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Productivity Commission

RE: Issues Paper- Data Availability and Use

This submission from the Australian Privacy Foundation responds to the Productivity Commission Issues Paper on Data Availability and Use.

The Australian Privacy Foundation endorses the submission of Roger Clarke and wants to add the following further comments.

Issues with the consultation method

We want to raise concerns with the way this consultation is being conducted. The issues paper is canvassing a wide range of issues with potential repercussions into the everyday lives of all Australians. The consultation is so high level as to be inaccessible to many parties who may have an interest if they understood what potential repercussions could occur. The APF stresses that any specific recommendations that arise from this consultation will still need a detailed and wide ranging consultation process.

There must be no "Australia Card" by digital stealth

The government is increasingly using a unique identifier (a Statistical Linkage Key) for individuals using government services. Both health and social services use this key. The SLK is supposed to be anonymous and we understand it is a combination of part of last name, part of first name and date of birth.

In the past Australians comprehensively rejected the introduction of an Australia Card. Any proposals for data sharing need to specifically acknowledge that Australians reject being uniquely identified and tracked. Any proposals by the Government to create unique identifiers for Australians and track Australians through an SLK (or otherwise) need to be rejected. If the Government plans to use data sharing and track Australians with a unique identifier then it must specifically consult Australians on this particular issue alone and not buried in a general data sharing agenda.

We also want to record now our serious concerns about the use of anonymised data that is at risk of re-identification. We consider the SLK to be at high risk of re-identification. Any data sharing that relies on a flawed anonymisation process must be rejected as flawed. It is also noted that there is a risk of re-identification with any rich collection of personal data.

Privacy as the control of personal information

The Privacy Commissioner, Timothy Pilgrim has said in a recent speech:

"Privacy is not secrecy. It is about giving individual's control over how their personal information is handled; giving customer's confidence and trust."

The APF contends that this concept must be at the heart of any discussion about data sharing. That is, any discussion about data sharing needs to start with the effect on the individual, whether it is reasonably necessary and whether the individual has control over their personal information. If a discussion about data sharing begins with the aims that could be achieved rather than the human rights (the right to privacy) of the individual then that process is fundamentally flawed.

'The APF draws attention to its summary of the Meta-Principles for Privacy Protection, at <http://www.privacy.org.au/Papers/PS-MetaP.html>'

Privacy Principles and Privacy Act

Australia does not have strong privacy laws by international standards. It is an area which Australia still needs to improve to meet best practice standards. In this context, it is important to not simply look at the privacy principles and Privacy Act to determine best practice on data sharing and making sure individuals have control of their personal information.

Public information and non-personal information

There is enormous scope for data sharing and improving availability of data in this area. We contend that should be a major focus moving forward. When there is no personal information involved there should be a move towards transparency and a rejection (as much as possible) of commercialisation that interferes with transparency.

Credit reporting

Comprehensive Credit Reporting (CCR) only commenced in March 2014 and a Principles of Data Reciprocity and Exchange Code was only approved by the ACCC last year. Accordingly, CCR in Australia is still only in an early transition phase. Even in the transition phase, a number of problems have become apparent:

1. CCR has interfered with a credit provider's obligations under the credit laws in relation to making financial hardship arrangements. We are aware of credit providers who have told consumers that they cannot have a hardship arrangement (as a blanket rule) and repayment history information (RHI) will be listed. Access to financial hardship is a key consumer right and consumers without access may face serious harm such as repossession of home or car and enforcement. In many cases this could have been avoided by a reasonable repayment arrangement.
2. There are credit providers with a hardline CCR approach where RHI will be listed even if temporary repayment arrangements are agreed. This is despite a Financial Ombudsman Service determination that provides clear guidance on this point.

CCR is new and there are real concerns that CCR changes could cause (and are already causing) some harm to consumers. It is noted that Australia has strong responsible lending laws and financial hardship provisions. A clear problem has been that credit providers have sought to have an approach that may work in an overseas jurisdiction but is not appropriate for Australian laws. There is still a great deal of work required by credit providers to meet these challenges and ensure consumers are treated fairly.

APF understands that there are calls for mandatory credit reporting by some parts of industry. It is noted that the Australian Law Reform Commission specifically rejected mandatory credit reporting in its review. An evidence based policy approach should be used. As there has been no review of the current system of CCR and a review is not possible until it is in widespread use, we contend that mandatory credit reporting cannot be considered until there is clear evidence of benefit to consumers that would apply in the Australian regulatory environment.

If you have any questions please do not hesitate to contact the writers.

Yours sincerely

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