



11 October 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sirs,

Privacy and Other Legislation Amendment Bill 2024

Thank you for the opportunity to respond to the Privacy and Other Legislation Amendment Bill 2024. Our submission is attached.

Clubs Australia represents over 5,000 clubs across Australia that employ more than 140,000 people. Clubs are not-for-profit, member-owned organisations that provide sporting and recreation infrastructure to their members and the wider community.

Clubs Australia acknowledges the introduction of the Privacy and Other Legislation Amendment Bill 2024. Our comments primarily focus on supporting clubs in effectively implementing the provisions of the Bill, ensuring compliance, and allowing sufficient time for adaptation to the new requirements. Tailored guidelines and phased compliance will help clubs adapt to the new standards without disrupting their ability to serve members and their communities. We also encourage a focus on education and support over punitive measures, especially for minor breaches.

A list of our recommendations is set out in **Appendix A**.

Yours sincerely,

Alison Tehan
Deputy Executive Director
Clubs Australia

Clubs Australia Incorporated
ABN 32 691 361 915

Level 8, 51 Druitt Street
Sydney NSW 2000
P 02 9268 3000 F 02 9268 3066



A. Part 2 – Australian Privacy Principles Codes

Tailored Australian Privacy Principles (APP) codes provide a nuanced regulatory framework, but the challenge for many clubs, particularly those that do not have resources and expertise, is the ability to quickly implement new obligations, without a sufficient transition period. An educative approach together with sufficient transition measures would help to mitigate these risks, allowing clubs time to adapt while still meeting regulatory requirements.

- 1. Recommendation: Clubs Australia recommends** appropriate transition provisions for APP codes, particularly temporary ones, to give clubs time to implement any new requirements. Additionally, an educative approach with clear guidance and support will help clubs implement the necessary changes smoothly.

B. Part 3 – Emergency Declarations

The expanded flexibility for sharing personal information during emergencies is a positive step, as it allows data to be shared to protect individuals without breaching privacy laws.

This provision supports timely and responsible data sharing during emergencies, such as natural disasters. While clubs may not often engage in emergency data sharing, those involved in crisis response or support must clearly understand their legal obligations.

- 2. Recommendation: Clubs Australia recommends** providing clear, step-by-step guidance for when emergency provisions apply and the requirements that will apply in these circumstances.

C. Security Retention & Destruction

The need for clubs to adopt encryption, secure data retention, and proper destruction practices could impose significant financial and technical challenges. Many clubs, particularly those with outdated systems, will face challenges to meet these requirements without external assistance. The importance of proper data security is undeniable—high-profile data breaches have led to costly fines and reputational damage in other sectors. However, the government must consider the realities faced by clubs, many of which have limited resources and technical support.



- 3. Recommendation: Clubs Australia recommends** a phased implementation of data security measures to allow clubs time to meet any new requirements.

D. Part 7 – Eligible Data Breaches

Many clubs operate with limited administrative and technical capacity, making navigating complex privacy requirements difficult, especially in high-pressure situations like data breaches. It may not be clear to some clubs when they must act without clear definitions of what constitutes a reportable breach, leading to underreporting or unnecessary reporting. Simple, clear definitions and examples are essential to ensuring compliance without overwhelming clubs.

In addition, effective communication with impacted individuals is critical for maintaining trust when a breach occurs. However, impacted organisations may not have the resources to develop well-crafted communications, especially under tight timelines. By providing ready-made templates and step-by-step guidance, the government can help organisations respond to data breaches in a way that keeps impacted individuals informed and meets privacy regulations.

Recommendations:

- 4. Clubs Australia recommends** that the government provide a simple, clear definition of what counts as a reportable data breach, including offline data breaches.
- 5. Clubs Australia suggests** offering ready-made templates and step-by-step guidance for communicating with impacted individuals after a data breach.
- 6. Clubs Australia suggests** providing straightforward and simple instructions on how to share data under a ministerial order, so organisations can act quickly without breaking privacy rules.

