



SOCIETY OF AUSTRALIAN

GENEALOGISTS

Submission to the  
Review of the Privacy Act 1988

Authorised by The Society of Australian Genealogists  
ABN 45 029 698 871 ACN 000 049 678

December 2021

Contact: Melissa Hulbert, President  
[info@sag.org.au](mailto:info@sag.org.au)

## **PRIVACY ACT 1988 REVIEW: ISSUES AFFECTING GENEALOGY ORGANISATIONS**

The Society of Australian Genealogists welcomes the opportunity to contribute our thoughts and concerns regarding the *Privacy Act Review – Issues Paper* (October 2021).

This submission conveys the key issues identified by the Society of Australian Genealogists as a non-profit organisation dedicated to helping people to learn more about their past. The concerns we raise are commonly shared by other genealogy societies.

### **1. Society of Australian Genealogists**

Founded in 1932, the Society of Australian Genealogists (SAG) is the oldest family history society in Australia. Its principal objective is *the advancement of genealogical education*, which is reflected in its education and training program, events, and collections.

Our Mission is to: *Inspire all to learn more about their past.*

SAG provides education and resources to help nearly 4,000 members research their own identities and family history, using whatever resources are available within their own families as well as in the public domain. Genealogists research and collate family trees in order to understand our own heritage or that of any person we are trying to help. An intrinsic part of this process is sharing information and research with extended family members. Therefore, appropriate approaches to privacy are a vital consideration of our research.

As genealogists, we do not trade or collect personal information in order to sell it, although some of our members may hope to write a book or autobiography about their findings. Copyright provisions already allow for the use of collecting information for personal research or family history. We recognise that additional permissions need to be sought before publication.

As part of its education program, SAG teaches the 'Genealogist's Code of Ethics' (as published by the Board for Certification of Genealogists). This code requires genealogists to

*not publish any personal, genealogical, or genetic information disclosed to me unless I have informed consent or omit personally identifying detail. I will also treat publicly available information about living people with sensitivity and will not publish any information with foreseeable potential for harm.*  
<https://bcgcertification.org/ethics-standards/code/>

### **2. The need to protect the right to identity**

Private genealogical research needs protection or exclusion from the scope of this Privacy Act Review.

Just as privacy is a universal human right so too it is a basic human need to know your family history and genetic identity. Genealogists seek to reconnect people with their families. Great pain is caused when individuals feel deprived of a familial connection - this is in keeping with the successive government policies acknowledging the harm of 'not knowing', which resulted in the national apologies to the 'Stolen Generations', to 'Forgotten Australians and Former Child Migrants' and to 'People affected by forced adoptions'.

We believe the rights of the individual to know their family identity needs to take precedence over the rights of an individual to not be identified. Considering the privacy rights of such individual family members as being absolute risks the continued denial of truth. SAG's position does not suppose that details of the identified family should be publicised or that there is any obligation for communication between the two parties.

#### *Family History and DNA Research*

Popular family history television programs and commercial online databases have led to an increased interest in family history research, and a desire to know family origins and to connect with other relatives who may have stories and documents about shared ancestors. The Royal Australian Historical Society has estimated that 250,000 Australians are members of family history-related organisations ([www.rahs.org.au/national-family-history-month](http://www.rahs.org.au/national-family-history-month)). Advertisements have also encouraged many people to take a DNA (genetic) test as the first step to identifying their family origins.

There is a steep learning curve encountered when testers receive their DNA test results. Testers often need education and guidance from more experienced genealogists, such as may be found within SAG, to be able to conduct their own research.

Genealogy research in Australia involves compiling and analysing a range of documents, most of which are already in the public domain, to reconstruct family groups. After searching backwards for ancestors, the next step is researching forwards to descendants, which will often include living people. We search for these living family members who often hold the stories and photographs about our family, our heritage and thus our identity. It is important that any changes to the Privacy Act do not restrict this capacity to connect.

Australian genealogists are already restricted from accessing recent birth, death and marriage certificates, and historical censuses – documents which are available to genealogists in countries such as United Kingdom. To find recent family, Australian genealogists need to use documents which are currently in the public domain, such as obituaries and death notices in newspapers – these are published voluntarily with the express aim of sharing information about an individual with anyone interested. It is important there are no further restrictions imposed on what is available for us to research.

Likewise, when an Australian genealogist does a direct-to-consumer DNA test, hoping to find other family members, they only find and can contact relatives who, at the time of taking a DNA test, expressly approved the provision of their contact details to relatives who share their DNA.

Individuals searching for the truth of their identity may be able to conduct that research themselves but many need education or even to employ others with more research experience. Without assistance they may make errors in their conclusions or in their approach to potential relatives.

DNA testing has become an integral part of genealogical research. However, DNA information is only valuable when used in combination with traditional genealogy research methods (using open access records). Employing traditional research methods, we build family trees. The DNA genealogy test then allows the *comparison* of shared DNA segments between consenting individuals. This comparison helps us to draw inferences about possible relatedness. DNA cannot on its own identify how we relate to others; that needs searching traditional genealogical documents and records to build the family trees. Then DNA comparisons with matches can confirm the truth of the written documents along with the conclusions we have drawn.

#### *Family History Research and the Privacy Act Review*

The Privacy Act already recognises genetic data as sensitive information, and the Office of the Australian Information Commissioner (OAIC) has flagged its interest in safeguarding this information. However, the Issues Paper identifies strengthened consent requirements as proposed area of reform (Recommendation 16(c)) and the Discussion Paper raises concerns regarding commercial DNA testing and its association with healthcare.

While SAG supports safeguarding of personal information in principle, it believes any strengthening of consent provisions requires very careful consideration, to avoid unintended consequences:

- a) *Disruption to foreign-based commercial operations.* Most genetic genealogy testing providers are US-based. If local privacy laws conflict with their business processes or are ambiguous, it is possible those providers would cease operations in Australia. If that occurs, both professional and private genealogists would lose a key tool for reuniting families and serving individuals without known family connections.
- b) *Misinterpretation of health information.* At present, available direct-to-consumer genealogy DNA tests do not provide health information to Australians, other than some general advice about healthy living. SAG always encourages anyone concerned about the medical implications of DNA testing to consult with a genetic counsellor.
- c) *Increased limitations upon identity and DNA research.* DNA tests are essential to finding our identity and our heritage. The OAIC must consider the impact on individuals who, without the support of DNA testing, are likely to face great difficulty in identifying their heritage or familial connections. It is essential that this current privacy review does not restrict their opportunity to connect. Examples of such individuals include:

- Those who migrated to Australia, especially those who are, or whose ancestors include, Holocaust survivors, refugees, international adoptees, or other displaced persons – who may only find surviving family members in large direct-to-consumer international DNA databases.
  - Indigenous Australians often must turn to DNA testing and commercial companies like Ancestry when they cannot find details of their own biological family through government records.
  - Those who were taken from their birth parents lawfully, inappropriately, or unlawfully – who may never be able to find immediate family. Likewise, those impacted by misattributed parentage or donor conception, foundlings and others with family mysteries might never be able to solve the questions about their biological relatives and identity without access to both traditional and genetic genealogical methods. SAG provides information about professional counselling services available to assist someone (such as an adoptee) to make initial contact with their biological families.
- d) *Impracticality of increased DNA consent requirements.* DNA epitomises the concept of shared and intertwined personal information. While donor consent is crucial, it is impractical to disentangle this genetic data or to obtain consent from every person who shares part of it, without having an enormously adverse effect on genetic genealogy research. The DNA matches we find on commercial website have already given consent to be contacted by their genetic relatives.
- Given the nature of genealogy, obtaining consent from all connected parties related to an individual is not viable. Significant ‘consent fatigue’ would arise. In many cases, locating these parties’ contact details would be far more privacy intrusive than current processes.
  - SAG provides encouragement and educational resources to help people undertake very thorough research, compiling all the evidence towards an accurate conclusion, recognising the harm that might be caused if individuals are guessing or reaching conclusions based on inadequate information.

### 3. Recommendations

To support family connections, to correct past injustices and misunderstandings, we need access to at least all the information currently available to us, to build family trees and make contact with extended family who have chosen to put some information in public domain, in order to accurately reflect relationships.

The unique pursuit of genealogy contributes to self-identity and the human need for familial connection. To successfully conduct family history research, we must maintain our current access to personal information. The Society of Australian Genealogists recommends:

- The OAIC opens dialogue with representatives of the genealogy community before closing access to any records currently used for family history research, due to amendments to the Privacy Act.
- No tightening of current restriction periods for accessing open records are made, due to amendments to the Privacy Act, noting the already restricted access to Australian family history documents when compared to other nations.
- Privacy consent requirements for open access records are not broadened or strengthened further as this will lock down access, preventing genealogists from being able to cross-check and confirm their conclusions with multiple sources, requiring genetic genealogists to ignore best practices.
- Genetic genealogists need continued access to compare their DNA with those living relatives (who have already chosen to grant that permission). It would be a potentially impossible task to contact and obtain permission from every living person connected with an individual’s genealogy research.

