



Report on Personal Identification Information in Property Data Code of Conduct Review

August 2022

EXECUTIVE SUMMARY

This is a five-yearly review of the operation of the *Personal Identification Information in Property Data Code of Conduct*.

The Code and its administration are a good example of a well-designed self-regulatory scheme that can deal with an issue, in this case a privacy issue, in a cost-effective way.

The Code was developed in response to consumer concerns about where people selling property are obliged to supply sale details, details of which are sold by the Department of Resources (DR) to value added property data companies whose customers were using the details for bulk mailing and unsolicited direct marketing. The Code was developed to remedy this.

It can be considered that the Code's objectives are threefold. One is to stop the misuse of data in the first place. The second to respond to breaches of the Code. The third to provide a remedy for those who feel aggrieved about the use of their data by way of complaints which will be investigated and suppression where requested.

This review found that after over a decade of operation that the scheme is delivering what it set out to do. In short it is "fit for purpose". That said, there have been suggestions made in this report to continuously improve the scheme.

To achieve maximum benefit from a code of conduct/ self-regulatory scheme it needs to satisfy some important metrics.

Coverage: the code should include coverage of the relevant industry/sector.

Visibility: to be truly effective the capacity for a consumer to be able to readily find how to suppress and/or complain must be highly visible i.e., be easy to find.

Accessibility: Having been able to find how to suppress and complain it should be easy to access.

Promotion: this is related to visibility. To deliver to its potential, the scheme needs to be promoted both to its subscribers and their customers.

This report discusses these and other metrics with suggestions on the way that these metrics may be improved so that the scheme can better deliver its potential benefits.



W G Dee

Personal Identification Information in Property Data Code of Conduct Reviewer

25 August 2022

METHODOLOGY

The Terms of Reference for the review indicated that it shall include consultation with key stakeholders, which shall include but not necessarily be limited to:

Queensland Department of Resources

Queensland Office of Fair Trading (a business unit of the Department of Justice and Attorney-General)

Code Subscribers / Value Added Property Information Broker Association Incorporated (VAPIBA) members

Code Oversight Committee members

Neil Lawson, Chair

Fiona FitzPatrick, Consumer Representative

Jolie Baasch, Industry Representative (Term expired 30 June 2022)

Real Estate Institute of Queensland (REIQ)

Consumers Association of Queensland or other relevant consumer organization.

Invitations to complete a questionnaire as well as to lodge a submission were sent to:

Chair, Code Oversight Committee

Consumer Representative, Code Oversight Committee

Queensland Department of Resources

Queensland Office of Fair Trading

Consumers Association of Queensland

Code Subscribers:

As of 30 June 2021, there were six Code Subscribers, being:

APM PriceFinder

CoreLogic

Domain

Equifax

National Property Data

onthehouse.com.au

During the first half of 2022 another information broker, PEXA Insights, became a Code Subscriber but as at the time of this review it had not commenced using QVAS personal identification data.

Responses to questionnaires/submissions lodged were submitted by:

- REIQ
- Office of Fair Trading
- CoreLogic
- APM PriceFinder
- PEXA Insights
- National Property Data
- Equifax
- Code Oversight Committee Chair
- Code Oversight Committee Consumer Representative

Face-to-face discussions were held with the Code Oversight Committee Chair and the Consumer Representative as well as a former Industry Representative.

Documents reviewed included:

Submissions

2020 – 2021 Annual Report

Statistics for 2020-2021 and 2021-2022

Publications on the Code's website at www.propertydatacodeofconduct.com.au

THE REPORT

Background

The Code of Conduct

The *Personal Identification Information in Property Data Code of Conduct* was introduced on 1 October 2009. It was designed to address consumer concerns about the inappropriate use of personal identification information (names and service addresses) sourced from the Queensland Valuation and Sales (QVAS) database maintained by the Department of Resources (DR).

Amendments to the Code of Conduct can be made in consultation with stakeholders, namely the Committee, industry and DR.

Access to the information held in the QVAS database is available online to individual businesses, industry professionals and members of the public and can be obtained over the counter for a fee from DR. The information is generally accessed by potential purchasers and professionals acting in property transactions, such as real estate agents, financing sources (e.g., banks), solicitors and valuers. The database includes the following information:

- details of the property, including the street address.
- transaction details (e.g., purchase price and type of sale); and
- personal information – the names and service addresses of the vendors and purchasers.

The 'service address' is the address nominated by the property owner for the receipt of official correspondence, such as Council rates notices, and may differ from the property's street address. Investor-owned as distinct from owner-occupied properties will frequently have service addresses different to the property's street address.

Other transaction details, such as the sale price of the property, are not covered by the Code.

The Code Oversight Committee

The Code Oversight Committee consists of an independent Chair, a Consumer Representative, and an Industry Representative.

The role of this Committee includes the following:

- approving and registering information brokers as Code Subscribers.
- monitoring compliance with the Code by its subscribers and their clients to ensure ongoing effective operation of the Code's requirements.
- receiving and investigating unresolved complaints.
- imposing sanctions on subscribers or their customers for failure to comply with the Code.
- maintaining a Register of Suppression Requests; and
maintaining a Register of Excluded Parties.

The work of the Code Oversight Committee and all other costs associated with administering the Code of Conduct are paid by the Code Subscriber members of the Value Added Property Information Broker Association Incorporated (VAPIBA). That is, the Committee and its work are entirely industry funded.

Every five years an independent review of the operation of the Code of Conduct is required to be commissioned as per Clause 18.2 of the Code. The last review and this review were undertaken by Bill Dee, Compliance and Complaints Advisory Services in 2017, and 2022. Since the 2017 review, there have been no major changes to the Code or the procedures for handling complaints and suppression requests.

Code review

The Code Oversight Committee nominated Bill Dee, Director, Compliance and Complaints Advisory Services, to undertake this five-yearly review.

The independent reviewer was asked to report on the operation and effectiveness of the Code of Conduct.

