

## Submission

**14 August 2023**

Australian Competition and Consumer Commission  
Via email: [digitalmonitoring@acc.gov.au](mailto:digitalmonitoring@acc.gov.au).

### Re: Digital Platform Services Inquiry – March 2024 report on data brokers

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Australian Competition and Consumer Commission (**ACCC**) for the opportunity to comment on the Digital Platform Services Inquiry – March 2024 report on data brokers Issues Paper (**the Issues Paper**).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

In our view:

- We are unaware of benefits to consumers from third-party data brokers.
- The collection, processing, analysis or storage of personal information by data brokers can risk consumer harms.
- Most consumers are not aware to the extent their data is collected and have limited ability to control how their data is collected, stored and used.
- Many of the proposals put forth in the Attorney General's (**AG**) report on the *Privacy Act 1988* (Cth) (**Privacy Act**) would go some way to ameliorating some of the harms risked by third-party data brokers.<sup>1</sup>

For more detailed feedback on specific questions from the Issues Paper, see **Appendix A** below.

There are many businesses in Australia that buy, sell and trade data.<sup>2</sup> Major telecommunications companies such as Telstra, Optus and TPG Telecom all appear to have provisions for third-party data brokers in their public privacy policies (see **Appendix B** for more details).

- Telstra, Optus and TPG Telecom all collect data from third parties.
- Telstra, Optus and TPG Telecom share consumer data with third parties for direct marketing.
- Both Optus and TPG explicitly share de-identified personal information with other businesses. Only Optus mentions that consumers can opt out of being included in these data sets.

<sup>1</sup> Attorney-General's Department 2023. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>2</sup> Ramon Lobato 2023. The data broker economy. *ADM+S Centre*. Available at: <https://www.admscentre.org.au/the-data-broker-economy/>

- Telstra, Optus and TPG Telecom share personal information overseas.

The Issues Paper directly addresses third-party data brokers that ‘collect, process and analyse “personal or other information on persons”.’ The Issues Paper notes that it takes a wider view of personal information than the Privacy Act to include de-identified and anonymised personal data. As a recent review of the Privacy Act found, the capacity of the Privacy Act to address de-identified and anonymised information ‘is limited’.<sup>3</sup> ACCAN has previously submitted our support to address this issue by amending the definition of personal information from ‘about’ to ‘relates to’.<sup>4</sup> This proposal, and others in section four of the report, would clarify definitions around personal information.

Many of the proposals set out in the AG’s report on the Privacy Act would go some way to ameliorating some of the harms raised by the Issues Paper. While the Issues Paper precludes some of the activities regulated by the Privacy Act, several key proposals made by the AG’s review address harms from third-party data brokers.<sup>5</sup> These include:

- Measures to clarify de-identification<sup>6</sup>
- Measures to criminalise malicious re-identification of de-identified information<sup>7</sup>
- Measures around fair and reasonable personal information handling<sup>8</sup>
- Measures to introduce a requirement that an individual’s consent must be obtained to trade their personal information<sup>9</sup>
- A prohibition on trading in the personal information of children<sup>10</sup>
- Measures to protect personal information that is shared overseas<sup>11</sup>

We thank the ACCC for the opportunity to comment on the Issues Paper. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at [samuel.kininmonth@accan.org.au](mailto:samuel.kininmonth@accan.org.au).

Yours sincerely,

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Policy Adviser

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<sup>3</sup> Attorney-General’s Department 2023. p.3. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>4</sup> ACCAN 2023. *Privacy Act Review Issues Paper*. Available at: <https://accan.org.au/accans-work/submissions/2126-privacy-act-review-2023>

<sup>5</sup> Attorney-General’s Department 2023. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>6</sup> Attorney-General’s Department 2023. Proposals 4.4, 4.5, 4.6. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>7</sup> Attorney-General’s Department 2023. Proposals 4.7. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>8</sup> Attorney-General’s Department 2023. Section 127. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>9</sup> Attorney-General’s Department 2023. Proposals 20.4. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>10</sup> Attorney-General’s Department 2023. Proposals 20.7. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>11</sup> Attorney-General’s Department 2023. Section 23. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

## Appendix A: Further responses to the Issues Paper

### Question 16: What benefits do data broker products and services provide to consumers and small businesses?

ACCAN is unaware of consumer benefits from third-party data brokers.

### Question 17: What consumer harms may arise from the collection, processing, analysis or storage of information by data brokers? Which consumers are most likely to be harmed and why?

