

Data Retention Review
Department of Home Affairs
By email: dataretentionreview@homeaffairs.gov.au

Dear Data Retention Review team,

Re: Commonwealth Data Retention Review

Introduction

The Council of Small Business Organisations (COSBOA) welcomes the opportunity to provide feedback on the **Discussion Paper for the Data Retention Review** (Discussion Paper). COSBOA is focussed on promoting, supporting, and advancing the interests of small businesses across Australia. Small businesses make up 97 per cent of all Australian businesses and are the backbone of the Australian community and economic growth. An estimated 2.5 million small businesses employ over 5 million people, and train over 40 per cent of all apprentices and trainees in Australia.

COSBOA recognises the role small businesses play in the everchanging cyber landscape. COSBOA proudly encourages all small businesses to join our Cyber Wardens program which aims to enhance their cyber security posture. The program is designed to educate and equip small business owners and employees with the necessary knowledge and tools to protect themselves against cyber threats.

From a small business perspective, COSBOA is focussed on educating small businesses and ensuring that they have sufficient resources at hand to protect themselves and the information they hold from cyber attack or leaks.

Consideration of the questions outlined in the discussion paper are below.

Discussion Questions

General experience in meeting data retention obligations

Small businesses with a turnover of less than \$3 million are exempt from the obligations outlined in the *Privacy Act 1988* (Privacy Act).

Small businesses continuously face changing obligations across all elements of business: industrial relations, work health and safety, and cyber security just to name a few. In late 2024, Parliament introduced the mandatory ransomware reporting for businesses that experience a cyber security incident and pay ransomware or cyber extortion payment of money. The rules regarding mandatory reporting have recently been published and align with the \$3 million threshold in the Privacy Act. This means that any business with a turnover of more than \$3 million, has a mandatory reporting obligation where they experience a cyber security incident and pay ransom. COSBOA has previously advocated for a higher exemption, as the \$3 million threshold in the Privacy Act has not been indexed since its introduction over two decades ago.

One of the biggest challenges a small business faces when it comes to data retention is the varying obligations outlined in different legislation. The review team will be across this, however, for the purposes of clarity, a summary is below:

- Small businesses that fall within the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*, must retain data for 2 years.
- Financial records must be retained for at least five years from the date of preparation to comply with tax laws.
- Employee records must be retained for at least seven years after employment ends, as required by workplace laws.
- If the small business operates within the health sector, health records must be retained for a minimum of seven years (or longer depending on the specific health regulation).
- For small businesses who are not captured by the \$3 million exemption, the Privacy Act does not specify a data retention period, but rather requires an entity to take reasonable steps to destroy or deidentify data once it is no longer needed for the purpose in which it was collected.

The Government's Business webpage (www.business.gov.au) does have a section on record keeping and some of the obligations, however, this is not a one-stop shop for a small business employer to see all their obligations in one place.

Small business often operate without internal legal, compliance or human resource support due to challenges of scale, and therefore spend significant time searching various Government sites for resources on how to navigate a litany of compliance requirements. Therefore, we strongly advocate for resources that clearly and simply outline a small business owner's obligations that they can easily follow.

Document verification or Digital ID

COSBOA has not received any specific feedback on the Government's document verification service or Digital ID, however, we can provide general commentary. The use of Digital ID has been helpful where it assists in reducing the amount of data a small business holds, and the number of resources required to ensure compliance with various data retention obligations. It also ensures a higher level of security, as the small business themselves are not holding sensitive personal information.

Consistency across areas in which Digital ID can be used is extremely important. Given that small businesses with turnover of less than \$3 million are exempt from the Privacy Act obligations, Government needs to develop useful tools that all small businesses but especially those with turnover beyond \$3 million are able to use in helping them meet their varying obligations in a practical manner.

Ultimately, as mentioned in the discussion paper, it is essential for there to be balance in approaches. Small businesses are already faced with large amounts of regulatory burden, and it is necessary that when developing or reforming policy, Government departments consider and ensure there is no duplication and contradiction with existing provisions. This is discussed further in the draft principles consideration below.

Draft Data Retention Principles for Commonwealth policy development

COSBOA generally supports the proposed Data Retention Principles outlined in the discussion paper. However, Government needs to ensure that agencies follow the principles when developing and

reforming policy. Small business policy impact assessments are required, yet, more often than not, these are either not conducted or not released publicly for transparency purposes. Impact assessments are vital to ensure small businesses understand the regulatory burden about to be placed on them and that Government has considered all options to ensure the regulatory burden is not unnecessary.

The draft principles will only be as effective as the enforcement and implementation of them. Consideration should be given to publishing a report or statement with proposed policy or legislation that increases data retention obligations that outlines the relevant department or agency followed the principles. There is no need for additional principles, if they are to not be followed by relevant agencies.

Conclusion

The review presents an opportunity to assess and refine Australia's data retention obligations, particularly for small businesses. As the Government considers submissions, COSBOA strongly reiterates the importance of striking a balance between ensuring compliance with data retention laws and the supporting the operational needs of small business.

We welcome any further consultation throughout the review process.



Luke Achterstraat
Chief Executive Officer

COSBOA