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data privacy detective series
information sheet

1. overview of the covid tracing app – australia

How does it work:

- **Aim:**
  - The aim of the COVIDSafe app is to keep a record of anyone with whom its users have been in close contact. It aims to allow for the easy identification of persons who have been in contact with someone who has tested positive for COVID-19.

- **Use of App:**
  - Downloading the app is voluntary.
  - When users download the app, they must provide their name, mobile number, postcode and age range.
  - The App must be open on the user's phone, with Bluetooth enabled, to collect data (but it can run in the background whilst other apps are open).

- **How many people have downloaded the app?[1]**
  - Approximately (only?) 6.5 million people. However, this isn't unusual when it comes to new or awaited technologies.
  - Interestingly, research by the University of WA found that people's willingness to download the app was related to people's political party preference.
    - E.g. supporters of the Greens and One Nation less inclined to download the app compared to Coalition and Labour voters – this is consistent with media outlets reporting a high percentage of Coalition / Labour MPs, but a low percentage of Greens / One Nations MPs, personally downloading the app.[2]

- **How many downloads does the app require to be effective?**
  - The Australian Government originally proposed a target of 40% of the population (10 million people) downloading the app. However, that figure hasn't been recently referenced. The Government is now saying the general target is every Australian with a smartphone.

2. disruptions by covid (i.e. more than our health – vast differences in how we work and interact, by going digital etc)

- **As expected, the disruption brought on by COVID-19 appears to be negatively affecting our health:[3]**
  - A survey of households from March to May found 22% of people eating more snack food and 14% drinking more alcohol;
  - Further, 1 in 10 Australians have reported feelings of depression.

- **The onset of COVID-19 has also brought on a dramatic change to the way we all work:[4]**
  - Remote virtual meetings are now common place, and activity has increased on a range of digital platforms.

- **Businesses and their employees are faced with the challenge of adopting working from home in a bid to keep their jobs safe and the economy on track.**
  - There are also businesses planning a permanent shift for the location of their workforce– e.g. the German technology company *Siemens* has decided to let its employees work from wherever they want for two or three days a week on a permanent basis.[5]
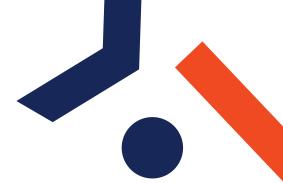
3. is australia using tracing to deal with the pandemic?

- **Yes – the CovidSafe App, which has been rolled out on a national level, is a contact tracing app.**

  - The app recognises other users' devices with the COVIDSafe app installed and Bluetooth enabled within approximately 1.5 metres for 15 minutes or more, and will note the:

    - Date;
    - Time;
    - Distance; and
    - Duration of the contact.

  - If a user tests positive for COVID-19, the app will ask for the individual's consent to upload the data collected by the app to a data storage facility.

  - Health and State officials can then carry out "Contact Tracing" to contact other users who were in close proximity with the person diagnosed with COVID-19.

  - The Prime Minister has promoted the app as being central to the Government's strategy for reopening the economy.

- **From a utility perspective, there has been a lot of criticism more recently that the app isn't doing what it was supposed to.**

  - COVIDSafe's ability to reliably transmit and collect encrypted codes using Bluetooth from other apps remains under scrutiny. Experts have criticised the app for not being useful enough in finding potential infections.

  - The COVIDSafe app has been criticised for having unintended effects on battery power, other apps, and may not connect with iPhones if the screen is locked.[6]

  - The Federal Government's own testing back in late April showed the app only worked effectively on locked iPhones about a quarter of the time or less.[7] The app's ability to communicate between two locked iPhones was rated as "poor" as of April 26.

  - In April, Apple and Google announced they were working together on sorting out their Bluetooth differences, and on a Bluetooth token exchange system that could be used by countries that didn't already have their own contact tracing systems. In late May, Apple and Google both released their versions of that software, but Apple had coupled the Bluetooth fix and the proposed contact tracing system – so governments couldn't take advantage of the former without also adopting the latter.[8]

- **On the State/Territory level, each State has its own tracing methodology/strategy.**

  - The easing of restrictions in certain States/Territories has brought about the implementation of certain measures/protocols, which are designed to control the outbreak and minimise the spread of COVID-19.

  - Some States and Territories have issued a Direction or Order, setting out that contact information of customers and visitors must be sought as a condition of particular businesses reopening.[9] E.g. some businesses are taking the temperatures of customers and staff members (and may or may not be recording this information).

