



28 March 2024

Attorney-General's Department  
Via Online Form

To whom it may concern

**Consultation on doxxing and privacy reforms**

Thank you for the opportunity to make a submission to the public consultation on doxxing and privacy reforms.

IIS Partners (IIS) is a consultancy that provides expert advice to entities on meeting their privacy and data security obligations, managing privacy and cyber security risk, and implementing a privacy by design (PbD) and security by design (SbD) approach to product and service development. We have worked extensively with public and private sector clients in Australia and globally, and we bring a practical perspective to law reform - particularly how privacy and security law is implemented 'on the ground' and the challenges entities tend to encounter.

IIS fully supports the Australian Government's commitment to shepherding a new era of public-private co-leadership to enhance Australia's cyber security and resilience. We have longstanding interest and engagement in privacy law reform and adjacent programs of work including the recent review of the Privacy Act (see, for example, our [submission to the Attorney General](#)); cyber security law reform (see our [submission to the Department of Home Affairs](#)) and digital identity (see our submissions to the [Department of Finance](#) and to the [Senate Economics Legislation Committee](#) on the Digital ID Bill).

We understand that changes to legislation can have significant impacts on how businesses make decisions, but more importantly how this impacts all Australians. Putting the individual first when considering the risks and impacts is not just the right thing to do, it is IIS Partners' 20-years belief that it is just good business and will add the most value for Australian businesses and citizens.

IIS Partners would be pleased to discuss any aspect of our submission.

### Reforms to address doxxing

Information provided on the consultation webpage outlines a working definition of doxxing and outlines steps the government is already taking to address doxxing and additional steps it plans to take.

In our view, of the three reforms outlined, the proposal for a statutory tort is likely to be the most effective for offering redress for the privacy harms caused by doxxing. This is because currently the *Privacy Act 1988* regulates the actions of entities; it does not regulate individuals acting in a personal capacity. This creates a significant gap in protection given that doxxing is often (perhaps, largely) perpetrated by individuals acting outside the auspices of an entity regulated by the Privacy Act. Indeed, doxxing carried out by an entity covered by the Act would probably not be understood using this terminology. Instead, inappropriate disclosure of personal information would generally be understood to be in breach of Australian Privacy Principle (APP) 6 or APP 11 and would be pursued under those existing provisions.

We therefore **support** the introduction of a statutory tort (discussed further below) to ensure that doxxing carried out by individuals (not just entities) can be pursued under the Privacy Act.

### Statutory tort for serious invasions of privacy

IIS supports the introduction of a statutory tort for serious invasions of privacy, based on the model recommended by the Australian Law Reform Commission (ALRC) in its Report 123. Certainly, this would offer a new and powerful tool in addressing doxxing.

The Government's Response to the Review of the Privacy Act agreed with the proposal for a statutory tort 'in principle'. However, it acknowledged '...concerns about the balance of prevailing laws adversely impacting public interest journalism and the need to protect public interest journalism...' and suggested '...further consultation with media organisations on additional safeguards for public interest journalism...' (page 19).

There is no doubt that a new statutory tort for serious invasions of privacy should not hinder journalists conducting public interest journalism. However, previous attempts to implement a statutory tort have not progressed due to strong opposition from media organisations. It is our hope that introduction of a tort or cause of action is not delayed again, given the growing need for legal recourse for doxxing and other serious invasions of privacy.

We would therefore encourage a balanced approach to developing any such tort which protects the activities of journalists while offering a legal avenue for those impacted by serious invasions of privacy. It would be a poor outcome if a statutory tort was again shelved due to challenges associated with excluding journalism.

#### Ensuring a balanced approach that considers the public interest

There has been some concern that a statutory tort could be used against whistleblowers or others acting in the public interest. To avoid this and protect legitimate disclosures of personal information, we support the approach proposed by the ALRC, and agreed to in principle by the Government, that the court must be satisfied that the public interest in privacy outweighs any countervailing public interests (see Government Response to the Privacy Act Review, p 19).

We **support** the essential features of a statutory tort proposed by the ALRC and agreed to in principle by the Government, including the weighing of the public interest.

#### Ensuring a technology-neutral approach

IIS would also like to emphasise the importance of taking a technology-neutral approach to formulating a statutory tort for serious invasions of privacy. While the consultation information offers a working definition of 'doxxing,' it is clear that technology (and associated practices and norms) is rapidly evolving. Tying down a statutory tort to a prescriptive definition of doxxing has the potential to limit the effective operation of the tort in a dynamic digital environment, while also unintentionally excluding other types of serious privacy invasion.

Thus, we **recommend** taking a technology-neutral approach to developing a statutory tort in which the emphasis is on the seriousness of the privacy invasion rather than on ruling things in and out of a rigid definition of doxxing. A statutory tort should cover all serious invasions of privacy of which doxxing would be one example.

#### New or strengthened rights for individuals

The recent review of the Privacy Act proposed creating a number of additional rights for individuals including enhanced access rights along with rights to object to information processing, erase, correct, and de-index their personal information. These proposals align with rights implemented in other jurisdictions and are an important step towards rebalancing power asymmetries between individuals and entities when it comes to the collection and handling of their personal information.

That said, in the past too much emphasis has been placed on individuals managing their own personal information rather than entities being obliged to treat such information fairly. In an increasingly complex digital environment, it can be difficult for individuals to keep tabs on how their personal information is being handled, let alone actively advocate for themselves or take steps to proactively manage privacy settings (in a way that minimises privacy harms and risks that may lead to doxxing).

Therefore, while we **strongly support** the introduction of expanded information rights for individuals, as proposed in the recent review of the Privacy Act, we also wish to emphasise the equal importance of reforms focused on improving the data practices of entities.

#### Progressing other reform proposals contained in the Privacy Act review

The review of the Privacy Act contained many worthwhile reforms that would significantly strengthen privacy regulation in Australia and address new challenges arising in the digital age. In our view, the most important and far-reaching reforms proposed in the review relate to the introduction of a fair and reasonable test (proposals 12.1-12.3) and greater regulation of targeting and trading (proposals 20.1-20.9). Also important are reforms related to the definition of personal information (proposals 4.1-4.10), children's privacy (proposals 16.1-16.5), and information security (proposals 21.1-21.8).

Each of these areas of reform has the potential to strengthen the regulatory posture of the Privacy Act vis-à-vis doxxing.

We **strongly support** the Government progressing reforms proposed in the recent review of privacy, particularly those outlined above.

This submission was authored by Natasha Roberts, Malcolm Crompton AM, Nicole Stephensen, and me. Thank you for considering our comments.

Please do not hesitate to call us to discuss any aspect of this submission or any other matter related to the consultation.

IIS Partners authorises and are pleased to have this submission to be made public.

Yours sincerely



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