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*Future trends in consumer credit
and privacy*

**Cockle Bay Wharf
Sydney**

3 March 2010



International Trends in privacy protection



Australia's credit reporting law changes – now + more

Managing the change for best advantage

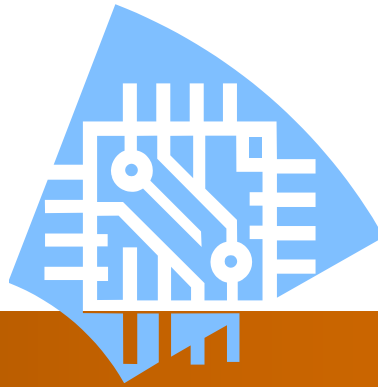


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Privacy is on the move

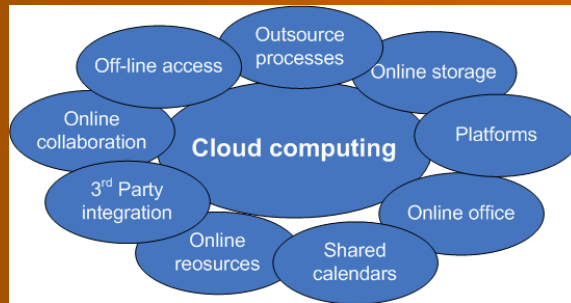
- Something will happen ... but what?
- Emerging themes:
 - Explosion in new technology
 - The rise of privacy to the top of the leadership agenda
 - Regulatory environment volatile





Explosion in new Technology...

- Social networking
- Location based services
- Behavioural targeting
- Mobile banking
- The Cloud
-



Privacy topping the agenda globally

- An idea who's time has come – political change
- Data breach rates huge and NOT slowing down
 - Australia lagging on reporting but unlikely to last
- Cloud – more information crossing boundaries
- Consumers edgy
 - increasing risks including ID theft
 - practices such as behavioural targeting
- Business – interest in flexible, internationally consistent law

Both sides of Atlantic engaged. And beyond



Key thinkers and regulators
with questions & ideas

Nationally &
Internationally –
business, regulators
engaged in finding better
solutions



Stuff ups + change in mood =
tough regulation at all levels





European Developments



Viviane Reding Vice-President Justice, Fundamental Rights and Citizenship

“We need to strengthen substantially the EU’s stance in protecting the privacy of our citizens”

Strong research agenda – Framework Program 7

Regulatory work – Article 29 Review, Accountability Project facilitated by France’s data protection regulator, Commission Nationale d’Informatique et Libertés, France (CNIL).



EUROPEAN DATA PROTECTION SUPERVISOR
LE CONTRÔLEUR EUROPÉEN DE LA PROTECTION DES DONNÉES
The European guardian of personal data protection
Le gardien européen de la protection des données personnelles

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A regulator insight – Peter Hustinx (EDPS)

- Rights of the citizen won't change much – emphasis on easier access to exercising existing rights.
- Future as based on implementing stronger incentives to do the right thing by privacy: commercial reality + regulatory incentive
- Globalisation and global data flows will also be very important – international regulation along lines of the Madrid declaration
- “Law should not legislate on technology” – operationalise privacy by design, including more ‘privacy by default’ settings
- Importance of ensuring effective accountability
- Really getting privacy right: not just seeking compliance with privacy law but demonstrating that ‘all measures have been taken to ensure that compliance will be a result’.

For more, see blog: [“EC thinking on privacy definitely on the move...”](#)

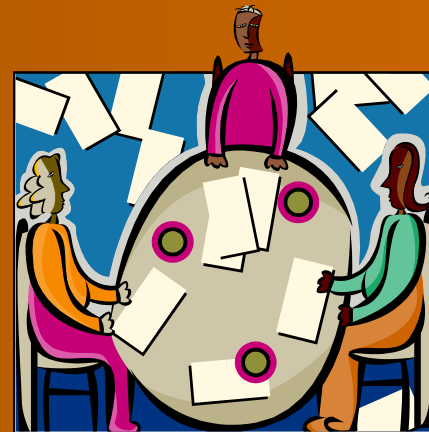
United States

- The US Department of Commerce and the US Federal Trade Commission (FTC) beginning to ask, “is there a better way?”.
- Jon Leibowitz, FTC Chair – questioning ‘notice and choice’ model – consulting via ‘round tables’

+/- using data, behavioural targeting etc

Technology issues – cloud etc

ID management, accountability +



<http://www.ftc.gov/bcp/workshops/privacyroundtables/>

Summing up the regulatory trends

Search is on for a better approach to privacy regulation

In the meantime

- Expect more law or tougher enforcement at critical points
- Expect more 'real privacy' and the emergence of 'assurance services'
 - pro-active e.g. privacy impact assessment
 - some reactive e.g. data breach notification
- Stronger sanctions & allocation of liability will be part of the incentive framework.



Another view of the way forward

- Less process but more accountability & a helping hand from technology “rules and tools”
 - On-screen alerts “a nudge” before publishing DOB online
 - Effective messaging - “visceral notice” and anthropomorphic cues

“Redrawing the Route to Online Privacy”, NY Times, 28 Feb 2010

See also:

“The data deluge Businesses, governments and society are only starting to tap its vast potential”, The Economist, 25 Feb 2010

Australia?

flux (flks)

n.

5. Constant or frequent change; fluctuation:.



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IDAM?

- A state of flux – possibly accelerating
 - More sector specific, government issued identifiers, et Individual Health Identifier (IHI), National Student ID number (in addition to existing Federal & State) ?
 - Bank initiatives – 2 factor authentication, mobile banking
- Digital God or a more subtle way?
 - Government and others investigating probabilistic, reputation based approaches
 - Use of more information already held
 - Australia a global leader in its response to AML/CTF?

flux (flks)

n.

5. Constant or frequent change; fluctuation:.



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A state of flux – Privacy Regulatory Environment?

- Australian Law Reform Commission on Privacy
 - Tinkering with the framework?
 - Delivering more comprehensive credit reporting
- Government response – Privacy law changes on the way
- Related Consumer law changes – responsible lending
- Office of the Information Commissioner – John McMillan



Govt. response – credit reporting overview

- Aim is to reduce complexity/overlap
- Specific credit reporting provision only where standard is to be stronger/weaker than the National Privacy Principles
- Provisions are generally in the Privacy Act proper rather than regulations
- General framework pretty much the same – some of the changes sought, and recommended by the ALRC, not taken up by the Government
- Major change – no longer will CRAs be simply default databases – more comprehensive, ‘positive’ reporting will be permitted

What can be reported

Recommendation 55–1 The new *Privacy (Credit Reporting Information) Regulations* should permit credit reporting information to include the following categories of personal information, in addition to those currently permitted in credit information files under the *Privacy Act*:

- (a) the type of each credit account opened (for example, mortgage, personal loan, credit card);
- (b) the date on which each credit account was opened;
- (c) the current limit of each open credit account; and
- (d) the date on which each credit account was closed.

Response: Accept

And a further carrot....

Recommendation 55–2 Subject to Recommendation 55–3... permit credit reporting information to include an individual’s repayment performance history, comprised of information indicating:

- (a) whether, over the prior two years, the individual was meeting his or her repayment obligations as at each point of the relevant repayment cycle for a credit account; and, if not,
- (b) the number of repayment cycles the individual was in arrears.

Response: Accept

Recommendation 55-3 – sets up responsible lending obligations

Response: Accept

Current Status on changes

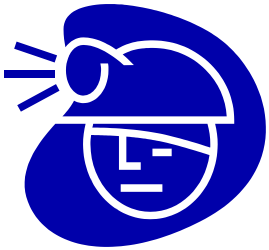
- The Government will release an Exposure draft of a privacy Bill sometime this year
- The Australasian Retail Credit Association (ARCA) working on a credit reporting code of conduct
- The National Consumer Credit Protection Act comes into effect on 1 Jan 2011 – includes responsible lending obligations
 - take account of the consumer's own objectives, undertake reasonable enquiries, don't lend if it would cause hardship

What does this all add
up to?

Is the answer simply compliance?

What we know so far:

- Privacy laws do not necessarily cover all that consumers expect or worry about
- Principles responsive to both individual interests and reasonable practice
- People want to be in control
- So compliance with the law = privacy ? ✓ ?



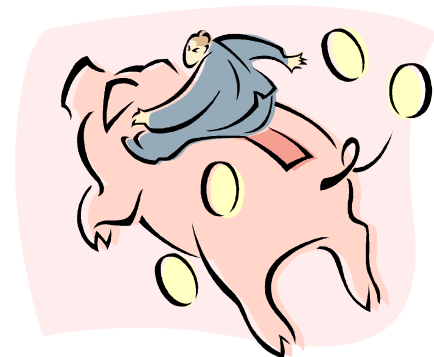
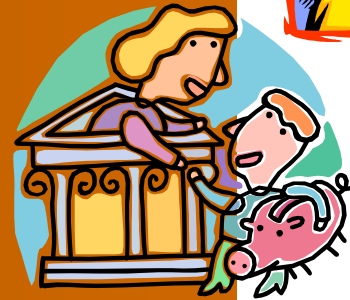
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Key risks beyond compliance

- function creep – unexpected or unwelcome new use of information
 - Facebook Top News vs Google Buzz ...
- Accuracy – can have major impact on people's lives
- Customer care – the merry-go-round, finding out who will help
- Identity theft and fraud - ID management

Other risks identified cont'd

- Transparency
- And Digital God again



“Layered Defence” essential

Privacy ▶ Control ▶ Trust ▶ Risk ▶ Accountability

Business
as usual

Law

Technology

Governance

Safety Net



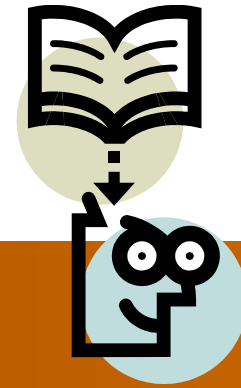
We can reduce the
Trust Deficit

Putting it all together

In the next few years...

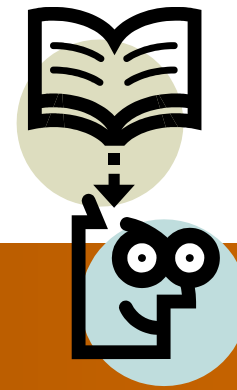
- “moody”, “volatile” environment
 - Responding to feelings of ‘icky’; ‘creepy’ ...
- Search is on for a better approach to privacy regulation
- “...batts are burning...”





Industry response?

- More of the same – proactive, engaging consumers
- Keep in mind the overall regulatory environment
- A time to build reputation for trustworthiness
- Exercise restraint
- Build platform for future



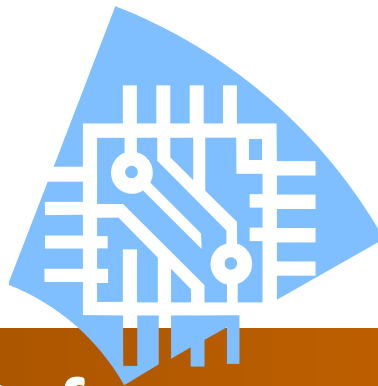
Applying Layered Defence

Business as usual

- Notice/transparency – new audience, best practice V defensive
- Keeping track of what information would be considered ‘credit worthiness’
- User Centred ID management – the key to trust??

Law

- Keep abreast and engaged
- possibility of more law



Applying Layered Defence, cont

Technology

- Role in compliance assurance
- ‘Design in’ privacy for new systems & products
- IDM – probabilistic processes
- New tools – nudge, etc



Applying Layered Defence, cont

Governance

- Senior involvement
- Privacy specialists
- Manage change over time



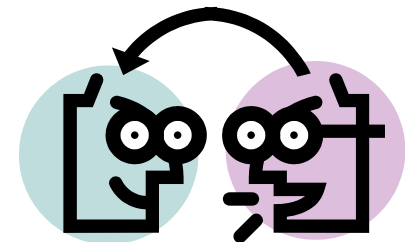
Safety Net

- Seamless, accessible customer care
- Critical



So finally....

- A lot coming over the horizon
- “tool” as well as “rules” on the way
- MANAGE the opportunity for more comprehensive credit reporting
 - Over exploit at your peril.
 - Address impact of industry outliers



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