The collection, processing, storage and analysis of personal information risks harming consumers. Vulnerable consumers may be harmed at similar rates but are less well placed to advocate for rectification/remediation of issues. We have concerns over the following potential consumer harms:

- Consumer consent is fundamental to the Australian Privacy Principles (APPs).<sup>12</sup> Consumers are unable to provide meaningful consent to third-party data brokers. Consumers do not have direct relationships with data brokers and have little ability to negotiate terms and conditions.<sup>13</sup>
- Third-party data brokers collect and store large amounts of personal data, which creates a significant risk of security breaches. Collecting large amounts of personal information ‘increases the risk that highly sensitive information is acquired by criminal scammers, foreign government agencies, and other actors’.<sup>14</sup> Given the high risk of data breaches in Australia, collecting consumers’ personal data can lead to a high risk of consumer harm. Almost half of Australians have been impacted by data breaches and ‘three-quarters of those who were involved in a data breach said they experienced some form of harm as a result’.<sup>15</sup>
- De-identification of personal information provides limited protection to consumers.<sup>16</sup>

### Question 18: What consumer harms may arise from the use of data products and services sold or provided by data brokers? Which consumers are most likely to be harmed and why?

The use of third-party data products and services risks consumer harms. These harms include:

- Incomplete or inaccurate personal data can lead to consumer harms. Third-party data is not always complete or accurate and entities that rely on information from third-party data brokers may make incorrect decisions based on flawed data.<sup>17</sup>

<sup>12</sup> OAIC 2023. *Australian Privacy Principles*. Available at: <https://www.oaic.gov.au/privacy/australian-privacy-principles>

<sup>13</sup> Attorney-General’s Department 2023. p.214. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>14</sup> Sherman, J 2022. *Data brokers and data breaches*. Available at: <https://techpolicy.sanford.duke.edu/blogroll/data-brokers-and-data-breaches/>

<sup>15</sup> OAIC 2023, p.54. *Australian Community Attitudes to Privacy Survey 2023*. Available at: <https://www.oaic.gov.au/engage-with-us/research-and-training-resources/research/australian-community-attitudes-to-privacy-survey/australian-community-attitudes-to-privacy-survey-2023>

<sup>16</sup> Bushwick, S 2019. “Anonymous” Data Won’t Protect Your Identity. Available at: <https://www.scientificamerican.com/article/anonymous-data-wont-protect-your-identity/>

<sup>17</sup> Dimitrova, D. 2021. The Rise of the Personal Data Quality Principle. Is it Legal and Does it Have an Impact on the Right to Rectification?. Is it Legal and Does it Have an Impact on the Right to Rectification. Available at: <https://ejlt.org/index.php/ejlt/article/download/768/1042>

- Consumers' personal data can be accessed by a range of actors. Consumers have little control over who can access their personal data from third-party brokers and third-party broker services could be used against consumers' wishes, such as for marketing by potentially harmful industries such as alcohol and gambling.<sup>18</sup>
- Use of third-party data could be used to discriminate services to consumers.<sup>19 20</sup>

**Question 20: To what extent are consumers aware that their data is being collected and used by data brokers? How are they are made aware?**

Consumers are largely unaware to the extent that their data is being collected and used by data brokers. When consumers are aware that their data is being collected for third parties, many are unable to change their privacy settings.

According to a survey by CHOICE,

40% of people weren't aware loyalty schemes could sell their data to data brokers, and roughly the same number (41%) didn't realise it could be used to make decisions about them, including their credit worthiness.<sup>21</sup>

According to the Consumer Policy Research Centre,

85% of consumers consider it is unfair for companies to share personal information they've provided with other companies – while 90% think it is unfair for this information to be sold to other companies.<sup>22</sup>

ACCAN's research has found that many groups who tend to be less digitally included, such as older Australians, Australians on lower incomes and rural, regional and remote Australians tended to find it harder to change their privacy and safety settings.<sup>23</sup> For example, only 44% of participants in our study over 50 agree that it is easy to change their privacy and safety settings on apps and websites.<sup>24</sup>

Consumers are worried by this lack of privacy and control over their personal data. For example, 'areas where people have the least awareness are actually the areas they are most concerned about,

<sup>18</sup> Leong, D & Yi-Ling, T 2020. *Data Brokers: A Weak Link in National Security*. Available at: <https://thediplomat.com/2020/08/data-brokers-a-weak-link-in-national-security/>

<sup>19</sup> Citron, D K, & Pasquale, F 2014. The scored society: Due process for automated predictions. *Wash. L. Rev.*, 89, 1.

