

Update on Incoming Privacy Law Reform



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For the last few years, members of the profession have been eagerly awaiting the details of proposed changes to Australian privacy laws.

State update

In WA, we have seen some movement on the subject of privacy law reform with the May 2024 introduction of the Privacy and Responsible Information Sharing Bill 2024 (WA). The Bill concerns 'IPP' (information privacy principle) entities, which captures Ministers, Parliamentary Secretaries, public entities, and contracted service providers.¹ Its objects include:

- promoting 'responsible and transparent practices for handling personal information by IPP entities';
- balancing 'the public interest in protecting the privacy of personal information handled by IPP entities with the public interest in the free flow of information'; and
- providing 'a means for individuals to complain about alleged interferences with their privacy',

among other things.² The legislation will introduce 'IPPs'—not to be confused with the 'APPs' (Australian Privacy Principles) of the *Privacy Act 1988* (Cth) ('Privacy Act'), as well as a mandatory data breach notification scheme applicable to IPP

entities.³ At the time of writing,⁴ the Bill is making its way through State Parliament.

The policy goals of that Bill are also served by the Information Commissioner Bill 2024 (WA). This legislation will establish new officeholders with responsibility for privacy matters in WA: the Information Commissioner, the Privacy Deputy Commissioner, the Information Access Deputy Commissioner and the Chief Data Officer. According to Attorney General John Quigley, the commissioners will support the privacy provisions of the Privacy and Responsible Information Sharing Bill 2024 (WA) and the *Freedom of Information Act 1992* (WA).⁵ This Bill is also making its way through Parliament.

These changes will be welcome additions to the patchwork of laws that purport to protect the privacy of Western Australians. Their significance may be dwarfed, however, with movements at the federal level.

Federal update

Changes to Commonwealth privacy laws have been in the pipeline for some years. Readers may recall the ACCC's 2019 final report of its *Digital Platforms Inquiry*.⁶ The ACCC considered that the Privacy Act needs reform 'in order to ensure consumers are adequately informed, empowered and protected, as to how their data is being used and

collected'.⁷ The then-Government agreed, leading to a review of the Privacy Act by the Commonwealth Attorney-General's Department. The February 2023 report of that 'Privacy Act Review' proposed dozens of changes to Australian privacy law.⁸ Some of the proposals that piqued my interest included the following:

- Creation of a statutory tort for serious invasions of privacy, covering misuse of information and intrusion upon seclusion (proposal 27). This would give effect to the recommendations of the 2014 ALRC Report 123, the report of an inquiry led by Professor Barbara McDonald;
- Creation of a new right to erasure, which would apply to APP entities (proposal 18, especially 18.3);
- Creation of a direct right of action, allowing persons to sue over various breaches of the Privacy Act—seemingly, including a breach of the right to erasure (proposal 26);
- Allowing the direct right of action to be litigated via representative proceedings (see p 273ff); and
- Creation of a new right (proposal 18.5) to de-index search results, similar to the GDPR right once called the 'right to be forgotten'. The proposal is for a right to de-index search results that

are (inter alia) 'inaccurate, out-of-date, incomplete, irrelevant or misleading' (proposal 18.5(iv)).

The Federal Government responded to the Privacy Act Review Report in September 2023. It accepted 38 of the Report's 116 recommendations, while accepting a further 68 recommendations 'in principle.'⁹

In late 2023, your LinkedIn feeds would have been full of firm updates on these recommendations. Commercial lawyers may soon be called on for advice on privacy compliance much more frequently than to which they are accustomed; their drool lines the gutters of St Georges Terrace.

These recommendations are still yet to be implemented. But in May, we saw movement.

On 2 May 2024, Attorney-General Mark Dreyfus announced that 'It's time for privacy reform.'¹⁰ The Attorney said:

'At the request of the Prime Minister I will now be bringing forward legislation in August to overhaul the Privacy Act and protect Australians from doxxing - the malicious use of their personal and private information. We will also

seek to strengthen laws against hate speech.

This work will complement work already underway across government as we seek to strengthen online safety for all Australians.

Over the next few months I will be calling on my colleagues on all sides of the federal parliament to work with me and the Government to ensure that the personal information of Australians is adequately protected.

Governments, industry and businesses also have an important responsibility to support and build technologies - and develop and implement practices and capabilities - that uphold these expectations.'

Privacy nerds will surely have already saved reminders in their Outlook calendars for August 2024, titled: 'Privacy law reform introduced yewwww <3'. ■

Endnotes

* Thanks to my Bennett colleagues, Will Bevan and Asra Khan, for their research assistance. Views are and silliness is my own.

1. Privacy and Responsible Information Sharing Bill 2024 (WA) cl 14(1)(a)-(d).

2. Privacy and Responsible Information Sharing Bill 2024 (WA) cl 3(a)-(c).
3. See generally Government of Western Australia, *Privacy and Responsible Information Sharing: Factsheet* (2024) <<https://www.wa.gov.au/system/files/2024-03/prisfactsheet.pdf>>.
4. As at 10 July 2024.
5. Western Australia, *Parliamentary Debates, Legislative Assembly*, 16 May 2024 (John Quigley) 2452c.
6. Australian Competition and Consumer Commission, *Digital Platforms Inquiry - Final Report* (Report, June 2019) <<https://www.accc.gov.au/about-us/publications/digital-platforms-inquiry-final-report>>.
7. Ibid 3.
8. Australian Government, Attorney-General's Department, *Privacy Act Review Report* (Report, 16 February 2023) ('*Privacy Act Review Report*') <<https://www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report>>.
9. Australian Government, 'Privacy Reform - what is it?', *Government Response | Privacy Act Review Report* (Fact Sheet) <<https://www.ag.gov.au/rights-and-protections/publications/government-response-privacy-act-review-report>>.
10. Australian Government, Attorney-General's portfolio, 'Privacy by Design Awards 2024' (2024) <<https://ministers.ag.gov.au/media-centre/speeches/privacy-design-awards-2024-02-05-2024>>.

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