18 September 2026

Attorney-General's Department
Australian Government

Dear Attorney-General's Department,

Submission: Privacy Reform

We welcome the opportunity to provide our submission to the Attorney-General's Department (**AGD**) in response to the proposed Privacy Reform including amendments to the Privacy Act 1986.

Consumer Action Law Centre (**Consumer Action**) congratulates the AGD on the proposed reform to modernise Australia's legislation to be better equipped to protect how people's information is collected, stored and used, in an increasingly online world. Consumer Action strongly supports the proposed reforms, particularly what their implications will have on lead generation, a perverse and harmful process where people's details are collected and used to manipulate them towards purchasing poorly suited and unsafe products. The proposed reforms that will have the most impact on this harmful consumer issue are the introduction of a fair and reasonable test obligation on the handling of consumer information, the inclusion of a disclosure definition and the expanded definition of consent to be voluntary, informed, current, specific and unambiguous.

While these reforms are a welcomed advancement, Consumer Action suggests that enforcing these amended laws will need dedicated focus and resourcing of the Office of the Australian Information Commissioner (OAIC). A direct right of action is also critical to the success of this reform to test the new laws in a rapidly changing environment and ensure wider accountability for breaches and ultimately deterrence.

We welcome the opportunity to discuss our submission further.

Please contact **Eleanor Doran** at **Consumer Action Law Centre** on (03) 8554 6981 or at eleanor.d@consumeraction.org.au if you have any questions about this submission.

Yours sincerely,

Steph Tonkin | CEO
Consumer Action Law Centre

TABLE OF CONTENTS

Recommendations 3

Manipulative lead generation is rampant and causes significant harm 3

Expanded definition of consent and disclosure provisions welcomed 4

Fair and reasonable test commended but must come with direct right to action 5

Right of erasure a critical protection in context of data breaches and scams 6

About Consumer Action 7

Recommendations

1. Consider how manipulative lead generation may exploit gaps in the proposed privacy regime and tighten exemptions to ensure lead generators are not able to circumvent obligations to consumers.

2. Use lead generation as an example of activity that does not meet the fair and reasonable test in practical guidance for businesses.

3. Increase resources to the OAIC to be effective at ensuring businesses comply with the fair and reasonable test, and non-compliance is deterred.

4. Introduce a direct right of action so individuals are empowered to enforce their rights under the Privacy Act, thereby increasing accountability for businesses that breach those rights

5. Extend application of the new right to erasure in proposed APP14 to all APP entities.

Manipulative lead generation is rampant and causes significant harm

Lead generation – the process of identifying people as potential sales targets and harvesting their contact details for further sales pitches – has become a significant source of consumer harm. In an increasingly online marketplace, manipulative lead generators are using compelling and misleading ads and online activities to collect a consumer's details to target them for a sale. Consumer Action's frontline experience has shown us lead generation comes hand in hand with sophisticated high pressure selling tactics. Our experience has also shown us a correlation between manipulative lead generation, high-pressure selling and products and services that are unsafe, poor quality and ill-suited to consumers.

Case study

Shield Master Fund (Shield) and First Guardian Master Fund (First Guardian) were managed investment schemes which collapsed in 2024 and 2025. 11,000 Australians lost more than $1.1 billion in retirement savings.

Victims were convinced to move their life savings from safe, regulated superannuation schemes into the unregulated, high-risk funds through manipulative lead generation. Many clicked on innocuous social media ads that encouraged consumers to provide personal details to receive a free comparison on their current superannuation fund's performance. Others received 'cold-calls' with no idea of how lead generators got their phone number. Lead generators used sophisticated tactics to warm people up before referring them to financial advisers who encouraged investment in Shield and First Guardian.

In May 2026, before a parliamentary committee, ASIC confirmed that Shield and First Guardian had collectively paid more $105 million for marketing, which included payment to lead generators – some of them licensed (Parliamentary Joint Committee on Corporations and Financial Services, May 29 2026 p44).

In August 2026, Assistant Treasurer David Mulino announced a reform package targeted at strengthening the superannuation sector against similar crises including banning unlicensed real time communication about superannuation. However, absent from the reforms were initiatives that addressed how people's personal information was captured, used and misused to direct them towards devastating financial loss.

