

Attorney-General's Department  
4 National Circuit  
BARTON ACT 2600

## Submission on the Privacy Act Review Report

Thank you for the opportunity to make a written submission on the Privacy Act Review Report.

WESNET provides comments on the basis of its role as the national peak body for specialist women's domestic and family violence services. With almost 350 eligible members across Australia, WESNET represents a range of organisations and individuals including women's refuges, shelters, safe houses and information/referral services. WESNET is also recognised as the leading non-government organisation specialising in the intersection of family violence and technology abuse.

Please note that at this time, as an unfunded peak body, we have only been able to provide very general comments in relation to the draft report as we are limited in time and resources.

WESNET has a keen interest in Australia's privacy framework. The issue of privacy goes hand in hand with victim-survivor safety. Australia has unacceptable rates of violence against women, with one woman being murdered by an intimate partner every 10 days (Australian Institute of Criminology, 2022). Separation was a factor in 55% of cases of male intimate partner homicide against a female victim; in 36% of cases, the couple was separated and, in a further 19% of cases, one or both parties had expressed an intention to separate (Australian Domestic and Family Violence Death Review Network, 2018). In the United States research has shown that most individuals (87% of the US population) have characteristics that likely make them unique based only on 5-digit ZIP, gender, and date of birth (Sweeney, 2000). Statistics like these demonstrate how easy it is for an abuser to locate a victim with very minimal information.

Whereas for some people the worst-case impact of a privacy breach is a threat to their life savings, for victim-survivors it might mean they find themselves in a situation where their lives are immediately endangered.

It is essential that victims can flee violence and access domestic violence services without being vulnerable to being found by an abusive partner. The information that service providers and government agencies can share with outside parties must be carefully scrutinised and limited. Databases and other public records must be carefully regulated to ensure the safety of women and children.

Overall, WESNET is pleased with the report and believes that, by and large, the proposals advance privacy protections for individuals. Additional comments are provided below.

### What information should be protected and who should protect it?

WESNET would like to see protection in the Act broadened and applied not only to personal data entered or captured via online activities, but also to any records or data that records people's interactions with technology (like behavioural biometrics and mouse/keystroke dynamics) that could identify preferences and patterns in behaviours and be used for identification verification processes. These types of technologies can potentially lead to identification of an individual who may then be targeted as a result – for example, the way an individual uses a keyboard can be captured and analysed, and can then be teamed with other data that provides information including date/time, likely location, device details, and browser used, to identify with high probability particular individuals interacting with a website.

### What privacy protections should apply?

Clear guidance and definition is required where there is a requirement for 'entities to take *appropriate* responsibility for handling personal information *fairly and reasonably*'. 'Reasonable efforts' have been used as a public (if not legal) defence of recent high-profile data security breaches that have resulted in a significant volume of highly sensitive, easily identifiable personal details leaked to the dark, and then the clear, web. Explanatory memoranda, second reading speeches, educative materials, and any other available means, must be used to communicate clear expectations around otherwise ambiguous terms.

Similarly, in the report it is proposed that 'implied consent' may be acceptable if it is 'unambiguous'. WESNET cannot see the benefit or applicability of this. It would be safer and clearer to prescribe that consent must be express. 'Express consent' should be the standard.

### What privacy protections should apply?

While it is proposed that the Act will 'strengthen the requirement on entities to keep personal information secure and destroy or de-identify it when it is no longer needed', WESNET would like to see that *all* data captured and stored by an entity is secured and protected from the outset by practices such as masking, pseudonymisation or anonymisation. For example, in recent breaches, customers' diagnoses, treatment centres and dates of admission were leaked, but an assigned code number could have replaced all of their personally identifying details (including name, birthdate, email address, home address, contact phone numbers), and these details would be secured separately to the hospital data. While there is always the chance hackers may be able to breach both databases, it is a much more secure practice than just having everything unencrypted sitting in the one location.

### How should breaches of privacy be enforced?

The importance of the entity, regulator, or both alerting affected parties of data breaches as soon as possible cannot be overstated. As noted earlier, the impact of breaches on victim-survivors of domestic and family violence can be life threatening.

## References

Australian Domestic and Family Violence Death Review Network, & Australia's National Research Organisation for Women's Safety. (2022). Australian Domestic and Family Violence Death Review Network Data Report: Intimate partner violence homicides 2010–2018 (2nd ed.; Research report 03/2022). ANROWS.

Australian Institute of Criminology (2022). National Homicide Monitoring Program. <https://www.aic.gov.au/statistics/homicide>

Sweeney, L (2000). Uniqueness of Simple Demographics in the US Population, LIDAP-WP4. Carnegie Mellon University, Laboratory for International Data Privacy, Pittsburgh, PA.

Again, thank you for the opportunity to comment. Please do not hesitate to contact me if you require clarification or further information.

Your sincerely

*Signed*



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