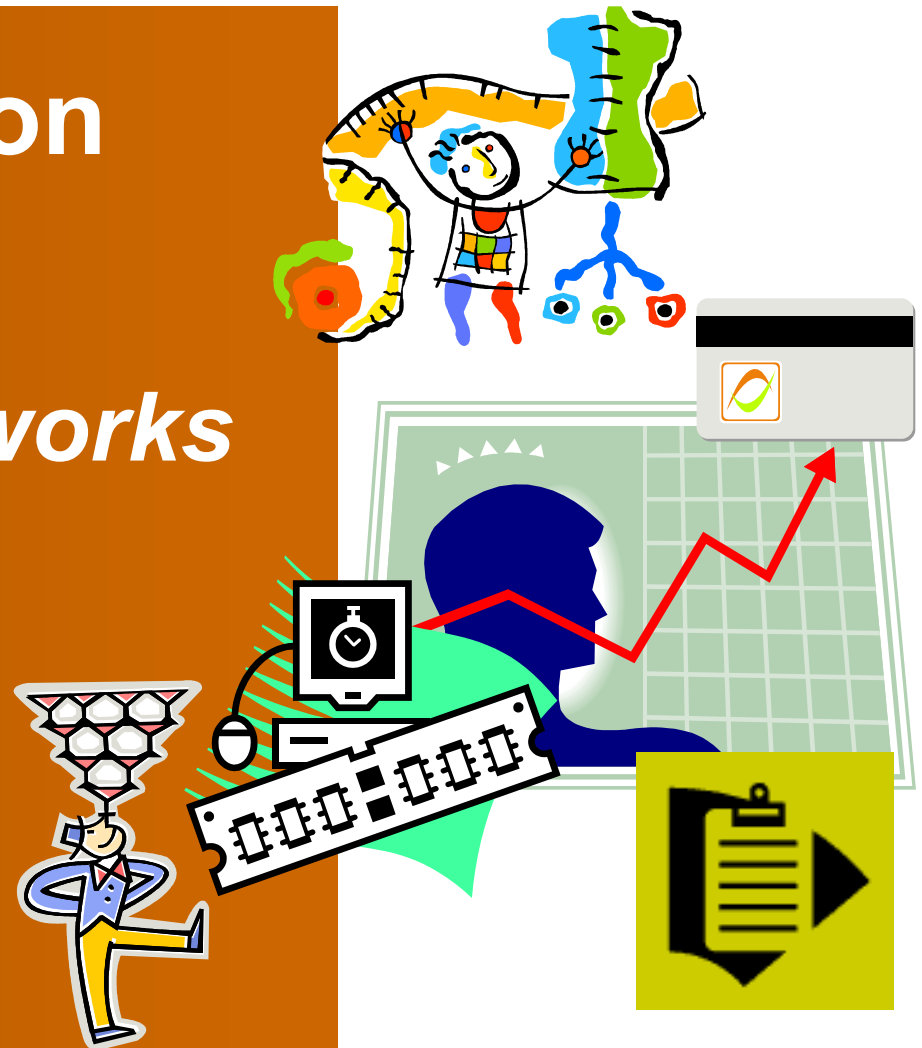


Malcolm Crompton

“Future Proofed” Regulatory Frameworks for Privacy

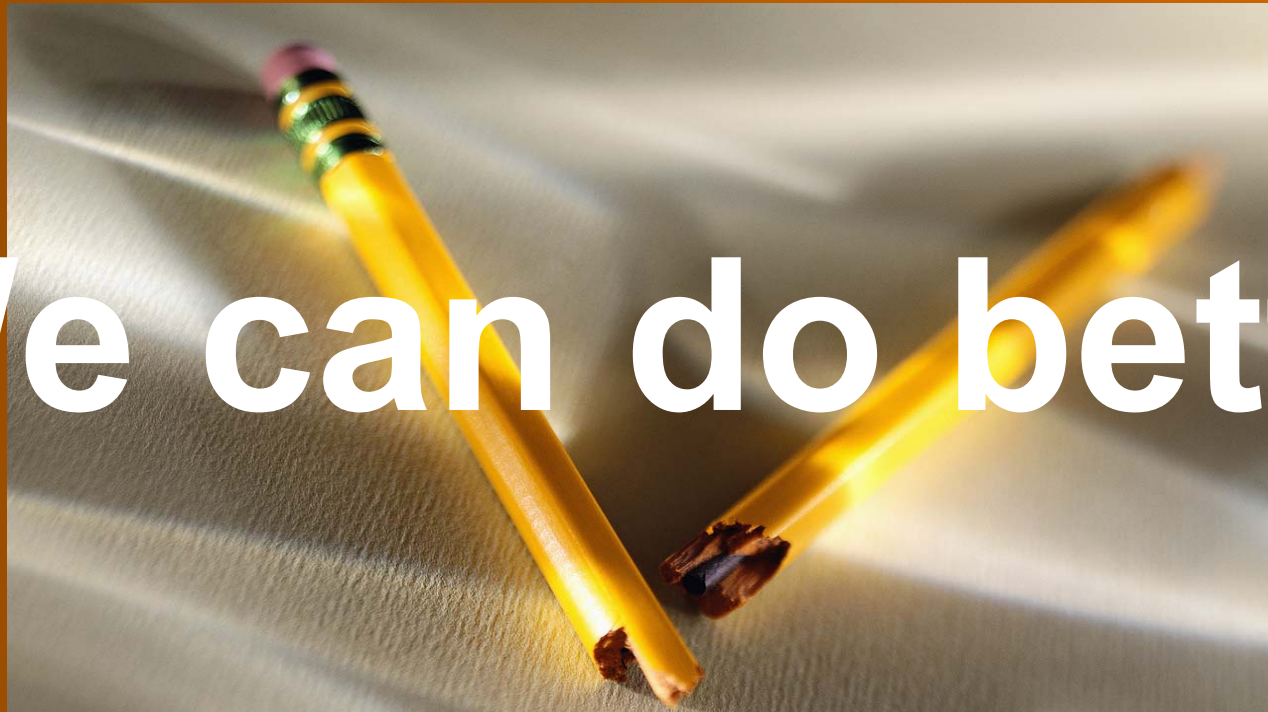
The Privacy Symposium

Cambridge, Massachusetts
24 August 2007



**Privacy regulation is
broken or breaking**

We can do better



Australia is “having a go”



- Consortium of 8-10 significant businesses
 - Australian & International
- Looking to the future, 5-10 years
- Holding a unique conversation with stakeholders
 - Business
 - Privacy advocates and consumer representatives
