

## Privacy Alert

# Privacy Reforms - effect of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*

July 2013

The Federal Parliament has passed major reforms relating to the *Privacy Act 1988* (Cth), resulting in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (**Act**) to be implemented in March 2014. Amongst other things, the reforms include a new set of Australian Privacy Principles (**APPs**), revised credit reporting provisions and greater enforcement powers for the Privacy Commissioner (including penalties of up to \$1.7 million).

### Australian Privacy Principles

The Act creates 13 new APPs which apply to both agencies and organisations, replacing the existing National Privacy Principles (**NPPs**) and Information Privacy Principles (**IPPs**). This will be relevant to a number of organisations, including but not limited to, financial institutions, credit reporting bodies and companies who collect and use credit information.

How does it affect you?

### **Manner and purpose of collection of personal information**

An organisation must not collect personal information unless it is 'reasonably necessary' for one of its functions or activities. Further, the collection of personal information must be by lawful and fair means.

In accordance with APP 2, there is an obligation for agencies to provide individuals the option to not identify themselves, or use a pseudonym, unless an exception applies.

APP 3 introduces a high standard to be met by agencies when involved in the collection of sensitive information.

Where unsolicited personal information is received by an agent, the agency must determine, within a reasonable period, whether it could have collected the information under APP 3 (that is, whether it is reasonably necessary for, or directly related to, one or more of the agency's functions or activities, and was collected by lawful and fair means). If the agency can answer yes to this, then APPs 5 to 13 must apply to the information. If the agency answers no, it must destroy or de-identify the information as soon as practicable, if it is lawful and reasonable to do so.

## Storage and security of personal information

APP 11 requires agencies to take reasonable steps to protect information from interference, misuse, loss, unauthorised access, modification and disclosure.

Agencies must take reasonable steps to de-identify or destroy personal information in the following situations:

- The agency no longer requires the information for any authorised purpose;
- The information is not contained in a Commonwealth record; and
- There is no requirement under Australian law (or pursuant to a court/tribunal order) to retain such information.

## Limitations on use and disclosure of personal information

The general principle emanating from APP 6, is that an agency that collects personal information for a particular (primary) purpose, may not use or disclose that information for a secondary purpose unless consent from the individual is obtained, or another exception applies.

The use and disclosure of personal information for a secondary purpose will be allowed if:

- It is necessary to take appropriate action relating to the suspicion of unlawful activity;
- It is reasonably necessary to assist in locating a missing person;
- It is for the purposes of a confidential alternative dispute resolution;
- It is reasonably necessary to establish, exercise or defend a legal or equitable claim.

APP 8 sets out the requirements associated with the disclosure of personal information to recipients located outside Australia. The cross-border disclosure obligations require reasonable steps to be taken by the agency to ensure that the overseas recipient does not breach the APPs in relation to the information provided.

In some circumstances, the act of the overseas recipient can be taken to have been done by the agency and may result in a breach of the APPs by the agency.

## Credit reporting regime

Numerous changes to credit reporting laws have resulted in the following:

- The introduction of comprehensive credit reporting (which enables reporting of information regarding credit commitments and repayment history);
- A simplified and enhanced correction and complaints process; and
- The introduction of civil penalties for breaches.

The Act enables credit reporting bodies to collect 'positive' information, including, the date a credit account was opened, the types of credit accounts opened, the limit of each account and more significantly, the repayment history.

Thomsons Lawyers can assist you to discuss the impact and effect of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* on your organisation.

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