

Privacy Law Reform

Avoiding Dirty Data: Know your way around the new Privacy Laws

Outline of reforms

- The *Privacy Amendment (Enhancing Privacy Protection) Act 2012* takes effect on 12 March 2014
- Guidelines now finalised (Friday 21 February 2014)
- The Act provides for:
 - harmonised privacy principles,
 - changes to credit reporting,
 - the registration of codes, and
 - the enhanced powers of the Privacy Commissioner.

Progression to Unified Principles

NPP

National Privacy Principles – formerly applicable to the Private Sector



IPP

Information Privacy Principle – formerly applicable to the Federal Public Sector



APP

Australian Privacy Principles – 13 new APPs applying to all 'organisations'

Definitional changes

- **Organisation**
 - An organisation is any entity that is not a Small Business
 - A Small Business has turnover of less than \$3,000,000 annually
- **Personal Information**
 - Any information or an opinion about a person if that person is 'reasonably identifiable'
 - Applies even if information is untrue or not recorded in a material form
- **Reasonable**
 - The concept of reasonableness permeates the legislation
 - Organisations should be in a position to justify their position by reference to the countervailing considerations

Comparison of Principles

APP	Theme	Equivalent NPP	Equivalent IPP
APP1	Open and transparent management of <u>personal information</u>	NPP5	
APP2	Anonymity and pseudo-anonymity	NPP8	
APP3	Collection of solicited personal information	NPP1	IPP2
APP4	Dealing with unsolicited personal information		
APP5	Notification of the collection of personal information	NPP1	IPP2
APP6	Use or disclosure of personal information	NPP2	IPP10

Comparison of Principles

APP	Theme	Equivalent NPP	Equivalent IPP
<u>APP7</u>	Prohibition on Direct Marketing	NPP2	
<u>APP8</u>	Cross-border disclosure of personal information	NPP9	
APP9	Adoption, use or disclosure of government related identifiers	NPP7	
APP10	Quality of Personal Information	NPP3	IPP8
APP11	Security of Personal Information	NPP4	
APP12	Access to Personal Information	NPP6	IPP6
APP13	Correction of Personal Information	NPP6	IPP7

OAIC - Expansion of Powers

- Performance Assessments
- Code making power
- Own Motion Investigations (OMIs) and determination
- Enforceable Undertakings
- Civil Penalty Orders



Key Changes

Personal Information

- Information or an opinion about an identified individual or an individual who is reasonably identifiable:
 - whether the information or opinion is true or not, and
 - whether the information or opinion is recorded in a material form or not



Key Changes

Direct Marketing (APP 7)

- New APP 7 restricts the use or disclosure of personal information for direct marketing unless an exception applies:
 - If collected directly – reasonable expectation – notice
 - If no reasonable expectation or 3P source – consent (unless not practicable)
- Opt out
- These obligations do not replace the obligations under the *Spam Act 2003* or the *Do Not Call Register 2006*, but rather, operate in addition to them

Key Changes

Cross-border disclosure of PI (APP 8)

- An organisation must take reasonable steps to ensure an O/S recipient does not breach the APPs
- No action required if:
 - the organisation has a reasonable belief that the O/S recipient is subject to a substantially similar privacy law/regime, or
 - individual has consented
- Vicarious liability for breach (potentially)



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