

Submission on the Exposure Draft Privacy Amendment (Personal Data Protection) Bill 2026

IMWT Pty Ltd T/A In Marketing We Trust | 18/09/2026

Submitted to the Attorney-General's Department, Privacy Reform consultation on Exposure Draft legislation

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1. Who we are

Why IMWT is making this submission.

IMWT Pty Ltd T/A In Marketing We Trust (IMWT) is a digital marketing analytics and performance optimisation agency headquartered in Sydney, with offices in Melbourne, Singapore, Seattle and London. We build and run marketing data systems for large enterprise marketing teams in Australia, the United Kingdom, Europe, the United States and Southeast Asia, under GDPR, the UK regime and US state privacy laws. In Australia we use personal information that would fall under this Bill to produce commercial outcomes for Australian businesses. Paul Hewett is a member of the MAA Privacy, Data and AI Council. This is IMWT's own view: practical analysis, not legal advice.

2. Our position

What we support, what concerns us, and what we ask for.

We support the objectives of the Bill and most of its drafting. Our concern is narrow. In three places the Bill places a duty on the advertiser that can only be performed inside a platform such as Google, Meta or a television network, or leaves open which of the two holds it, and its commencement design assumes the advertiser can act first. When a rule asks a company to do something it cannot do, the company either updates its privacy policy and changes nothing, or moves its advertising into the largest platforms. Both cost Australian businesses productivity, and neither gives the individual any privacy they did not already have.

We ask for three changes and put one question.

1. State in APP 7 which organisation holds the opt-out duties where advertising is delivered through a platform, and where the advertiser is responsible, limit the duty to communications it delivers itself.
2. Apply the consent-to-trade rule to information collected after commencement, as the Bill already does elsewhere.
3. Stage commencement by lead time, with no less than two years where a platform or supplier must build first.
4. State whether an advertising platform is intended to be a processor or a controller.

3. What we tested

How we checked the Bill against real marketing work.

We reviewed every operative provision of the Bill and tested 32 ordinary marketing activities of a large Australian company against it. Nothing stops. Twenty continue at higher cost, four work worse, and seven are blocked because the control the advertiser needs sits with a platform. We expect 19 to comply, six to comply on paper only, and two to move into a large platform. The table is at Annexure A.

4. Opt-outs

Australian Privacy Principle 7.1 to 7.3. The Bill does not say who holds the opt-out duty in advertising.

An organisation must offer a simple opt-out (APP 7.1), act on requests (APP 7.2) and accompany each communication with opt-out information (APP 7.3). Email and SMS are unchanged; APP 7.7 leaves them to the Spam Act.

The Bill does not say which organisation "makes" the communication when an advertiser buys advertising on a platform. The consultation paper says the platform will generally be responsible unless it is acting solely as a processor. That allocation is not in the Bill, and it depends on the processor question in section 6, which the Bill also leaves open. If the duty falls on the advertiser, it cannot perform it. A banner is a box of pixels; a fifteen-second television spot has no field for text. Platform settings let a person hide an advertiser inside that platform, but the advertiser cannot invoke them, cannot see whether they were used, and they do not exist for connected television or audio. Schedule 2 Part 3 item 26 makes APP 7.3 a civil penalty provision. The likely result is an opt-out that covers the advertiser's own channels while its advertising continues unchanged.

What we ask. State in APP 7 which organisation holds the duties in 7.1 to 7.3 where a communication is made through a platform, consistent with the consultation paper's stated intent. Where the advertiser is responsible, limit the duty to communications it delivers itself to an identified individual.

5. Old customer data

APP 4.2, section 6FC and Schedule 2 Part 1 item 13. Consent to trade applied to data collected years ago.

Disclosing personal information for direct marketing is trading, whether or not money changes hands, and trading requires prior consent. The consultation paper confirms this reaches cookies and pixels in programmatic advertising. Item 13 applies the rule to information already held. Uploading a customer list to an advertising platform is therefore trading, and customer records held today were collected with consent to marketing, not to trading. That consent cannot be created after the fact; section 6AAB requires it to be unambiguous, which silence is not. The choice is to ask again and lose most of the list, or continue without consent.

The Bill already handles this correctly elsewhere. Four application provisions apply only to acts done after commencement (Schedule 1 item 13(1), Schedule 2 Part 3 item 28, Schedule 4 Part 1 item 4, Schedule 6 item 7). Trading is an act, not a state, and belongs with them. We understand from industry consultation with the department that retrospective application is not intended. The same trading trigger appears to change which small businesses lose the exemption in section 6D; see Annexure C.

