18 September 2026

Ms Catherine Fitch
Assistant Secretary – Privacy Reform Taskforce
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
Barton ACT 2600

via email: PrivacyReform@ag.gov.au

Dear Ms Fitch,

Privacy Reform – Consultation on Exposure Draft legislation

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a submission to the *Privacy Amendment (Personal Data Protection) Bill 2026*, and associated consultation paper.

The ASBFEO supports modernising Australia's privacy framework to strengthen consumer confidence in businesses that hold personal information, particularly as both established and emerging technologies create new and evolving privacy risks. However, some of the proposed reforms will increase complexity and create uncertainty for smaller regulated businesses.

Reforms will require regulated entities to exercise considerable judgement when determining whether information relates to an individual and therefore falls within the scope of the Privacy Act. This assessment may depend on the nature of the information, the context in which it is collected, and the purpose for which it is used.

The increased reliance on context-specific assessments and judgement may create challenges for small businesses that lack the resources and specialist expertise to confidently assess their obligations. These businesses often have limited financial resources to access legal, privacy and cyber security expertise and must manage privacy obligations alongside their core business operations. As a result, they may face greater difficulty interpreting regulatory requirements, monitoring compliance and implementing necessary changes to their business practices. It is therefore essential that clear, tailored guidance, practical tools and other implementation support are available for regulated small businesses.

Small businesses will also not only be navigating the implementation of these proposed changes, but will be also grappling with a number of other additional regulatory changes at the Commonwealth level in addition to changes at the state and territory and local government levels.

Further, AGD should consider the implications of the proposed right to erasure reforms for small businesses that rely on large digital platforms to engage with customers. Where customer information is collected and handled through a platform, a customer may exercise privacy rights directly with that platform, including requesting the deletion of their profile or personal information. This may create uncertainty for small businesses regarding what information remains available to them, their ongoing privacy obligations, and their ability to continue interacting with customers through the platform.

Small business support

The ASBFEO supports a proportionate, risk-based approach to privacy regulation that recognises the varying size, resources and risk profiles of regulated entities. While the proposed framework may provide greater flexibility in responding to evolving technologies and data practices, the increased reliance on judgement-based decision making may present challenges for small businesses seeking to understand and meet their obligations.

To support compliance, the implementation of the proposed reforms should be accompanied by clear, practical and accessible guidance tailored to the needs of regulated small businesses. Guidance should assist with understanding how the 'fair and reasonable' test applies in different circumstances and provide clarity about the factors to be considered when assessing whether personal information can be collected, used or disclosed.

Many small businesses operate in highly regulated environments and may already be subject to obligations under other legislative frameworks, including Australia's Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regime. Guidance should make clear how privacy obligations interact with existing regulatory requirements to minimise duplication, reduce compliance costs and avoid unintended conflicts between legislative obligations.

The ASBFEO considers that guidance should go beyond legislative descriptions and include practical resources that assist small businesses to meet their Privacy Act obligations in real-world situations. This could include decision-making frameworks, flowcharts, checklists, worked examples and industry-specific case studies that help businesses assess whether the collection, use or disclosure of personal information is fair and reasonable in the circumstances.

In particular, guidance should assist regulated small businesses to understand:

- when information is considered to relate to an individual
- how the nature of the information, the context in which it is collected, and the purpose for which it is used may affect compliance obligations
- factors that may be relevant in determining whether the collection, use or disclosure of personal information is fair and reasonable in the circumstances
- how transparency obligations should operate when personal information is collected through websites, digital platforms, online marketplaces and social media channels
- when consent is required, what constitutes genuine choice, and how consent can be obtained and managed in a practical manner
- how data minimisation obligations apply in circumstances where small businesses rely on third-party software providers or digital platforms that automatically collect information
- how privacy obligations apply where personal information is handled by third-party service providers, including the respective responsibilities of controllers and processors, where multiple entities may collect, store, use or process personal information
- how privacy obligations apply where an individual has the primary relationship with a digital platform, but a small business interacts with that individual through the platform, particularly where the individual exercises privacy rights through the platform, including the right to erasure.
- appropriate retention and destruction practices for personal information collected through digital systems
- how privacy obligations interact with information collection and verification requirements under other legislative frameworks, such as the AML/CTF regime.

Providing practical tools and resources alongside the reforms would help small businesses make informed and consistent decisions, reduce uncertainty regarding compliance obligations, and support the policy objective of strengthening privacy protections without imposing unnecessary regulatory burden.

The ASBFEO would welcome the opportunity to work with the Office of the Australian Information Commissioner to support the development of guidance that assists regulated small business to understand and apply the Privacy Act requirements in an efficient and effective manner.

If you require any further information, please do not hesitate to contact the Policy and Advocacy team via email at advocacy@asbfeo.gov.au.

Yours sincerely

Lynda McAlary-Smith

Australian Small Business and Family Enterprise Ombudsman