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ARTICLES

"PERSONAL INFORMATION" AND GROUP DATA UNDER THE PRIVACY ACT 1988 (CTH)

Mark J Taylor

The Privacy Act 1988 (Cth) is focused on information that relates to identified or identifiable persons. If understood narrowly, this approach risks failure to acknowledge the importance of data relating to multiple persons (group data) and its appropriate control within the framework of data governance. There is an increasingly urgent need to address this risk. Indeed, the COVID-19 pandemic has already demonstrated how group data might have tangible impact: by shifting an understanding of priority and what constitutes a reasonable trade-off between individual and public interests. This article considers the extent to which governance mechanisms could, through the vehicle of existing privacy law, protect persons from potentially harmful uses of group data in a modern information economy. 730

CONSUMER PRIVACY AND CONSENT: REFORM IN THE LIGHT OF CONTRACT AND CONSUMER PROTECTION LAW

Damian Clifford and Jeannie Paterson

In its Digital Platforms Inquiry report, the Australian Competition and Consumer Commission recommended reform of the Privacy Act 1988 (Cth) to provide better mechanisms for ensuring consumer consent and to the Australian Consumer Law to strengthen the protection for consumers. Such reforms would be timely, given growing concerns about the collection and use of consumer data. There has long been debate within the scholarly literature around the role and the limits of consent in promoting welfare-enhancing outcomes for consumers and the need for consent-based mechanisms to be supplemented by other protections. Moves to bolster consent within the field of consumer privacy, and indeed, the criticisms of relying on it, should be couched within this broader literature. 741

LIABILITY OF PLATFORMS UNDER AUSTRALIAN PRIVACY LAW

David Lindsay

Platforms are integral to the lives of Australians. Although the main platforms are subject to Australian privacy law, the law fails to satisfactorily deal with the privacy threats posed by them. Serious weaknesses in the law were identified in the Australian Competition and Consumer Commission's report on Digital Platforms, which recommended reforms. Those weaknesses were confirmed, at least in part, by the Commonwealth Government response to the Digital Platforms report. This article explains and analyses the liability of platform operators under the most relevant Australian privacy laws: the Privacy Act 1988 (Cth) and the action for breach of confidence. The article concludes with analysis and observations as to how Australian law relating to platforms might be reformed to more effectively protect the privacy of individual Australians whose information is processed by platform operators. 752

ANOTHER PUSH FOR AN AUSTRALIAN PRIVACY TORT: CONTEXT, EVALUATION AND PROSPECTS

Normann Witzleb

In 2019, the Australian Competition and Consumer Commission and Australian Human Rights Commission proposed the enactment of a statutory privacy tort in the form recommended by the Australian Law Reform Commission in 2014. Although both Commissions made their proposals in different contexts, their respective calls respond to the common threat that the rise of modern data-driven technology poses for privacy. The Government response to the ACCC reform announced that the recommendation would be further examined as part of a review of the Privacy Act 1988 (Cth) and related laws. At the same time, the ACCC's recommendation for a direct right of action under the Privacy Act was "support[ed] in principle, subject to consultation and design of specific measures". The renewed attention given to privacy law reform makes it timely to contextualise and evaluate the ACCC and AHRC proposals for a statutory tort and to assess the prospects of legislative action. 765

THE CONFIDENTIALITY OF JOURNALISTS' SOURCES IN POLICE INVESTIGATIONS: PRIVACY, PRIVILEGE AND THE FREEDOM OF POLITICAL COMMUNICATION

Rebecca Ananian-Welsh and Joseph Orange

The protection of source confidentiality is an ethical obligation for journalists and a central tenet of press freedom. The vulnerability of source confidentiality in Australia was laid bare in June 2019 when the Australian Federal Police (AFP) executed raids on the home of News Corp journalist Annika Smethurst and the Australian Broadcasting Corporation's Sydney headquarters. This article focuses on the scenario presented by the AFP raids, and the separate legal challenges by Smethurst and the ABC which followed. It critiques the potential for distinct fields of law to protect source confidentiality in the federal search and seizure context, namely: privacy rights, the constitutional implied freedom of political communication, and notions of privilege and confidentiality. This analysis reveals a pressing need for law reform and argues that privilege could offer an appropriate and effective option in protecting both press freedom and law enforcement as distinct components of the rule of law. 777

PRIVACY CLASS ACTIONS

Michael Rivette

The major theme of this article is that class actions are able to address the enforcement of privacy rights and offer a remedy for breach, as they provide a solution to the economic obstacle of litigation by collecting individual claims into a single action that can support the cost of litigation. They also suit the nature of many modern privacy breaches, particularly those involving data, as in the digital age it is not uncommon for many individuals to be harmed in essentially identical ways by a data breach. The recent NSW Supreme Court decision in Evans v Health Administration Corporation, approving the settlement in the first privacy class action where compensation was obtained for class members, paves the way for class action to become a normal and acceptable legal approach to respond to mass privacy breaches through the pleading of existing and emerging causes of action. 791

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