See more at Super Consumer's Australia's website www.takeyoursuperback.com

Problematic lead generators not only manipulate consumers into purchases but additionally they on sell consumer information to third parties who want to turn an even bigger profit by pressure selling goods and services consumers never asked for. "Consent" for personal details to be used in this way is generated in opaque and misleading ways, including buried in terms and conditions and/or hidden behind unrelated online activities.

Consumer Action's landmark report into manipulative lead generation – *Manufactured Consent – stopping the harm from manipulative lead generation* (**Manufactured Consent Report)**, recommended :

- Ban lead generation in high-risk sectors and scenarios (e.g. superannuation)
- Extend the Unfair Trading Practices Prohibition into financial services
- Make digital platforms accountable for their hosted lead generation ads
- Strengthen consent and disclosure requirements to protect how consumer information is collected and used

This submission will focus on the fourth recommendation from that report and their alignment with the proposed privacy reform.

Expanded definition of consent and disclosure provisions welcomed

Consumer Action welcomes the proposed amended definition that consent must be voluntary, informed, current, specific and unambiguous. This was a recommendation in the Manufactured Consent Report and is important in ensuring consumers are in control of what happens to their information. Specifically, this expanded definition will mitigate the opaque ways lead generators manufacture 'consent' including through 'bundling' of consent through online activities, dense terms and conditions and designing privacy notices to encourage click-through without reading.

In addition, the proposed inclusion of a disclosure definition that requires entities to make clear when personal information has been made accessible to a third party, is a significant step forward to enforcing transparency about what happens to people's personal information.

Consumer Action has concerns around the provision in the Exposure Draft that qualifies a disclosure of information is not a trade if its incidental to a merger or acquisition where a person or body takes over another business, or a part of another business. In our experience, lead generators will move like water where there is opportunity to circumvent a law, and we imagine they may circumvent this by developing business models of consistent merging and acquiring in order to avoid these consent and disclosure obligations.

Similarly, Consumer Action expects lead generators will take advantage of the exemption of small businesses to the Privacy Act. Currently, most small businesses with an annual turnover of $3 million or less are exempt from the Privacy Act. Consumer Action expects dodgy lead generators will keep their turnover under this threshold to avoid needing to meet these obligations. For this reason, we recommend considering that some of the reform proposed be applicable to small businesses.

Recommendation

1. Consider how manipulative lead generators may exploit gaps in the proposed privacy regime and tighten exemptions to ensure lead generators are not able to circumvent obligations to consumers.

Fair and reasonable test commended but must come with direct right to action

Consumer Action also welcomes the introduction of a single fair and reasonable test for how businesses collect, use and disclose personal information. This test means businesses must consider whether their collection and use of a person's information is reasonable. This principled approach is critical to respond to the increasingly sophisticated ways businesses are collecting and using people's information.

In our frontline experience of lead generation practices, we have seen a troubling trend of consumers responding to online ads, only to later be visited at their home and subjected to aggressive high-pressure selling tactics.

Case study

Gina* contacted our lawyers after incurring significant debt tied to lead generation advertising.

Initially contacted after responding to an online ad purporting to check her eligibility for a government rebate, Gina was instead visited at her home by a salesperson who subjected her to an aggressive sales pitch for solar panels. The salesperson also provided Gina with false assurances about government subsidies, bills savings and a 'free' battery.

Under pressure, Gina relented and signed a contract for rooftop solar, without being told she was being entered into a Buy Now Pay Later (BNPL) arrangement. The repayment amounts turned out to be much higher than promised and were more than Gina could afford. When Gina attempted to cancel within the cooling-off period, she faced multiple barriers put in her way by the retailer.

Despite the BNPL provider eventually agreeing to cancel her contract with them (after much effort on Gina's part), debt collectors acting on behalf of the solar company started pursuing her for the cost of the solar panels, prolonging Gina's financial stress.

