

On 16 February 2023, the Commonwealth government released its much-anticipated “Privacy Act Review Report” (the Review Report), flagging potential changes to Australia’s privacy law regime. Reform of Australia’s Privacy Act 1988 (Cth) (the Privacy Act or the Act) has been ongoing since 2020, but had been put on hold in the lead up to Australia’s 2022 federal election.

Following the election of Australia’s Labor government in May 2022, Attorney-General Mark Dreyfuss recommissioned a review of the Privacy Act, signalling broad changes to Australia’s privacy framework.

The review into the Privacy Act has garnered significant public interest as a result of a series of significant data breaches, most notably the cyberattacks on Optus and Medibank, which compromised customer information in September and October of 2022, respectively.

In the media release accompanying the Review Report, Dreyfuss commented that “the Privacy Act has not kept pace with the changes in the digital world. The large-scale data breaches of 2022 were distressing for millions of Australians, with sensitive personal information being exposed to the risk of identity fraud and scams.”

As we shared in [this October 2022 article](#), Australia has already taken action to strengthen privacy penalties, increasing penalties for breaches of customer data for serious or repeated privacy breaches from AU\$2.2 million to whichever is the greater of AU\$50 million, three times the value of any benefit obtained through the misuse of the stolen information, or 30% of the company’s adjusted turnover during the relevant period.

The Review Report goes further, evincing the Commonwealth’s intention to introduce sweeping privacy reform that can restore trust in the digital economy and digital services provided by the private sector and governments in Australia. The Review Report contains 30 proposals to change or expand Australian privacy law. Some of these proposals are holdovers from the original reform framework considered in 2022; however, a number are new. The Australian government is seeking public consultation on all 30 proposals, with submissions in response to the Review Report due by 31 March 2023.

The proposals broadly fit into three categories:

- **The scope of “personal information” regulated under the Act and how it should be protected** – Including proposals to clarify the definition of “personal information”; restricting the misuse of de-identified personal information and regulating targeted advertising and data processing, among others.
- **Additional privacy protections** – Including increasing disclosure obligations for data collection and use practices, strengthening protections for children and vulnerable people, introducing new rights for individuals to control their data, including rights to seek erasure and opt-out rights for direct and targeted marketing and the sale of personal information, among others.
- **Expanded penalties and enforcement** – Including enhanced powers to make orders against entities breaching privacy law, the potential for a private tort for serious invasions of privacy and stricter data breach response obligations.

The most notable proposals are the expanded individual rights, including the right to erasure and the right to opt out of the collection of information for the purposes of direct and targeted marketing. These rights (reminiscent of the GDPR’s right to be forgotten, or various US privacy law marketing opt-out rights, as applicable) would be a seismic shift in the relationship between individuals and businesses with respect to privacy. Currently, the Privacy Act allows individuals the right to access and correct their information, as well as to opt out of receiving direct marketing; however, businesses have a general right to collect non-sensitive personal information about individuals, and use that information internally, if done so in connection with their legitimate business interests. This framework gives Australian businesses broad grounds to collect and use personal information of their consumers and contracts. The new individual rights proposed by the Review Report would place more power in the hands of individuals to opt out of the collection and use of their information, allowing individuals to cut ties with businesses they no longer wish to associate with.

The other critical proposal is the introduction of a privately enforceable tort for invasions of privacy. You may be aware that Australia does not currently have, whether under statute or at common law, a right for individuals to enforce breaches of privacy against businesses and other third parties. Currently, Australian individuals would need to rely on the Office of the Information Commissioner (OAIC) enforcing the Privacy Act against businesses that engage in serious interferences with individual privacy.

While the OAIC may impose orders increasing privacy protections or imposing financial penalties, these enforcement actions will rarely mitigate the damage caused to an individual by breach of their privacy. A privately enforceable tort would allow individuals to enforce their own privacy directly against businesses who have obligations to protect it, increasing privacy compliance risks for all companies, and enticing Australian businesses to take greater care with individuals' data.

When the Commonwealth introduced harsher penalties for breaches of customer data for serious or repeated privacy breaches, it promised this would only be the start of its response to reshape the Australian landscape with respect to privacy laws. The Review Report, and the proposals contained within, highlights the sentiments of Australians wanting more control over how their personal data is used and shared in the digital environment. While it is unlikely that all the proposals contained within the Review Report will be adopted, the reform proposed will take Australia to the forefront of international privacy regimes, with broad rights for individuals, strict penalties and increased compliance burdens. Once implemented, the Review Report's reform proposal will be the most significant change to Australian privacy law in a decade.

A [copy of the full report](#) is available, and a [high-level one-page summary](#) of the report's primary proposals has been published by the Attorney-General's Department. If you would like further information regarding how the Review Report proposals may impact you or your business, please do not hesitate to contact us for further information.

## Author



### **Connor McClymont**

Senior Associate

T +61 8 9429 7534

E [connor.mcclymont@squirepb.com](mailto:connor.mcclymont@squirepb.com)