

Submission to the APEC CBPR Consultation

Consultation closes COB Thursday 27 July 2017

Your details

Name/organisation <i>(if you are providing a submission on behalf of an organisation, please provide the name of a contact person)</i>	Australian Services Roundtable
Contact details <i>(one or all of the following: postal address, email address or phone number)</i>	Alina Bain Chief Executive Officer 0400202804 alinabain@australianservicesroundtable.com.au

Publication of submissions

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If you choose to provide a separate document, the following formats are preferred:

- Microsoft Word
- Rich Text Format (RTF)
- txt format.

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Your submission

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Executive Summary

- The Australian Services Roundtable (ASR) supports the APEC Cross Border Privacy Rules System (CBPRS) and urges the Australian Government to join the Scheme.
- There are many benefits to be obtained by all stakeholders and consumers from participation in the CBPRS, particularly as it matures through regional adoption. These include trade, regulatory and governance benefits, as well as improvements in trust.
- At a time when the Australian Government is focussed on regional and global participation by the Australian services industry, it is vitally important that Australia joins the CBPRS and enables Australian firms to participate in regional and global opportunities. The CBPRS facilitates the flow of data and enhances the ability of services firms to globalise.
- The CPBRS is a voluntary scheme for individual companies and is their choice whether they wish to join and avail themselves of the benefits.
- In addition to facilitating trade, the CBPRS provides a streamlined regulatory environment which will yield benefits for firms in terms of compliance.

About ASR

- The Australian Services Roundtable is the peak business body for the Australian services industries. ASR represents Australia's services industry across a range of sectors including telecommunications, financial, education, and ICT services. ASR's key objective is to secure Australia's place in the global services economy.
- ASR has a large number of SME members.

Introduction

The Australian Services Roundtable (ASR) supports the APEC Cross Border Privacy Rules System (CBPRS) and urges the Australian Government to join the Scheme.

The CBPRS is a voluntary scheme; ASR members and the broader industry which supports this submission have not yet committed to seek to participate in the Scheme if Australia were to join. However some of the companies have already been accredited in other economies to participate in the CPBRS.

We refer to the [report](#) by Information Integrity Solutions Pty Ltd (IIS) referenced in your Discussion Paper. The report identifies the many benefits to be obtained by all stakeholders and consumers from participation in the CBPRS, particularly as it matures through regional adoption. These include trade, regulatory and governance benefits, as well as improvements in trust.

Australian companies who transfer personal information across borders to conduct their business are regularly faced with compliance challenges. They need to comply not only with local Australian requirements but also with foreign requirements when personal information is being imported to Australia from those countries. In the case of multinational companies, they also need to comply with any requirements applicable to transfers between the countries in which they have subsidiaries. Such transfers have been necessary for business operations for many years, but are accelerating as operations globalize with collection and processing occurring in multiple locations, and as data volumes and uses increase exponentially.

These compliance challenges arise from the varied and incompatible approaches nations are adopting to regulate these transfers. 18 of the 21 Asia Pacific Economic Communities (APEC) Economies now have sectoral or general Privacy Laws, 17 of which impose conditions on cross border data flows.

The APEC CBPRS introduces a degree of harmonisation in a region of otherwise uneven and diverse privacy protections. In summary, the System:

- requires organisations to implement a robust internal compliant privacy model *certified by an independent agent* to meet APEC privacy standards;
- provides a simple and effective enforceable mechanism to help meet regulatory

requirements for protecting personal information in cross border transfers; and

- assists Australian multinational businesses to manage compliance with the diverse legal systems in APEC, including Australia.

Certification demonstrates a commitment to consumer privacy and provides credible evidence of trustworthiness which may also help to attract future business from individuals and organisations in other APEC economies and, indeed, anywhere in the world.

All APEC countries have made a commitment at the highest level of government to develop cross-border privacy rules for the APEC region and to use them once they exist to enhance privacy protection and eliminate barriers to cross-border data flows to facilitate trade. It is incumbent on governments in APEC economies to devise effective domestic strategies to implement these commitments and incentivise businesses to use the system.

There are benefits to Australia, and Australian companies, in joining and participating in the CBPRS - as more countries join and the number of participants increase, and as the CBPRS integrates with other global systems, managing cross border transfers of personal information will become more efficient - this will reduce compliance costs for companies, and improve consumer confidence. CBPRS would indeed be an enabler and not a barrier for companies transferring personal information across borders and, in fact, may be one of the few allowable mechanisms under local laws for transfers of personal information.

Questions raised in the Discussion Paper

- 1. Would it be advantageous to Australian business and consumers for Australia to join the CBPR system?**

Yes.

At present the APEC economies each have their own privacy laws and regulations which lead to significant privacy compliance costs for firms with cross border operations.

The CBPRS provides a degree of harmonisation and certainty which will reduce compliance costs and will incentivise Australia's services firms to seek out internationalisation and cross border opportunities under Australia free trade agreements.

The harmonisation benefits will increase as more economies join the scheme. Australia is well placed in the APEC region for services firms looking at regional expansion. The CBPRS will encourage Australian firms and those outside Australia who are seeking opportunities in the region.

The ability to move data across borders is key to a services firm ability to internationalise.

2. Has Australia's lack of participation in the CBPR system hindered your business relations in the APEC region, or beyond? Why?

Yes.

The ability of a service firm to move data across borders lies at the very heart of their ability to internationalise. The regulatory uncertainty and additional compliance costs are a disincentive for Australian firms who are seeking internationalisation opportunities.

For many Australian services firms, particularly SMEs, the costs to internationalise are significant. Licensing and establishment costs are a significant investment. The compliance burden of different regulatory schemes for privacy across the region are an additional and unnecessary burden.

It is in the Australian Government's interest to assist Australia's services firms and in particular services SMEs to internationalisation and grow. And in doing so, to identify regulatory and cost burdens and seek to remove or minimise them.

3. What is your experience in dealing with businesses in other APEC economies that are a part of the CBPR system?

The United States and Japan are both very active participants in the APEC scheme and this brings benefits to their services firms seeking to move data across borders. As more economies join the scheme, the greater the benefits for all services firms across the region.

4. Would you be prepared to contribute to the cost of establishing and maintaining an Accountability Agent system?

Yes.

The ASR supports a scheme, paid for and managed by the users of the scheme and this includes bearing the costs of their own use of any Accountability Agent in Australia.

5. Would you be prepared to contribute to the cost of the development and maintenance of additional enforcement arrangements (such as those that might be established through a code)?

Yes

The ASR supports the development of a self-regulatory enforcement scheme (including that which might be established through a Code). Costs and complexity can be best managed by an industry developed and administered scheme.

6. What accountability and redress mechanisms do you think are appropriate for consumers dealing with businesses operating under the CBPR system?

The CBPRS provides adequate consumer safeguards. ASR supports the mechanism anticipated by the scheme through the Accountability Agent and additional enforcement as required necessary, perhaps through the Office of the Australian Information Commissioner

ASR supports a consumer education campaign in relation to the adoption of the CBPRS by Australian firms.