*Name changed

A fair and reasonable test should mitigate businesses using information they have collected online to visit people at their homes or via other means (e.g. telephone) and subject them to high-pressure selling tactics. In the practical guidance that the OAIC will develop to support businesses meet the fair and reasonable test, Consumer Action recommends explicitly including lead generation – particularly where information gathered online is then misused to subject a person to high-pressure selling – as an example of information collection and use that is unfair and unreasonable.

Recommendation

2. Use lead generation as an example of activity that does not meet the fair and reasonable test in practical guidance for businesses

A fair and reasonable test will only be as effective as the accountability mechanisms in place for businesses that breach this obligation. The primary consideration must be a well-resourced OAIC that can take a broad range of enforcement activities to hold businesses to account and develop the boundaries of the laws as the landscape changes. But without a direct right of action for consumers, it is close to a lottery which breaches will be brought to the regulator's attention and then selected to be pursued. This significantly undermines the policy aims and any deterrent effect of the new laws, and many businesses used to operating on the fringes of regulation will likely take the gamble on avoiding being caught by the regulators. We see this routinely on our frontlines with smaller or disbursed traders engaging in misconduct because they know busy regulators like the ACCC or Consumer Affairs Victoria are highly unlikely to take action for such a small businesses.

As a community legal practice, Consumer Action understands first-hand the importance of a direct right of action in testing principles-based legislation for the best consumer outcomes. We know that privacy is being infringed regularly by businesses, and the regulatory action OAIC can take will just scratch the surface of the instances of consumer harm from such breaches. Consumers should play a role in holding businesses to account and deterring non-compliance with the law, and in that way, the direct consumer right of action should be regarded as part of the regulatory framework by increasing compliance with and enforcement of the law.

Furthermore, through more direct actions by consumers, problematic practices themselves would be brought to light, providing greater opportunity for the practices to be disrupted and others impacted to seek a remedy.

3. Increase resources to the OAIC to support enforcement action for businesses compliance with the fair and reasonable test
4. Introduce a direct right of action so individuals are empowered to enforce their rights under the Privacy Act, thereby increasing accountability for businesses that breach those rights

Right of erasure a critical protection in context of data breaches and scams

As our digital economy evolves rapidly, the need for a right of erasure is becoming more urgent to accompany the new fair and reasonable test and also the obligations on businesses to delete or deidentify the personal information they hold. Companies hold large amounts of data about customers, sometimes for many years after accounts are closed or the information has any use. For example, in the 2024 Latitude data breach, it was revealed that Latitude held customer data dating back to predecessor companies from 2005.[1] That breach impacted 14 million customers.

Large-scale data breaches are happening at frightening frequency due to targeted criminal activity as well as accidental disclosure of information. The impact of a data breach can be significant including compromising personal banking or online shopping accounts, identity theft and hacking social media accounts all of which can result in lost money, impersonation, extortion and incredible stress for victims. As more biometric information is collected and stored by businesses, the risks can increase.

Personal information leaked in data breaches is also a key tool used by scammers to steal money from the individual concerned or other victims – such as providing access to a mule account through impersonation, extorting the victim with threats of disclosure and manipulation, targeting and tailoring scams to an individual using the stolen information or providing legitimacy when using the information to groom and manipulate a victim into trusting the scammer.[2] Consumer Action regularly hears from scam victims who report scammers using very specific personal information that they and we can only conclude has been stolen or accessed following a data breach.

Australians are a target for local and international scammers with over $2.18billion lost to scammers in 2025 alone.[3] In this context, the strongest possible protections are needed to limit Australians' personal information that could be disclosed and accessed by criminals. We refer to and support the submission by Digital Rights Watch that calls for a broad application of the right to erasure, and we agree that there is little justification for confining the right to users of 'large digital platforms'.

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[1] https://www.choice.com.au/data-protection-and-privacy/protecting-your-data/data-privacy-and-safety/articles/long-term-data-retention
[2] Morgan A, Voce, I, 2022, 'Data breaches and cybercrime victimisation', Australian Institute of Criminology Statistical Bulletin 40, accessed 18 September 2026.
[3] NASC Targeting Scams Report - March 2026

Recommendation

5. Extend application of the new right to erasure in proposed APP14 to all APP entities.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.