Comments to the Attorney-General’s Department on the Review of the Privacy Act 1988

The Global Data Alliance\(^1\) welcomes the opportunity to provide comments to the Attorney-General’s Department (AGD) on the Privacy Act Discussion Paper (Discussion Paper).\(^2\) The Discussion Paper consolidates the substantial stakeholder feedback received on the Privacy Act Review Issue Paper (Issue Paper) published in October 2020\(^3\) which was designed to “consider whether the scope of the Privacy Act 1988 (the Act) and its enforcement mechanisms remain fit for purpose.”\(^4\)

This Global Data Alliance submission builds on our previous comments\(^5\) and presents our views regarding cross-border data transfers specifically. Several Alliance member companies are also providing separate submissions on other aspects of the current Review through other organisations and associations. We also ask that you consider those other submissions.

The Alliance is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. Alliance companies rely on the ability to transfer data responsibly around the world to create jobs and make local industries more competitive. Cross-border data transfers power innovation and growth across the globe and all sectors of the economy — from manufacturing and farming to local start-ups and service providers. Data transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes, in every country, to create new kinds of jobs, boost efficiency, drive quality, and improve output\(^6\).

Global Data Alliance members share a deep and long-standing commitment to protecting personal data across technologies and business models, as they recognise that today’s cross-border economy depends on the trust of consumers and the general public. The Alliance, therefore, supports policies that protect personal data while enabling data to move across borders.

Many of the proposals in the Discussion Paper, if adopted, would significantly strengthen personal information protections and consumer rights in Australia. We are hopeful that the amended Privacy Act will promote robust personal information protection through a legal framework that is flexible, fosters

\(^{1}\) The Global Data Alliance (globadataalliance.org) is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, financial services, health, media and publishing, natural resources, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance. For more information on the Global Data Alliance, please see: https://www.globadataalliance.org/downloads/aboutgda.pdf


\(^{4}\) Ibid., p. 2.


innovation, and allows companies to responsibly transfer data both internally and externally to other entities, within and outside Australia.

**Flexibility and Interoperability of Data Transfer Mechanisms**

GDA is encouraged that the AGD recognises the importance of supporting a variety of data transfer mechanisms that facilitate cross-border data transfers.

Data protection and privacy frameworks that are based on a common set of international consensus-based principles contribute to global efforts in building interoperable systems and mechanisms that facilitate cross border data transfers while driving innovation and business investment in local markets. These mechanisms also help bridge current gaps in international privacy norms, while facilitating the safe and secure transfer of personal information.

GDA continues to encourage the Australian Government to recognise a range of data transfer mechanisms that can meet the requirements imposed by the Act and support the accountability model for international data transfers. These may include the APEC Cross Border Privacy Rules and Privacy Rules for Processors, or other existing mechanisms recognised by leading data protection laws worldwide. Recognising these existing mechanisms would help to align the Act with global best practices and give entities the flexibility to determine which mechanism will be better suited for each situation.

We also urge the Australian Government to refrain from creating new data transfer mechanisms solely for use by entities transferring data to and from Australia. Data transfers mechanisms that are unique to a single country are less effective than more broadly applicable mechanisms at promoting privacy and cybersecurity protections; they are also less supportive of the widespread use of interoperable mechanisms to facilitate responsible data transfers. For example, if the proposed standard contractual clauses are not interoperable with other similar standard contractual clauses, they would impose operational and compliance challenges for entities operating in multiple jurisdictions. As such, GDA recommends that any new Australian-specific data transfer mechanisms should remain voluntary and be interoperable with other global schemes to help further industry participation and ensure meaningful protections for consumers.

GDA also supports retaining the following exceptions:

- **APP 8.2(a)** for recipients subject to “at least substantially similar” protection to the APP. The exception provides a straightforward path for entities transferring personal information to jurisdictions offering robust and enforceable privacy regimes and also enhances flexibility while preserving consumer protections.

- **APP 8.2(b)** on informed consent[^7] as removing the informed consent exception would increase the regulatory burden on entities seeking to transfer personal information overseas and on entities which have relied on the exception in the past.

GDA further notes that the Discussion Paper proposes to strengthen the transparency requirements in relation to potential overseas disclosures by including information such as the destination countries that personal information may be disclosed to, as well as the specific personal information that may be disclosed overseas. While improving the transparency of data transfer processes is an important prerogative, such requirements might not materially impact or enhance consumers’ understanding of how these transfers might affect the processing and protection of their personal information. Disclosing transfer destination countries, for example, does not provide consumers any actionable information about the risks of processing due to the existence of numerous other factors, such as differences in how

[^7]: Schedule 1, APP 8.2(b) of the Privacy Act states that APP 8.1 will not apply to the disclosure if: (1) the APP entity expressly informs the individual that if he or she consents to the disclosure of the information; and (2): after being so informed, the individual consents to the disclosure.
national laws are applied in practice, based on the type of information being transferred, the nature of the
service, and legal and procedural limits on access to information that may be non-public given their use in
law enforcement and national security contexts. **In this regard, we caution against adopting Proposal
22.4 in the Discussion Paper.**

**Conclusion**

We appreciate the opportunity to share these views and hope that they will be helpful as the AGD
considers its next steps on the Australian Privacy Act, promoting a robust data protection environment,
while allowing responsible stewardship of data to continue benefiting the citizens and economy of
Australia.

Please do not hesitate to contact us with any questions regarding this submission.

Sincerely yours,

_Eunice Lim_

Eunice Lim
Senior Manager, Policy-APAC
Global Data Alliance
eunicel@bsa.org