

Privacy and Other Legislation Amendment Bill 2024 [Provisions]

18 October 2024

Recommendations

ACCAN recommends that the Government:

- > Commit to a timeline for delivery of the full recommendations of the Attorney-General's privacy review by 1 July 2025.
- > Introduce further legislation to progress privacy reforms by 1 July 2025 that, at minimum:
 - > Updates personal information protections from being merely 'about' a person to 'relates to' a person, to capture technical data such as IP addresses, device identifiers and location data, as such technical data can tell as much about someone as the content of their communications.
 - > Removes the small business exemption to recognise that small business (below \$3 million p.a.) accounts for a large amount of the economy, and that excluding small business puts consumers at unnecessary risk.
 - > Adds a fair and reasonable test so that consumers have concise and relevant information (and can make informed decisions), rather than having to wade through lengthy policies and collection notices, ensuring that organisations balance their need for information with the interests of individuals and the public.
 - > Modernises consent requirements by requiring genuine consent measures, which are voluntary, informed, current, specific, and unambiguous, while eliminating 'tick box' consent notices.
 - > Allows individuals to opt out of targeted advertising, as most consumers want the choice to opt out.
 - > Requires consent from consumers for the trade of their personal information.

About this submission

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Senate Legal and Constitutional Affairs Committee (**the Committee**) for the opportunity to comment on the Privacy and Other Legislation Amendment Bill 2024 [Provisions] (**the Bill**).

ACCAN supports the Bill as a first step to modernising Australia's privacy protections. However, Australian consumers have poor privacy protections by international standards and further reforms are needed now. ACCAN urges the Government to address all the remaining recommendations from the Attorney-General's privacy report and to ensure that Australians receive the same minimum privacy protections enjoyed by the rest of the world.

Key issues

Privacy reform should be prioritised to provide consumers contemporary protections

Australia's privacy protections are outdated and inadequate, undermining consumer safety and confidence that their information will be securely managed and treated with respect. For example, Optus's 2022 major data breach exposed the personal information of more than nine million customers.¹ The breach raised 'a serious weakness' with privacy laws that allows organisations to store personal information beyond what is needed for core business purposes.² Unless privacy laws are reformed, experts predict that similar major leaks will continue to harm consumers.³

Privacy protections are fundamental to consumer safety and confidence, but Australia's *Privacy Act 1988* (Cth) is not fit for purpose. The Bill provides responses to some of the 116 recommendations raised in the Attorney-General's report but does not address many of the most important recommendations.⁴

¹ Hanah Murphy, 'Optus says it will defend allegations it failed to protect confidential details of 9 million customers in cyber attack' *ABC* (23 May 2024). <https://www.abc.net.au/news/2024-05-23/optus-to-fight-in-federal-court/103885104>

² Brendan Walker-Munro, 'Optus says it needed to keep identity data for six years. But did it really?' *The Conversation* (Melbourne, 30 September 2024). <https://theconversation.com/optus-says-it-needed-to-keep-identity-data-for-six-years-but-did-it-really-191498>

³ Brendan Walker-Munro, 'Optus says it needed to keep identity data for six years. But did it really?' *The Conversation* (Melbourne, 30 September 2024). <https://theconversation.com/optus-says-it-needed-to-keep-identity-data-for-six-years-but-did-it-really-191498>

⁴ Commonwealth of Australia, *Government response to the Privacy Act Review Report* (Report, 2023).

ACCAN recommends that the Government commits to advancing these reforms as a priority, with all recommendations to be advanced by no later than 1 July 2025. The Government should prioritise the following measures from the *Australian Government's response to the Privacy Act Review*:⁵

- Change the word 'about' in the definition of personal information to 'relates to'. Ensure the definition is appropriately confined to where the connection between the information and the individual is not too tenuous or remote, through drafting of the provision, explanatory materials and OAIC guidance (**Proposal 4.1**).
- Remove the small business exemption following consultation and impact assessments and with support for small business through the transition (**Proposal 6.1**).
- Amend the definition of consent to provide that it must be voluntary, informed, current, specific, and unambiguous (**Proposal 11.1**).
- Amend the *Privacy Act 1998* (Cth) to require that the collection, use and disclosure of personal information must be fair and reasonable in the circumstances. It should be made clear that the fair and reasonable test is an objective test to be assessed from the perspective of a reasonable person (**Proposal 12.1**).
- Provide individuals with an unqualified right to opt-out of receiving targeted advertising (**Proposal 20.3**).
- Introduce a requirement that an individual's consent must be obtained to trade their personal information (**Proposal 20.4**).

These measures are examples of important protections for consumers and do not preclude any of the remaining outstanding recommendations. Many of the proposals from the Attorney-General's report work together in combination to provide a minimum personal information safety net for consumers all need to be introduced as a matter of urgency.

⁵ Commonwealth of Australia, *Government response to the Privacy Act Review Report* (Report, 2023).

Conclusion

In the digital age, privacy protections are more important than ever and reforms to strengthen the privacy protections of Australians need to be advanced as a priority. Consumers need a clear timeline for further protections. Failing to commit to advancing reforms in a timely manner risks consigning Australian privacy law further behind the rest of the world and undermining consumer confidence in digital communications.

We thank the Committee for the opportunity to comment on the Bill. ACCAN supports the Bill and looks forward to urgent reforms soon. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact Samuel Kininmonth, Senior Policy Adviser, at Samuel.kininmonth@accan.org.au.

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.](#)



**Australian Communications
Consumer Action Network**

Australian Communications Consumer Action Network

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.