 - Regulators

PRIVACY & TRUST
PARTNERSHIP

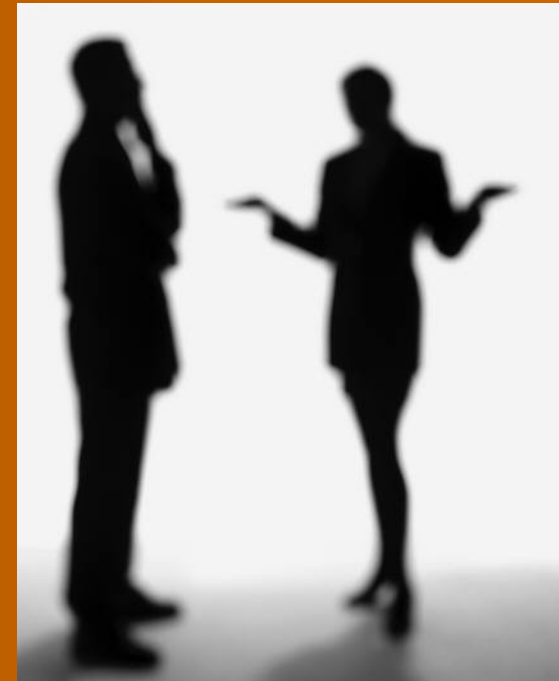
WHY BOTHER – The “Payoff”

- Efficient regulation that delivers
 - innovation
 - easy, effective engagement with other economies
 - further release of economic value in personal information
 - a society we want to live in
- Works for the long term



Today's discussion

- The problem
- How we got here
- The economic value in doing better
- Foretelling the future



An Australian perspective
relevant in our global
environment

What's the problem?