The review should include but is not necessarily limited to an assessment of the accountability, effectiveness, efficiency, accessibility, and the independence of the Code of Conduct and its administration, taking into account the following:

- an analysis of changes in industry practice,
- privacy regulation, and
- best practice.

The review may recommend necessary changes and amendments to the Code of Conduct.

Examples of the areas of particular interest are:

- Co-operation between Code Subscribers and the Committee to achieve the objectives of the Code of Conduct
- Complaint handling processes
- Suppression request processes
- The Committee's decision-making procedures with respect to alleged breaches of the Code and whether these accord with the principles of procedural fairness and allow for assessments and decisions of a matter to be based on fairness, other relevant industry codes of conduct, and good industry practice
- The promotion and marketing of the Code of Conduct.
- Other matters considered by the reviewer to warrant attention in the context of the objectives of the review regarding the accountability, effectiveness, efficiency, accessibility, and the independence of the Code of Conduct and its administration.

The metrics

Coverage: A high level of involvement of stakeholders will encourage a high level of code ownership and coverage. The greater the involvement of industry stakeholders with the industry code, the greater the likelihood of it achieving its objectives.¹

The Code only applies to the names and service addresses of vendors and/or purchasers of real property in Queensland where such information is obtained by way of wholesale licence from the Department of Resources (DR). The relevant DR database is the Queensland Valuation and Sales system (QVAS).

The Code does not apply to information that may be obtained from other non-QVAS sources.

DR knows which brokers it licences and to whom it supplies names and service addresses. If a broker purchases QVAS data (e.g., sale prices) but not names and service addresses, such a broker is not covered by the Code and does not have to be a Code Subscriber or member of VAPIBA.

The Code does not apply to information where the vendor or purchaser of real property is a corporation. Only natural persons can apply for suppressions of the names and service addresses.

The Committee uses market intelligence and consultations with DR to assess whether there are any other information brokers who should be members of the Code. Unless an information broker wishes to receive QVAS name and service address information from QVAS under licence from DR, they do not need to be a Subscriber of the Code.

The line of business of all Subscribers to the scheme is that they are value added property data companies with CoreLogic and Domain/APM PriceFinder being the largest while other Subscribers such as National Property Data and PEXA Insights are smaller at this stage of their development.

The Chair believes that the Code has 100% coverage of licensed QVAS users but does not include all information brokers, e.g. Ownership Data.

The Chair pointed out that VAPIBA and its Subscriber members are active supporters of the Code and there is a strong level of engagement between all parties on Code matters.

At the Privacy Officer level, there is a well-established network, which includes the Code's Administrator, across all Subscribers for cooperation on Code matters.

I am satisfied that the scheme meets this metric. DR's requirements that any new information broker seeking a licence to access QVAS personal identification information must apply to the Code Oversight Committee and be approved by the Committee as a Code Subscriber, ensures the Code's application to all licensed information brokers accessing that data.

¹ ACCC Guidelines for developing effective voluntary codes of conduct, P 5

Visibility: for a code/self-regulation scheme to be truly effective then the capacity for a consumer to be able to readily find how to suppress and/or complain must be highly visible i.e., easy to find. Put another way a person's guarantee to privacy potentially given by the code is diminished the less visible it is.

OFT provides information on property data on its website for consumers who may be buying or selling a property. The information advises "*The Queensland government stores some personal details in our property data, which individuals or companies may access. A code of conduct regulates how people access this data*". A link is provided to the Personal Identification Information in Property Data Code of Conduct webpage.

OFT in its submission indicated that complaint data held by OFT and discussions between OFT officers and consumers indicate consumers are not made sufficiently aware of their right to not have their personal information provided to brokers or their clients. When considering complaints about this issue, the main complaint from consumers is that real estate agents write to them directly, using private personal details they believed were obtained from the RP Data source, to entice them to sell their homes. (RP Data is a product brand used by CoreLogic. Sometimes consumers and others use 'RP Data' as a generic term, meaning property information brokers.)

Under the licensing agreement with DR, Code Subscribers assume positive obligations to promote and enforce the Code in their dealings with their customers and consumers. These include an obligation to include prescribed terms in their agreements and to promote the Code's dispute resolution options, including members' internal dispute resolution processes and the right to escalate complaints to the Committee. This obligation was intended to promote the visibility and accessibility of the Code's processes to consumers.

This review found that there are some problems with this approach.

One problem is that the message is "crowded out" or "buried" within a document, written in legalese rather than easy English and not being prominent for the reader.

As this obligation stems from the licence agreement with DR, the Code Oversight Committee has concluded that, strictly speaking, the Department is the only entity with the appropriate standing to monitor and enforce compliance. Nevertheless, the Committee has raised the need for monitoring and enforcing the obligation both with Code Subscribers and with the department, under the auspices of its broad obligation to promote the Code.

As the Committee reported to the last review and to DR, ensuring compliance with these obligations would promote this visibility and accessibility. This review agrees with this finding.

The Code Consumer Representative pointed out that the department should be the spot where, as soon as consumers lodge their personal information, there should be some notification that it could be on-sold and to be informed that if it is used for unsolicited direct marketing, they have a right to bring a complaint or apply to have their name and service address suppressed.

The Chair was of the opinion that the settlement process is already a 'crowded space' with all the legal requirements and documentation needed to effect the transfer of real property. Additional information being inputted into this space about a Code of Conduct, which may or may not be of interest to property purchasers, would be difficult to justify and its effectiveness questionable.

While information is available to consumers on the DR website it is "hidden" in the privacy, policies in the Procedure for disclosing "personal information" collected under the *Land Valuation Act 2010*.

This review believes that there are some methods available which could increase visibility, i.e. ways for consumers to be informed of the Code and the right to suppress their personal information. These could include sending information with the Valuation Notice and including an electronic notification as part of the registration process.

Another means of visibility could be provided by Subscribers placing a *prominent* link on their home page directing readers to their privacy policy which should include where the consumer can get information on remedies available for them if they receive unsolicited direct marketing as well as providing a link to the Code's website.

