



THE LAW SOCIETY  
OF NEW SOUTH WALES

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13 December 2016

Mr Jonathan Smithers  
Chief Executive Officer  
Law Council of Australia  
DX 5719 Canberra

By email: [natasha.molt@lawcouncil.asn.au](mailto:natasha.molt@lawcouncil.asn.au)

Dear Mr Smithers,

**Privacy Amendment (Re-Identification Offence) Bill 2016**

I refer to the Law Council's memorandum dated 16 November 2016, seeking input in relation to the Senate Standing Committee on Legal and Constitutional Affairs' inquiry in relation to the Privacy Amendment (Re-Identification Offence) Bill 2016.

The Law Society comments on a number of the draft provisions of the Bill below.

**Clause 16D(2)**

The exemption in cl 16D(2)(b) is to enable agencies to perform their ordinary functions and activities. The concern in relation to the need to protect personal information remains where an agency, other than the responsible agency, re-identifies information that is published by another agency for its functions and activities. This would mean an individual's personal information could potentially be obtained by any agency through the re-identification of de-identified data. Individuals may not expect other agencies, which are not the responsible agency, to have access to their personal information without their consent.

We note that a Commonwealth agency is still bound by Australian Privacy Principle ("AAP") 3.6(a) which requires an agency to collect personal information only from an individual, unless the individual consents to collection from someone else (in this case, collection by re-identifying information published by the responsible agency); or the agency is authorised by law to collect from someone else (APP3.6(a)(ii)). It is not clear whether cl 16D(2) is intended to give the authorisation under APP3.6(a)(ii). This should be clarified.

### **Clause 16D(3)(a)**

We assume that in order for the exemption to operate the contract needs to be between the entity, as the contracted service provider, and the responsible agency, and not just a contract between the entity and for example, another agency. If this is the intention, the drafting of the section should be clarified.

It is not clear whether this exemption is intended to apply to sub-contractors of the entity which is the main contracted service provider. The Explanatory Memorandum at paragraph 36 states the intention of the exemption is to allow entities to engage in functions and activities such as information security tests. It would not be uncommon for such tests to be carried out by sub-contractors. The current drafting doesn't extend the exemption to sub-contractors.

### **Clause 16F(4) and 16F(5)**

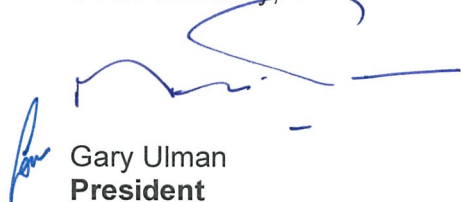
The commentary in the Explanatory Memorandum at paragraph 84 provides, similarly to the commentary in relation to cl 16D(2)(b), that this exemption is to allow for data-matching. If the intention is to facilitate better access and availability of data across agencies, then we support having a proper framework for data sharing, as is proposed in the Productivity Commission report<sup>1</sup>, as opposed to giving a blanket exemption to agencies.

### **General**

There needs to be a public education campaign to increase awareness of the proposal that individuals, not operating as a business, and small businesses, are not exempt from the proposed offences under this Bill. This is a substantial shift from the current position. We suggest that the Office of the Australian Information Commissioner should consider running such a public education campaign to increase awareness of these new offences.

Thank you for the opportunity to provide comments to this inquiry. I would be grateful if questions can be directed at first instance to Liza Booth, Principal Policy Lawyer, by email at [liza.booth@lawsociety.com.au](mailto:liza.booth@lawsociety.com.au) or phone (02) 9926 0202.

Yours sincerely,



Gary Ulman  
President

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<sup>1</sup> Australian Government, *Productivity Commission Draft Report: Data Availability and Use*, November 2016.