

Independent Code Review of the Privacy (Market and Social Research) Code 2014

Data Synergies has been commissioned to undertake an independent review of the Privacy (Market and Social Research) Code 2014¹ (the **Code**).

The Code was approved by the Office of the Australian Information Commissioner (**OAIC**) under Part IIIB of the federal Privacy Act 1988, the first registered APP Code.

The Code is administered by the Association of Market & Social Research Organisations (**AMSRO**), the peak body for the market and social research, data and insights sector.

The Code is administered by the AMSRO Secretariat (**Code Administrator**) and overseen by the AMSRO Privacy Compliance Committee, comprising an independent chair, at least two industry representatives and one consumer representative.

The Code applies to market and social research, data and insights businesses which are members of AMSRO.

In accordance with the provisions of Part G of the Code, the Code is subject to independent review by the Independent Code Reviewer Panel at least every five years.

This is therefore the first Independent Code Review of the Code.

The responsibilities of the Independent Code Reviewer are:

- to seek the views of the Commissioner, government agencies, industry representatives, consumer representatives, the general public and other persons or bodies as appropriate in Australia and internationally, regarding the operation of this Code and in relation to suitable revisions and amendments;
- by January 31, 2020, to produce a report including recommendations for any amendments to this Code that are considered necessary or desirable for the effective operation of the Code.

The Commissioner's Explanatory Statement² made in relation to registration of the Code stated that the Code protects against the arbitrary interference with privacy, and advances the right to the protection of the law against such interference by:

- setting out how the APPs in Schedule 1 of the Privacy Act are to be applied and complied with in the market and social research industry (Part E of the Code)
- introducing additional privacy enhancing requirements for research organisations to apply in the market and social research industry when handling personal information, including:

¹ <https://www.oaic.gov.au/privacy/privacy-registers/privacy-codes-register/market-and-social-research-code/>

² <https://www.legislation.gov.au/Details/F2014L01725/Explanatory%20Statement/Text>

- a. the additional matters that a research organisation bound by the AMSRO code must notify an individual participating in market research about, and the timeframe for providing that notice (paragraphs 5.3 – 5.4 of the Code)
- b. the circumstances under which a research organisation bound by the AMSRO code can use and disclose certain personal information (paragraphs 6.2A - 6.2B)
- c. clarification of the obligations of a research organisation bound by the AMSRO code to protect security of personal information (paragraph 11.2)
- d. the steps that a research organisation bound by the AMSRO code must take to de-identify certain personal information (paragraph 11.4)
- e. when a research organisation bound by the AMSRO code is permitted to retain certain personal information (paragraph 11.5)
- f. the reasonable steps a research organisation bound by the AMSRO code must take to ensure that certain personal information that it discloses is protected (paragraphs 11.6(a) - (c))
- g. the limited circumstances when a research organisation bound by the AMSRO code is not required to comply with a request to destroy or de-identify certain personal information (paragraph 11.7).

As Independent Code Reviewer, and in consultation with the AMSRO Secretariat and AMSRO Privacy Compliance Committee, I prepared a consultation review draft revision of the Code. This consultation review draft is attached, as a mark-up to the Code as currently in operation so that changes made are readily seen. This is a working draft, intended to facilitate public input into this Code review. The amendments made in this working draft cover matters which I consider should be addressed:

- to bring the Code up to date, including by addressing changes in the law;
- to clarify certain aspects of operation of the Code that were not as clearly expressed as would be ideal,
- to reference relevant guidance and explanatory material that had been released by the OAIC since the Code was registered in 2014.

Proposed changes include:

- references to the Notifiable Data Breach Scheme, to ensure good practice in mitigation of risk of data breaches and sector awareness of the requirements of this Scheme;
- clarification as to alternatives available to consumers in raising concerns as to operation of the Code and complaints as to compliance with provisions of the Code;
- improved coverage of obligations of Code members to ensure compliance with data privacy law in relation to use of cloud services, outsourcing and other data handling practices conducted outside Australia, including relevant foreign laws such as the General Data Protection Regulation of the European Union;
- removal of references to the AMSRS Code of Professional Behaviour, which is not controlled by the Code Administrator and which therefore could be changed by AMSRS in a manner that conflicts with the findings of this review or the approval requirements of the Code;
- stronger monitoring, stronger compliance and reporting mechanisms, to heighten sector wide awareness of issues or concerns which arise in relation to an individual Code member but which have wider sector relevance.

AMSRO Member organisation comments in relation to Code revisions are welcome and should be addressed as below and made before 20 November 2019.

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