Trust

“The ongoing debate about data privacy needs to evolve into a dialogue about consumer trust ...

“The Yankelovich *Consumer Trust Report* clearly pointed out the need for a new approach. ‘The state of mistrust is not a new problem, but it is one that can no longer be ignored,’ Wood said. ‘According to our findings, 80% of consumers believe American businesses are too concerned about making a profit and not concerned enough about their responsibilities ...’

“Distrust has a potentially devastating impact on profitability ... Almost half (45%) of the respondents say there is at least one retail business that they trusted at one time but no longer trust. Of those people, nearly all (94%) say they spent less money with that company, resulting in an average 87% decrease in spending by that group.”

Craig Rogers, Yankelovich Partners, Press Release on *The State of Consumer Trust Report*
8 June 2004

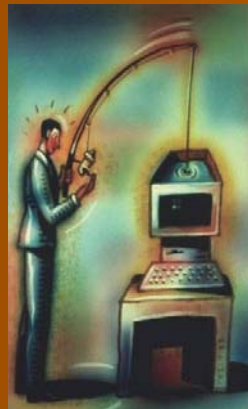
Individuals don't feel safe

	Broad consents	More EOI	Logging & Monitoring	Inadequate Accountability
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Unexpected uses

Lack of Control

Burden of Risk



Trust deficit

- Avoid
- Falsify
- More law



Many surveys & research show the impact

Research into Community attitudes towards Privacy in Australia 2004 & 2001, OPC Australia

“Poll: Americans fear ID theft but try to protect themselves”, CNN Money, 18 July 2005

Attitudes and Behaviors of Online Consumers: A Study of Five Cities (Sydney, Singapore, Bangalore, Seoul, New York), NUS, 2003-04

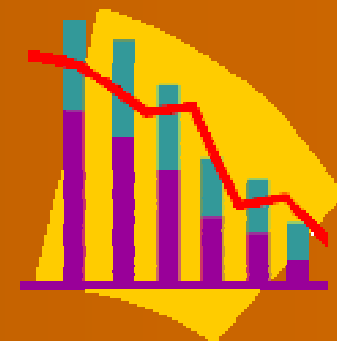
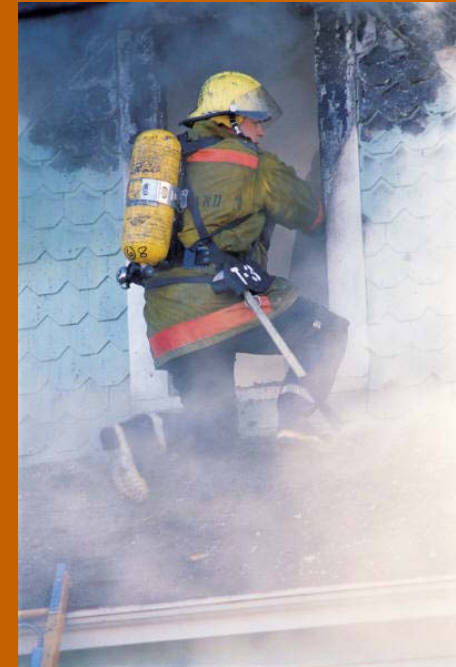
The New e-Government Equation: Ease, Engagement, Privacy and Protection, Hart-Teeter Research in US, 2003

Privacy & data-sharing: The way forward for public services, & supporting focus group research, UK Cabinet Office, 2002

www.trustguide.org.uk

For Business privacy law unpredictable

- General privacy principles + specific laws
 - Limits on use/reuse of personal information
 - Limits on new uses of historical data
- Development of law by 'emergency response'
- Leads to:
 - Increased costs
 - Compliance strategies eg :
bundled consent \neq consumer trust
 - Reticence to innovate



Regulator Frustration

- Community needs not met by the law
 - Eg bundled consent
- Law ineffective in promoting consumer trust
- Law does not respond flexibly to business needs
- Similar concerns across jurisdictions, eg
 - Australia's Privacy Commissioner submission to ALRC
 - Canada's Privacy Commissioner on PIPEDA review
 - UK Information Commissioner calls for new privacy safeguards to protect against the surveillance society
 - US FTC's SAFE WEB Act proposals, later enacted

How did we get here?

What is happening?



161 exabytes (161 billion gigabytes; 10^{18} bytes) of digital data created & copied in 2006, *cf* 5 EB in 2003; 968 in 2010

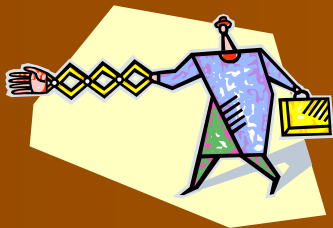
IDC Report on The Expanding Digital Universe, Mar 2007

“More information has been produced and stored in the past five years, than at any time in human history”

BBC News Online Magazine , 3 Nov 2003

“Analysts envision a time when the [RFID] system will be used to identify & track every item produced on the planet”

Katherine Albrecht, Founder of CASPIAN (Consumers Against Supermarket Privacy Invasion and Numbering), 2002



The rules of the game

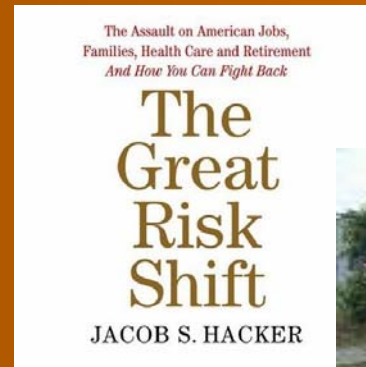


- Based on
 - information life cycle (collection, accuracy, use, security)
 - Securing transparency and individual control
 - Key concepts
 - Notice
 - Necessary collection
 - Use limitation
 - Access and correction



Burden of notice and consent: 'front end loading'

- Notice obligations = avalanche of notices \neq more privacy
- Shifts risk to individuals
- Front end loading
- Single control point
 - maps poorly to a multi-use networked information economy



An issue of perceptions

For individuals

- privacy is value, an emotional need



For business

- A set of legal or compliance obligations



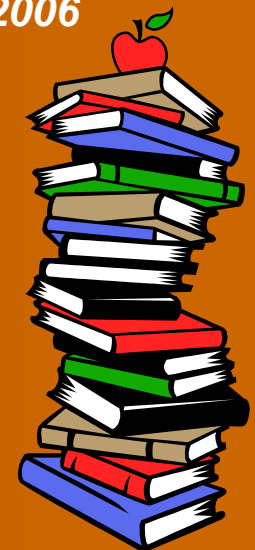
Law: emergency response to shock events

Australia



USA

- Fair Credit Reporting Act 1970 & amended many times
- Privacy Act 1974
- Family Educational Rights and Privacy Act 1974
- Health Insurance Portability and Accountability Act (HIPAA) 1996
- Children's Online Privacy Protection Act 1998
- Gramm-Leach-Bliley Act 1999 (banking)
- over twenty more at the Federal level alone & new initiatives all the time



What's to gain?

