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Attorney-General's Department
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QUT Digital Media Research Centre submission in response to the Privacy Act Review Discussion Paper

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We are researchers in QUT's Digital Media Research Centre. The DMRC is a global leader in digital humanities and social science research with a focus on communication, media, and the law.

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Executive summary

We welcome the opportunity to contribute to this review of the *Privacy Act 1988* (Cth). Prof Peta Mitchell and Dr Jessica Megarry are part of the research team for the ARC-funded Digital Media, Location Awareness and the Politics of Geodata project, which critically examines the increasingly pervasive role of location metadata (or geodata) in Australian smartphone practices and cultures.

Our research indicates that:

- Location data is widely collected from Australians for a range of purposes.
- The collection, use and disclosure of location data can have serious potential impacts on individuals, including risks to their personal safety.
- Location data can reveal other sensitive information about individuals.
- Australians are concerned about the privacy risks associated with sharing their location data.
- Australians may provide 'consent' in relation to their location data, despite privacy concerns, because they cannot otherwise use particular services.
- Australians may provide 'consent' in relation to their location data without fully understanding how their location data is collected, used and disclosed.
- Companies have sought to rely on 'consent' that is neither fully voluntary nor fully informed in legal proceedings brought against them.

Based on this research, we recommend:

- Amending the definition of sensitive information to include location data.
- Explicitly including 'voluntary' and 'informed' in the definition of consent (proposal 9.1).

Location data as sensitive information

Location data is widely collected for a vast range of purposes, including navigation (e.g., Google Maps), transport (e.g., Uber), and social connection (e.g., Facebook).[1]

Location data should be considered sensitive information because of the serious potential impacts of its collection, use and disclosure. For example, in the wrong hands, location data could be used to stalk, harass, or physically harm a person.[2]

Location data can also reveal other sensitive information about an individual. For example, frequent visits to a particular location (e.g., a place of worship or a campaign

[1] Riedlinger, Michelle, Chantal Chapman and Peta Mitchell. 2019. *Location Awareness and Geodata Sharing Practices of Australian Smartphone Users*. QUT Digital Media Research Centre. https://eprints.qut.edu.au/132000/; Mitchell, Peta and Tim Highfield. 2017. "Mediated Geographies of Everyday Life: Navigating the Ambient, Augmented and Algorithmic Geographies of Geomedia." *Ctrl-Z: New Media Philosophy* (7). http://www.ctrl-z.net.au/journal/?slug=mitchell-highfield-mediated-geographies-of-everyday-life.

[2] See, for example, Riedlinger, Chapman and Mitchell (fn 1) 43.

office) could reveal a person's religious or political affiliations. Location data can also be aggregated with other data to reveal a person's identity.[3]

In a survey of 287 Australian smartphone users, conducted in 2019 as part of the Digital Media, Location Awareness and the Politics of Geodata project, over half of the respondents reported negative feelings about the collection of their location data by smartphone apps.[4] Respondents indicated that they felt "uncomfortable, wary or suspicious," "vulnerable," "scared, horrible, exploited." Specific concerns included mishandling or misuse of data, risks to personal safety (e.g., stalking, harassment), and threats to political freedom.

Based on these findings, **we recommend amending the definition of sensitive information to include location data.**

Voluntary and informed consent

Another finding from the survey was that respondents felt that the loss of their privacy was "the price they had to pay" for access to apps and services.[5] They reported feeling "resigned to not having control," "forced to sacrifice privacy for the services," and that they "don't really have a choice."[6] Respondents also suggested that service providers should allow users increased control over their privacy.[7] These findings indicate that, currently, the 'consents' provided by Australians to collect, use and disclose their location data may not be entirely voluntary.

Research also indicates that users may not fully understand what they are consenting to when they provide 'consent' to collect, use or disclose their location data.[8] In particular, details about the disclosure of location data to third parties for advertising or other commercial purposes is often hidden from users. Location intelligence and marketing companies that trade in app-derived user location data routinely point to consent mechanisms built into mobile operating systems to claim that the personal location data they on-sell has been ethically harvested with full user consent. However, recent lawsuits have revealed that the opt-in text requesting access to users' location data can be deceptive and misleading, omitting critical information about what the app will do with that data.[9]

Informed by this research, we support the inclusion of an explicit requirement that consent be both voluntary and informed.[10]

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[3] Riedlinger, Chapman and Mitchell (fn 1) 6.
[4] Riedlinger, Chapman and Mitchell (fn 1).
[5] Riedlinger, Chapman and Mitchell (fn 1) 9.
[6] Riedlinger, Chapman and Mitchell (fn 1) 25.
[7] Riedlinger, Chapman and Mitchell (fn 1) 10.
[8] See, for example, Mitchell and Highfield (fn 1).
[9] See, for example, Lyles, Taylor. 2020. "Los Angeles settles Weather Channel lawsuit, lets it keep selling location data to advertisers." *The Verge*, August 19, 2020. https://www.theverge.com/2020/8/19/21376217/los-angeles-the-weather-channel-app-lawsuit-settlement-location-data-selling; ACCC. 2021. "Google misled consumers about the collection and use of location data." April 16, 2021. https://www.accc.gov.au/media-release/google-misled-consumers-about-the-collection-and-use-of-location-data.
[10] We have not commented on the inclusion of 'current, specific, and an unambiguous indication through clear action' as this is less directly related to our research.