<sup>20</sup> Attorney-General's Department 2023, p.217. *Privacy Act Review Report*. Available at: <https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>

<sup>21</sup> Page, R 2021. *What are loyalty schemes like Flybuys and Everyday Rewards doing with your data?* Available at: <https://www.choice.com.au/consumers-and-data/data-collection-and-use/who-has-your-data/articles/loyalty-program-data-collection#our-survey>

<sup>22</sup> CPRC 2020. *New research finds Australian consumers want more control over their personal information and expect fair treatment*. Available at: <https://cprc.org.au/cprc-2020-data-and-technology-consumer-survey/>

<sup>23</sup> ACCAN 2022. *Research Snapshot: What Australians Expect from Digital Platforms*, Australian Communications Consumer Action Network, Sydney. Available at: <https://accan.org.au/accans-work/research/2003-consumer-expectations-2022>

<sup>24</sup> ACCAN 2022. *Research Snapshot: What Australians Expect from Digital Platforms*, Australian Communications Consumer Action Network, Sydney. Available at: <https://accan.org.au/accans-work/research/2003-consumer-expectations-2022>

with 70% concerned about their data being sold to data brokers and 62% concerned about schemes using this data to make decisions about them.’<sup>25</sup>

**Question 22: What bodies or resources exist to assist and support consumers in their dealings with data brokers? What more could be done to better educate and empower consumers?**

In ACCAN’s view, the complexity and opacity of the third-party broker market would limit the value of consumer education.

According to experts at the University of New South Wales (**UNSW**) Australian Privacy Principle (**APP**) 3.6 of the Privacy Act.<sup>26</sup> APP 3.6(b) provides that an ‘APP entity must collect personal information about an individual only from the individual unless ... it is unreasonable or impracticable to do so.’

According to Dr Katherine Kemp, use of third-party data collection likely contravenes APP 3.6b. To date, APP3.6(b) has likely not been enforced as

a result of the opacity of corporate data practices for consumers, limited scrutiny and guidance from the regulator in respect of data collection from third parties, and the general lack of deterrence created by privacy legislation which has not yet given rise to a single pecuniary penalty.<sup>27</sup>

Instead of consumer education ACCAN recommends that regulators and industry consider the implications of 3.6b for protecting consumer’s privacy and ensuring that any third-party data brokering in Australia conforms with both consumers interests and the law.

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<sup>25</sup> Page, R 2021. *What are loyalty schemes like Flybuys and Everyday Rewards doing with your data?* Available at: <https://www.choice.com.au/consumers-and-data/data-collection-and-use/who-has-your-data/articles/loyalty-program-data-collection#our-survey>

<sup>26</sup> Kemp, K, 2022. *Australia’s Forgotten Privacy Principle: Why Common ‘Enrichment’ of Customer Data for Profiling and Targeting is Unlawful.* Available at SSRN: <http://dx.doi.org/10.2139/ssrn.4224653>

<sup>27</sup> Kemp, K, 2022, p.20. *Australia’s Forgotten Privacy Principle: Why Common ‘Enrichment’ of Customer Data for Profiling and Targeting is Unlawful.* Available at SSRN: <http://dx.doi.org/10.2139/ssrn.4224653>

## Appendix B: Carriage Service Providers' Privacy Statements

### Telstra

According to Telstra's Privacy Policy,<sup>28</sup> Telstra may gather information from:

organisations like regulators, or sources like marketing mailing lists or commercially available information sources that contain personal, identity, geographic or demographic information. It may include information that's publicly available, like public posts on social networking sites you've used to interact with us. We may also collect information about you from our related entities, business and commercial partners, along with our service providers, for example identity and fraud checking services we use.

Telstra may share information with '[m]arket research, marketing, telemarketing and door-knocking services (where permitted)'.<sup>29</sup>

The privacy policy states that customers can opt out of Telstra direct marketing emails and correct personal information, but it does not mention of opting out of data provided to third-party businesses.

### Optus

According to Optus's Privacy Policy<sup>30</sup> Optus collects information from sources including:

- People with permission from you to give us your information (such as family members).
- Our business partners, such as our franchisees or distributors like Coles or Harvey Norman.
- Recruitment agencies, previous employers or referees.
- Third party websites and social media platforms that collect and disclose information about you (including via the use of cookies and similar technologies) such as Google or Facebook.
- Business directories, open data sources, or public social media posts.
- Government agencies, such as the Australian Bureau of Statistics.
- Credit reporting bodies such as Equifax and Illion.
- Service providers that work with Optus, like companies that help us provide products and services to you, or identity and fraud checking services, or analytics and advertising-related services (including ad-serving/targeting platforms).
- Companies related to Optus, including companies in the Singtel Group such as Trustwave Holdings, Inc and DSpark Pty Limited.

