



**Australian
Privacy
Foundation**

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<http://www.privacy.org.au/About/Contacts.html>

7 April 2013

Mr Glenn Archer
Chief Information Officer
Australian Government Information Management Office
Department of Finance & Deregulation

Dear Glenn

Re: Big Data Strategy Issues Paper

As I'm sure you're aware, the Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

The Australian Privacy Foundation welcomes the opportunity to provide input to AGIMO regarding the March 2013 Big Data Strategy Issues Paper.

The Foundation strongly endorses the Issues Paper as an indication of AGIMO's recognition of the significance of privacy in the emerging world of 'big data' and as an indication of AGIMO's commitment to engage with civil society organisations. The history of policy development and implementation in Australia demonstrates that there are advantages for public and private sector entities in taking on board advice from outside government, particularly where that advice involves expertise regarding law, information technology, markets and consumer behaviour.

The Foundation strongly agrees with AGIMO's acknowledgement that Big Data poses challenges and that there is a need for careful consideration of:

- tensions regarding openness in public/private sector administration and the protection of personal information
- decisions regarding the ethical, privacy and security implications of public sector use of data stores from Google, Facebook, Twitter and other services
- decisions regarding the provision to nongovernment entities of information collected by government agencies from individuals, businesses and organisations, particularly where that collection was required by law or was a standard feature of service delivery by government agencies
- the potential for inappropriate deanonymisation of data released by public sector entities in giving effect to an Open Government philosophy.

Big Data does offer exciting opportunities for enhanced service provision and for value-adding through new partnerships involving government agencies, business, not-for-profit entities and research institutions. It is important however to recognise that **the analytics highlighted in the Issues Paper:**

- **are not an end in themselves**, contrary to what on occasion is assumed by information technology solutions vendors with a vested interest in data sharing, mining and integration or by public sector policymakers whose belief in the benefits of ‘Open Government’ or ‘Government 2.0’ overlooks the privacy and data protection concerns that are being articulated in Europe and North America
- **are potentially erosive of the human dignity** that is a foundation of Australia as a liberal democratic state (ie people are individuals rather than points on a social graph or manifestations of attributes in a large data set)
- **must be embedded within a coherent privacy framework** and should not be addressed through ongoing fixes to national legislation – in particular the *Privacy Act 1988* (Cth) – that offers lower protection than that in Europe.

Overall the Foundation endorses the explicit recognition in page 7 of the Issues Paper regarding privacy, security and trust. That recognition is particularly important because in the past government agencies have tended to treat privacy as an afterthought or as an impediment to achievement of corporate objectives regarding reduction of administrative costs, ease of detecting fraud or convenience in gathering evidence relating to what is characterised as organised crime.

The challenge for AGIMO, the ATO and other public sector stakeholders in the proposed Strategy is to go beyond generalities. Failure to do so will erode potential community support for the Strategy (the “public trust” highlighted in the Issues Paper) and raise inconvenient questions about individual agency initiatives.

One area of concern is the assumption that the amended *Privacy Act 1988* (Cth) and other data protection legislation is currently adequate, will remain so in future or can be fixed through easy administrative protocols. **There is a need for the Strategy to guide agencies** – and by extension corporate partners and consumers engaged in practices such as mashups – **about issues and practicalities**. There is a danger that agencies will interpret a broad strategy on an idiosyncratic basis and indeed rely on that strategy as authority for practice that is both contrary to the relevant legislation and inconsistent with global best practice.

Examples of the issues and practicalities that we have in mind include:

- the nature of informed and freely-given consent
- acceptable and unacceptable processes for demonstrating that legal authority exists or that consent can be over-ridden
- anonymisation techniques and their deficiencies
- small-cell identification problems
- the scope for re-identification, especially in large and/or rich datasets
- the meaning of data-items within each particular data collection and the likelihood of misinterpretations arising from the combination of data-sets
- the quality assurance standards that apply to each particular data collection and the risks involved in combining data-sets with different quality standards

Another area of concern is the assumption that **the Office of the Information Commissioner (OAIC), in particular the Privacy Commissioner**, has the physical resources, expertise and commitment to actively and effectively advise key agencies on policy questions and then ensure compliance with the legislation at the level of principle and practice. The Foundation expresses its respect for the OAIC but notes that the agency **is small and that the agency has faced recurrent criticism from within and outside government about its handling of privacy questions**.

In moving forward the Foundation suggests that AGIMO needs to actively flesh out the Strategy so that it is readily intelligible and applicable by all government agencies. In the emerging world of big data that intelligibility and application must move beyond the corporate Chief Information Officer in each agency and be fully imbued by an awareness of current and potential privacy concerns, with a move towards global best practice. Privacy cannot be regarded as band-aid, as an impediment or as something that is featured as a high level statement that is not translated into operational practice. Australia’s experience over the past three years, with for example reputational damage for Telstra

and Sony, has been that chief executives on occasion have pronounced a commitment to privacy protection and respect for consumers; that commitment has been disregarded or simply not transmitted to the workforce

The Issues Paper at page 6 highlights Open Engagement'. The Foundation submits that this will not be achieved unless and until AGIMO, the Big Data Working Group and the ATO Data Analytics Centre of Excellence directly involve the Foundation and other relevant civil society organisations in their meetings and distributions of drafts.

Engagement will then inform effective policy development and implementation. Just as importantly, it will reinforce the legitimacy of the government bodies in a world where the emergence of big data practices and big data policies will increasingly be accompanied by big data anxieties. AGIMO has an opportunity to learn from the past and not repeat the difficulties evident in controversies such as the Australia Card, the Access Card and low uptake of the new e-Health system.

The Foundation looks forward to close contact with AGIMO as development of the Strategy progresses.

Thank you for your consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roger Clarke', with a long horizontal line extending to the right.

Roger Clarke
Chair, for the Board of the Australian Privacy Foundation
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Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby AC CMG and The Hon Elizabeth Evatt AC, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>