

AMSRO's Privacy Code

IS IT WORTH TALKING TO REGULATORS?

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for the Global Market Research Association Hub*

The Association of Market & Social Research Organisations (AMSRO) is the peak industry body for market and social research organisations in Australia. In 2003, AMSRO launched its own industry-specific privacy code, the Market and Social Research Privacy Principles. In 2014 it was the first (and only) industry body to register a non-mandatory APP industry privacy code under Australia's new privacy legislation. This article explains why that was done and the benefits of this approach.

What's the Australian situation?

On December 1 2014 the Association of Market and Social Research Organisations (AMSRO) registered the Privacy (Market and Social Research) Code on the Federal Register of Legislative Instruments. The Code is the first (and remains the only) registered non-mandatory, co-regulated privacy code under the legislated Australian privacy rules, the Australian Privacy Principles (APPs).

The changes to privacy practices include a new set of 13 APPs for the private sector, along with significant, new enforcement powers, penalties and sanctions for the Privacy Commissioner. The APPs mandate how and when an individual's information can be used and penalties can hit AUD1.7 million.

These changes, in conjunction with today's tech driven world, an increase in general privacy complaints along with a number of high profile data breaches , mean protecting personal information is fast becoming serious business.

Why did AMSRO decided to register a code?

It's important to note that the new code superseded an earlier one (which AMSRO members worked under for just over ten years without any record of an official breach). By developing its own privacy code in 2003, AMSRO essentially designed and promoted practices that minimised intrusion and assured the public, commercial and government sector that research is carried out honestly, objectively and with best practice to protect the identities and rights of individuals.



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Additionally, operating under a Code for the past decade has enabled the industry to differentiate itself from others. Amongst other benefits, amendments to Australia's Telecommunications Act now differentiate between direct marketing and research practices and research organisations are excluded from the provisions of the Do Not Call register (which lists over 10 million Australian telephone numbers). More recently the Code has supported the industry's bid to gain broader research access to a list of Australian wide telephone numbers (landline and mobile) via the Integrated Public Number Database of every connected phone of any type in the country.

It's this unique positioning, coupled with AMSRO's commitment to best practice along with major changes to privacy law, that motivated AMSRO to register a new Code.

What are the advantages of working under a code?

As most major research organisations in Australia are members of AMSRO, it means that the great majority of genuine research approaches to the public - ranging from large-scale national surveys to smaller more specialised collections - operate within the framework of the approved co-regulated Code.

The Market and Social Research Privacy Code 2014 relates to industry practices in a clear and unambiguous way, enabling research organisations to operate with certainty. It aims to ensure that member organisations understand how the new APP's are applied in regards to collecting, retaining, using, disclosing and destroying personal information in market and social research. In short, it's a 'researcher's roadmap' providing customised, specialist instruction and explanatory material as to how the APP's are to be applied and complied with.

Additional aims include:

- ✓ to facilitate the protection of identified information provided by, or held in relation to, the participants or subjects of market and social research;
- ✓ to enable quality research to be carried out, so as to provide accurate information to government, commercial and not for profit organisations to support their decision-making processes;
- ✓ to allow market and social research small business operators that are otherwise not subject to the Privacy Act 1988 (Commonwealth) to benefit from compliance with industry best practice in relation to the handling of identified information.

It's these additional requirements and higher obligations which reflect the fact that participation by subjects in research as carried out by AMSRO members is always voluntary; that market and social researchers are generally not interested in making use of the identity of research participants and that they use and disclose the information only for research purposes. Therefore, not only have AMSRO



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members adapted to the extension of the legislation, but also, effectively given its research practices (as outlined in the professional bodies' Code of Professional Behaviour) the force of law.

"I'm very pleased to have worked with AMSRO in the development of the Code. It is the first industry-led APP Code to be registered under new Australian privacy laws. This is a significant step that highlights the value of co-regulatory schemes under the Privacy Act and it demonstrates the importance of privacy for the market and social research industry."

Australian Privacy Commissioner Timothy Pilgrim

Importantly, the Code also offers a dispute resolution mechanism, allowing members to report to AMSRO and seek guidance from its Privacy Compliance Committee, before a privacy matter is escalated to the Commissioner's office.

Furthermore, the introduction of a new Code extended to the launch of another Australian-first, the AMSRO Trust Mark, which recognises and promotes member organisations who meet high ethical standards set by the new code. The Trust Mark represents increased protection against privacy breaches, quality in delivered projects and protection of member's client reputation.

Any suggestions for other associations considering a code?

- ✓ Identify opportunities and risks associated with operating under a code,
- ✓ Work in close collaboration with national privacy authorities,
- ✓ Check-in regularly with your members and surround yourself with experts in the industry who can help guide and support the practical application of the privacy legislation.

It is also important to balance whether the industry would benefit from simply meeting legal requirements or exceeding them. In most cases the ICC/ESOMAR Code on Market and Social Research exceeds the base requirements for data protection and privacy law.

The recently released ESOMAR Data protection checklist outlines the questions you should ask in order to ensure that you're complying in the market, social and opinion research context. Given our experience in developing our own code, Australia was invited to play a part in developing these guidelines and Jayne Van Souwe, a long-standing member of our AMSRO Privacy Compliance Committee, who also sits on the AMSRS Professional Standards Committee, was a member of the working group.



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MAY
WEDNESDAY 6 MAY 2015
Q&A PANEL DAY
PRIVACY AWARENESS WEEK
WEBINAR
12:00 - 3:30PM

Presented by: AMSRO's Privacy Compliance Committee

- Terry Aulich (CEO, former Senator and Privacy Law specialist)
- David Vaile (Cyber Law and Policy Community, Faculty of Law, UNSW)
- Jayne Van Souwe (MD Wallis Group Consulting)
- Szymon Duniec (MD ORIMA Research)
- Andrew Maher (HR Legal)
- Sarah Campbell (AMSRO)

Register: www.amsro.com.au

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