Optus uses the information for:

- Deriving insights about you and who you interact with to identify market segments, market products and services, or carry out market research.

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<sup>28</sup> Telstra 2023, p.5. *Telstra privacy statement*. Available at: <https://www.telstra.com.au/content/dam/tcom/personal/privacy/pdf/telstra-privacy-statement.pdf>

<sup>29</sup> Telstra 2023, p.10. *Telstra privacy statement*. Available at: <https://www.telstra.com.au/content/dam/tcom/personal/privacy/pdf/telstra-privacy-statement.pdf>

<sup>30</sup> Optus 2023. *Privacy Policy*. Available at: <https://www.optus.com.au/about/legal/privacy>

- Assessing the effectiveness of our marketing campaigns to optimise our marketing spend and to personalise our products, services, and marketing messages.
- Analysing audience ratings information and anonymous viewing and/or browsing data to understand how you and others engage with our products and services (including our content services).
- Supplementing, matching and analysing information about you with information from third party sources (e.g. from Facebook or Google) to learn more about your preferences and interests and to create aggregated market segments.
- We may de-identify information about you to use and share with our business partners. This information may be combined with other demographic information or anonymous identifiers, to develop aggregated insights to improve our products, services and offers to our customers.

Optus shares consumers personal information with their 'business partners and selected third parties'. According to Optus consumer data is shared with:

- Our service providers (including our contact and service centres and sales agents).
- Our analytics and advertising-related organisations. This includes providers of ad-serving/targeting platforms and third-party proprietary measurement software, such as OzTAM and Nielsen.
- Our debt recovery agents and credit reporting bodies, such as Equifax and Illion.
- Other telecommunications companies (e.g. to administer number portability requests).
- Companies who collect information and data from cookies and other similar technologies.
- Companies working with us to prevent or investigate unlawful activity (particularly fraud and identity theft).
- Companies related to Optus including companies in the Singtel Group.
- Advertisers of third-party products and services for the purpose of selling or providing relevant advertising on our websites, apps, and other online services (including our content services like Optus Sport).

The privacy policy states that customers can contact Optus to control whether they:

- Receive marketing messages and targeted online advertising from Optus.
- Have your information included in aggregated and anonymised insights used by our business partners and their customers.

Optus's Privacy Policy provides a way for consumers to correct personal information.<sup>31</sup>

### **TPG Telecom**

TPG Telecom's Privacy Policy<sup>32</sup> states that TPG Telecom collects personal data from:

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<sup>31</sup> Optus 2023. *Privacy Policy*. Available at: <https://www.optus.com.au/about/legal/privacy>

<sup>32</sup> TPG Telecom 2023. *Privacy Policy*. Available at: <https://www.tpgtelecom.com.au/about-us/privacy>



- Other companies in the TPG Group. For example, if you have a service with Vodafone, we may share your personal information with our other brands such as TPG or iiNet
- Credit reporting agencies, law enforcement agencies and other government entities
- Entities that provide services to us. This includes entities to which we may disclose your personal information. We explain who these entities are below in the section 'Who can we provide your information to?'
- Your authorised representatives or legal advisors
- Publicly available sources of information, like market research providers

TPG Telecom further states that '[w]e may also collect information in other ways and will take all reasonable steps to let you know if we do'.

According to their Privacy Policy,<sup>33</sup> TPG Telecom shares:

de-identified and anonymised data with select business partners. In these cases, we use techniques such as grouping, combining and anonymising so that we do not reveal your personal information[.]

We may give your personal information to other organisations that assist us in providing you with direct marketing. These organisations are limited to our suppliers or third parties working with or directly on behalf of the TPG Group. You can separately opt-in to receiving third-party marketing through a specific promotion.

TPG Telecom provides information for consumers to opt out of marketing materials and correct personal information. The Privacy Policy does not provide information for consumers to opt out of disclosure of de-identified information to third-party businesses.

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***The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.***

***ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP](#)***

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<sup>33</sup> TPG Telecom 2023. *Privacy Policy*. Available at: <https://www.tpgtelecom.com.au/about-us/privacy>