- **Victoria:**

  - In Victoria, we had a second wave and went back into lockdown. Currently, under Stage 4 restrictions, only 'Permitted Work Premises' may continue to operate on-site. These workplaces are required to have a COVIDSafe Plan in place, which involves establishing and maintaining a register of every person who attends the workplace for a period of more than 15 minutes. This includes all workers (including sub-contractors) and any customers, clients or visitors permitted in the workplace (including workplace inspectors).

  - However, in the interim period between our first and second lockdown, some businesses, workplaces and premises were allowed to reopen, on the condition that they:

    - collect the information of each person who attends the premise for than 15 minutes (including staff), e.g. first name and phone number; and

- · keep a record of those details, and the date and time at which the person attended the facility for 28 days.
- – With regards to use of the app, Victorian Health authorities said back in July that it hadn't helped them with contract tracing.[10]
  - · In fact, any information logged by the app provided no information that had not already been collected by Health Authorities through traditional contract tracing.
  - · The Victoria Chief Medical Officer argued that this is mainly because people are not going out and interacting with others, particularly in Melbourne, which was under strict lockdown. Instead, people's close contacts are family members or people they live with, and workplace close contacts (and not strangers who a standing next to each other for 15+ minutes).
  - · So the app has not been very useful or relevant in Victoria's context.
  - · It also became publicised in early August 2020 that Victorian officials stopped using the COVIDSafe app for several weeks. The pause allegedly came when Victorian contact tracing teams were under pressure, and the second wave was hitting (with over 500 cases a day). Although State authorities have resumed using the app, the Victorian Deputy Chief Health Officer has said that he doesn't expect to find contacts through the app, because at the moment people are either at work or at home and the contacts are known to them.
- – Earlier this month (September 2020), it was reported that Victorian Health Authorities had enlisted the US cloud-based software company Salesforce to administer a data management system to accelerate contract-tracing efforts.[11]
  - · The system would run in conjunction with the State's 2,600 contact tracers, saving time otherwise spent on manual data entry. It would also provide an electronic interface on which patients and case managers can upload details about where the patient has been, as well as the names, phone numbers and email addresses of their contacts.
  - · The contacts can then be automatically notified by SMS or email, before being approached by the case manager for a more detailed discussion.
  - · This article on the Conversation suggested some ways to safeguard the personal data of Australians in this system, including:
- · requiring two-factor authentication from all parties that access the system;
- · putting regulations and safeguards in place to ensure data in the system is stored in Australia, only accessible to contact-tracing staff and only used only for intended purposes;
- · opening the system up for assessment by cybersecurity experts before it's implemented (potentially by providing the software source code); and
- · keeping audit logs of who accessed the data and when, so any breach can be rapidly traced.
- · **New South Wales:**
  - – The NSW government has identified cases through information collected by the app.
  - – NSW's test-and-trace strategy has been described by the Prime Minister as the "gold standard" in COVID-19 suppression.[12] This is because NSW had a far better resourced, integrated and accountable health system than Victoria. Also, NSW's decentralised health system of 15 local districts paved the way for better management of the virus in every pocket of Sydney and wider NSW.

4. what guarantee is there that sensitive information about our health won't be misused?

- · There are some protections intentionally built into the collection and storage of the data to ensure sensitive information of the participants isn't misused.
- · The collection and storing of COVID app data is regulated by the *Privacy Amendment (Public Health Contact Information) Act 2020*.

Collection of data:

- If a user tests positive for COVID-19, the app will ask for the individual's consent to upload the data collected by the app to a data storage facility. The app cannot do this on its own volition;

- If they do consent, the name of the person isn't released;

- The app does not collect the user's location.

Storage of, and access to, data:

- This means, amongst other, things that:

  – The data and information collected by the app is encrypted and stored on the user's phone;

  – All registration information, encrypted user identifier and contact data is stored in the "National COVIDSafe Data Store", which is a cloud-based facility.

  – The Act prohibits the retaining of data on a database outside of Australia.

- Only State and Territory health officials can access app information if someone tests positive and **agrees** to the information in their phone being uploaded.

- The health officials can only use the app information to help alert those who many need to quarantine or get tested.

Deletion of data:

- Further, the contact information stored in a person's app/device will be deleted from 21 days after contact occurs. The 21-day rolling cycle takes into account the COVID-19 incubation period and the time it takes to get tested.

- If a user deletes the app, this will remove all COVIDSafe app information from the user's phone BUT will not delete information stored in the Data Store.

- All data in the Data Store will be deleted (as soon as is reasonable practicable) after the Health Minister determines that COVIDSafe is no loner required to prevent or control the spread of COVID-19 in Australia.

5. what if a person refuses to participate, or demands limits on how their information is used?

- The downloading of the app is voluntary and is not mandated by the Australian Government.