E. Part 8 – Penalties for interference with privacy

Introducing civil penalties for privacy breaches, including minor infractions, presents significant challenges for clubs. These organisations, often operating with limited budgets and fewer resources, may find it difficult to consistently comply with evolving privacy regulations. Imposing financial penalties for minor breaches could disproportionately impact some clubs, particularly those that are small and volunteer run.

While the Bill introduces a three-tiered penalty system that scales fines according to the severity of the breach, some organisations may not be able to absorb these penalties. The lowest tier, involving administrative fines for minor infractions, will likely be applied more frequently, yet could still impose a heavy burden. A one-



size-fits-all penalty structure does not account for the varying levels of risk and resources across different organisations.

Clubs Australia supports introducing a risk-based, tiered penalty system, but advocates for additional safeguards to ensure smaller organisations are not penalised for minor or unintentional breaches. Emphasising education and remediation over punitive measures for minor infractions would foster a culture of compliance and continuous improvement.

Recommendations:

- 7. Clubs Australia recommends** that the introduction of a three-tiered penalty system, as outlined in the Bill, be complemented with safeguards ensuring that penalties are proportional to the size, resources, and risk level of the organisation, as well as the intent behind the breach.
- 8. Clubs Australia further recommends** that penalties prioritise education and remediation for minor infractions, helping clubs improve compliance without jeopardising their financial sustainability. Punitive financial measures should only be applied when other corrective actions have been exhausted or in cases of serious breaches.

F. Part 15 –Automated decisions and privacy policies

The Bill introduces important reforms requiring organisations to disclose how they use Automated Decision-Making (ADM) systems in their privacy policies. Clubs Australia acknowledges that these changes aim to enhance transparency and protect individuals' rights when decisions affecting them are made through automated processes. However, many clubs may not have sophisticated ADM systems, and their use of automation limited to basic tasks like managing memberships or sending out promotions.

For clubs using ADM systems, these new requirements could complicate the management of privacy policies. Some clubs may face challenges with the technical aspects of assessing and disclosing how their automated processes, like membership management or promotions, affect member privacy.

The Bill's requirement for detailed explanations of ADM's impact on individuals may create an added administrative burden. Simplified guidelines tailored to clubs with basic ADM usage would help reduce compliance challenges while maintaining transparency.

- 9. Recommendation: Clubs Australia** recommends that the Government provide simplified guidance for organisations that use basic or limited automated decision-making systems.



List of Clubs Australia Recommendations

Rec. No.	Theme	Recommendation
1	APP Codes	Clubs Australia recommends appropriate transition provisions for APP codes, particularly temporary ones, to give clubs time to implement any new requirements. Additionally, an educative approach with clear guidance and support will help clubs implement the necessary changes smoothly.
2	Emergency Declarations	Clubs Australia recommends providing clear, step-by-step guidance for when emergency provisions apply and the requirements that will apply in these circumstances.
3	Security Retention & Destruction	Clubs Australia recommends a phased implementation of data security measures to allow clubs time to meet any new requirements.
4	Eligible Data Breaches	Clubs Australia recommends that the government provide a simple, clear definition of what counts as a reportable data breach, including offline data breaches.
5	Eligible Data Breaches	Clubs Australia suggests offering ready-made templates and step-by-step guidance for communicating with impacted individuals after a data breach.
6	Eligible Data Breaches	Clubs Australia suggests providing straightforward and simple instructions on how to share data under a ministerial order, so organisations can act quickly without breaking privacy rules.
7	Penalties for interference with privacy	Clubs Australia recommends that the introduction of a three-tiered penalty system, as outlined in the Bill, be complemented with safeguards ensuring that penalties are proportional to the size, resources, and risk level of the organisation, as well as the intent behind the breach.
8	Penalties for interference with privacy	Clubs Australia further recommends that penalties prioritise education and remediation for minor infractions, helping clubs improve compliance without jeopardising their financial sustainability. Punitive financial measures should only be applied when other corrective actions have been exhausted or in cases of serious breaches.



9	Automated decisions and privacy policies	Clubs Australia recommends that the Government provide simplified guidance for organisations that use basic or limited automated decision-making systems.
---	--	---