On the issue of "helpful" websites they themselves need to be regularly promoted through available channels to be visible.

Consideration might also be given to the Code Oversight Committee seeking advice from a communications expert on how best to better communicate information on the scheme and therefore increase the visibility of actions consumers can bring when they have received unsolicited direct marketing.

Accessibility: in this context means finding how to suppress and complain it should be easy to access.

More generally it covers the degree to which the Committee's and Subscribers' contact points for consumers, processes and systems are user-friendly.

The test for consumer accessibility to suppression is therefore to be seen in the context of how readily a consumer can access the suppression process in the event they consider they have the need to do so because of their concerns about receiving unsolicited direct marketing material and encroachment on their privacy.

A consumer has access to suppression information from multiple sources, including:

- The Code's website – www.propertydatacodeofconduct.com.au
- Department of Resources
<https://www.qld.gov.au/environment/land/title/valuation/about/privacy>
- Office of Fair Trading
<https://www.qld.gov.au/environment/land/title/valuation/about/privacy>

The Code's website provides for online applications for suppression. This facility is frequently reviewed and has been amended on several occasions to provide improvements in the information available and the ease of use for consumers.

The Code's website also provides information about statutory suppressions under the *Land Valuation Act 2010*.

As discussed under Accessibility, both the Code Oversight Committee's brochure and website contain user-friendly information about what the Code has to offer consumers. The challenge is to make this material more visible to this target audience.

As mentioned above *websites with critical information need to be regularly promoted through available channels to be visible.*

The review believes the Code Oversight Committee should consider a strategy how best to promote these websites on a regular basis.

Promotion: to deliver to its potential, the scheme needs to be promoted both to its subscribers and the users of their services, and to the public.

In relation to the public this is covered above under visibility. This section focuses on promotion of the Code to the Subscribers' customers/users.

The Code is primarily a preventative measure designed to eliminate the misuse of QVAS personal identification information. It therefore has a focus on stopping misuse at the point where the primary risk occurs, i.e. with Code Subscriber customers. Hence the licensing requirements, product terms and conditions, and education of Subscriber customers about what is prohibited by the Code, are important to be communicated. Then there are the provisions for penalties if there are breaches of the Code.

The Code Chair in a letter to VAPIBA pointed out that Code Subscribers are obliged to promote the Code and the prohibition on direct marketing:

6.3.3.... in relevant Code Subscriber Customer marketing literature and online material

The Chair considered that visibility amongst real estate agent customers of Code Subscribers is high.

He indicated that if consumers have concerns about how their personal identification information is being used and they make enquiries such as contacting, for example, the real estate agent who has written to them, or the information broker the real estate agent nominates as the data source, or they contact the Office of Fair Trading, which is a common complaint consumer contact point, they will have access to information about the Code and their options.

In relation to Subscribers and users of their services it falls on Subscribers to run training courses for their real estate agent customers (and other customers) which include content about the Code. Subscribers do this on an ongoing basis.

The Code Oversight Committee has promoted the Code to the Real Estate Institute of Queensland (REIQ) for the information of its members who are a prime user group of QVAS data.

The Committee has also in the past sent correspondence to the Consumers Association of Queensland informing them of the Code and attaching copies of Annual Reports.

Real estate agents come and go so it is up to the Principals of real estate businesses to see that new/untrained agents and support staff are trained on this matter early in their engagement.

When an agent breaches the Code there is a requirement for the agent to attend to be retrained by the Code Subscriber with whom they have their data supply contract. The Code Oversight Committee checks to see that this has taken place.

The Chair though considered it a good idea for Code Subscribers to provide a copy of their training material on the Code and to confirm their arrangements for training for verification. The Chair thought it might be an opportune time, particularly with new Subscribers, to approach them as to how they will carry out their obligations to train and to show what they will be saying to their customers (real estate agents and others).

This review supports his suggestions.

Historically the Committee has responded to complaints from consumers. However, given that real estate agents are the main profession using the data for direct marketing, the Committee took a more proactive approach by addressing the problem at its source. Committee members have met

with the CEO of the REIQ and provided her with a fact sheet for dissemination at training sessions and, more recently, copies of FAQs (frequently asked questions and answers) for use by REIQ.

Again, this review supports these proactive initiatives by the Committee.

As the peak body, the REIQ in its submission indicated that it provides training, education and support to the real estate community on a regular basis. This includes training and support in relation to the Code. In relation to the methods that the REIQ uses to do so, this includes:

- Advice and support delivered through the Association's Agency and Property Management support service.
- Webinars and events.
- Videos.
- Compliance training throughout the State at REIQ zone events; and
- Articles and communications delivered via the REIQ Journal and Property Management Support Newsletter.

REIQ have liaised with CoreLogic in respect of the review and have agreed that additional training and education should be developed. This review supports such proactive initiatives.

There is a passing reference to the Code requirements on the REIQ website as follows:

REIQ RESEARCH & DATA DISCLAIMER

All residential sales statistics are compiled by the REIQ based upon data supplied by CoreLogic RP Data. Data must not be used for direct marketing or be used in breach of the privacy laws. http://www.reiq.com/REIQ/REIQ/Research/Use_of_Median_Sales_Data.aspx

The REIQ may want to consider giving more information on the rights for consumers for suppression, or, at the very least, about how to complain when they receive unsolicited direct marketing from an agent, plus a link to the Code's website.

The Consumer Representative on the Code Oversight Committee thought that there should be more information on the REIQ website and that DR's documents should be amended to include the missing information in its information privacy documents. Again such information should be prominent and easy to find.

CoreLogic in its submission noted that there has been no change in the number of Code complaints since the last review. It suggested that the Code Oversight Committee continue to proactively engage with VAPIBA members, as well as continue a programmes of education to increase awareness of the Code and the Committee amongst VAPIBA Members, to facilitate best practice and hopefully reduce the number of complaints being received.

