

TASMANIA
LAW REFORM
INSTITUTE

Submission Template

Review of Privacy Laws in Tasmania

The Tasmania Law Reform Institute is currently reviewing privacy laws in Tasmania. The Institute is seeking to inquire into, review and report on:

1. the current protections of privacy and of the right to privacy in Tasmania and any need to enhance or extend protections for privacy in Tasmania;
2. the extent to which the *Personal Information Protection Act 2004* (Tas) and related laws continue to provide an effective framework for the protection of privacy in Tasmania and the need for any reform to that Act; and
3. models that enhance and protect privacy in other jurisdictions (in Australia and overseas).

In undertaking this review, the Institute will consider and have regard to:

- a. the United Nations International Convention on Civil and Political Rights and other relevant international instruments that protect the right to privacy;
- b. relevant existing and proposed Commonwealth, state and territory laws and practices;
- c. any recent reviews of the privacy laws in other jurisdictions;
- d. current and emerging international law and obligations in this area;
- e. privacy regimes, developments and trends in other jurisdictions;
- f. the need of individuals for privacy protection in an evolving technological environment; and
- g. any other related matter.

The Institute will identify and consult with relevant stakeholders and ensure widespread public consultation on how privacy and obligations relating to protecting privacy can best be promoted and protected in Tasmania, and provide recommendations as to an appropriate model for Tasmania to protect and enhance privacy rights and protections.

This Issues Paper provides background, context, and considerations regarding privacy laws in Tasmania. The aim is to facilitate informed discussion about how privacy can best be legally protected, given the rapid advances in information technology, changing community perceptions about the importance of privacy, and growing legislative regulation of various matters.

The Institute invites submissions on this topic until **11 July 2023**.

You can answer any or all of the questions and provide as little or as much information as you wish.

The Template can be filled in electronically and sent by email or printed out and filled in manually and posted.

- The form is designed to be completed electronically by entering responses. The space provided for your answer will expand (if necessary) as you type. You are invited to include as much or as little information as you choose.
- Alternatively, you may print out the form and either fill it in manually or use a separate answer sheet (if you use a separate answer sheet, please ensure that you clearly number your answers to correspond with the questions in the Issues Paper). Again, you are invited to include as much or as little information as you choose.

After you have completed your submission please either email or post the document to the Institute:

Email: law.reform@utas.edu.au

Post: Tasmania Law Reform Institute

Private Bag 89
Hobart TAS 7001

This study has been approved by the Tasmanian Social Sciences Human Research Ethics Committee. If you have concerns or complaints about the conduct of this study, please contact the Executive Officer of the University of Tasmania Human Research Ethics Committee on +61 3 6226 6254 or email human.ethics@utas.edu.au. The Executive Officer is the person nominated to receive complaints from research participants. You will need to quote ethics reference number [H0016752].

Personal Information

Name: _____

Organisation (if any): _____

Address: _____

Email: _____

Phone number: _____

Publication of Submissions

The Institute uses any submissions received to inform its research. Submissions may be referred to or quoted from in a final report which will be published on the Institute's website. Extracts may also be used in published scholarly articles and/or public media releases. However, if you do not wish your response to be referred to or identified, the Institute will respect that wish.

Therefore, when making a submission to the Institute, please tick the applicable box to identify how you would like it to be treated based on the following categories:

Public submission – the Institute may refer to or quote directly from my submission and name me as the source of the submission in relevant publications.

Anonymous submission – the Institute may refer to or quote directly from my submission in relevant publications but must not identify me as the source of the submission.

Confidential submission – the Institute must not refer to or quote directly from my submission but may aggregate information in my submission with other submissions for inclusion in any report or publication.

Confidential submissions will only be used to inform the Institute generally in its deliberations of the particular issue under investigation, and/or provide publishable aggregated statistical data.

Providing a submission is completely voluntary. You are free to withdraw your participation at any time, by contacting Kira White on (03) 6226 2069 or email Law.Reform@utas.edu.au. You can withdraw without providing an explanation. However, once the report has been sent for publication, it will not be possible to remove your comments.

All responses will be held by the Tasmania Law Reform Institute for a period of five (5) years from the date of the first publication and then destroyed. Electronic submissions will be stored on a secure, regularly backed-up University network drive. Hard copy submissions will be stored in a locked filing cabinet. At the expiry of five years, submissions be deleted from the server, in the case of electronic submissions, or shredded and securely disposed of in the case of paper submissions.

