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21 March 2025

Jane Forsythe
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Department of Home Affairs
PO Box 25
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By email only: dataretentionreview@homeaffairs.gov.au

Dear Jane

Data Retention Review – discussion paper

The Property Council of Australia (the Property Council) welcomes the opportunity to respond to the Department of Home Affairs and Attorney-General's Department's discussion paper for the Data Retention Review (the Review).

The Property Council is the peak body for owners and investors in Australia's \$670 billion property industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private.

AML/CTF reforms

The Review comes at a critical time for data retention in Australia's property industry. As part of reforms to Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime new data retention obligations will be placed on industry, including real estate professionals for the first time as part of the extension of the regime to tranche two entities.

From 1 July 2026, new obligations will be placed on real estate agents, buyers' agents and property developers, as well as other professionals including lawyers, conveyancers and accountants, taking the total number of reporting entities from approximately 17,000 to 90,000.

These obligations will include a requirement to make and keep records for at least 7 years and include reports and documents relating to customer due diligence, transaction records, and sensitive personal information.

The discussion paper notes the risks posed to entities (and their customers) for holding onto large volumes of information, and for long periods of times, and that data breaches are increasing in complexity, scale and impact.

It is therefore critical that the Review formally engages with AUSTRAC in the development of both the AML/CTF Rules and sector-specific guidance which will be finalised in the second half of 2025.

By working with AUSTRAC, the Review should ensure that any new or additional obligations placed on reporting entities by these reforms are proportionate, leverage other Commonwealth reforms such as Digital ID, and meet the policy development principles outlined in the discussion paper, including minimising retention requirements to the extent possible.

Digital ID reforms and 'know your customer' information

The Digital ID reforms in 2024 provided for the expansion of the Australian Government's Digital ID System (AGDIS) beyond public organisations to the private sector, who will be eligible to use the system as part of a phased expansion to December 2026.

Under the AML/CTF reforms, a key concern of tranche two entities including real estate professionals like property developers include the collection and retention of 'know your customer' (KYC) information.

When conducting KYC on an individual customer (i.e. a person), the entity must be satisfied that an individual customer is who they claim to be, which as a minimum requirement includes the customer's full name, residential address and/or their date of birth.

Entities can rely on 'reliable and independent documentation' to satisfy KYC requirements, including:

- An original primary photographic identification document, such as a driver's license or Australian passport,
- An original primary non-photographic identification documents, such as an Australian or foreign birth certificate, or government-issued concession card, or
- An original secondary identification document, such as an Australian Taxation Office or Centrelink notice, or council rates.

The Property Council has welcomed the confirmation from AUSTRAC that the formal guidance from the regulator will not require reporting entities to retain a copy of the specific documentation used by the entity to verify individual customers, however it has not yet advised how the principle of data minimisation will be expressed.

As the discussion paper outlines, entities are holding onto large volumes of information for significant periods of time, potentially beyond what is strictly required by legislation. For the example of KYC documentation, there may be a gap between what entities *have* to retain, and what they will actually retain in practice.

As such, the guidance provided by AUSTRAC will be critical in driving the behaviour of reporting entities and avoid the creation of unnecessary 'honey pots' of sensitive, personal information and documents.

The Review should investigate where existing data retention obligations could be satisfied by the Digital ID system in order to minimise what personal data is retained on reporting entities internal systems, including email, cloud storage and physical servers.

Opportunities for reform

Members of the Property Council have identified a number of existing concepts and obligations which should be investigated as part of the Review. They fall into two broad categories, being Commonwealth legislation and harmonisation between the States and Territories.

Commonwealth Act, regulation or legislative instrument	Description
Digital ID Act 2024 Digital ID (Accreditation) Rules	The Review should consider how Digital ID can be leveraged to minimise data retention obligations across other areas of regulation or legislation, such as the AML/CTF regime.
Income Tax Assessment Act 1936 (Cth) Income Tax Assessment Act 1997 (Cth) Taxation Administration Act 1953 (Cth)	The Review should consider whether the requirement to maintain financial records, particularly those containing personal data, for extended periods meets the best practices for data minimisation.
Privacy Act 1988	The Review should assess the Privacy Act broadly to investigate whether any additional clarity is required regarding the obligations placed on entities regarding data retention and privacy.
Corporations Act 2001 Corporations Regulations 2001	The Review should engage with the Australian Law Reform Commission on their Review of the Legislative Framework for Corporations and Financial Services Regulation, which seeks to simplify relevant legislation whilst still being compliant with the substance and intent of the law.

Whilst out of scope for the Review, the Commonwealth has a key leadership role in coordinating reforms to State and Territory legislation, including concerning data retention.

As part of the outcomes from the Review that will be shared with State and Territory governments, the Commonwealth and other jurisdictions should consider the harmonisation of the following obligations through the appropriate ministerial council:

State and Territory Act, regulation or legislative instrument	Description
Work, health and safety (WHS) record keeping requirements	A harmonised approach to record keeping requirements (and advice) from the State and Territories can minimise over-retention of sensitive employee health and safety records.
Surveillance data	Data retention for surveillance data is varied across the States and Territories. A harmonised approach across jurisdictions will help minimise the pooling of a large amount of data, including video and biometric data.

The Property Council would welcome the opportunity to discuss this submission in more detail. Please contact Dan Rubenach, Policy Manager at drubenach@propertycouncil.com.au to arrange a meeting.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Antony Knepe', with a small dot at the end.

Antony Knepe
Executive Director – Capital Markets