



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

29 January 2021

Privacy Act Review
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

via email: PrivacyActReview@ag.gov.au

Dear Sir/Madam

Review of the Privacy Act 1988

My Office strongly supports retaining the small business exemption (the Exemption) under the *Privacy Act 1988* (the Act) and makes the following comments:

1. **Best practice regulation.** Tiered or flexible regulatory approaches, including partial or complete size-related exemptions, are critical to best practice regulation.¹ Removing the Exemption would be regressive and counter to policies of reducing the regulatory burden on small business.
2. **Narrow scope of the Exemption.** The Exemption applies to businesses with an annual turnover of up to \$3 million, while the ATO classifies small business as those with less than \$10 million turnover. As such, the Exemption is already narrow.
3. **Is there a problem?** Evidence of problems with exempted business' handling of information would be required to justify a change. If there is evidence of a problem, the best practice approach is to directly address that problem rather than removing the Exemption altogether.
4. **Communications with small business.** The information about the Exemption on the Office of the Australian Information Commissioner's website is generally well presented. The privacy checklist is a particularly effective way of helping stakeholders understand their obligations. However, information could be improved by:
 - a) preparing a guide for small businesses on how to handle information (including businesses not covered by the Act) with examples of common errors that small businesses make; and
 - b) working with the ATO to notify small businesses of their obligations under the Act when they see an increase in turnover to more than \$3 million.
5. **Concerns raised by other stakeholders.** We note concerns raised by the Australian Broadcasting Corporation (ABC), including that small businesses often lack awareness of their privacy obligations. Given the Exemption does not apply to services provided under a Commonwealth contract, removal of the Exemption should have little effect on the ABC. The ABC could ensure its suppliers are aware of their obligations through its communication with them.

If you would like to discuss this matter further, please contact Mr Alex Maskiell on 02 6213 7446 or by email to alex.maskiell@asbfeo.gov.au.

Yours sincerely

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman

¹ OECD, "OECD SME and Entrepreneurship Outlook 2019", 2019.