What we ask. Amend Schedule 2 Part 1 item 13 so APP 4.2 applies to personal information collected on or after commencement, mirroring Schedule 1 item 13(1). Suggested wording:

The amendments made by this Part apply in relation to the collection, use, disclosure or holding of information on or after the commencement of this item, whether the information was acquired or created before, on or after that commencement. However, Australian Privacy Principle 4.2 applies only in relation to personal information collected on or after that commencement.

6. What an advertising platform is

Section 16D(1) and section 6FC(2)(c). Whether a platform follows instructions, and what follows if it does not.

The Bill defines controller and processor in relation to an act or practice, and disclosure to a processor is not trading. IMWT is both: a controller for our own contacts, a processor when acting on a client's written instructions. An advertising platform fits neither role cleanly. When we upload a client's list, the platform matches it for the client and also uses it to improve its own systems. The Bill allows a platform to be a processor for one act and act on its own account for another, but does not say what the advertiser's single disclosure is when it knowingly serves both. It also expects the controller to document the instructions; in practice the platform writes the terms and the advertiser accepts them.

The two questions connect. Under section 6FC(2)(c) the upload is not a trade only if the platform is a processor. Under the consultation paper, the opt-out duty sits with the platform only if it is not solely a processor. Treat the platform as a processor and the advertiser avoids consent to trade but holds an opt-out duty it cannot perform. Treat it as a controller and the opt-out moves to the platform but every upload needs a consent the advertiser does not hold.

What we ask. State whether the platform is intended to be a processor, in which case other submitters' amendments will work, or a controller, in which case every upload is trading, and carry the answer through to APP 7. If advertisers are expected to stop using platforms that will not change their terms, say so plainly.

7. Timing

Section 2 of the Bill. When each part should start.

The commencement table is blank and the consultation paper invites views. For the rules above, the platform builds the feature, then the company evaluates, installs and migrates, then rewrites its contracts; each step waits for the one before, and each is likely to depend on a vendor overseas. Multi-year platform agreements written before this Bill rarely allow exit for a change in privacy law, so a company that cannot comply on the platform it has may be unable to leave it. The government has already set two years for a privacy rule requiring system change: the automated decision-making transparency obligation, given Royal Assent on 10/12/2024, commences on 10/12/2026. This Bill has a longer chain.

What we ask. Stage commencement by lead time: definitions first; trading and direct marketing rules once platforms demonstrably support them; APP 11.4(b) and Schedule 6 with no less than two years, because the first requires data discovery tooling to be procured and implemented, and the second requires every agency, technology and platform contract to be varied, which happens at renewal.

8. Drafting matters and further engagement

Corrections for the department's attention, and an offer.

Four drafting matters are at Annexure B. One has operative effect: section 13K(1)(b)(ixa) makes APP 14.4(c) a civil penalty provision, and APP 14.4 has no paragraph (c); the notice obligation sits at 14.4(b)(ii). IMWT would welcome discussion with the Privacy Reform Taskforce. Our provision review and use-case testing are available on request.

32 marketing activities tested against the Bill

Key. **Blocked**: the control the advertiser needs sits with a platform. **Paper only**: privacy policy updated, practice unchanged. **Consolidate**: activity moves into a large platform.

Ref	Activity	What happens	Likely response	Main provisions
1.1	Web and app measurement tagging	Continues, costs more	Comply	s 6AAA, s 6FD, discloses, APP 5
1.2	Registration, loyalty enrolment, progressive profiling	Continues, costs more	Comply	APP 3.1, APP 4.4, s 6AAB
1.3	Consent and preference architecture	Continues, costs more	Comply	s 6AAB, APP 4.2, APP 7
1.4	Lead generation with onward disclosure	Continues, costs more	Comply	s 6FC, APP 4.2
1.5	Third-party data enrichment and append	Continues, works worse	Use a different method	Publicly available document, APP 3.1
1.6	Location, in-store and offline capture	Continues, costs more	Works worse	Precise geolocation, s 6FE, APP 4.5
1.7	Age assurance and under-18 handling	Blocked	Paper only	APP 3.1, APP 3.2(g), Children's Online Privacy Code
2.1	Segmentation and propensity modelling	Continues, costs more	Paper only	s 6AAA, s 6FG, APP 6 repeal
2.2	Matched audience upload to platforms	Blocked	Paper only	s 6FC, APP 4.2, s 16D(1)
2.3	Pixel and tag-based retargeting	Continues, works worse	Works worse	Discloses, s 6FE, direct marketing definition
2.4	Lookalike and modelled audiences	Blocked	Paper only	s 6FF, s 6FG, s 6AAA(2) to (4)
2.5	Programmatic buying and ad tech mechanics	Blocked	Paper only	APP 7.1 to 7.4, s 6FC
2.6	Owned-channel lifecycle messaging	Continues, costs more	Comply	APP 7, s 6AAB
2.7	Onsite and in-app personalisation	Continues, works worse	Works worse	Direct marketing definition, APP 7.5 and 7.6
2.8	Retail media and supplier-funded placement	Continues, costs more	Comply	APP 7.5 and 7.6, s 6FC, s 16D(1)
2.9	Loyalty coalition and partner data sharing	Continues, costs more	Comply	s 6FC, APP 4.2
2.10	Account-based B2B outreach	Continues, costs more	Comply	s 6AAA, APP 3.1, s 6FE, APP 7.7

