

Submission to The Attorney-General's Department – Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021

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By email and online submission: OnlinePrivacyBill@ag.gov.au

The Consumer Policy Research Centre (CPRC) welcomes the opportunity to contribute to the consultation on the '*Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021*'.

CPRC is an independent, non-profit consumer research organisation. Our mission is to improve the lives and welfare of consumers by producing evidence-based research that drives policy and practice change. Data and technology issues are a research focus for CPRC, including emerging consumer risks and harms and the opportunities to better use data and technology to improve consumer wellbeing and welfare.

While the CPRC generally supports the proposed amendments in *Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021*, we note that the development of the Online Privacy Code (the OP Code), only partially addresses the issues Australian consumers currently face due to lack of choice and control over the collection, sharing and use of their personal information across digital settings.

Prioritising economy-wide privacy reform

We urge the Government to prioritise and fast-track the review of the Privacy Act to address the increasing ubiquity of data collection, use and disclosure in the economy that goes beyond the scope of the specific industry sectors captured within the proposed OP Code. Privacy Act reforms will ensure the environment surrounding the OP code provides sufficient protection for consumers. Clearer market stewardship is required from government to ensure that emerging digital markets both work for and deliver benefits for Australian consumers.

Below is our specific feedback in relation to the application of the new Bill:

Scope of the Bill

We support the scope of the proposed Code, including capturing data brokers in addition to social media networks and large online platforms. Collection of personal information both by firms and digital platforms consumers engage with, as well as firms that consumers have no direct relationship with (such as data brokers) pose significant risks to consumer choice and control. Inferences about a consumer, including predictions on how they will behave across various situations can all be facilitated by the collection of data.¹

¹ Richmond, B, "A Day in the Life of Data", CPRC (2019), <https://cprc.org.au/publications/research-report-a-day-in-the-life-of-data/>.

Effective enforcement measures

We support the introduction of a pecuniary penalties being commensurate to those applicable in the Australian Consumer Law. Holding parties accountable with comparable consequences will assist in creating a fairer market for consumers. However, for this to be effective, the onus cannot remain on consumers alone to identify and report breaches to the OP Code. **Effective and regular surveillance and enforcement by the regulator is needed to educate and shift the market towards a more consumer-centric approach to privacy.** We support the proposal to increase and enhance the Office of the Australian Information Commissioner's (OAIC) capacity to conduct assessments. It is not just necessary but crucial to ensure the OAIC is effectively resourced to maintain the level of surveillance and enforcement that is at par with the complex digital environments that create covert harms for consumers.

Comprehensive consumer experience (CX) research

One of the aims of the OP Code is to reduce information asymmetries via clear and simple messaging when explaining the purpose of or seeking consent for collecting, holding, using and disclosing personal information. To ensure this aim is achieved, **CPRC strongly encourages the Government to embed comprehensive CX research as part of the development process for the OP Code.** The CX research should be thorough with statistically significant consumer samples and be representative of the Australian population, capturing varying levels of digital literacy and experience and including consumers experiencing vulnerability. This will assist to adequately measure the impact of the OP Code and its practicality in meeting consumer needs.

Research should also measure consumer comprehension of rights and risks, and the implications of sharing their personal information in particular use-cases. Our 2020 Consumer and Data Survey confirmed that privacy policies continue to be ineffective in engaging Australians, as 94% of consumers are not reading such information all the time and 33% of consumers never read these documents. Of the 67% who had terms and conditions at some point in the 12-month period, 69% reported accepting terms even though they were not comfortable with them, with the majority (75%) accepting them as it was the only way to access the product or service.² The OP Code needs to be able to address this lack of agency consumers currently have over the choice of how their personal information is collected, shared, used and disclosed.

Another aspect that would benefit from rigorous CX research is the implementation of the mandatory requirements requiring social media firms to verify user age and seek parental/guardian consent of children under 16 years of age before collecting, using or disclosing their personal information. Our research highlights the increased use of frictionless techniques that nudge people to automatically accept settings and contracts without reviewing or considering the terms.³ Often such frictionless processes are geared towards acceptance, causing contractual arrangements to be automatic and ubiquitous.⁴

² CPRC, "2020 Data and Technology Consumer Survey", (December 2020), <https://cprc.org.au/app/uploads/2020/11/CPRC-2020-Data-and-Technology-Consumer-Survey.pdf>

³ Richmond, B, "A Day in the Life of Data", CPRC (2019), <https://cprc.org.au/publications/research-report-a-day-in-the-life-of-data/>.

⁴ *Ibid*

Dispute resolution

For the OP Code to be effective, in addition to well-resourced enforcement, there must be effective dispute resolution pathways to enable consumers to seek redress for when things go wrong. **We strongly advise that the establishment of effective external dispute resolution pathways be fast-tracked, such as via a Digital Ombudsman.** As consumers increase their engagement online with more digital products and services and increased complexity of digital harms, a Digital Ombudsman needs to be adequately resourced to meet the Governments 'Benchmarks for Industry-based Customer Dispute Resolution'⁵ to ensure consumers can effectively resolve any disagreements that will arise.

Further engagement

We would welcome the opportunity to work with Government and share further insights from our consumer research projects. For further discussion regarding our research and the contents of this submission, please contact Chandni Gupta, Policy and Program Director at chandni.gupta@cprc.org.au.

Yours sincerely



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⁵ See: <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution>