

Asia Internet Coalition Submission on the Privacy Bill (New Zealand)

Overview

The Asia Internet Coalition (AIC) is an industry association made up of leading internet and technology companies. The AIC seeks to promote the understanding and resolution of Internet policy issues in the Asia Pacific region. Our members are Airbnb, Amazon, Apple, Expedia, Facebook, Google, Line, LinkedIn, Rakuten, Twitter, and Yahoo (Oath).

For the Asia Internet Coalition this is the first time that comments are being submitted to the New Zealand Government and the reason of doing so is because, as an industry, we believe that bringing New Zealand into alignment with Asia and Global best practices it is extremely important for New Zealand and for the industry.

We believe that businesses that are entrusted with people's information have a special responsibility to keep it safe and secure. There is strong incentive on businesses to deliver on their responsibility and with this in mind they have developed systems to enable people to choose how much information they wish to share. We are not perfect, and from time to time we make mistakes, but we strive to live up to our responsibilities.

The Asia Internet Coalition (AIC) welcomes the opportunity to respond to the Privacy Bill, and we would like to make the following observations and suggestions.

Include APEC Cross Border Privacy Rules - clause 193

We respectfully submit that New Zealand should consider including APEC's Cross Border Privacy Rules in the legislation. We wish to highlight that New Zealand's two-way trade with APEC reached \$102 billion for the year ended September 2017, [Stats NZ](#).

We note that the Explanatory Note to the Bill and that clause 193 refers to the European Union's upcoming General Data Protection Regulation and the EU Directive 95/46/EC. There are currently five participating APEC CBPR system economies: USA, Mexico, Japan, Canada and the Republic of Korea with more expected to join soon (including Australia).

Given the significant trade between New Zealand and APEC nations, we suggest that clause 193(2)(c) is amended to include (iii) the APEC Privacy Framework and Cross Border Privacy Rules (CBPRs) - <http://www.cbprs.org/>

Support Principles based approach - clauses 19 and 6

AIC support the retention of the principles based approach, including the definition of personal information in clause 6.

Administrative Reasons for refusing a request - clause 56

Clause 56 states that:

‘An agency may refuse access to any information requested under IPP6(1)(b) if—

- a. the information requested is not readily retrievable; or
- b. the information requested does not exist or, despite reasonable efforts to locate it, cannot be found; or
- c. the information requested is not held by the agency.’

Many cloud services, including those provided by our members, enable a business customer to retain control over access to information. Under these arrangements the cloud provider holds information but does not control access to the information. We would therefore submit that the Bill needs to be amended to take this situation into account. We therefore respectfully suggest that clause 56 is amended to include “(d) the information requested is not controlled by the agency.”

Part 6 Notifiable privacy breaches and compliance notices - implementation period

Many agencies including small business, schools, healthcare providers, may need time to prepare for these new provisions, and to hire and train new staff if required. This will adversely affect smaller businesses/organisations greater than larger ones. We therefore suggest a longer implementation period of at least 12 months before Part 6 comes into effect. This time frame is in line with other countries implementation schedules, including the Australian legislation

Part 6 Notifiable privacy breaches and compliance notices - clause 177 - threshold to notify

It is important that affected individuals properly consider notifications of data breach. However, excessive notification of minor breaches may mean that individuals ‘switch off’ and ignore notifications, which could mean that they miss being alerted to a more serious breach. Therefore, setting the right threshold for notification is important.

Notification under the current Bill is broadly defined through s72(2)(b) which includes a wide range of ‘harms’ that may or may not be serious (e.g. ‘may adversely affect the interest of the individual.’). The Australian legislation limits notification to breaches likely to result in serious harm in order that notifications of data breach are taken seriously.

We respectfully suggest that the definition of ‘notifiable data breach’ in clause 177 of the Bill aligns with the threshold in the Australian legislation that requires notification when ‘a serious breach occurs’ which includes where the following data types is accessed or disclosed without authorisation:

- Personal information
- Credit reporting information
- Credit eligibility information
- Tax file number information

Commissioner may share information with overseas privacy enforcement authority - Clause 207

This Clause provides the Privacy Commissioner with a broad power to share information to overseas privacy enforcement authorities.

We suggest that it would be prudent to include a safeguard provision similar to the Japanese privacy law (APPI) which limits the extent of information sharing with foreign authorities. Art 78 of APPI does not enable the Japanese Privacy Commissioner's to share information with foreign law enforcers when such information could be used for the investigation against political offenders, or if the case at issue is legal if it took place in Japanese territory, or if there is no reciprocity.

Adverse comment - Clause 210

This provision is limited to adverse comments contained in a statement or report. We submit that this needs to be updated given the wide range of new communications technologies. We respectfully suggest amending clause to read "The Commissioner must not, in any communication made pursuant to this Act or the Crown Entities Act 2004, make any comment that is adverse to any person unless that person has been given an opportunity to be heard."

Conclusion

Thank you for the opportunity to provide comments and we hope that our above comments are useful to you. Please do not hesitate to contact the AIC at jeff@aicasia.org should you wish to discuss the contents of this submission further.

Yours sincerely

A handwritten signature in blue ink that reads "Jeff Paine".

Jeff Paine
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