



7 November 2022

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Via email: legcon.sen@aph.gov.au

RE: Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022

Privacy breaches can have devastating impacts on Australian consumers, exposing people to financial loss, emotional distress and loss of trust in private markets. In light of recent major data breaches affecting millions of people, the case for strengthening Australia's privacy laws and regulatory enforcement powers has never been clearer.

CHOICE strongly supports the passage of the *Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022* ('**the Bill**'). This reform to Australia's privacy laws will empower privacy regulators to protect people from data misuse.

This reform is an important and overdue first step. The Bill will provide regulators with some of the additional tools needed to prevent data misuse in Australia. CHOICE welcomes the proposals to:

1. Increase penalties for businesses who breach the Privacy Act

CHOICE strongly supports increasing maximum penalties to the greater of \$50 million, three times the benefit obtained, or 30% of turnover in the relevant period. The level of penalties in Australia's privacy laws need to be set at a level that effectively deters business against the improper use, handling and collection of consumer data. These penalties must be seen by companies which hold people's data as greater than the 'cost of doing business'. CHOICE welcomes that the proposed increase in penalties will mirror the recently legislated penalties regime for key provisions in the Australian Consumer Law ('**ACL**').¹ This sends a clear signal to businesses the seriousness of breaching privacy laws.

2. Expand OAIC's extraterritorial reach

CHOICE strongly supports repealing section 5B(3)(c) of the *Privacy Act 1988 (Cth)* to expand the extraterritorial reach of the Office of the Australian Information Commissioner ('**OAIC**'). Currently, under the existing "Australink link" criteria, overseas businesses can be exempt from privacy laws if personal information was not collected or held in Australia.

This provision creates an unfair loophole that means some international corporations may be exempt from adhering to critical privacy protections. OAIC has recently been able to take action

¹ *Treasury Laws Amendment (More Competition, Better Prices) Bill 2022*.



against extraterritorial companies who breach Australia's privacy laws, including taking action against Uber and Facebook². However, these were lengthy and complex processes. Without clarity in the law, OAIC may be deterred from pursuing companies due to the "Australian link" criteria. Importantly, this reform will bring the Privacy Act closer in line with the European Union's best practice General Data Protection Regulation ('**GDPR**') extraterritoriality rules.

3. Empower OAIC to issue infringement notices

Infringement notice powers are a useful enforcement tool for regulators to quickly address misconduct that may lead to consumer harm. CHOICE supports the Federal Government providing OAIC with powers to issue infringement notices for failing to give information, answer a question, or produce a document or record. These powers will allow OAIC to more effectively penalise certain types of non-compliance without costly and time consuming litigation in court. These powers bring OAIC into line with similar regulators, including the Australian Securities & Investments Commission ('**ASIC**') and Australian Competition & Consumer Commission ('**ACCC**').

Additionally, CHOICE recommends amending this Bill to further expand the powers of the OAIC to issue infringement notices for other breaches of the Privacy Act, including the failure to take reasonable steps to protect personal information and the non-consensual collection of sensitive data. This would mirror the ACCC and ASIC's powers to issue infringement notices for breaches of a broad range of consumer protections provisions.

4. Strengthen the Notifiable Data Breach scheme

CHOICE supports the proposal to expand the power of the OIAC to access, request, and assess an entity's compliance with the Notifiable Data Breach ('**NDB**') scheme. While the introduction of the NDB scheme in 2018 has been a positive step, it relies on the discretion of businesses to disclose data breaches and individual harm to the OAIC. These amendments will strengthen OAIC's investigative powers, and allow it to ensure compliance with the NDB scheme.

While not within scope of this inquiry, CHOICE is strongly supportive of broader reforms to strengthen Australia's privacy laws and regulatory capabilities in the interest of consumers.

Yours sincerely,

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CHOICE

² Uber found to have interfered with privacy, *Office of the Australian Information Commissioner*, 23 July 2021; Commissioner welcomes Full Federal Court ruling on Facebook appeal, *Office of the Australian Information Commissioner*, 7 February 2022.