



## Opening statement to Legal and Constitutional Affairs Legislation Committee

### Inquiry into Privacy and Other Legislation Amendment Bill 2024 [Provisions]

22 October 2024

#### Introduction

Good morning, Chair and members of the committee.

Thank you for the opportunity to appear before you today.

[A] My name is **Louise McGrath**, I am the Head of Industry Policy and Development with the Australian Industry Group.

[B] I am joined by **Yoness Blackmore**, Principal Advisor – Workplace Relations Policy, also with Ai Group.

We thank the Committee for the opportunity to provide further assistance to the inquiry, following our written submission we made on 11 October 2024.

We note the Committee is to broadly inquire and report on the provisions of the Privacy and Other Legislation Amendment Bill 2024.

As you may be aware, Ai Group is a peak national employer organisation that represents employers of all sizes, and which conduct business in traditional, innovative and emerging industry sectors. Ai Group supports the need to provide the public with confidence that their privacy and their data is being handled safely and responsibly.

We have focused our submission on this Bill to the areas of relevance to our members in connection with the workplace. However, we refer the Committee to our past submissions which set out our members' position more generally in relation to the Government's review of the Privacy Act. As you will be aware, we have consistently pressed for the employee records and small business exemptions to be retained and for the Government to instead pursue best practice outcomes for members' dealings with personal information. We maintain this position.

Before we address questions – we would like to briefly highlight several key points:

- Our members as employers deal with personal information for legitimate reasons and in the public interest. We ask the Committee to recognise that.

- This includes where employers manage their workers' conduct and performance, to ensure compliance with their obligations under workplace laws and to keep people and property safe and free from injury or damage.
- While a worker might believe that an employers' dealing with their personal information breaches their right to privacy, this should not always be considered where it occurs in connection with the workplace.
- The introduction of the statutory tort for a serious invasion of privacy is significant change is not justified by any apparent existing shortcomings, especially in the context of the workplace.
- If the statutory tort is retained, despite our opposition, it is essential the employee records and small business exemptions and definition of personal information are applied to the cause of action. There must also be specific defences acknowledging the legitimate dealings with personal information in connection with the workplace and the public interest in maintaining that.
- Due to the generally commercial or proprietary nature of automated decision making or other artificial intelligence tools, it will also be extremely difficult for most employers to be open and transparent in an APP privacy policy. A better approach would be to support our members in their adoption of these tools, including with reference to the 10 voluntary guardrails recently introduced by the Government to support safe and responsible AI use.
- Finally, it is our position that the proposed expansion of regulatory enforcement powers and penalties is unwarranted and pre-emptive. OAIC's focus should instead provide business uplift through education and industry engagement and the proposed amendments do not do that.

With that brief introduction, we will be pleased to take questions.