This review supports that suggestion.

When asked whether it believed that the promotion and marketing of the Code of Conduct was effective, OFT in its submission replied that it is unaware of the promotion and marketing of the Code. OFT recommended consideration be given to running a campaign to provide information to industry participants about the Code. Such a campaign could provide information through real estate related associations, such as the Real Estate Institute of Queensland and the Australian Resident Accommodation Manager Association, as well as training organisations who provide real estate training to those entering the profession.

At an individual broker level APM PriceFinder indicated in its submission that client-facing staff who support and sell PriceFinder subscriptions and products and manage existing PriceFinder client relationships, are responsible for educating current and prospective clients around the correct practical applications of the Code and how that translates into their business.

PriceFinder customers have access to its public Online Help Centre which contains information about the proper use of property data in Queensland, its obligations as a data broker and their obligations as customers. Furthermore, a “No Direct Marketing” Policy is attached to all products where QVAS data is stored.

It is hard to gauge how much promotion is undertaken by REIQ and the Subscribers across the board. In the interest of compliance, transparency and accountability the Code Oversight Committee should collect data on promotion annually and report on it in its Annual Report. This should help identify where gaps are in promotion.

Accountability In essence accountability is a ‘window’ on the scheme so that all interested stakeholders and the public at large can have confidence that the Code Oversight Committee has delivered what the code sets out to deliver.

The Code Oversight Committee’s accountabilities are set out in the Code. Key requirements which allow a window on the Committee’s work include:

- Publication of its Annual Report by 30 August each year
- The conduct of an Independent Review every five years
- Referral of any complaints by consumers or other entities received by the Department of Resources or the Office of Fair Trading including referrals from the offices of local Members of Parliament
- Consumer and industry representation on the Committee.
- The Committee’s engagement with VAPIBA
- The Committee’s periodic communications with the REIQ, a major stakeholder.
- The Committee’s engagement with individual Code Subscribers including their Privacy Officers.
- Points of contact with the available consumer organisations.
- Appointments of the Chair and the Consumer Representative to the Committee for three-year terms.

Each Code Subscriber has an obligation to accept responsibility and act in line with its obligations under the Code. Currently there is no way of knowing or validating a Code Subscriber’s accountability or effectiveness, in particular:

1. whether a Code Subscriber has in fact received complaints that ought to have been handled in accordance with the Code of Conduct;
2. whether a Code Subscriber complies with its obligations and how;
3. how seriously these obligations are received from offending parties; and
4. what consequences are imposed by Code Subscribers for those parties who are found to breach the terms of the Code.

For example, a couple of the Code Subscribers intimate that they have not received a single Code related complaint in a 12-month period, which appears to be contrary to the trend across the industry as demonstrated by other Code Subscribers. Improvements could be made to provide

transparency of the conduct and compliance of Code Subscribers, by way of auditing a sample of complaints.

Whilst Code Subscribers are required to promote the Code in their Terms and Conditions, there are always opportunities to further raise the awareness of for example a real estate agent's obligation.

Effectiveness: One major measure of effectiveness could include the level of dissatisfaction from consumers, Code Subscribers and other stakeholders on the Code Oversight Committee's administration of the Code in delivering on the objects of the Code

In relation to whether the procedures to prevent QVAS data being used for unsolicited direct marketing are working effectively, the Consumer Representative pointed out that the number of complaints remains low. The Committee believes that the message is getting out to agents that the information cannot be used for direct marketing without attracting a possible listing on the Register of Excluded Parties.

The Chair pointed out that the level of dissatisfaction with the Code Oversight Committee's administration of the Code is monitored through feedback or enquiries received from consumers, Subscribers, government agencies or other stakeholders. When such feedback is received it is considered.

The former Industry Representative on the Code Oversight Committee, who was consulted in this review, believed that the relatively low volumes of suppression requests and complaints received each year is a result of the continuation of the Committee's commitment to awareness of the responsibility and obligations of Code subscribers. This ensures focus is maintained on end-user responsibilities and their obligations in the event a Code Subscriber investigates an alleged breach of the Code

Efficiency: Efficiency in the context of the Code means the Code Oversight Committee and Code Subscribers being able to undertake their tasks in a timely and cost-effective manner.

Code Subscribers' key Code-related tasks include:

- Informing and educating their customers about compliance with the Code
- Enforcing their customers' compliance with the Code
- Responding to consumer Code-related complaints
- Investigating alleged breaches of the Code
- Suppressing personal identification information approved for Suppression.

All Subscribers have their nominated internal Privacy Officers who deal with Code complaints and investigations in the first instance, as well as handling complaints or enquiries about other privacy concerns from consumers or other parties.

The Code Oversight Committee has the support of an Administrator who can provide timely and cost-effective support and services to consumers or other parties

The former Industry Representative believed that the process of suppression requests and complaint handling has been very well handled to date. Communications are clear and concise including obligations and expected handling/response times for both suppressions and investigations of alleged breaches.

CoreLogic has also noticed many improvements in the administration of the Code over the last couple of years. In particular, it recognised that the suppression and complaint processes have become more refined and efficient, and that the Code Oversight Committee's pro-active engagement with the VAPIBA members has enabled further industry education about the Code's existence.

Independence of the Code administration: Independence of the Code administration means that the Code Oversight Committee has enough funding to carry out its task and to be free of any undue influence from any outside body.

Both the Chair and the Consumer Representative are entirely independent of the Code Subscribers.

The Industry Representative is nominated by VAPIBA and has been to date a senior employee of one of the Code Subscribers, CoreLogic. The Code prescribes in 5.1.2 that the Industry Representative be a person of relevant experience at a senior level who is nominated by a simple majority of Code Subscribers.

The current Administrator is an employee of CoreLogic who is made available by CoreLogic, in agreement with VAPIBA, to perform the duties of the Administrator which include secretariat functions for the Committee. The Administrator does not perform any decision making functions and only participates in meetings in a secretariat capacity.

