



General Manager
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

Submission on the Competition Policy Review Final Report

Thank you for providing the Office of the Australian Information Commissioner (OAIC) the opportunity to comment on the Final Report of the Competition Policy Review (the Report). The comments in this submission are limited to Recommendation 21 of the Report, which relates to enabling individuals to make better informed choices through improved access to information.

The OAIC understands that Recommendation 21 of the Report proposes that governments should work with industry, consumer groups and privacy experts to allow consumers to access information in an efficient format to improve informed consumer choice. Further that, as a step towards implementing this recommendation, a working group (Working Group) should be established to develop a public-private partnership agreement which will allow people to access and use their own data for their own purposes. The OAIC supports the intention of the recommendation, which we understand is intended to help consumers make better informed choices, not only through access to accurate information, but also by providing that access in formats that are accessible and useful.

The Australian Privacy Principles (APPs) contained in the *Privacy Act 1988* (Cth) (the Privacy Act), set out standards, rights and obligations in relation to handling, holding, accessing and correcting personal information. Importantly, they also create a regulatory framework that requires both Australian Government agencies and many private sector organisations, which collect personal information, to be transparent about the way that information will be handled. This is enshrined in the requirement to have a privacy policy and to give notice to consumers about how their information will be handled (see APPs 1 and 5). These requirements assist consumers to make informed decisions about whether they wish to provide their personal information and engage with the service provider.

The APPs also set out responsibilities for those entities covered by the Privacy Act to give consumers access to the personal information held about them. In addition, the *Freedom of Information Act 1982* (Cth) (the FOI Act) also allows consumers to access their information, including personal information, held by government agencies. The OAIC encourages Australian Government agencies and private sector organisations to give consumers access to their personal information in ways that are simple and effective.

Below we set out some further information about the existing frameworks in the Privacy Act and the FOI Act for providing access to personal information, which the Treasury may find useful in its consideration of the Report. We also provide some comments about the potential implementation of Recommendation 21.

Access to personal information under the Privacy Act

APP 12 provides a framework for giving individuals access to their personal information. Under APP 12, an APP entity that holds personal information about an individual must, on request, give that individual access to the information (subject to limited exceptions). Importantly, APP 12 only sets out the minimum access requirements, including the time period for responding to an access request, how access is to be given, and that a written notice, including the reasons for the refusal, must be given to the individual if access is refused.

The OAIC has issued the APP Guidelines that outline the mandatory requirements in the APPs, the OAIC's interpretation of those requirements, examples of how the APPs may apply to particular circumstances and good privacy practice to supplement minimum compliance with those mandatory requirements. Chapter 12 of the APP Guidelines provides some additional guidance about how access is to be given under APP 12, and how it interacts with the FOI Act in relation to personal information held by government agencies (see below for a further discussion of access under the FOI Act). However, as the APPs only set out minimum requirements and apply across all Australian industries, that guidance is general in nature.

Under APP 12 it is open to entities to adopt processes and procedures that make it easier for individuals to access their personal information. The OAIC encourages this and, as such, would support any initiatives of the Working Group which would assist entities to provide access in a manner that is as prompt, accessible and inexpensive as possible, provided the necessary privacy safeguards are in place. Relevantly, under APP 12, an APP entity must give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so. Accordingly, if initiatives of the Working Group specify particular formats for providing information (e.g. electronically), APP entities may also need to provide access in another format if requested.

While the OAIC is not in a position to be a permanent member of such a Working Group, it would welcome the opportunity to assist the Working Group in considering how to manage any privacy impacts related to the model.

Access to personal information under the FOI Act

As you would be aware, in addition to rights to access personal information under APP 12 (discussed above) the FOI Act also provides a right of access to information (including personal information) in documents held by Australian Government ministers and most agencies.

The objectives of the FOI Act support the intention of Recommendation 21 to provide access to information in formats that are accessible and useful to consumers. These objectives include increasing recognition that information held by the Government is to be managed for public purposes, and is a national resource. A further objective of that Act is to facilitate and promote public access to information, promptly and at the lowest reasonable costs.

An initiative under the FOI Act that facilitates public access to information is the Information Publication Scheme (IPS), which applies to Australian Government agencies that are subject to the FOI Act. The IPS specifies categories of information that agencies must publish online, however, agencies can also choose to publish other information under the IPS. The IPS encourages agencies to proactively release information in a consistent way, reflecting the pro-disclosure goals of the FOI Act and, thereby, supporting the objective of Recommendation 21 to enable individuals to make better informed choices through improved access to information. Importantly, information published under the IPS must be accurate, up to date and complete.

Facilitating new markets for personal information services

As part of implementing Recommendation 21, the Report also discusses improving access to information by facilitating new markets for personal information services. The OAIC understands this to mean allowing businesses to develop services that assist consumers to access and make use of their personal information. While the OAIC supports the intention of this proposal, we are mindful that such services may, themselves, involve the handling of large amounts of personal information. Therefore, we would encourage a privacy impact assessment (PIA) to be conducted in relation to any such initiatives. A PIA is a written assessment that identifies the privacy impacts of a proposal and sets out recommendations for managing, minimising or eliminating those impacts. For further information about undertaking a PIA please see the OAIC's [Guide to undertaking a PIA](#) available on the OAIC website at www.oaic.gov.au.

I trust that these comments are of assistance. If you have any questions, please do not hesitate to contact Annan Boag, Acting Director, on (02) 9284 9266 or at Annan.Boag@oaic.gov.au.

Yours sincerely



Timothy Pilgrim
Australian Privacy Commissioner

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