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Director  
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The Treasury  
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## Unfair trading practices – supplementary consultation

Dear Director

I welcome the opportunity to make a submission to Treasury's *Unfair trading practices – supplementary consultation paper*.

The supplementary consultation paper is seeking views on the design elements of general and specific prohibitions on unfair trading practices.

The OAIC supports the introduction of a principles-based general prohibition designed to address unfair practices of the kind identified in the 'Problem' section of the consultation paper, while being flexible enough to address new and emerging problematic conduct.<sup>1</sup>

I also take this opportunity to highlight an emerging practice of concern that I consider should be addressed by an unfair trading practices prohibition, and reiterate the importance of progressing reforms to both the privacy and consumer protection frameworks to ensure comprehensive protection for consumers against harms in the online and offline environments.

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<sup>1</sup> The OAIC has previously expressed support for the introduction of an unfair trading practices prohibition and set out our views on how it would intersect with the proposed reforms to the Privacy Act. See [OAIC submission to Treasury – Consultation regulation impact statement on unfair trading practice reform](#).  
[OAIC](#)

## Digital receipts

We have observed an emerging practice amongst retailers to require consumers to provide either a mobile number or email address to receive a digital receipt. Anecdotal evidence collected by CHOICE suggests some retailers may be refusing to provide paper receipts, with digital receipts offered as the only option.<sup>2</sup>

Requiring consumers to disclose personal details to issue a digital receipt, without providing an alternative option such as a paper receipt, has implications for both privacy and consumer law. From a privacy perspective, this practice may be inconsistent with Australian Privacy Principle (APP) 2, which states that individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with an organisation unless it is impracticable for the organisation to deal with individuals who have not identified themselves or who have used a pseudonym.

Additionally, an organisation must only collect personal information unless the information is reasonably necessary for its functions or activities. A key factor to determining whether a collection of personal information is reasonably necessary is whether the entity could undertake the function or activity without collecting that personal information, or by collecting a lesser amount of personal information.

In the context of mandatory online account requirements, the consultation paper highlights the proposed introduction of a requirement into the Privacy Act that the handling of personal information must be fair and reasonable, which was agreed-in-principle in the Government Response to the Privacy Act Review Report.

While the proposed introduction of a fair and reasonable test into the Privacy Act will likely have a role to play in preventing problematic practices like mandatory account creation or only offering digital receipts, it's important to note that the protections in the Privacy Act only apply to the handling of personal information. In relation to the practice of issuing digital receipts, a mobile phone number or an email address on its own may not be enough to identify or reasonably identify an individual for the purposes of the Privacy Act. Consequently, consumers may not have a remedy under privacy law.

The ACL requires businesses to provide a receipt for anything over \$75, and for anything under \$75 if asked for one. The ACL does not prescribe a particular format for providing that receipt.

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<sup>2</sup> See [Receipt refusal: Shoppers don't want to hand over personal data for receipts | CHOICE](#)

Only providing consumers with a digital receipt may prevent consumers from exercising their legal rights under the ACL. Specifically, if consumers choose to forego a receipt over concerns about disclosing their personal details, it may prevent them from seeking a repair, replacement or refund where a product or service does not meet a consumer guarantee, and they are subsequently unable to demonstrate proof of purchase.

We recommend further consideration is given to addressing this practice either by including it as an example in the proposed list of non-exhaustive examples of conduct (a 'grey list') which may satisfy the general prohibition test, or as a specific prohibition.

### **The importance of reform**

The Privacy Act and the Australian Consumer Law have distinct but complementary roles to play in addressing the risks and harms faced by Australians online and offline transactions.

The recent passage of the *Privacy and Other Legislation Amendment Act 2024* introduced a first tranche of much-needed privacy reforms, and I welcome the Government's commitment to progressing a second tranche of reforms including the introduction of a new positive obligation to ensure that the collection, use and disclosure of personal information is fair and reasonable in the circumstances.

We submit that the Government's proposed reforms to both privacy and consumer protection frameworks are crucial to ensure comprehensive protection against harms in both the online and offline environment.

Yours sincerely

Carly Kind  
Privacy Commissioner

16 December 2024