

Assignment 1 Essay

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Topic:

The Australian Privacy Act (1988) shares many common requirements with the European Union's (EU's) General Data Protection Regulation (GDPR), but it doesn't go far enough to protect the data privacy of Australian citizens. Discuss the notable differences between the two and what improvements could be made to the Australian Privacy Act (1988) and why you think these would be beneficial.

Introduction:

In the growing age of technology, where more and more traditional systems have migrated to an online form, it is important to consider the legality and the rights people have to their digital footprint and identity.

Many countries and unions have embraced such change and developed legislation to protect user's personal information and data, which is more widely accessible to companies and agencies through the world wide web. Two such legislation is "The Australian Privacy Act (1988)", and the "European Union's General Data Protection Regulations" (GDPR). Both acts aim to establish regulations when it comes to handling people's personal data. Yet, in comparison to the EU regulation, the Australian act seems to lack the proper restraints to protect the data privacy of Australian citizens.

To understand why this is, it is important to analyse the actual contents of each legislation to see what areas each cover that the other does not. Furthermore, it is crucial to recognise the context of which each legislation was formed as that many impacts the decisions made regarding its contents. In keeping with the spirit of interconnectedness that the world wide web has granted us; it is important to learn from our fellow man, and the Australian Privacy Act could learn from the EU's General Data Protection Regulation in order to improve itself.

Essay body:

The effectiveness of each legislation can mostly be attributed to their different approaches to several categories. Firstly, violation for each differs, with the GDPR taking the upper end of the penalty cost. "Under GDPR, organisations in breach of GDPR can be fined up to 4% of annual global turnover or €20 million (whichever is greater)", [1] juxtaposing the Australian Privacy Act: "Serious and repeated interferences with privacy may be subject to a civil penalty of up to \$4.2 million. (13G)". [3] The higher penalty rates of the GDPR may be a contributing factor to the increased effectiveness of the GDPR over the Australian Privacy Act, as a higher fee would deter more people from violating the act's rules. Subsequently, the consent category may be a leading factor to the success of the GDPR. GDPR consent stipulations: "Companies will no longer be able to use long illegible terms and conditions full of legalese, as the request for consent must be given in an intelligible and easily accessible form" [4]. This stipulation prevents companies from using vocabulary foreign to the average person to confuse the user into consenting to something they do not fully understand the weight of. This small detail will prevent the personal information violation of all the users who tend to only glance over terms and agreements and take all at face value. The Australian Privacy Act has a similar stipulation; however it uses more general words such as "adequately informed", which leaves far more room for companies and smaller entities to fool their users by 'informing' users in terms they do not fully comprehend. Finally, the GDPR simply covers areas that the Australian Privacy Act does not. This is especially apparent in 'the right to be forgotten'. Also known as data erasure. Unlike the Privacy Act, the GDPR has an emphasis on the erasure of a user's personal information from an entity's database and further procedures for any third-party users of said personal information. [6] The Privacy Act must take reasonable acts to destroy and/or de-identify the data of a user once it is no longer needed or exceeds the agreements with the user (consent). However, entities under the Privacy Act's legislation are not required to destroy or de-identify user information. A grey area left up to a moral decision by the entity holding the information; this is a hole in the Privacy Act that greatly weakens its effectiveness to protect personal information of its citizens. When performing point to point comparisons between the two legislations, it is evident that, in comparison to the Australian Privacy Act the GDPR took greater lengths to close any potential loopholes in their principles.

Although both legislative materials share the same goal of protecting the privacy of people's information; when each was created heavily impacts how each was written. The Australian Privacy Act, in comparison to the EU's General Data Protection Regulation, is an old piece of legislation. Thus, its contents were written in relation to its time period. Although the act holds up even in this modern era; some aspects have become outdated. A prime example of this who is obligated to uphold the act. An Australian business is required to uphold the Privacy Act if they have a turnover of more than \$3 million AUD. [2] There are exceptions to this rule such as if the business trades in personal information [2]. However, even with the few exceptions to the former requirement, it is still too much of a narrow scope to encapsulate the many kinds of entities that have access to people's personal data. Back in the time when the legislation was written, it was not as common to have businesses that were having less than \$3 million yearly turn over and handle user information [2]. However, currently, even the smallest entity could gain access to its user's data. Juxtaposing the Australian Act, the EU's Regulation uses the broader phrasing of "Offer goods and services to people or businesses in the EU (whether paid or for free), or

monitor the behaviour of people who are in the EU (including via behavioural advertising)” [5]. This casts a wider cone on the current society which is rich with small business owners and start ups which deal in non-user information related items, but still hold personal information from their users (E.g. credit card information from a service subscription). The EU Regulation has many advancements, like this one, over the Australian Act; partially because the Privacy Act was written in 1988. This is a stark difference from the GDPR’s birth year of 2016. The GDPR was written in the context of the modern digital age. Thus, it was able to use the context of the current times to appropriate right legislation from it. Although 1988 isn’t the stone ages, the rapid evolution of technology and technological services in the recent decades have certainly hindered the effectiveness of the Australian Act as its writings have not aged well.

The analysis of the Privacy Act’s shortcomings in comparison to the GDPR is nothing new. Yet the Privacy act hasn’t seen an amendment since 2000 [1], long before the birth of the GDPR. Now with the GDPR in mind, several amendments to the Privacy Act could be made to improve its ability to protect the information of its citizens. The main take away is to overview the wording of its legislation with more caution. Many of the advantages that the GDPR has over the Australian Privacy Act is that its wording is less broad and more particular, stating specifics about how consent is to be gained, how information is meant to be handled, how information is meant to be disposed of etc. Furthermore, in addition to creating more specific legislation, the Privacy Act could use the examples of the GDPR to expand their legislation to cover areas they lack in comparison to the EU Regulation. Another major change that the Privacy Act might want to do is to widen the code of effectiveness of their legislation; meaning they should widen the criteria that stipulates who must follow the Privacy Act. This way, the act will be able to enforce personal information privacy to more entities which hold user data but don’t fit in the current, insufficient scope. There is an obvious culture difference from the EU to Australia, however the people’s right to privacy is universal; thus the Australian Act should take away all the positive points that they can get from the similar EU legislation. The GDPR does have the advantage of being a younger, more modern based legislation; thus it was able to write its principles in accordance to the real world needs of its citizens in a modern context. The Australian Privacy Act’s somewhat outdated legislation does leave much room for improvement. However, now with the even more modern context, and effective legislation like the GDPR to pull from, the Australian Privacy Act now has all the tools it needs to greatly improve the privacy of its citizens private information.

Conclusion:

The advancements of modern information sharing are a marvel to behold and has proven its use all around the globe. However, no matter how beneficial such advancements are; the human right to privacy will never change. It is the responsibility of every nation to protect the personal information of its citizens. The Australian Privacy Act and the European Union's General Data Protection Regulations both aim to ensure the privacy and safety of user's data and information, but to differing levels of effectiveness. The GDPR's more in-depth rulings, younger nature and more extensive coverage does allow it to go further than the Australian Privacy Act to protect the data privacy of its citizens. The Australian government can and should learn off the EU's example to ensure its citizens feel safe and secure.

Total word count (introduction + essay body + conclusion): 217 + 1166 + 131 = 1514

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