All Code Subscribers are obliged to be members of VAPIBA.

VAPIBA's business purpose is to provide a legal and funded entity to support the operation of the Code and it does so by holding the funds acquired as Subscriber membership fees and being the contracting entity for any services required e.g. commissioning the five yearly Independent Review and purchasing appropriate insurance cover, and meeting the costs of the Code Oversight Committee (including members' fees and expenses where applicable).

VAPIBA's funds have always been in surplus and funding of the Code Oversight Committee's administration has not ever been of concern to the Committee.

The Code Oversight Committee adopts a responsible approach to its expenditures and has never felt constrained nor subject to any undue influence in its administration of the Code.

If a conflict of interests was to arise with an investigation of an alleged breach of the Code, the Industry Representative would abstain from decision making in the matter.

This review considered that there would be considerable merit in involving DR and OFT in some advisory role with the Code administration, the former because of their key role as distributing property sales information and the latter as being a recipient of some complaints regarding breaches of the Code together with their general knowledge of fair trading. Having a relationship with the Code Oversight Committee is important to keep the agencies engaged with the scheme.

One option for consideration would be having a representative from these two agencies in some form of "Ex Officio" capacity which would strengthen the relationship and it would be more "front-of-mind" with DR and OFT than currently appears to be the case.

This would not be a large commitment by those organisations as the Committee's normal meetings are bimonthly by Zoom and normally 1 ½ hours in duration and in terms of time and other resources it would not be a huge impost.

An alternative option for consideration would be for the Committee to convene a joint meeting with DR and OFT at least annually or more often if thought desirable or necessary.

The reviewer believes that the Code Oversight Committee operates independently.

Other administrative matters

CoreLogic in its submission stated that it appreciates the Code Oversight Committee's guidance and understands that an Administrator is necessary for the smooth provision of its functions.

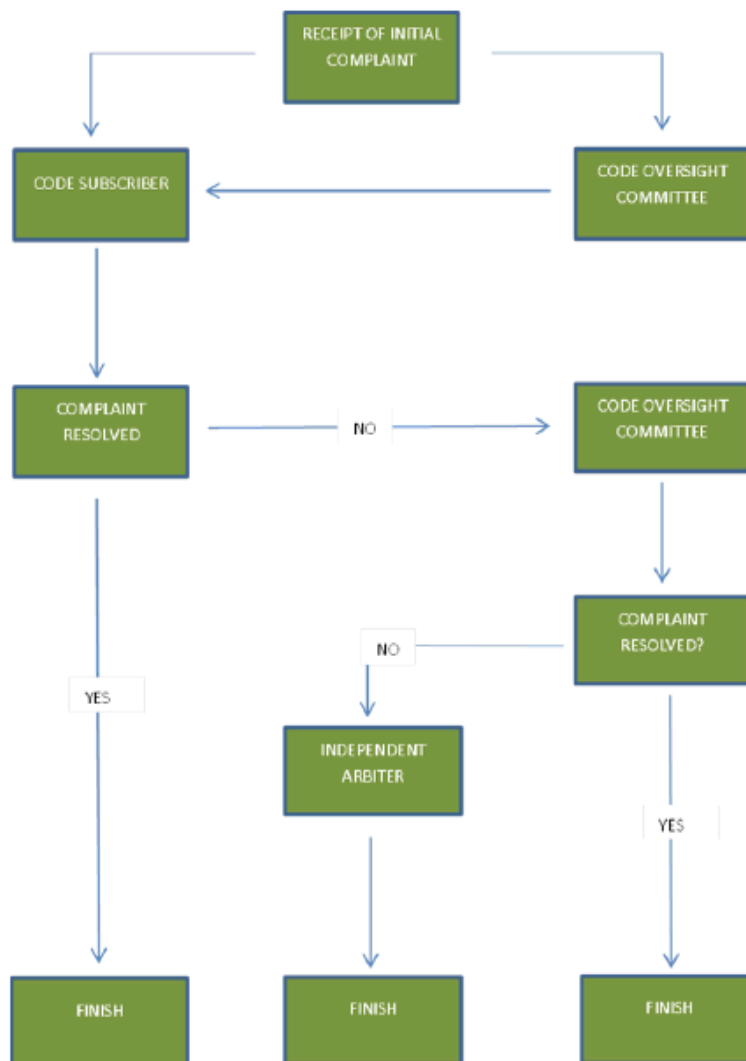
Since the Code's inception, CoreLogic has provided a CoreLogic employee, on a rotational basis, to assist the Committee by completing reasonable administrative work which includes support and maintenance of the Code website, processing the suppression requests that are received, assisting with the preparation of the Code Oversight Committee's Annual Report as well as attending and documenting the Minutes of Committee meetings. The reviewer notes that this is a part time arrangement at no charge to the Committee and is in addition to the employee's primary role at CoreLogic.

Whilst Core Logic indicated it has been happy to continue the arrangement which has been in place since the establishment of the Code, it noted that the administrative workload has increased over time. Further, it also noted that CoreLogic, continues to fund some of changes and improvements and maintenance to the Code website at its own cost. CoreLogic will be requiring that other Code Subscribers contribute to some of these costs moving forward.

This review sees merit in this argument, particularly for equity reasons, in CoreLogic's submission but suggests that this is a matter best suited for Subscribers to collectively decide.

Complaints handling

Consumers can lodge a complaint with a Subscriber (information broker) or with the Committee if they believe that prohibited direct marketing has taken place, or if the Subscriber or their customers have otherwise breached the Code. The process for resolving complaints under the Code was arrived at after considering complaints processes across a broad range of industries. The process is outlined in the following flow chart:



Code Subscribers are obliged to establish binding agreements with their customers, agents or other third parties wishing to access QVAS information. These agreements must reflect the prohibition on direct marketing using personal identification information. Further, the Code requires all Subscribers to have a documented internal dispute resolution framework for dealing with consumer complaints.

Lodging a complaint with a Subscriber

The Code of Conduct’s website contains contact names and other details for the nominated complaints officer for each Subscriber.

If the consumer remains dissatisfied with the Subscriber’s response or where the complaint has not been resolved within 30 days, the consumer can escalate the complaint to the Committee by giving written notice of a dispute.

Lodging a complaint with the Committee

Written notification of complaints and supporting material may be lodged by email or post with the Committee. If the complaint is not covered by the Code, the consumer will be advised in writing.

If the complaint falls within the ambit of the Code, the Committee will investigate and will make a decision.

The circumstances in which the Committee may decline to consider a complaint include:

- complaints which do not involve a breach of the Code;
- where the relief sought is outside the Committee's powers or authority as provided for by the Code;
- where consumers do not authorise the Subscriber or the Committee to disclose their name and service address to the data user, who it is alleged is in breach of the Code, when it is necessary to investigate and determine the complaint;
- complaints that on the balance of probabilities have no basis in fact;
- complaints that arose prior to the date of commencement of the Code, 1 October 2009; and
- complaints that the Committee has already considered and determined to have no reasonable grounds for the matter to be re-opened.

The Committee will not usually consider a complaint that has been settled. An exception may arise if there is evidence of serious or systemic breaches of the Code or if the data user has not complied with the terms of the complaint's settlement.

The Committee will not accept complaints brought outside the following time limits:

- where the event occurred before the Subscriber became a subscriber to the Code;
- where the act or omission occurred more than 12 months before the date on which the consumer made the complaint to the Subscriber in writing;
- where the complaint is between a consumer and a data user, the business of which has been acquired by a Subscriber, and if that agent was not an agent of the Subscriber at the time the events (which are the subject of the complaint) occurred.

If either the Subscriber or the consumer is not satisfied with the Committee's decision, the Code allows them to apply to an independent arbiter. The cost of the arbitration is borne by the Subscriber, with no fee payable by the consumer. The decision of the independent arbiter is binding on both parties.

There was an increase in the number of direct marketing complaints from 15 in 2020/2021 to 20 in 2021/2022. Of the 20 complaints received, most involved alleged breaches by real estate agents with 13 received from the public by the Code Oversight Committee, and then referred to Subscribers, while 7 were received directly by Code Subscribers.

When a complaint is received by a Code Subscriber and a breach is found to be substantiated, the Committee is informed. When a complaint has been received directly by the Committee and then referred to the relevant Subscriber, who has the respondent as a customer, the Committee monitors the progress of the complaint and may provide advice to the Subscriber if required.

Of the complaints received in 2021/2022, 11 were found to be substantiated, in contrast to the 2 breaches found in 2020/2021. In all cases, these were effectively first breaches, and the responsible firms were given a written warning and their staff required to undertake training on their obligations under the Code with an emphasis on the prohibition of unsolicited direct marketing using QVAS data.

The Committee considers that while complaints rose slightly during the year there is a general level of awareness of the appropriate use of personal identification information by both consumers and Code Subscriber customers, principally real estate agents.

Table – Complaints and breaches

	1 July 2015 to 30 June 2016	1 July 2016 to 30 June 2017	1 July 2017 to 30 June 2018	1 July 2018 to 30 June 2019	1 July 2019 to 30 June 2020	1 July 2020 to 30 June 2021	1 July 2021 to 30 June 2022
Complaints	37	22	30	21	13	15	20
Breaches	12	6	10	11	3	2	11

Register of Excluded Parties

The Committee did not add any entities to the Register of Excluded Parties during 2021/2022 as all the breaches were first breaches. The general policy of the Committee is that, depending on the circumstances, sanctions will only be considered when the entity has been found to have committed second or subsequent breaches. Entities who are listed on the Register of Excluded Parties cannot access QVAS name and service address data for the period prescribed by the Committee.

As of 30 June 2022, there were no entities listed on the Register of Excluded Parties.

In response to a question whether it thought that the complaints handling system is working well OFT in its submission pointed out that it regulates licensed real estate agents, property auctioneers, real estate salespersons and property manager. As part of its role as a regulator, the OFT receives complaints and enquiries from consumers and industry professionals regarding the lawfulness of the use of sales and personal data in real estate transactions, direct marketing and real estate enquiries.

In the five-year period since the last review of the Code, OFT has received 22 formal complaints regarding the alleged use of this data without permission for sales and marketing purposes.

In its submission OFT stated that a review of complaints data for this period also reveals a number of complaints about information stored on the website www.onthefhouse.com.au for particular properties being either incorrect (e.g. incorrect sale price figures, age of property or when it was built) or that the properties were actually for sale when they were not.

In the period 2017-2022, OFT received four complaints about onthefhouse.com.au, seven about CoreLogic, four about RP Data, and seven about individual real estate entities.

OFT noted that it has seen a rise in complaints since the Code's previous review (10 complaints received in the last review compared with 22 this period) which it thought may indicate a reduction in awareness within the industry.

In its submission PEXA Insights pointed to the evidence of Committee findings of breaches occurring from complaints referred from both the public as well as directly from Code subscribers. In each instance the Committee has continued to engage with the relevant Code subscriber to ensure appropriate actions are undertaken

The previous Industry Representative on the Code Oversight Committee indicated that it has been his prior experience that all alleged breaches are taken extremely seriously, the Committee acts swiftly in identifying any Brokers involved and triggers a thorough, fair and outcomes driven investigation immediately. All evidence is considered, additional follow-up occurs where further details are required, and communications with all parties on progress and outcomes are maintained.

CoreLogic in its submission to the review indicated that it believes that the Code provides an effective method for dealing with privacy complaints when related to direct marketing. However occasionally, it receives complaints that are not related to direct marketing activities but where the complainant has alleged that another party has encroached upon their privacy. There is little policy about how these types of privacy complaints should be dealt with by Code Subscribers (or the Committee) and the circumstances where it is more appropriate to refer these complaints to the Office of the Australian Information Commissioner (OAIC).

