



THE LAW SOCIETY
OF NEW SOUTH WALES

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Dr James Popple
Chief Executive Officer
Law Council of Australia
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By email: natalie.cooper@lawcouncil.au

Dear Dr Popple,

Doxxing and Privacy Reforms

Thank you for the opportunity to contribute to the Law Council's submission to the Attorney General's Department in relation to its consultation on doxxing and privacy reforms. The Law Society's Privacy and Data Law Committee has contributed to this submission.

Review of the *Privacy Act 1988*

The Law Society has long supported a holistic approach to privacy and data law reform that promotes, to the greatest extent, consistency and predictability in the relevant law. In this regard, we have consistently called for the review of the *Privacy Act 1988* (Privacy Act) to be advanced as a matter of priority, being the primary and authoritative source of privacy law in Australia.

We note that the Government has agreed 'in-principle' to several proposals in the Privacy Act Review Report,¹ including Proposal 27.1, which would introduce a statutory tort for serious invasions of privacy.² However, we are concerned that the narrow scope of this consultation, which is focussed solely on the issue of doxxing, in the absence of any further substantive details in relation to the proposed statutory tort, undermines the capacity for stakeholders to provide considered responses to this important issue. This problem is exacerbated by the very limited timeframe provided for consultation.

In seeking to address the privacy issues associated with doxxing, we reiterate our call for the review of the Privacy Act to be progressed urgently, with priority given to the advancement of Proposal 27.1. In our view, doxxing should be considered in the context of Proposal 27.1, with the Courts primarily responsible for determining whether any particular conduct, including doxxing, constitutes a 'serious invasion of privacy' under the proposed statutory tort.

¹ Australian Government, Attorney General's Department, *Privacy Act Review Report 2022*, (February 2023).

² Australian Government, *Government Response: Privacy Act Review Report*, (September 2023), 19.

We appreciate that the issue of doxxing has received significant media attention recently.³ However, we do not support a reactive, fragmentary approach to privacy reform, which prioritises doxxing over the broader areas identified for urgent reform in the Privacy Act Review Report and the Government's Response. In this regard, we note that the term 'doxxing' is not mentioned in the Privacy Act Review Report, and has not been subject to the same substantial consultation as has been undertaken in relation to Proposal 27.1, and the Privacy Act generally.

Definition of doxxing

The consultation appears to employ the eSafety Commissioner's definition of doxxing, which refers to "...the intentional online exposure of an individual's identity, private information or personal details without their consent."⁴

As stated above, it is our view that doxxing should be dealt with under the rubric of Proposal 27.1, to the extent that it may be considered a 'serious invasion of privacy'. However, in considering other possible legislative responses to doxxing, we suggest that, at a minimum, the term 'doxxing' should be more sharply defined to clarify the specific conduct which is intended to be targeted. For example, it is not clear whether 'online exposure' requires disclosure in the nature of a publication to a large audience, or whether private discussions amongst friends in a closed online conversation would be sufficient. We also suggest further clarification is required in relation to:

- The meaning of 'intent' (i.e. whether intent is limited to maliciousness and/or recklessness);
- The relevant defences that may apply, including, for example, a public interest justification;
- The types of individuals that may be the subject of doxxing, as well as any limitations.

There is a significant risk that a variety of innocent interactions may be captured under the current definition, which could result in a chilling effect on disclosures that are in the public interest. We suggest that a harm-based approach should inform the definition of doxxing, which should be weighed against factors such as engagement in legitimate public discourse.

We also suggest that if doxxing-specific laws are to be proposed, such laws should be accompanied by educational resources and initiatives issued by the regulator on appropriate online behaviour. Such resources should be targeted at key demographic groups, such as teenagers and young adults, who regularly share personal information online.

Further clarity regarding the definition of doxxing would assist in ascertaining the extent to which other laws and regimes, including processes under the eSafety Commissioner's purview, are adequate to address the relevant harms associated with doxxing. On the material provided under the consultation, it is possible that a range of existing laws may apply, including:

- Using a carriage service to menace or harass;⁵
- Vilification and other serious hate crime laws under Commonwealth and state legislation;
- Workplace laws relating to discrimination, harassment and bullying;

³ Michael Koziol, 'Minns warns neo-Nazis will be named and shamed after another Sydney gathering', *Sydney Morning Herald*, 28 January 2024.

<https://www.smh.com.au/national/nsw/minns-warn-neo-nazis-will-be-named-and-shamed-after-another-sydney-gathering-20240128-p5f0jx.html>

Lisa Visentin, 'Doxxers on notice they will face jail time under new laws', *Sydney Morning Herald*, 19 February 2024.

<https://www.smh.com.au/politics/federal/doxxers-on-notice-they-will-face-jail-time-under-new-laws-20240216-p5f5ha.html>

⁴ Australian Government, eSafety Commissioner, Doxxing

<https://www.esafety.gov.au/industry/tech-trends-and-challenges/doxxing>.

⁵ *Criminal Code Act 1995* (Cth) s 474.17.

- Defamation law;
- Offences relating to malicious cyber activity under the *Autonomous Sanctions Act 2011*;
- Domestic violence and coercive control legislation.⁶

It is not clear on the current information available whether a legislative imperative for specific anti-doxxing laws exists. Given the potential overlap of other existing laws and regimes, we suggest that significant further detail is required to clarify the specific conduct being targeted, as well as the specific harms to be addressed.

We hope this input is of assistance. Questions at first instance may be directed to Sophie Bathurst, Policy Lawyer, at (02) 9926 0285 or sophie.bathurst@lawsociety.com.au.

Yours sincerely,



Brett McGrath
President

⁶ For example, amendments introduced by the *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW).