Financial Abuse Service NSW

Redfern Legal Centre

10 September 2026

Attorney-General's Department
By email: PrivacyReform@ag.gov.au
Website upload: https://consultations.ag.gov.au/rights-and-protections/privacy-reform/

Dear Attorney-General's Department,

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

Thank you for the opportunity to make a submission on the Australian Government's package of reforms to strengthen Australia's privacy laws, including the *Privacy Amendment (Personal Data Protection) Bill 2026* (**the Bill**).

This submission is made by Redfern Legal Centre's Financial Abuse Service NSW. It focuses on the application of the Bill's consent requirements and proposed fair and reasonable test to ongoing access to consumers' banking transaction data. It also highlights the risks that such access may create for people experiencing financial abuse.

About Redfern Legal Centre and the Financial Abuse Service NSW

Redfern Legal Centre (**RLC**) is a not-for-profit community legal centre that provides free legal assistance in our local catchment and statewide in NSW. RLC's Financial Abuse Service NSW is a specialist statewide service assisting people experiencing financial abuse.

Introduction

Redfern Legal Centre supports the proposed requirement that consent be voluntary, informed, current, specific and unambiguous. We support the introduction of an overarching requirement that the collection, use, and disclosure of personal information be fair and reasonable.

These reforms provide an important framework for addressing broad and ongoing access to consumers' financial information. However, the Exposure Draft does not provide sufficient certainty about how the requirements apply where a credit provider relies on acceptance of a privacy policy during a loan application to access a borrower's banking transaction data throughout the life of the loan.

Without clarification, lenders may continue to rely on broad privacy policy terms as authority for ongoing access, leaving consumers to challenge these practices after harm occurs. Our casework shows that ongoing access can affect hardship decisions and create particular risks for people experiencing financial abuse.

We recommend targeted legislative clarification and regulatory guidance to ensure that a consumer's banking transaction data is accessed only where the scope, duration and purpose are fair, reasonably expected, and proportionate.

Case study: Consent and ongoing access to banking data

Through our casework, the Financial Abuse Service NSW has identified privacy policy terms used by two lenders that authorise ongoing access to borrowers' banking transaction data beyond the initial loan application.

In a recent matter, a lender informed us that accepting its privacy policy during the loan application provided them with ongoing authority to access the borrower's banking transaction data. The lender stated that this extended beyond assessment of the original loan application to:

- assessing requests for hardship assistance or payment variations;
- administering and enforcing the credit contract; and
- considering future applications for refinancing or further credit.

We understand that this authority arises from standard terms in the lender's published privacy policy and therefore potentially affects its borrowers generally. We identified similar terms in the published privacy policy of a second lender. This suggests that reliance on privacy policies to authorise ongoing banking data access may be a broader practice within parts of the consumer lending industry.

Borrowers may accept a lengthy privacy policy through a tick-box during the loan application without the continuing nature, scope and purposes of access being presented prominently and separately. They may be unaware that the lender can continue accessing their transaction data after the original credit assessment, including during a later hardship application. Where ongoing access is embedded in a general privacy policy and not clearly brought to the borrower's attention, there is a significant question whether consent is genuinely informed, current, specific and unambiguous.

The borrower in our case was experiencing financial abuse and was unaware that the lender claimed ongoing authority under its privacy policy. In assessing the hardship application, the lender relied on transaction turnover obtained through this access. Although it acknowledged that transaction turnover was not necessarily equivalent to income, it questioned whether the activity was consistent with the borrower's stated financial circumstances.

The lender agreed to a hardship arrangement, but not on the terms sought as reflecting the borrower's circumstances. The case demonstrates how a standard privacy policy term can materially affect an individual hardship decision.

Transaction turnover does not necessarily indicate income available to a borrower. In financial abuse matters, transactions may reflect transfers between accounts, activity controlled by another person, informal assistance, safety-related expenditure, borrowed funds or transactions made under coercion. Without safeguards, this information may be misunderstood and used to question a borrower's credibility or access to hardship assistance.

Consent and the fair and reasonable test

The requirement that consent be current and specific is an important reform. However, the Exposure Draft does not establish when consent to recurring access becomes outdated, whether it should be renewed, or whether a materially different purpose requires fresh consent.

Acceptance of a general privacy policy during a credit application should not, by itself, provide indefinite authority to access a person's banking transaction data. Consent obtained to assess an initial credit application should not automatically extend to later purposes such as hardship, enforcement, refinancing, or further credit.

Consent requirements alone may not address the issue. Financial transaction data is personal information but will not necessarily be sensitive information, even though it may reveal detailed information about a person's circumstances, relationships, and behaviour. The fair and reasonable test will therefore be the primary protection in many cases.

We support the test applying independently of consent. A lender should not be able to establish that ongoing access is fair and reasonable merely by pointing to a privacy policy term. Each collection and use should be assessed in its own circumstances including whether:

- the borrower would reasonably expect the access;
- the duration, frequency and purposes were clearly explained;
- the borrower had a genuine choice;

- the purpose could be achieved with less information; and
- The privacy impact and risk of harm were proportionate to the benefit.

A borrower may have little practical choice if broad access is a condition of obtaining credit or if they believe withdrawing access will jeopardise a hardship application. These concerns are heightened where financial abuse affected the original application, account or transactions. The fair and reasonable test should account for these power imbalances.

Clear guidance and practical examples will be needed to ensure the test prevents overcollection rather than allowing entities to justify existing practices after the event.

Recommendations

We recommend that:

1. Proposed section 6AAB be amended to clarify that consent to recurring collection, use or disclosure is not informed, current or specific unless the individual is clearly and separately informed of the scope, purposes, frequency and duration of access and how it may be limited or withdrawn.
2. Proposed APP 3.2 be amended to require consideration of the frequency and duration of ongoing access, whether the individual remains aware that access is occurring, and whether they can readily limit or end it.
3. The legislation or supporting materials clarify that consent obtained for one purpose does not automatically extend to a materially different purpose. Consent to access transaction data for an initial credit assessment should not automatically extend to hardship, enforcement, refinancing or further credit.
4. The OAIC and ASIC develop joint guidance on applying consent requirements and the fair and reasonable test to ongoing access to financial transaction data, including in hardship and financial abuse matters. The guidance should address genuine choice, data minimisation, less intrusive alternatives and withdrawal of access without inappropriate adverse treatment.

Thank you for considering our submission.

Yours sincerely

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