



SUBMISSION

Privacy Act Review Report

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Real Estate Institute of Australia


PO Box 234


DEAKIN WEST ACT 2600

Ph: 02 6282 4277

 @REIANational

 @REIAustralia

 @reiaustralia

 Real Estate Institute of Australia



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OF AUSTRALIA

Summary

REIA thanks the Attorney General's Department (ADG) for the opportunity to comment on the Privacy Act Review Report (the Review Report).

Real estate businesses provide an essential service to Australia's renters, investors, homeowners, and home buyers, transacting each year around \$350 billion in home sales and collecting \$78 billion in rent receipts.

This service is delivered across 45,000 small businesses, the majority of whom have an average turnover of \$700,000.

REIA notes the need for absolute transparency and high levels of customer service to Australian property customers but argues that some approaches identified by the Review Report equate to regulatory overreach which will not lead to any greater benefits to consumer privacy.

REIA therefore tables the following six recommendations to the ADG:

1. That the exemption for small businesses with a turnover of less than \$3 million remains.
2. A multi-year moratorium applies prior to an enforcement and penalties program up until the scheduled Review of the Privacy Act. The focus of the initial period of legislation should be business adoption and establishing an ongoing way of working in relation to new privacy obligations.
3. That Federal and State Governments develop a standard pro forma to be attached to contracts and MOUs that outline the mutual privacy obligations of both parties (e.g., grantor and grantee) to make clear the shared standards and obligations.
4. The cost benefit analysis for removal of the small business exemption identifies the costs to businesses.
5. A tailored direct to business real estate program is funded and implemented.
6. That the ADG work with REIA to scope a real estate code of conduct.

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About the Real Estate Institute of Australia

The Real Estate Institute of Australia (REIA) is the national body and voice for the real estate profession in Australia. REIA's primary function since 1924 has been advocacy for policies that support a successful real estate industry. We are committed to working with the Australian Government to achieve our 2025 vision to 'advance Australia's prosperity.'

REIA represents an integral element of the small business sector, with 99pc of Australia's 46,793 real estate agencies being small businesses. Additionally, 11pc of all small businesses are affiliated with real estate. Only 0.6pc of businesses employ 50 persons or more.

Agencies employ 145,000 Australians and the Australian property industry is worth \$300 billion annually to the Australian economy as a measure of GDP. Real estate businesses are also an important service for renters and buyers, with agencies helping 6.9 million Australians into new rentals and homes each year.

REIA's Megatrends Report 2021: Megatrends Relevant to the Real Estate Industry¹ identified consumer-centric transparency as one of the top 9 megatrends.

Transparency expectations on how real estate businesses operate is fundamental to this trend in terms of pricing of real estate, but growing rapidly is also the transparency of how the vast amounts of data captured on vendors, buyers, tenants, and investors is used and treated.

As a directed related area to privacy, cybersecurity for the Australian real estate sector is a major strategic priority. In REIA's 2023 strategic policy agenda, as identified by our Institutes and has taken leadership in providing information on best practice to our members, such as through our 12 Days of Cybermas Campaign² and collaboration with Edith Cowan University.

Overview

The ADG describes the timelines for this current consultation as:

- **2020:** The Privacy Act Review commenced in 2020 following recommendations by the Australian Competition and Consumer Commission in its 2019 *Digital platforms inquiry - final report*.
- **2023:** On 16 February 2023, the Attorney-General publicly released the Review Report.

REIA welcomes the opportunity to provide feedback and notes the unique implications for Australian real estate practitioners and agencies given our interactions with vendors, buyers, tenants, investors, and third-party service providers.

¹ Available: [Megatrends Report 2021](#)

² Available: [12 Days of Cybermas](#)

Consultation Approach

REIA notes the focus on real estate directly and indirectly throughout the Review Report.

REIA wishes to highlight to the ADG that no invitation to attend any in person roundtable over 2021 and 2022 was extended to representatives of REIA as per Appendix A.

REIA would further like to note that of the 116 recommendations presented by the Review Report, at least 80 per cent of these will have a direct impact on real estate businesses.

A two-month timeframe to provide a detailed assessment of the impacts on our collective business network is insufficient.

Objections to the Review Report

REIA recognises the privacy framework in Australia must be updated for the protection of both consumers and businesses.

REIA has the following specific objections to the proposals in the Review Report: Removal of exemption of small businesses with a turnover of less than \$3 million.

REIA submits that these changes are a regulatory overreach with the better approach to focus on adoption and awareness to establish an ongoing way of working for privacy principles within small businesses.

Review Report: Specific Responses

Proposal 6.1 Remove the small business exemption.

REIA estimates that up to 65% or around 30,000 real estate businesses would fall within the current exemption with IBIS World identifying the average turnover of a standard real estate practise sitting at around \$700,000 per year.³

REIA does not support the exemption for small business being removed and argues that the introduction of this exemption is unlikely to lead to any further beneficial outcomes for consumer protection.

REIA supports the proposed interim steps identified in the Review Report to make an evidence-based decision with this regard and stands ready to assist the ADG in the delivery of 6.1 (a) – (d).

REIA Recommendation: That the exemption for small businesses with a turnover of less than \$ 3 million remains.
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Proposal 25.1 Create tiers of civil penalty provisions to allow for better targeted regulatory

³ Available: [Real Estate Services in Australia - Industry Data, Trend5s, Stats | IBISWorld](#)

responses

Given the large-scale reform proposed and the fundamental changes that will need to apply by real estate businesses it is recommended until at least 2025 that no penalties apply and that enforcement activities are focused on adoption over compliance.

REIA Recommendation: A multi-year moratorium applies prior to an enforcement and penalties program up until the Review. The focus of the initial period of legislation should be business adoption and establishing an ongoing way of working in relation to new privacy obligations.

Proposal 29.1 – 29.3 Interactions with other schemes

It is important that expectations by government are set at all levels of partnership with industry and business. Currently this is generally in the form of a standard privacy clause but with any increase privacy obligations this should be specifically identified in all government procurement and partnership processes on a three-tiered basis.

REIA Recommendation: It is REIA's strong recommendation that Federal and State Governments develop a standard pro forma to be attached to contracts and MOUs that outline the mutual privacy obligations of both parties (e.g., grantor and grantee) to make clear the shared standards and obligations.

Review Report: General comments

Implementation Approach

It is REIA's view that practicality and pragmatism will be critical success factor in order to actually improve privacy protection for consumers.

All team members across real estate businesses will need to be engaged in an ongoing way of working to deliver these new privacy protection responsibilities.

There is a breadth of changes proposed within the Review Report which will impact real estate practises on an operational level. Core changes to day-to-day business operations will in real terms include but are not limited to:

- Update and publication of privacy policies and requirements.
- Update of opt out requirements and disclosures within real estate marketing.
- Development, adoption, and training of internal protocols.
- Development of incident response plans, including notification protocols to meet 72-hour notifiable data breach period.
- Complaint policies and procedures.
- Any audits and remedial actions with third-party providers that are required.
- Alignment and integration with State and Territory legislation including consultation with local Institutes and regulators.

- Alignment with current and proposed Federal legislation.
- Broad scale industry and business level adoption and awareness programs including communications with vendors, buyers, investors and tenants.
- Development of an industry specific code of practise.

REIA encourages the ADG to consider how long this would take for such an update to be applied effectively across the Australian Public Service (APS) as a starting point with all staff working and engaged on their responsibilities.

It is further recommended that a multi-year non-penalty moratorium period while an ongoing way of working is established depending on the commencement of the Act.

REIA strongly recommends the need to have a long time from for commencement of the Act, and then the commencement of an enforcement program under the Act.

REIA Recommendation: The cost benefit analysis for removal of the small business exemption identifies the costs to businesses.

Business Impacts

At a minimum, the following key areas will require major operational changes and are not simple to implement across sales, rent roll and special projects within a real estate business. These include but are not limited to:

- Proposal 4.2–4.9: Personal information, de-identification and sensitive information
- Proposal 7: Employee records exemption
- Proposal 11: Consent and privacy default settings Security Retention and
- Proposal 13: Additional protections
- Proposal 15: Organisational Accountability
- Proposal 18: Rights of the Individual
- Proposal 20: Direct marketing, targeting, and trading
- Proposal 21: Security, retention, and destruction
- Proposal 22: Notifiable data breaches scheme

Support will be required – at a minimum – in the form of high-level checklists and templates to achieve this on a tailored to real estate specific checklist.

REIA Recommendation: A tailored direct to business real estate program is funded and implemented.

Real Estate Code of Conduct

REIA, through our REIA Strategic Policy Agenda: Getting Real,⁴ committed to the development of an industry led Privacy Code of Conduct in 2021 as this reform process commenced.

⁴ Available: [Getting Real](#)

REIA seeks advice on how we could work with the ADG on how we could develop, fund, and implement a holistic Real Estate Code of Conduct that aligns with best and leading practise within Australian real estate.

This should align with all other requirements including cybersecurity, know-your-customer and other current reform processes proposed by the Australian Government which will require real estate businesses to take on board a larger Verification of Identity liability.

There is a potential proposal around a tri-partite approach to this as it relates specifically to employee records, and we note real estate has a non-unionised workforce.⁵

REIA Recommendation: That the ADG work with REIA to scope a real estate code of conduct.

Conclusion

REIA does not support certain proposals within the Review Report, specifically the removal of the small business exemption.

REIA is firmly of the view adoption of improved privacy principles and establishing an *ongoing way of working within real estate businesses* is far more likely to yield both better consumer protection and business outcomes rather than imposing new requirements that equate to nothing but a regulatory overreach.

REIA is committed to working with the ADG to achieve this.

REIA would welcome the opportunity to participate in a series of in person meetings with the ADG to work through the specific impacts on Australia's real estate consumers, practitioners, and businesses.

ENDS

⁵ Available: [Trade union membership, August 2022 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/Trade-union-membership-August-2022)