

**Privacy Act Review**  
**Outdoor Media Association - Submission**

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April 2023

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## EXECUTIVE SUMMARY

*Privacy regulation should seek to align business and consumer interests.*

Protection for consumers is tantamount. Given recent and repeated data breaches the need to protect Australians and update the Privacy Act is clear.

Much of the discussion to date has been about promoting either consumer rights or business, rather than recognising that when consumers do well, business flourishes and visa versa.

The Outdoor Media Association (OMA) supports fact-based regulation which effectively aligns the interests of consumers and business whilst promoting innovation.

For the Out of Home industry, we rely on data to measure the effectiveness of messages displayed on screens in the community. Outdoor digital screens have been used in emergency situations to communicate with a broad audience in critical situations such as COVID-19, bushfires and floods.

Outdoor media is a critical medium to convey important information to the community in a timely manner, reaching an audience that other mediums online platforms may not.

Given the extent of the proposed changes, the OMA is recommending a two-year transition to give businesses, particularly small businesses, time to adapt. This lead time gives additional opportunity for organisations to respond to these changes.

At a time of heightened economic uncertainty, a core issue with the proposed changes to the Privacy Act is their failure to consider the cost to businesses.

The changes will have a material impact on business, putting at risk jobs, wages and investment. The cost of compliance for businesses in many sectors is significant and has repercussions for the Out of Home industry. There is a risk that the amendments to the legislation will hamper the uptake of advanced data-driven technology by Australian businesses.

The OMA calls on the Australian government to incentivise innovation which is needed to drive our competitiveness internationally, rather than creating barriers for technological innovation and adoption.

The digital economy is largely data driven, meaning small changes in the regulation governing the use of data can have a disproportionate effect on businesses, even those not directly involved in data collection or use.

The Out of Home industry is at risk of suffering the adverse effects of heightened regulation like many industries across Australia (see Figure 2).

Having just recovered from COVID-19, now is the time to ensure regulation is growth centric and affords ample opportunity for Australian businesses.

### ABOUT THE OUTDOOR MEDIA ASSOCIATION

*The Outdoor Media Association (OMA) is the peak body for Out of Home advertising in Australia representing more than 95% of the industry.*

In addition to the thousands of jobs that the industry is directly responsible for, outdoor media supports many thousands more as an industry that contributes to the success of local companies.

OMA members make significant economic contributions to government and the community at nearly \$647 million to Australia’s GDP each year. In addition, most OMA members are Australian owned and operated, with profits going back to the Australian economy. Maintaining high standards and upholding prevailing community values means being able to respond to changes in public expectations and priorities.

Out of home advertising provides a solution to the growing infrastructure deficit facing Australia, from bus stops and park benches to road maintenance to toll relief. Regulation that negatively impacts the Out of Home industry undermines a proven and sustainable financial model to power investment in critical infrastructure.

**Figure 1: Nationwide Impact**

The OOH advertising industry operates across Australia making important economic and social contributions and is a significant employer.

	NSW	VIC	QLD	SA	WA	Total
<b>Economic contribution</b>	\$136M	\$91M	\$37M	\$6M	\$14M	\$284M
<b>Jobs supported</b>	2679	1050	666	84	66	4545
<b>Philanthropic contribution</b>	\$20M	\$14M	\$7M	\$10M	\$2M	\$53M
<b>Public infrastructure items</b>	6382	2559	5305	614	798	15,685
<b>Public infrastructure estimated value</b>	\$136M	\$45M	\$54M	\$20M	\$25M	\$280M

The desire for a sustainable self-regulated industry led to the development of the OMA Code of Ethics and seven policies that guide members and ensure they operate their businesses responsibly.



The industry is also bound by the AANA Code of Ethics, the AANA Code for Advertising and Marketing Communications to Children, the AANA Wagering Advertising and Marketing Communication Code, the ABAC Responsible Alcohol Marketing Code and several other industry specific advertising codes.

The Out of Home advertising industry has an exemplary record of managing compliance with these codes and continues to ensure that internal policies remain fit for purpose while meeting community standards.

## **COST OF COMPLIANCE & INNOVATION**

### *The burden of regulation on competitiveness and the digital economy.*

As noted in the Privacy Act Review Report<sup>1</sup>, the reforms are modelled on the European Union's General Data Protection Regulation (GDPR).

Given that the GDPR has seen almost 50% of small businesses fail to comply<sup>2</sup> after a year of the measures being enforced, this raises serious concerns as to whether the GDPR is the right model. This is also indicative of the complexity and cost of compliance to business more broadly.

Similarly, compliance costs for small businesses concerning GDPR was as high as €50,000 (\$81,000 AUD) which incorporates expenditure on new software, amongst other services.

For larger organisations the costs may be substantially higher. Whilst larger companies may be able to comply with the new regulations relatively efficiently, there is a case to be made that the complexity of the regulations will unfairly disadvantage smaller organisations who may not have access to the same resources as larger companies.

The OMA recommends the government ensure measures are being taken to support businesses to tackle the added costs of compliance and navigate an increasingly complex legal field.

The OMA also supports further investigation as to how these measures could uniquely impact Australian businesses, jobs and the economy at large, considering the significant differences between Australia and Europe.

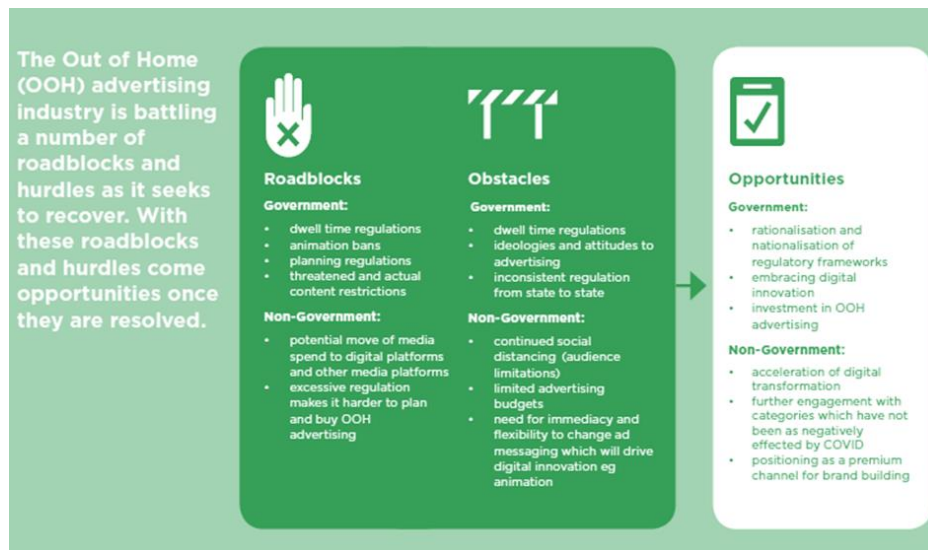
Figure 2 below outlines just some of the current regulatory and compliance burdens the Out of Home industry is already facing. Adding additional regulations will only exacerbate the issues caused by regulatory creep and multiple, sometimes contradictory, regulations across different States and Territories. Ultimately this makes Australia a more challenging place to do business and less competitive internationally.

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<sup>1</sup> Privacy Act Review Report, 2022, page 3.

<sup>2</sup> GDPR.EU, 2019 GDPR Small Business Survey (Report, May 2019) 3.

**Figure 2: The Current State of Affairs<sup>3</sup>**



## COMMUNITY IMPACT OF RESTRICTING GEOLOCATION

*Changes in geolocation regulation can undermine government’s crisis response capacity.*

Out of Home advertising promotes all types of businesses, communities, arts and sports organisations because it has the ability to broadcast through its national network of signs, or narrowcast by honing in campaigns to a particular locale, be it a suburb, a geographic area or a state.

The ability to narrowcast can be particularly important in emergency situations as well as crucial government messaging from anti-smoking advertisements through to safe driving.

Geolocation is critical because it is effective. It enables Out of Home advertisers to reach certain communities and ensure government messaging is both timely and effective.

The outright restrictions and additional compliance burden the proposed changes seek to enforce puts at risk the capacity for industry to support positive community change.

Consequences of the reforms could also include the potential reduction in investment by the private sector in effective geolocating as the commercial benefits are no longer evident. This in turn will undermine the government’s capability to run effective campaigns and respond to crises.

<sup>3</sup> Outdoor Media Association. OMA Regulatory Change Roadmap. 2020. Page 9.

The OMA is seeking further review concerning the impact of geolocation regulation and its impact on government and industry's ability to respond to emergencies along with commercial implications.

## **CONSENT BASED DATA COLLECTION**

*Additional requirements around repeated consent must consider the impact to business and government.*

The OMA endorses consent-based data collection and strongly recommends a more considered approach to business.

This is particularly the case when multiple consents are required for essentially the same service. Campaigns frequently occur across multiple platforms combining Out of Home with online, print and other mediums.

While the way in which Out of Home uses data is different from other media industries, the privacy by default proposal may have unintended consequences for our partners. Out of Home firms often collaborate with the data specialists to ensure effective messaging including on government sponsored campaigns.

Putting the interests of consumers first requires industry to identify our community's most vulnerable, including children. Reforms to the Privacy Act may be putting these people at risk by undermining the capacity of advertisers to exclude certain categories and products from being viewed. Targeted marketing is as much about ensuring effective messaging as it is about protecting consumers via exclusion.

Small businesses are often reliant on targeted marketing as a strategic tool, particularly in the early stages of development. As a government that is committed to small business, jobs growth and innovation, the OMA recommends amendments to support those businesses.

## **CONCLUDING REMARKS**

Updating privacy regulation is important to keep Australians safe in an increasingly digitised world and economy.

Recent data breaches have shown that protections are not working as intended and more effective measures need to be taken to protect consumers.

These changes, however, should not come at the expense of business. We must recognise the mutual benefit of robust privacy protection regulation for all.

The OMA welcomes the opportunity to discuss this further.

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