- However, the Prime Minister has promoted the app as being central to the Government's strategy for reopening the economy.

- An app user may not limit how and what information is collected whilst using the app. However, a user who tests positive can decide **not** to give consent for the information collected about its movements etc. to be uploaded into the data system.

6. public perception / privacy concerns

About the app

- Privacy concerns about the app appear to often be outweighed by public confidence in the government's handling of the pandemic.

  – E.g. a poll commissioned by the Guardian found that whilst approx. 57% of voters were concerned about the security of personal information collected by the app, 41% were confident the government would protect the data collected.[13]

- There appears to have been relatively high levels of faith and confidence in the way the Federal Government has been handling the pandemic.

- Nevertheless, there are some common concerns about contact tracing / the COVIDSafe app.

  – The Australian public is somewhat concerned about the potential exploitation of technical bugs in the COVIDSafe app, which was quickly developed and rolled-out (and this concern is shared by communities around the world where similar tracing apps have been developed and implemented)

- Some privacy advocates have criticised the decision by the Government to store the data in a centralised data storage facility, rather than a more privacy-friendly decentralised option.[14]

- Some are concerned that the COVIDSafe data is being held by the US-based company Amazon. Amazon has the highest data security certification for its Sydney data centre. The Act also prohibits the retaining of data off-shore.[15] Nevertheless, the Australian Law Council has raised concerns that Amazon could be compelled under US law to produce, under subpoena, data (regardless of where in the world that data is stored).[16]

- There are also some concerns around who can access the data. Only State and Territory health authorities currently have access to the data stored in the server. Whilst the Federal Government has said that police will not be able to access the data, even with a warrant, and court orders will not be able to force the handing over of data, this is not explicitly outlined in the underpinning legislation.[17] Nevertheless, the legislation does make accessing the data for purposes outside of contract tracing a crime.[18]

Current situation – privacy in the 2020 climate

- People are becoming more aware of privacy

- With COVID-19, there was an uptake of usage with digital media platforms, social media platforms, various applications etc. There was also an increase in awareness around the privacy implications of signing up and using such applications/websites.
  - E.g. the public outcry after concerns about TikTok's collection of user data, and who its shared with
  - This has shone the spotlight on the need for privacy safeguards to be embedded in the design of online platforms and apps.

- However, it may be the case that people are happy to make trade-offs when it comes to their privacy for the benefits

- E.g. with the COVIDSafe app, giving up some privacy for the 'greater good' and the hope that it will assist things return 'back to normal'

- E.g. with providing personal information to restaurants and other businesses they visit, in order to gain access and enjoy the goods/services

- E.g. providing personal information to subscription services and businesses online, in order to gain the comfort/benefit of shopping online, having purchases delivered (rather than physically attending the premises)

- Possibly trading some privacy, for the sake of better prices or more relevant/targeted advertising?

7. alternatives to the COVIDSafe software?

- In May, Google and Apple launched an exposure notification API or framework built into their devices' operating systems that allows health authorities to build their own apps. Germany and Ireland, and other European countries, have now launched their own COVID-19 exposure notification apps using the Google-Apple framework.

- With Ireland's COVID Tracker app and Germany's Corona-Warn-App, each app regularly checks the 'exposure codes' it stores against those the system has identified as belonging to an infected person. If someone tests positive for the virus, they can voluntarily make their random codes available to the exposure notification system. Individuals who match will receive a warning notification on their phone and can then choose to get in touch with a doctor. These apps operate more as a warning system and offer much less information to authorities.[19]

- Due to the lack of centralised data collection for those apps, some believe Australia should move to the Google-Apple API, in the interests of privacy.

8. key takeaways

· The uptake in Australia has been sizeable with almost 7 million people downloading the app;

· It has legislative backing in _Privacy Amendment (Public Health Contact Information) Act 2020_, ensuring that the privacy of users is protected;

· The app is not compulsory and the user must consent to their positive test being uploaded to the data base;

· Regarding the intersection of privacy and public health concerns:

  – The Australian Government has maintained a careful balance in their roll out of the tracing app;

  – The app isn't mandatory for members of the public and they still have to consent to their information being uploaded on receiving a positive test;

  – The Australian Human Rights Commission welcomed the COVIDSafe App as an important public health initiative,[20] and found that the underpinning legislation contains numerous important legal protections (including criminal offences regarding misuse of the COVIDSafe App).[21] It also identified some opportunities to strengthen the protection of human rights in the legislation (e.g. provide access to effective remedies for breaches of the legislation – not just criminal prosecutions, but other avenues of obtaining compensation or personal remedy for losses sustained).

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