

Data and Privacy

Masterclass: NSW Privacy Summit Lead Up Series

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The Essentials – What can we expect?

- **Government / powerful actors** – observe rule of law values, not exercise arbitrary power
 - **Transparency** (with narrow exceptions) about what data it uses, how processed, how used in decision-making
 - **Accountable** for data practices, security and decisions made
 - **Equal protection** so some data not factored in, other areas factored in to avoid disparate impact (eg race, sex, etc)
 - Rules are applied **consistently** so citizens can **predict** how rules will be applied
- **All** – obey the law

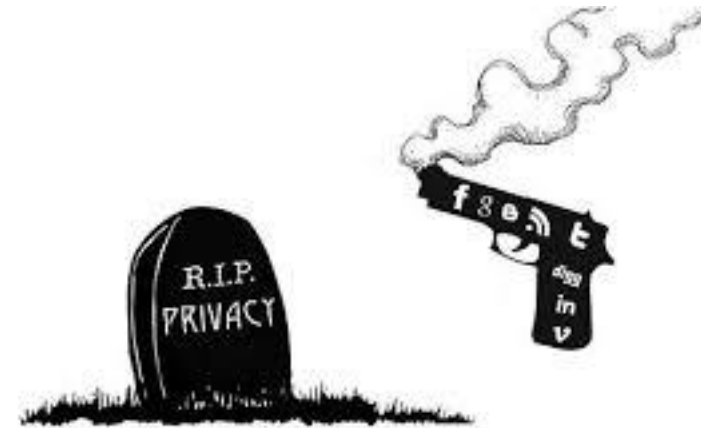
How does this fall short



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I Agree




Is there a choice?



Some things are not OK

COMPAS Assessment

- Probation assesses for Risk and Need using the COMPAS assessment
- Probation then links offenders to treatment and intervention services based on their specific Risk and Needs
 - Risk- Violence and Recidivism
 - Need- Criminogenic Needs



The screenshot displays the COMPAS assessment interface. It features a table with columns for 'RISK' and 'NEED'. The 'RISK' column shows a red bar indicating a high risk level, while the 'NEED' column shows green bars indicating various levels of need. The interface includes a sidebar on the left and a main content area with a table of scores and corresponding bars.

ITS



- 1.
- 2.
- 3.
- 4.



- 1.
- 2.
- 3.
- 4.

e.g.

- 1.
- 2.
- 3.
- 4.

Customer experience ...

- Customer Citizen or Client ...
 - Always same set of issues for us as Individuals
- Organisational focus always on 'success', UX & what it looks like
- BUT ... The best laid plans
 - What's the customer experience when things not going so well?
 - Lost online shopping cart
 - 'nobody home' for help
 - Barriers to exercising choice, etc, etc
 - Plan the UX for when things inevitably don't go so well!
- The 'recovery spectrum':
 - Curiosity > Inquiry > Action (purchase, install, operate etc) > Help > Complaint to entity > complaint to regulator > 'see you in court'
 - Keep to the left – minimises cost to everybody
- Made worse to impossible if delivery via an 'ecosystem' of entities
 - 'Supply chain' vs multiple 'links'

Customer experience (2) ...

- By design or by accident – doesn't matter
- Case study – 'Robodebt'
 - Individual sent computer generated letter of demand
 - Demand based on flawed logic in algorithm (average earnings over a longer period than the law requires)
 - Based on 'guilty until you prove yourself innocent'
 - compounded by 'we will not help you do this': almost impossible to obtain help by phone or online
 - Individuals most affected least able to maintain or obtain records from years ago (eg payslips)
 - compounded by poor employer record keeping
 - Requires skill with online technique to work through MyGov, other websites, form filling etc
 - 'Debt' not repaid in specified time factored off to obscure collection agencies
 - Collection agencies use inappropriate and even illegal standover tactics
 - NOTE – very little of this 'illegal', but inflicts huge complexity burden on individual
 - Kafka would be proud

COVIDSafe: is it safe?

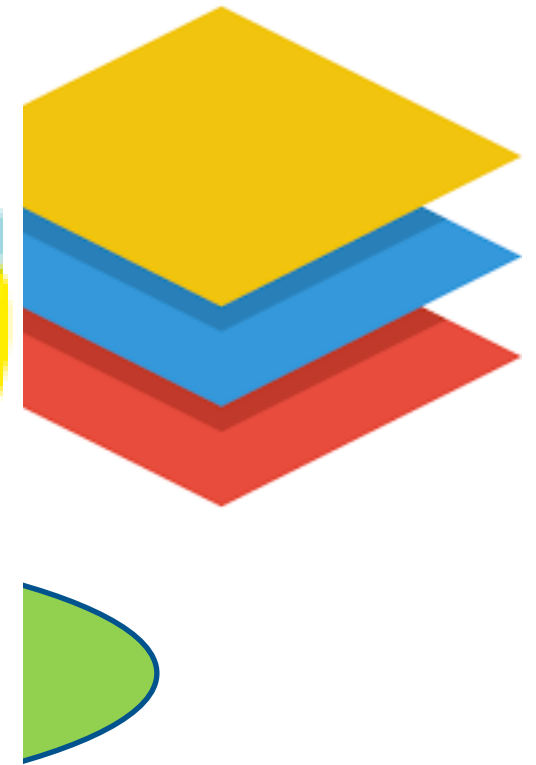
Where do you stand?

