

WARNING: ARE YOU READY FOR THE PRIVACY LAW NEW WORLD ORDER? ONLY ONE WEEK TO GO!

By Leanne Montibeler, Solicitor

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The clock is ticking and the deadline fast approaching for organisations to ensure they are prepared for the new privacy law regime in Australia. The significant reforms, which we first discussed in our [Privacy Update](#) article in May 2013, will finally come into effect on 12 March 2014. Although for many businesses, this is still going to be a shock to the system.

Unfortunately though, given the long lead time afforded to businesses by the Office of the Australian Information Commissioner to update processes and policies prior to the 12 March 2014 deadline, there is no grace period and so no excuse for being unprepared or under-prepared. If you have not yet considered the privacy law changes and their impacts, we urge you to make this an immediate priority.

The new changes introduced in the Privacy Act result in it having more 'teeth' and consequently, the potential for a stronger, more painful 'bite'. In particular, the Information Commissioner will have a broader enforcement focus and powers and can financially penalise businesses for breaches of privacy, which has not been available before. A serious or repeated failure to comply with the Privacy Act could expose businesses to hefty penalties of up to \$1.7 million for corporations (and for individuals, up to \$340,000). Needless to say, being the first test case for these powers would not be wise.

In addition to the right to issue fines, the Information Commissioner will be entitled to conduct an assessment of an organisation to request a demonstration of its compliance with the new privacy laws, even in circumstances where no one has made a complaint. This power could be used as a fishing expedition by the Information Commissioner to pull into line businesses who have breached the Privacy Act and who might previously have gone under the radar in the absence of a complaint.

Given the changes, those most at risk under the new laws include businesses that engage in direct marketing and that routinely disclose personal information to overseas suppliers or affiliates. Again, if you haven't read our Privacy Update from May 2013, we recommend you do now.

What you need to do

If you haven't started yet, we recommend that you get cracking on the below list:

- Get a good understanding of the kinds of personal information you collect and your current processes and seek advice as to the relevant compliance issues and needs for your business.
- Review, update where necessary and implement all processes around collecting and storing personal information, and your access, correction and complaints handling processes, including for unsolicited personal information and the need for collection statements.
- Destroy or de-identify personal information that you no longer need.
- Ensure that you have a privacy policy that is compliant with the new regime. An old privacy policy may need to be updated, as well as internal processes.

- Ensure your staff are trained in the requirements of the new regime – non-compliance via the actions of staff who are not aware of the new requirements will be no excuse. In some cases, it may help to appoint a compliance officer who is across all the Privacy Act changes and can advise staff.
- If you use overseas suppliers, you may need to ensure that your contracts impose contractual obligations for privacy compliance on the overseas supplier – this is because your business will be deemed responsible for the actions of overseas suppliers in some cases.
- If you engage in direct marketing, review your processes and ensure that recipients can opt out and that you have appropriate consents in place.
- It is also a wise idea to document your privacy compliance practices, in the event the Information Commissioner comes knocking.

Contact us

If you would like further information on the privacy law changes and how they might impact on you, please contact Clint Fillipou or Leanne Montibeler asap. We can provide tailored legal and practical advice to assist you with reviewing your privacy policy, practices and procedures.

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