



Harnessing data and digital technology

Submission to Productivity Commission

16 June 2025

Recommendations

This submission recommends the Australian Government:

1. Commit to a timeline for delivery of the full recommendations of the Attorney-General's privacy review.
2. Prioritise further privacy legislation to progress key reforms to protect consumers' data.

About this submission

The Australian Communications Consumer Action Network (**ACCAN**) is pleased to provide this submission to the Productivity Commission on Harnessing data and digital technology (**the Consultation**).

ACCAN agrees with the Productivity Commission that it is fundamental to build public confidence in data and technology. In today's digital world, strong privacy protections are more important than ever. Reforms to strengthen the privacy rights of Australians must be treated as a national priority. Consumers deserve a clear timeline for the introduction of further safeguards. Delaying these reforms risks leaving Australia's privacy laws lagging behind international standards and eroding public trust in digital services.

Contents

About this submission.....2

Recommendations2

Introduction.....4

Responses to consultation4

Conclusion.....7



ACCAN is the peak national consumer organisation advocating trusted, accessible, inclusive, affordable and available communications and digital services.

Introduction

ACCAN welcomes the opportunity to provide views to the Consultation. As Australia's peak body representing communications consumers, we recognise the critical role that data and technology play in unlocking Australia's productivity.

ACCAN's submission outlines that Australia's privacy protections are in dire need of reform to effectively protect personal information and drive consumer confidence. The reforms outlined in the Privacy Act Review represent a tangible first step to balancing the needs of consumers and enabling more ethical business practices. This will in turn drive good business practices and boost productivity.

Responses to consultation

Support safe data access and handling through an outcomes-based approach to privacy.

Australia's Privacy Act is outdated and fails to strike a fair balance between the interests of consumers and businesses. Currently, personal data is often treated as freely available, with limited consent requirements. This approach undermines public confidence in how data is handled while exposing consumers to significant risks and imposing costly burdens on those who seek to protect their privacy.

The lack of effective privacy protections has real-world consequences. In 2022, the Optus data breach exposed the personal information of more than nine million Australians.¹ The incident revealed a major gap in the law — organisations can retain personal data long after it is needed for core business functions.² Unless the Privacy Act is comprehensively reformed, experts warn that similar large-scale data breaches will continue, putting consumers at serious risk.³

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* (Online, 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* (Online, 30 September 2024) <https://theconversation.com/optus-says-it-needed-to-keep-identity-data-for-six-years-but-did-it-really-191498>.

From an economic perspective, robust privacy protections are essential for sustainable digital economic growth. As the value of consumer data rises, so too does the economic incentive for its collection, use, and potential misuse. The market for direct sale of data represents only a portion of the value derived from data collection and the Organisation for Economic Co-operation and Development (OECD) estimated the market grew from USD 24 billion in 2013 to USD 33.3 billion in 2019.⁴ The value and therefore potential loss from privacy asymmetries is growing substantially but Australian privacy regulation does not have sufficient incentives to manage the risk.

Consumers typically do not have the time, resources, or expertise to fully understand the value of their data. ACCAN research has found that only 56% of respondents think it is easy to change the default privacy and safety settings of websites and apps and only 56% of people usually change the default privacy and safety settings of websites and apps they use.⁵ However, many groups who tend to be less digitally included, such as older Australians, Australians on lower incomes and rural, regional and remote Australians find it harder to change their privacy and safety settings.⁶

Consumers are unlikely to fully understand the value of their data as emerging technologies find new applications for information previously thought to have little value. This can lead to market failures – such as information asymmetry – that prevent consumers from making informed choices and allow data controllers to profit from personal information in ways that are opaque and potentially exploitative.

Such exploitation and lack of adequate protections undermine consumer trust, leading to lower participation in digital markets and greater reluctance to share information online.⁷ This trust deficit imposes hidden costs on the economy by stifling innovation and reducing the uptake of digital services. Clear, enforceable privacy obligations on the part of data controllers are necessary to address this issue. As the ACCC noted in their Digital Platforms Inquiry:

Privacy and data protection laws can build trust in online markets. They can increase consumer protections by addressing sources of market inefficiencies such as information asymmetries and bargaining power imbalances.⁸

⁴ Organisation for Economic Co-operation and Development, 'Measuring the Value of Data and Data Flows' (Policy Paper, 14 December 2022) 21 https://www.oecd.org/en/publications/measuring-the-value-of-data-and-data-flows_923230a6-en.html.

⁵ ACCAN, 'ACCAN Research Snapshot: What Australians Expect from Digital Platforms (Online, 2022) 2 <https://accan.org.au/accans-work/research/2020-digital-platforms-consumer-experience>.

⁶ Julian Thomas et al, *Measuring Australia's Digital Divide: Australian Digital Inclusion Index 2023* (Report, ARC Centre of Excellence for Automated Decision-Making and Society, RMIT University, Swinburne University of Technology, and Telstra., 2023) <<https://apo.org.au/node/323092>> ('*Measuring Australia's Digital Divide*').

⁷ Alessandro Acquisti, Curtis Taylor and Liad Wagman, 'The Economics of Privacy' (2016) 54(2) *Journal of Economic Literature* 442.

⁸ Australian Competition and Consumer Commission, 'Digital Platforms Inquiry - Final Report' (Report, ACCC, 26 July 2019) 5 <https://www.accc.gov.au/about-us/publications/digital-platforms-inquiry-final-report>.

ACCAN supports privacy reforms that shift the economic burden away from individual consumers and towards data controllers, ensuring they internalise the social and economic costs of poor data stewardship and align private incentives with public interest.

Are there any changes you would like to see to privacy legislation in Australia? Please provide details below.

Privacy protections are fundamental to consumer safety and confidence in data and technology, but Australia's *Privacy Act 1988* (Cth) is not fit for purpose. The *Privacy and Other Legislation Amendment Act 2024* (Cth) provided a first tranche of reforms but far more needs to be done. The *Privacy and Other Legislation Amendment Act 2024* (Cth) 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.⁹

ACCAN recommends that the Australian Government commits to advancing the remaining recommendations as a priority. The Australian Government should prioritise the following measures from the *Australian Government's response to the Privacy Act Review*:¹⁰

- 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 outlined above are examples of important protections for consumers. They do not preclude any of the remaining outstanding recommendations from the Attorney-General's report. Many of the proposals from the Attorney-General's report work together in combination to provide a minimum personal information safety net for consumers. Without these reforms, it is likely that consumer trust in data and technology will decline.

⁹ Commonwealth of Australia, 'Government response to the Privacy Act Review Report' (Report, 2023).

¹⁰ Commonwealth of Australia, 'Government response to the Privacy Act Review' (Report, 2023).

Conclusion

Building public confidence in data and technology must be a national priority to unlock Australia's productivity. ACCAN supports strong privacy reforms and urges timely action to strengthen Australians' rights and drive confidence in the digital economy. We thank the Productivity Commission for the opportunity to comment on the Consultation. Should you wish to discuss any of the issues in this submission further, please do not hesitate to contact Sam Kininmonth, Research Manager, at samuel.kininmonth@accan.org.au.



www.accan.org.au

info@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.