QUESTIONS

Chapter 2—Privacy protection: Scope and application of the PIPA

Question 2.1

Are there Tasmanian public sector agencies or organisations not sufficiently covered by the PIPA, or which should otherwise be included in the definition of ‘personal information custodian’?

Question 2.2

Should non-government organisations, such as for-profit businesses, charities, or political parties registered in Tasmania, be subject to privacy regulation in addition to any obligations under the Privacy Act?

Question 2.3

To what extent are government contractors appropriately subject to obligations under the PIPA? Should there be additional obligations on Tasmanian government agencies entering into contracts with private bodies to ensure that privacy obligations are able to be enforced against the contractor?

Question 2.4

Should the definition of 'personal information' be changed? Should it be consistent with the definition in the Privacy Act, or with the definition of personal data in the European Union's GDPR?

Question 2.5

Are the other categories of information, including health and other forms of sensitive information suitable?

Question 2.6

Are the exceptions, including the process for declaring and publishing public benefit exemptions, suitable?

Chapter 2—Privacy protection: Personal Information Protection Principles

Question 2.7

Should the PIPPs under the Tasmanian PIPA be amended to make them, as far as possible, consistent with the APPs in the Commonwealth Privacy Act as they currently exist or as amended in the future?

Question 2.8

Are there any other amendments to the PIPPs that you think should be made?

Question 2.9

Should any of the other potential reforms be introduced, including:

- a. fairness and reasonableness requirements;
- b. a right to object;
- c. a right to be forgotten;
- d. specific restrictions on the use of artificial intelligence in automated administrative decision-making; or
- e. strengthened notice and consent requirements?

Chapter 2—Privacy protection: Complaints, monitoring and enforcement

Question 2.10

How effective is the current complaints process in enforcing obligations under the PIPA?

Question 2.11

Should consideration be given to amending the PIPA to include provision for an individual to appeal or seek review if they are dissatisfied with the actions or recommendations of the Ombudsman in investigations of privacy complaints?

Question 2.12

What other remedies should be available to individuals affected by a breach of the PIPA?

Question 2.13

Are there other forms of enforcement action that should be introduced?

Question 2.14

Should consideration be given to the development of privacy codes by amendment to the PIPA or by providing for similar rules to be made in delegated legislation?

Question 2.15

Should a form of data breach notification requirement be introduced? If so, what models of mandatory reporting schemes should be considered?

Chapter 3— Other legislation impacting the privacy of government-held information

Question 3.1

Should legislation providing for the application of minimum privacy safeguards be introduced to apply to all information sharing within and between government bodies?

Question 3.2

If such legislation should be introduced, how should the safeguards be enforced?

Chapter 4— Other protections of privacy

Question 4.1

Should the existing protections in the listening devices legislation be amended in Tasmania to strengthen the protection of individuals against surveillance, whether governmental, workplace, or private surveillance?

Question 4.2

Should be stronger legislative protection, including through the introduction of new statutes in Tasmania, against governmental (particularly police) surveillance in general?

Question 4.3

Should there be stronger legislative protection, including through the introduction of new statutes in Tasmania, against workplace surveillance in particular?

Question 4.4

Should there be specific protection against interference with physical privacy through the use of drones (Remotely Piloted Aircraft or RPAs, and Unmanned Aerial Vehicles or UAVs)?

Question 4.5

Are the existing legislative protections against stalking and harassment adequate to protect physical privacy, or should there be a new or strengthened law to protect against such physical and intimidating interferences?

Question 4.6

Are the existing legislative protections (largely at the Commonwealth level) against image-based abuse and similar online privacy interferences adequate to protect individual privacy, or should the Tasmanian Parliament enact new criminal offences or civil remedies for such egregious online interferences with privacy, as other Australian jurisdictions have done?

Question 4.7

Does existing judicial recognition of privacy (either through equitable remedies or as a nascent constitutional principle) provide adequate protection for individual privacy, especially in circumstances not covered by the PIPA and other legislative protections?

Question 4.8

Should Tasmania codify a fundamental right to privacy, which can be set aside by other legislation that authorises activities that may interfere with privacy, and which is qualified by justified limitations?

Question 4.9

Should the Tasmanian Parliament legislate to introduce a statutory civil cause of action for interference with privacy in Tasmania in place of or in addition to existing legal protections? If so, how should this cause of action be framed, taking into account the matters of threshold and scope, breach, defences, and remedies?