

THE UNIVERSITY OF SYDNEY

# Governing Immersive Tech Project Submission to Consultation on Privacy Reform Exposure Draft Legislation 2026

The Governing Immersive Tech Project is an Australian Research Council funded Discovery Project (DP250100343) awarded to Joanne E. Gray, Marcus Carter, and Ben Egliston at The University of Sydney.

# Privacy and wearable devices

This submission focuses on the privacy issues arising from wearable devices, such as smart glasses, and the practical implications of the proposed privacy law reforms.

We are of the view that the proposed reforms provide a much stronger basis for addressing the privacy implications of wearable technologies, however, several important issues remain unaddressed.

In this submission, we explain the key gaps and how they can be addressed to ensure that Australia's privacy framework provides effective protection as wearable technologies become more widespread.

## 1. The proposed definitions of *personal information* and *identifiability* are well suited to wearable technologies, but the proposed definition of *sensitive information* is too narrow

Wearable devices with built-in cameras and microphones can capture the faces, voices, movements, interactions and locations of both wearers and people around them. Unlike conventional cameras, these recording devices are designed to be unobtrusive: they may look like ordinary glasses or be small enough to go unnoticed.

This makes the collection of personal information more ambient and difficult for others to detect, whether the recording is incidental or deliberate. When combined with AI, this information can also be rapidly analysed, interpreted, and acted upon by wearers and technology companies.

***Personal information***

The change from information "about" an individual to information that "relates to" an individual is particularly important for the information collected by wearable devices, because people who are not the intended subject of a recording may nevertheless have their personal information—image, voice, movements, interactions or location—captured simply because they are nearby. The proposed definition provides a stronger basis for treating this information as personal.

***Identifiability***

The proposed definition of identifiability is particularly important for wearables because the information they capture can be used to distinguish, track and profile a person without establishing their name or legal identity. This may include linking the same person across multiple recordings and datasets. For example, the I-XRAY project demonstrated how Meta smart glasses can be combined with existing facial-search and AI tools to match people captured by the glasses with information available online.

***Sensitive information***

The inclusion of precise geolocation tracking data as sensitive information is important for wearables but the requirement that the information is collected and held "over time" may limit its effectiveness in practice. A single recording by a wearable device can reveal sensitive information about a person. For example, it might reveal that someone was at a medical clinic, domestic violence service, protest or religious institution. The definition should clarify that it includes precise location information where a single observation reveals sensitive information about an individual and does not depend on longitudinal tracking.

## 2. The definition of *collection* should be expanded to include collection by individuals for personal uses

The reforms provide substantially stronger protections where personal information is collected or used by entities covered by the Privacy Act, but generally not where an individual collects or uses the same information for personal purposes. This is a significant gap for wearables, which enable individuals to covertly record and publish identifiable or sensitive information about others without their knowledge or consent.

A person's right to privacy should not depend on whether their personal information is collected by an individual or a company.

The 'fair and reasonable' test for the collection, use and disclosure of personal information should therefore also apply to individuals who collect and use personal information about others.

A person walking along Bondi Beach might reasonably expect to appear incidentally in someone else's photograph. That would ordinarily be fair and reasonable. They would not necessarily expect another person to deliberately target and continuously record them, capturing their image, voice and location, and then publish that recording online without their knowledge or consent. The fair and reasonable test should provide protection against this kind of targeted and intrusive collection and use.

## 3. The Privacy Act should confirm that notice is not consent

Wearable device providers, including Meta Platforms, have tended to rely on indicator lights to signal when a device is recording. But notice is not consent.

The law should make clear that a recording indicator, such as an LED on smart glasses, may alert people that recording is occurring, but does not establish that they have consented to being recorded or to the subsequent collection, analysis, use or disclosure of their personal information.

## 4. Statutory remedies should be extended to include targeted recording in public and semi-public spaces

The statutory tort for serious invasions of privacy should provide remedies for deliberate and unreasonable recordings without a person's knowledge or consent, including in public and semi-public spaces, where the person may not necessarily have a reasonable expectation of privacy.

Wearables can be used to covertly record another person at the beach, gym, coffee shop, workplace or apartment building foyer, places where they expect to be seen and heard by others. But an expectation of being seen or heard should not limit the recourse available to a person who is deliberately, unfairly and unreasonably made the subject of a recording without their consent.

Where a person is deliberately made the subject of a recording, they should have the opportunity to provide consent, subject to appropriate exceptions for legitimate purposes such as journalism and public-interest reporting, law enforcement, safety and security, accessibility and incidental capture.

Where they are subjected to unfair and unreasonable recordings without knowledge or consent, including in public and semi-public spaces, the existing statutory remedies for serious invasions of privacy—along with the proposed right to erasure—should apply.

The proposed right to erasure should extend beyond large digital platforms to personal information collected by individuals, including recordings made for personal use or uploaded to social media. A person's right to have information about them erased should not depend on who collected it or the size or business model of the organisation holding it.

The law should also explicitly allow for the removal or destruction of the underlying audio, video or other recording, rather than only personal information derived from it.

## How to cite this submission

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# About us

The Governing Immersive Tech project is an interdisciplinary research team from the University of Sydney, with funding from the Australian Research Council, working on the development of frameworks for public-interest governance of immersive and other emerging technologies. Our mission is to support proactive governance, not damage control.

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