32 marketing activities tested against the Bill

Ref	Activity	What happens	Likely response	Main provisions
3.1	Analytics and business performance measurement	No change	Comply	s 6AAA, APP 3.1, s 6FD
3.2	Conversion tracking and offline conversion upload	Continues, works worse	Use a different method	Discloses, s 6FC, APP 4.2
3.3	Identity resolution and attribution	Continues, costs more	Comply	s 6FD, s 6FF, s 6FG
3.4	Mobile app attribution via measurement partner	Continues, costs more	Comply	Discloses, s 16D(1)
3.5	Market research and insight	Continues, costs more	Comply	s 94B, APP 3.1
4.1	Advertiser to broadcaster matching for addressable television	Blocked	Consolidate	s 6FC, s 6FG, APP 7, s 16D(1)
4.2	Retail data matched to media exposure	Continues, costs more	Comply	Discloses, s 6FC, s 16D(1)
4.3	Shared identifier frameworks	Blocked	Consolidate	s 6FD, s 6FF, s 6AAB
4.4	Industry audience measurement	Continues, costs more	Comply	Discloses, s 6FG, s 6FF
4.5	Platform use of uploaded data for its own purposes	Blocked	Paper only	s 16D(1)
5.1	Retention and destruction across the marketing estate	Continues, costs more	Comply	APP 11
5.2	Data inventory and classification	Continues, costs more	Comply	APP 11.4(b)
5.3	Destruction requests and platform-held copies	Continues, costs more	Comply	APP 11, APP 14
5.4	Agency, martech and platform contracting	Continues, costs more	Comply	Schedule 6
5.5	Breach readiness across marketing systems	Continues, costs more	Comply	s 26WK

Drafting matters

1. Section 13K(1)(b)(ixa), inserted by Schedule 4 Part 2 item 7, makes APP 14.4(c) a civil penalty provision. APP 14.4 has only paragraphs (a) and (b). The notice obligation is at 14.4(b)(ii). Amend the reference, or renumber APP 14.4 so the notice obligation has its own paragraph (c).
2. Note 2 under APP 3.3 and Note 2 under APP 4.6 both refer the reader to paragraph 4.2(a) for the sensitive information exceptions. Those exceptions are at 4.3(a), and subclause 4.2 has no paragraphs. Correct both references to 4.3(a).
3. Section 26WL(7)(b), as inserted by Schedule 3 Part 1 item 10, and section 26WR(13)(b), as inserted by Schedule 3 Part 1 item 19, number their subparagraphs (i) then (iii). Renumber as (i) and (ii).
4. Every page of Schedule 6 carries a running header reading "Part 2 Consequential amendments". Schedule 6 has no Parts. Remove the header.

A question about small businesses

We raise this as a question, not a finding. Schedule 2 Part 1 item 5 replaces paragraphs 6D(4)(c) and (d) with a trading test, and item 6 rewrites subsection 6D(8) to match. Under section 6FC, trading includes disclosing personal information for direct marketing whether or not money changes hands. Read with the new definition of direct marketing, a small business that uploads its customer list to a social media platform for advertising appears to be trading, and would lose the small business exemption.

Subsection 6D(8) was rewritten to match the new wording. Subsection 6D(7), the consent saving, was not, and still refers to information "about" an individual rather than information that "relates to" one. The Privacy Reform Impact Assumptions paper states there is no change to the scope of regulated entities and so has not costed this either way.

Has the class of small businesses that lose the exemption changed, and if so, was that intended?

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