

Submission on ALRC Inquiry on Reforms to Address Serious Invasions of Privacy in the Digital Era

Thank you for an invitation to provide submissions to the above inquiry.

Businesses, Governments, and other bodies have always collected information and data never considered confidential and usually was innocuous. The digital era has made the collection, organisation, and analysis of that information easier and has made the collected information substantially more valuable particularly when that information is amalgamated with information from different sources for law enforcement. The privacy of that information must be protected and safeguarded.

However, I do not believe that is possible or desirable for there to be

- a. A new general stand-alone Commonwealth Act to ensure privacy; or
- b. An Action in Tort that for an invasion of privacy

Information is collected by too many bodies for too many legitimate purposes with too many competing criteria to provide sufficient safeguards for privacy at the same time not impeding body efficiently carrying on its duties. For example, a Trustee in Bankruptcy or the Official Receiver, must maintain and disclose personal information about a bankrupt, his/her creditors etc. A trustee cannot be impeded in carrying on his duties, by being concerned information he had to divulge may cause tort proceedings being brought against him.

As the discussion paper recognises there are two separate elements about privacy must be considered

1. The invasion of privacy, where personal information is accessed; and
2. Disclosing personal information.

Philosophically we lost our right to privacy on September 11. Law Enforcement and National Security Bodies should be given access to big data collected by businesses and other bodies but with the appropriate essential safeguards. In my view, privacy would be better protected by creating offenses for unlawfully intentionally or recklessly

1. accessing personal information;
2. using personal information; and
3. disclosing personal information;

The more serious offence being the intentional disclosure of personal information. That offences should have severe penalties. The liability of the offences should be with the individual/s carrying out the act, and not employing body. Officers must take personal responsibility. Compensation Orders should follow a successful conviction, with the employing body also being vicariously liable.

Model privacy provisions should be enacted in various acts regulating the industry involved (e.g. Bankruptcy, Banking, Credit Reporting, Tax, Crime etc.) with similar penalties. It may be appropriate that each legislative enactive give jurisdiction to a specific commissioner or body to prosecute offences (e.g. the Privacy Commissioner).

Jeffrey Chard
B.Eng (Elec) I and LLB