Economic Value of doing better

Information economy inputs at risk

Privacy principles based on:

- Binary relationships
- Direct collection
- Limited use/disclosure



The new environment:

- Third party collection
- World wide web
- Probabilistics
- Networked data
- New channels XML



facebook



YouTube
Broadcast Yourself™



INFORMATION
INTEGRITY
SOLUTIONS

Economic value in doing better

- United States use of information technology spurred growth in 1990s – Alan Greenspan’s reduction in knowledge float
- Probabilistics
 - Credit scoring predicting bankruptcy, marketing analytics
 - Expanding to fraud control; health & business metrics etc
www.australia.businessobjects.com/jump/edm/Future_of_Business_Analytics/Future_of_Business_Analytics.pdf
- New business models:
News Corp paid \$US580m for MySpace
<http://australianit.news.com.au/story/0,24897,20119094-15318,00.html>
- Data Breach Will Cost TJX \$1.7B, Security Firm Estimates
http://blog.wired.com/27bstroke6/2007/03/data_breach_wil.html

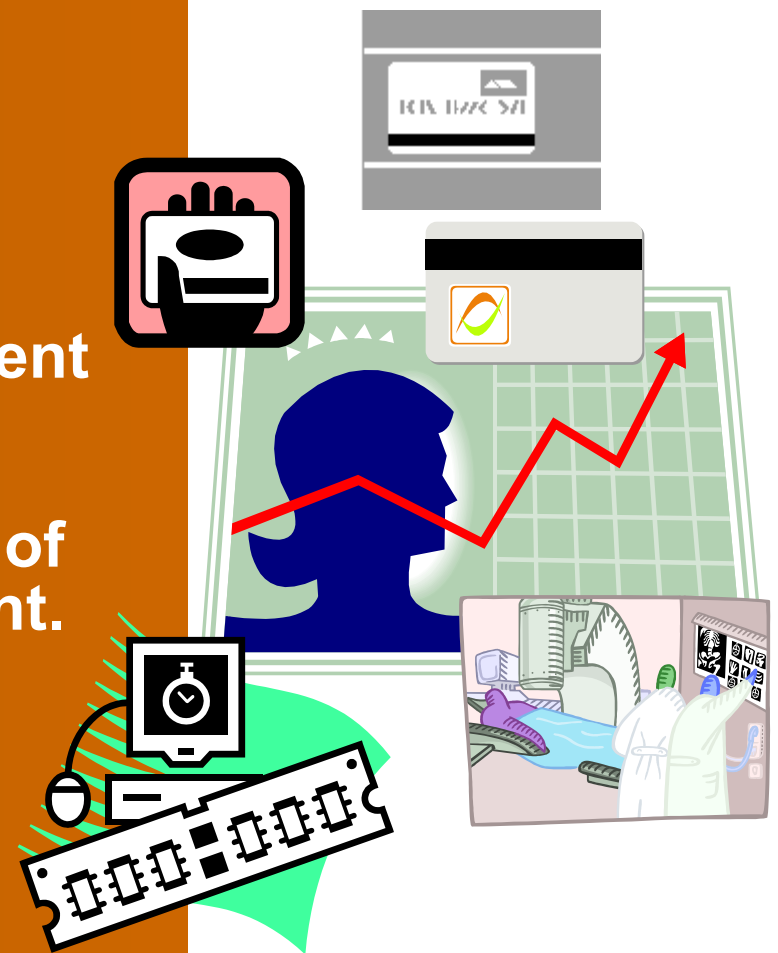
Foretelling the future

What does success look like?

PRIVACY & TRUST PARTNERSHIP

The Project aims to:

- Build capacity for engagement with ALL stakeholders
- identify the interests, areas of agreement and disagreement.
- detail a possible framework and a number of possible directions and themes



PRIVACY & TRUST PARTNERSHIP

Process and timetable

- Two white papers, first at:
www.iispartners.com/white_paper.pdf
- Consultations, workshops with stakeholders
- Two seminars
 - 4 July 2007
 - 4 December 2007

Likely themes

Draw upon near analogies in other fields

- Environmental law
- Consumer protection law
- Financial governance
- Motor vehicle design standards & enforcement

Hence possible framework ? :

1. Privacy Principles supported by standards set by experts
 - Less reliance on 'front end loading'
 - Customer control where it matters
2. Internalise externalities
3. Fair risk allocation between stakeholders
 - Stronger Safety Net including restitution on failure
4. Accountability & transparency
 - External
 - self funded
5. Flexibility

**INFORMATION
INTEGRITY
SOLUTIONS**

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