges the positive steps taken, but we remain concerned that several key areas require further attention to fully safeguard both the digital economy and the privacy rights of Australian citizens.

Firstly, the AIIA notes the failure to introduce the much-needed distinction between data controllers and data processors. This distinction would increase the efficiency of the Privacy Act by allocating responsibilities relating to notification, consent, and security. The clear separation between controllers and processors forms a fundamental aspect of effective privacy frameworks worldwide, including the European Union's GDPR. The AIIA cautions that a failure to provide a clear delineation between these concepts would result in an inability to clearly define responsibilities in the management of personal data.

Furthermore, the Bill does not address the removal of the small business exemption, a provision that is anomalous when compared with other mature jurisdictions. The AIIA firmly believes that all businesses, regardless of size, should be held accountable for protecting the privacy of Australians and their personal and sensitive information. Excluding small businesses from this regulatory framework not only heightens the risk to individuals but also overlooks the significant role these businesses play in the broader digital economy, forming 97% of businesses in Australia and contributing approximately one-third of Australia's GDP.

Since SMEs make up such a significant portion of the Australian economy, all the more, those that process or store personally identifiable information (PI), especially sensitive data such as health or financial records, should not be exempt from privacy and related cyber security laws. The legislation could explicitly state this, ensuring protections are in place without applying unnecessary burdens to the majority of SMEs. As suggested in our earlier submissions, penalties could be tailored for SMEs, providing them with a longer implementation timeframe to ensure compliance. Furthermore, given the requirements under the government's cyber security strategy for secure supply chains, software

¹ AIIA, [Submission on the Final Report of the Privacy Act 1988 Review](#), 7 April 2023

² AIIA, [Privacy Legislation Amendment \(Enforcement and Other Measures\) Bill 2022](#), 7 November 2022.

³ AIIA, [Privacy Act Review – Discussion Paper](#), 22 December 2021.



SMEs working in critical sectors must also meet minimum privacy and security standards moving forward.

Additional Concerns and Recommendations

The AIIA commends the government's efforts to address the escalating dangers associated with doxxing. However, while punitive measures such as the proposed statutory tort for serious invasions of privacy and amendments to the Criminal Code Act are a positive development, the focus must also include measures to mitigate harm to victims swiftly and effectively. The expansion of the scope of the OAIC Commissioner's determination powers under Part 11 of the Bill, though promising in its capacity to compel the removal of harmful content, would benefit from closer collaboration with online platforms and service providers. Establishing clear protocols and streamlined processes will enable prompt action, reducing the time harmful content remains accessible online and improving compliance.

Conclusion

While the amendments proposed in the Bill are a positive step forward, they remain inadequate to bring Australia's privacy laws to the level of modernisation required for today's digital landscape. The AIIA has consistently called for more robust reforms that address the real and present challenges in protecting citizen privacy in the digital age. Delaying these essential changes only serves to undermine confidence in the process and the government's leadership on privacy matters.

Should you require further information, please contact Ms Siew Lee Seow, General Manager, Policy and Media, at siewlee@aiia.com.au or 0435 620 406, or Mr David Makaryan, Advisor, Policy and Media, at david@aiia.com.au.

Thank you for considering our submission.

Yours sincerely

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About the AIIA

The AIIA is Australia's peak representative body and advocacy group for those in the digital ecosystem. Since 1978, the AIIA has pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment for our members and to contribute to Australia's economic prosperity.

We are a not-for-profit organisation to benefit members, which represents around 90% of the over one million employed in the technology sector in Australia. We are unique in that we represent the diversity of the technology ecosystem from small and medium businesses, start-ups, universities, and digital incubators through to large Australian companies, multinational software and hardware companies, data centres, telecommunications companies and technology consulting companies.