



Terms of Reference

Objective

The review will consider whether the scope of the *Privacy Act 1988* and its enforcement mechanisms remain fit for purpose.

Context

In its response to the Australian Competition and Consumer Commission's (ACCC) *Digital Platforms Inquiry*, the Government committed to undertake a review of the Privacy Act and to consult on options for implementing a number of privacy-specific recommendations to better empower consumers, protect their data and best serve the Australian economy.

The digital economy has brought with it immense benefits including new, faster and better products and services. The ability of businesses to engage with consumers online is vital to economic growth and prosperity. As Australians spend more of their time online, and new technologies emerge, such as artificial intelligence, more personal information about individuals is being captured and processed raising questions as to whether Australian privacy law is fit for purpose.

At the same time, businesses that are trying to do the right thing are faced with an increasingly complex regulatory environment with respect to managing personal information. This is particularly true for businesses who work across international borders where complying with information protection standards can be a requirement for access to overseas markets.

Matters to be considered by the review

The review will examine and, if needed, consider options for reform on matters including:

- The scope and application of the Privacy Act including in relation to:
 - the definition of 'personal information'
 - current exemptions, and
 - general permitted situations for the collection, use and disclosure of personal information.
- Whether the Privacy Act effectively protects personal information and provides a practical and proportionate framework for promoting good privacy practices including in relation to:
 - notification requirements
 - consent requirements including default privacy settings
 - overseas data flows, and
 - erasure of personal information.
- Whether individuals should have direct rights of action to enforce privacy obligations under the Privacy Act.

- Whether a statutory tort for serious invasions of privacy should be introduced into Australian law.
- The impact of the notifiable data breach scheme and its effectiveness in meeting its objectives.
- The effectiveness of enforcement powers and mechanisms under the Privacy Act and the interaction with other Commonwealth regulatory frameworks.
- The desirability and feasibility of an independent certification scheme to monitor and demonstrate compliance with Australian privacy laws.

The review builds on reforms announced in March 2019 to increase the maximum civil penalties under the Privacy Act and develop a binding privacy code to apply to social media platforms and other online platforms that trade in personal information.

Matters that will not be considered

The review will not consider the following areas that have only recently been considered:

- Credit reporting under Part IIIA of the Privacy Act
- Operation of Part VIIIA of the Privacy Act relating to the COVIDSafe app

Conduct and outcomes of the review

Consultation and evidence

The review will draw on a range of sources. The review will:

- Invite submissions on matters for consideration in the review
- Meet with stakeholders on specific issues
- Consider research and reports which consider privacy issues, including the:
 - ACCC Digital Services Advertising Inquiry
 - ACCC Digital Platforms Inquiry Final Report, 2019
 - Data Availability and Use, Productivity Commission Inquiry Report, 2017
 - Serious Invasions of Privacy in the Digital Era, ALRC Final Report 123, 2014
 - For Your Information: Australian Privacy Law and Practice, ALRC Report 108, 2008

Reviewer

The review will be undertaken by the Australian Attorney-General's Department.

Timing and outcomes

The review will commence in October 2020. The report of the review will be made public after government consideration.