CoreLogic pointed out that Section 6.1 of the Code prohibits the use of QVAS Identified Information for the purposes of:

- (a) Direct Marketing (direct marketing complaints); or
- (b) with the intention of encroaching upon the privacy of a Consumer.

Paragraph (b) above is framed very similarly to s36 of the *Privacy Act 1988* (Cth), which addresses complaints by an individual about “an act or practice that may be an interference with the privacy of the individual”, i.e. what may be called an interference complaint.

CoreLogic have noted a reluctance by the Code Oversight Committee to address complaints that would typically fall into the interference complaint category and instead a preference to confine the exercise of its jurisdiction to direct marketing complaints. This raises a number of questions including:

- (a) whether the Code Oversight Committee has an obligation to investigate and make determinations in relation to such interference complaints and how the Committee’s remit overlaps with that of the OAIC; and
- (b) whether, when and in what circumstances the Committee and/or the Code Subscribers should otherwise refer those complaints to the OAIC.

CoreLogic suggested that the Code Oversight Committee consider obtaining its own independent legal advice in order to develop a policy and process about how best to handle interference complaints when they are received.

The Chair indicated that there is no reluctance on the part of the Committee to consider privacy issues which are not related to direct marketing nor a preference to deal only with direct marketing complaints. That has never been a policy - explicit or implicit - of the Committee. He added that the Committee just have not had many privacy complaints to consider.

The Chair further indicated that the Committee wants to be able to use all the tools it has at its disposal to achieve the objectives of the Code and if there is one which may be underutilised, the Committee would like to learn as much as it can about how and when to use it.

The Chair felt that the concern raised by CoreLogic is welcomed and that he was very supportive of any measures that can be taken to ensure that the Committee has access to comprehensive professional advice about what it can do with that part of the Code which prohibits using QVAS

personal identification information '... with the intention of encroaching upon the privacy of a Consumer'.

This review supports the reasoning by the Chair as every reasonable effort should be made to give access to remedies.

PriceFinder in its submission indicated that the introduction of the consistent email/letter templates for the use of all Subscribers has improved the efficiency of the complaints handling process creating a consistent approach by all brokers. In addition to this, the inclusion of common responses from data customers, and the reasoning as to why these common responses are not accepted has been beneficial in training internal staff members.

Suppression under the Code of Conduct

Individual owners or vendors of properties in Queensland can apply under the Code of Conduct to the Committee to suppress their names and service addresses. Applicants must be natural persons. Corporate property owners are not eligible to apply for suppression. A current Council rates notice, or an extract from the Council's rates records, must be provided to the Committee as proof of ownership, the applicant's standing to make the request and to provide all the necessary property description details to ensure the correct property is being dealt with. Once suppression requests are processed by the Code's Administrator, they are added to the Committee's Register of Request Suppressions and Code Subscribers are advised so that they can apply the suppressions to their databases. Code Subscribers must suppress any personal identification information within their systems within 30 days of receiving the request from the Committee.

Applications for suppressions can be made online through the Code's website or in writing to the Code's postal address.

Suppression under the Land Valuation Act 2010

As an alternative to suppression under the Code, if a property owner can establish that there is a risk to a person's safety or property, they may make an application to suppress their personal information at the source, namely in the Department of Resource's valuation roll, under s188 of the *Land Valuation Act 2010*, at www.resources.qld.gov.au. If approved the suppression direction by the Valuer-General will be effective for five years and may be renewed on a further application. Where a suppression direction is granted, the person's details will also be suppressed from the results of a name search of the relevant land register. The person's details will not be provided to Code Subscribers. For the purposes of this legislation, a property owner can include, as a 'person', an incorporated or non-incorporated entity, as well as a natural person.

2021/2022 Suppressions under the Code of Conduct

In 2021/2022, the Committee received 131 suppression requests of which 96 were approved by the Committee. This was an increase of 34% compared to the 98 requests received in 2020/2021. The number of approved suppressions also increased by approximately 35% over the previous year.

Reason for requests being declined were:

- the applications were for properties owned by corporations which are ineligible to apply for suppression under the Code of Conduct; and

- the applicant was not the owner of the property.

Eleven requests remained under consideration as at 30 June 2022 pending provision of the correct documentation required for processing the request.

24 suppression requests were not approved for the following reasons:

- duplicate applications for the same property / address details; and
- applications were not complete.

Table – Total of approved Suppression Requests

	1 July 2015 to 30 June 2016	1 July 2016 to 30 June 2017	1 July 2017 to 30 June 2018	1 July 2018 to 30 June 2019	1 July 2019 to 30 June 2020	1 July 2020 to 30 June 2021	1 July 2021 to 30 June 2022
Suppression requests	59	96	99	78	87	71	96
Approved	59	96	99	78	87	71	96

In response to a question as to whether procedures to prevent QVAS data being used for unsolicited direct marketing work effectively, the Code Oversight Committee indicated that the procedures adopted by the Code Subscribers to train their data customers and emphasise the prohibition on unsolicited direct marketing using QVAS data are considered to be reasonably effective. However, the Committee’s letter to VAPIBA letter stressed the need to promote the Code and to include the mandatory provisions in agreements with customers. The Committee is concerned that these obligations should be uniformly observed by all Subscribers.

The Code of Conduct provides a mechanism which enables a consumer to request suppression of their personal identification information in the Code Subscribers’ data bases where that data has come from QVAS, if they wish to do so.

In its submission to the review CoreLogic pointed out that the Code Oversight Committee provided a letter to all members of the VAPIBA regarding third party applications for the suppression of names and service addresses. The letter proposed that the current process of requiring suppression applications only from the owners of the relevant property be extended to include applications from solicitors acting on an owner’s instructions, or from other third-parties with the owner’s authorisation.

CoreLogic submitted that requests for a suppression direction should be limited to the individual owner, or where there are several owners, one of the owners may make the application on behalf of all owners.