A survey:

Discussion ...

- Or a comfort stop
- Or boil the kettle

Complexity of data laws

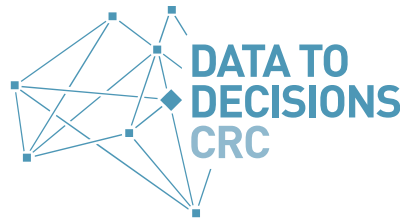


Terms

Too many

Category Most Closely Associated with	Terms
Property	possess/possession; property; owned; of [entity]; its
Collection	acquire; obtain; gain; comes to knowledge; produce to; given to; disclosed to; made or received; recorded, collected or obtained; created by, obtained by or given to; obtained or created; creates or obtains possession; collects or handles; kept; originated from and is more closely related to; comes to knowledge or into the possession of (where possession includes control)
Obligation	responsible for; care; control meaning responsible for keeping
Availability	access; has/had access to; reasonably practical to obtain; available to; has or can reasonably obtain; possession defined as entitled to; held/hold, defined to include entitled to access or immediate right of access; has or can reasonably acquire; had reasonable access
Physical	hold; held; holding; holder; in a [name of entity] database; held or used
Influence	control
Custody	custody
Combinations	document of an agency defined in terms of possession, whether created or received; document of an agency defined using possession, control and access; control or entitled to control meaning possession or entitled to possess; control meaning possession or custody; held, holds or holding, defined to include possession or control and entitled to access (from private sector); held, holds or holding, defined as possession or control; collected or held; collected, held, managed, used, disclosed or transferred; obtained, received or held; holds information in computer storage; possession and power; possession or power; possession includes control; possession includes custody or control; possession or control; possession or control, with control defined in terms of possession or control; possession, custody or control; possession, custody or power; care, defined in terms of custody; custody or control; control of the custody; control, meaning possession, custody or power; made and kept; made and kept or received and kept; responsible for meaning entitled to control including made and kept or received and kept and possession or custody; held, defined as possession or control or responsible for; created or received or taken control of

Transparency about the rules – can people understand it?



Complexity and transparency in implementing the law

- Complexity in implementation worsens Complexity in the law
 - Don't mention Robodebt...
 - Jobseeker allowance
 - NDIS
 - Book an ACAT for the Aged Parent
 - BOTPA
 - Blame it On The Privacy Act
 - What's your pet peeve?
 - Chat

What to do about it?

- Law reform; Standards; Accountability
- GDPR & CCPA best privacy laws ever written for 20th century; not fit for 21st
- Universal 'Notice & choice' a busted flush
 - Policy makers & regulators just waking up to this
 - [Global Privacy Assembly](#); [ACCC Digital Platforms Inquiry](#)
 - “the ACCC’s view is that few consumers are fully informed of, fully understand, or effectively control, the scope of data collected and the bargain they are entering into with digital platforms when they sign up for, or use, their services.”
 - “Consumers also relinquish considerable control over how their uploaded content is used by digital platforms. For example, an ACCC review of several large digital platforms’ terms of service found that each of the terms of service reviewed required a user to grant the digital platform a broad licence to store, display, or use any uploaded content.”

There is a better way & we use it often

Frameworks and testing by trusted third parties

- Applied to almost all aspects of today's complex life
- except personal information!

Five important components

1. Credible frameworks / rules / standards / laws
 - written by competent, independent, trustworthy third parties
2. Credible testing
 - by other competent, independent, trustworthy third parties
3. Funding of this process by the entities themselves
4. Consent sought only where important, makes sense and the individual can understand and decide
 - not all the time, for everything, hundreds of times a day
5. Enforced by law
 - regulator as backstop not first call
 - courts as last resort

Glimpses of this in privacy law now

- Credit reporting and scoring
 - Privacy Act Part IIIA framework & related law
- Health research using personal information
 - framework established by NHMRC & OAIC via the National Statement on Ethical Conduct in Human Research & s95A guidelines
 - applied by Health Research Ethics Committees

Privacy law for 21st Century?

- [US H.R.6227 – Privacy Score Act of 2020](#) currently before Congress
- [Privacy and Trust Partnership](#) 2007
 - Privacy & Security (P&S) Rating
- [Demonstrable accountability enforced by law](#)
 - People Beneficial Impact Assessments (PBIAs) which go beyond PIAs
- How does COVIDSafe stack up?
- Data ethics frameworks ?
 - some are promising, eg 2018 draft [Ethics Guidelines for Trustworthy AI](#) issued by the EC High Level Expert Group on Artificial Intelligence
 - others not very good at all such as that issued by the Department of Industry
 - BUT hot debate over value, utility ...

Ethical
People

High Level Principles

Law

Systems

Regulatory
framework

Procurement
standards

Design standards