

submission

Submission by Privacy NSW
to

Ministerial Inquiry into the Taxi Industry



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Privacy NSW Submission into the Ministerial Inquiry to the Taxi Industry

Introduction

Privacy NSW is making this submission regarding proposed changes to the Taxi Industry. Our comments are based on the terms of reference provided at the Ministry's website. We have also based our comments on complaints received which relate to privacy and the taxi industry.

Our comments are in relation to:

- the role of taxi-companies, co-operatives and networks and their impact on customer service standards
- ways to improve the taxi industry focus on customer service
- taxi customer service issues

Privacy NSW is the Office of the NSW Privacy Commissioner. The Privacy Commissioner is the holder of an independent statutory office, created by Parliament under the Privacy and Personal Information Protection Act 1998.

The functions of the Privacy Commissioner include making public statements about any matter relating to the privacy of individuals generally, and publishing reports and recommendations about any matter that concerns the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of individuals.

This submission reflects the views of the NSW Privacy Commissioner. It does not reflect the views of the NSW Government.

The PPIP Act

Whilst the PPIP Act only gives enforceable remedies in relation to privacy breaches by public sector agencies, the Act also gives the Privacy Commissioner the power to investigate and conciliate complaints about breaches of privacy by organisations and individuals who are not public sector agencies.

A finding that a complainant's privacy has been 'violated or interfered with' will be based on relevant standards. The 'relevant standards' will differ, according to the nature of the complaint and the type of respondent. In general, the 'relevant standards' will be either the Information Protection Principles from the PPIP Act (the IPPs), Privacy NSW's Data Protection Principles (the DPPs), or what have become known as the 'Prosser tests'. For more information about these standards see:

www.lawlink.nsw.gov.au/privacynsw.nsf/pages/complaints

Since December 2001, the Commonwealth *Privacy Act 1988* has regulated the conduct of *some* private sector organisations - for example, respondents with an annual turnover of more than \$3M. However Privacy NSW continues to deal with



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complaints against the private sector which are *not* regulated by the Federal *Privacy Act*, by reason of either:

- the organisation not being regulated by the Federal *Privacy Act* (eg. a small business), or
- the conduct or decision complained of is exempt from the Federal *Privacy Act* (eg. employee records), or
- the conduct or decision complained of is not regulated by the Federal *Privacy Act* (eg. physical privacy).

Complaints to Privacy NSW about NSW taxis

There have been a number of complaints to Privacy NSW about taxi passenger privacy over the years. Some of these complaints have concerned then Department of Transport's complaint handling procedures, while others relate to the collection and disclosure of personal information by a taxi driver.

The complaint about the Department's complaint handling procedures was made by an individual who had made a complaint about a taxi driver to the Department. In his complaint to Privacy NSW he indicated that the Department had provided the taxi driver with his name and address.

Privacy NSW was advised by the then Department of Transport that the Transport Co-ordination Authority (TCA) had introduced a customer feedback system which incorporated privacy principles and which required that TCA staff investigating complaints were bound to keep complainant information private.

A recent complaint about the disclosure of personal information by a taxi driver was made by an individual who provided a Cabcharge voucher to a taxi driver as payment for her fare. Preliminary enquiries revealed that the driver allegedly copied the information on the voucher and verbally disclosed it to the taxi company. He later disclosed the information to a Sydney radio station by email. The information was then broadcast by a radio announcer. The radio announcer disclosed the following information about the passenger:

- name and occupation
- employer
- departure and arrival locations of the trip
- cost of the trip

The radio announcer allegedly criticised the use of the voucher by the passenger adding that it was a "waste of the tax payer's money".

The complainant was advised of her right to take her complaint regarding Cabcharge (a private company) to the Office of the Federal Privacy Commissioner. Privacy NSW sought advice from the Ministry of Transport regarding the contractual arrangements between taxi drivers and the Ministry, and between taxi companies and the Ministry.



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The Ministry advised that the Passenger Transport Act 1990 does not require that there be a contractual relationship between the Department and taxi companies. The Ministry also advised that taxi drivers are issued with a Driver Authority which licences them to drive taxis. Taxi drivers are not required to provide undertakings with respect to passenger information, however nor are they authorised to collect personal information about passengers.

Privacy NSW pointed out that taxi passengers therefore had no recourse to complain if their personal conversations or their other personal information were disclosed by a taxi driver. It was suggested that the Ministry consider reviewing the terms of the Driver Authority to include a requirement that drivers comply with a code of practice which would protect the privacy of passenger information, among other things. It was suggested that a proven breach of that code could result in disciplinary action such as conditions being placed on a driver's Authority to drive.

It should be noted that the misuse of personal information gathered by a taxi driver may pose significant safety risks, particularly to people vulnerable to physical assault.

Recommendations

Given the fact that taxi drivers are not bound by either State or Federal privacy laws, we are concerned that if passenger conversations or other personal information about passengers are provided to third parties or are used for unrelated purposes by taxi drivers there is no means of redress against the driver and no protection for passenger information.

When passengers travel in the close and confined space of a taxi they may have a limited expectation of physical privacy, however it is unlikely that they will have a limited expectation that their personal information will be used and/or disclosed without their consent and that their information privacy will be breached.

While Privacy NSW might be able to attempt to conciliate complaints against drivers if they are engaged by taxi companies, co-operatives or networks which fall outside the jurisdiction of the Privacy Act 1988 (Cth) it is submitted that taxi drivers, like some of their public sector transport counterparts, should be required by the Ministry of Transport to protect the privacy of their passengers. We believe that the most effective means of protecting passenger information is for drivers to be required to comply with a code of conduct which is enforced at first instance by taxi companies, co-operatives or networks with appeal rights to the Ministry of Transport. We suggest that a code should include the following minimum requirements:

- I. that drivers are not permitted to collect personal information about passengers (verbal or written) except in the course of accepting a booking or where the passenger consents to the collection of their information for a purpose related to travel.
- II. that drivers do not use or disclose passenger information (verbal or written) except in relation to clarifying bookings or where passengers consent to the use or disclosure for a purpose which is related to travel.



- III. that drivers may collect, use or disclose passenger information in order to prevent or lessen a serious threat to any individual's safety

We suggest that a proven breach of requirements I and/or II should give rise to disciplinary action against the driver and possibly give rise to the placing of conditions on the Driver Authority by the Ministry on advice from the taxi network. We also suggest that proven breaches should trigger driver privacy training to be arranged by the taxi company, co-operative or network.

Conclusion

Taxi drivers are unregulated by either State or federal privacy laws, yet the information they may collect about passengers may be significant. The possibility of misuse of such information diminishes customer's trust in taxi companies, co-operatives or networks.

We welcome this review into the taxi industry, and recommend that specific customer privacy safeguards be included in revised and enforceable customer service standards.



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