They considered that applications should not be made on behalf of an owner other than where the owner’s representative holds a power of attorney or is their appointed legal representative. The appointment of an attorney is the mechanism at law to accommodate individuals who do not have the ability or capacity to act on their own behalf (such as through disability or otherwise). In these circumstances, we would also suggest the representative should be asked to provide written evidence of their appointment under a Power of Attorney.

The Code Chair in a letter to the VAPIBA pointed out that the Code of Conduct is silent in terms of the status of third parties to make applications for suppressions. While the number of third-party

applications is not large, the Committee wanted to clarify the circumstances under which a third-party application would be accepted and the rationale for that position.

He added that regardless of who is making a request for suppression, they must still produce a Council rates notice or an extract from Council rates records providing the owner's name and service address to verify their link with the property and provide the relevant property details

The Chair proposed the following approach to third party applications:

- In the circumstances where a lawyer, acting on a consumer's instruction, request a suppression the Committee proposes to action the request. Solicitors 'stand in the shoes' of their clients and it is accepted that they have standing to make requests on behalf of their clients in a range of jurisdictions. Furthermore, serious consequences can be imposed on a lawyer who misrepresents their client.
- However, the Committee considers that if a non-lawyer third party is making a request, they should be required to provide written evidence they have been authorised by the consumer to do so. This may take the form of a written authority signed by the owners or a power of attorney.

This review believes that this is a matter for parties to the scheme to decide but, suffice it to say, as a general rule of thumb, the emphasis should be on making access easier.

APM PriceFinder in its submission believed that the existing suppression process continues to work well due to the manual process and automated checks allowing it to adhere to suppression requests as they come through in a timely manner. APM PriceFinder indicated that a small improvement that would assist with applying suppressions, would be the consideration of updating the naming convention for "cancelled" requests to remove any ambiguity when the suppression is being applied or processed.

The Committee's decision making procedures with respect to alleged breaches of the Code

In relation to the Code Oversight Committee's current decision-making procedures with respect to alleged breaches of the Code and whether these accord with the principles of procedural fairness, the answer received from the Committee was in two parts.

Subscriber complaint handling

Procedural fairness will be accorded provided Code Subscribers follow the Committee's complaint handling guidelines. However, it is important to note that the Committee only hears about complaints investigated by Code Subscribers if there is a breach, as the Subscribers are obligated to notify it. Code Subscribers are required to inform the Committee at 30 June each year of the number of Code-related complaints they have dealt with during the preceding 12 months and these statistics include both breaches and non-breaches.

The Committee only takes action where the number of breaches or seriousness of the breach or breaches justifies, in the Committee's view, listing on the Register of Excluded Parties. As a matter of Committee policy 'first offences' where the agent does not have a history of breaches will result in a warning to the agent and the requirement for the agent to attend training in QVAS data use by the Code Subscriber with whom they have their data supply contract.

Committee complaint handling

For the purposes of this example it is assumed that the alleged breach has been allegedly perpetrated by a real estate agent ('the agent') as a Code Subscriber customer.

1. Upon receipt of a complaint, and with the complainant's consent, the agent is contacted and asked to explain the source of the data used in direct marketing to the complainant.
2. If the agent responds with an explanation, this is referred to the complainant for comment.
3. Additional information may be sought from both parties.
4. The Committee receives and considers an investigation report on the complaint.
5. If on the evidence adduced and on the balance of probabilities it is considered that a breach may have occurred, the Committee writes to the agent, explains the evidence provided to the Committee, informs them that the Committee needs to consider whether a breach has occurred and asks the agent to respond within 14 days, showing cause why a breach should not be found.
6. After receipt and consideration of the response from the agent, if the Committee finds that a breach has occurred, the Committee writes to the agent and informs them that a breach has been found and what, if any, sanction the Committee is contemplating imposing on the agent. The agent is given an opportunity to respond within seven days to show cause why the contemplated sanction should not be imposed.
7. After receipt and consideration of the agent's response, the Committee informs the agent of what, if any, sanction has been imposed.

In relation to sanctions the Code Oversight Committee has imposed on Subscribers for failure to comply with the Code, to date there have not been any instances where Code Subscribers have been found to have breached the Code.

Breaches of the Code have occurred with Code Subscriber Customers and where sanctions have been considered by the Committee to be warranted those Code Subscriber Customers have been added to the Register of Excluded Parties for specified periods of time. Where firms are added to the Register of Excluded Parties all Code Subscribers are informed so that denial of data access occurs for the period of listing on the Register.

The number of listings on the Register of Excluded Parties is also reported in the Annual Report each year.

Subscribers contacted believed that the documented procedures for the Committee to handle complaints about alleged breaches of the Code appear to accord with the principles of procedural fairness.

This review believes that the Code Oversight Committee's current decision making procedures with respect to alleged breaches of the Code accord with the principles of procedural fairness.

Code compliance management systems

The ACCC guide on codes² states that a code administration committee needs to ensure that each participant has some form of in-house system to ensure compliance with the code.

I note that one of the stated roles of the Code Oversight Committee is to monitor compliance with the Code by its Subscribers and their clients and to ensure ongoing effective operation of the Code's requirements. I have interpreted this to cover monitoring for compliance of:

- Adequacy of Code compliance systems;
- Subscribers' complaint handling processes; and
- Subscribers' suppression processes.

The Code Oversight Committee indicated that each Code Subscriber is responsible for compliance with the Code by both itself and its data customers. Each Code Subscriber has an appointed Privacy Officer who is responsible for responding to complaints under the Code. The Committee communicates with these Privacy Officers on an individual basis and annually convenes a teleconference with all Privacy Officers to discuss trends and developments in complaints and the administration of the Code.

Each Code Subscriber also has access to in-house legal counsel to advise them on their compliance responsibilities.

The Committee also monitors complaint handling by Code Subscribers and promotes general compliance with the Code, e.g. by checking whether or not Subscribers are complying with their obligation to include prescribed terms in agreements and to promote the Code.

² ACCC Guidelines for developing effective voluntary industry codes of conduct, at p.10