

Privacy information sheet 1

Privacy and the non-government sector

Private sector organisations

The *Privacy Act 1988 (Commonwealth)* now applies to all private sector organisations with an annual turnover in excess of \$3 million (including funding). Organisations with an annual turnover of \$3 million or less are exempt from the new laws unless one of the following applies. The organisation:

1. is related to another business (eg. it is a holding company or subsidiary) that has an annual turnover of more than \$3 million
2. provides a health service and holds health records other than employee record
3. discloses personal information for a benefit, service, or advantage
4. provides someone else with a benefit, service, or advantage to collect personal
5. information
6. is a contracted service provider for a Commonwealth contract.

If an organisation is covered by the *Privacy Act 1988 (Commonwealth)*, then it is obligated to comply with this Act for all services that it provides.

The *Privacy Act 1988 (Commonwealth)* allows small business operators, who would otherwise not be covered by the Act, to choose to be treated as an organisation for the purposes of the Act. This option has been made available in order to provide small businesses with the opportunity to benefit from any increase in consumer confidence and trust that may be derived from operating under the *Privacy Act 1988 (Commonwealth)*.

Formal notification must be made to the Privacy Commissioner when opting-in or out of coverage. It is important to note that any actions taken while you are being treated as an organisation may be the subject of a complaint to the Commissioner, even if you subsequently opt out.

Personal information

The *Privacy Act 1988 (Commonwealth)* only applies to *personal information*. Personal information has been defined as information about an individual who can be identified, or whose identity may be readily ascertained, from the information. Such personal information only relates to human beings, and not to entities who may be recognised by the law as a "legal person" (such as companies).

Sensitive information

Sensitive information is a special category of personal information that discusses the following about an individual:

1. criminal record
2. health
3. membership of a professional or trade union association
4. membership of a political association
5. philosophical beliefs
6. political opinions
7. racial or ethnic origin
8. religious beliefs or affiliations
9. sexual preferences or practices.

Privacy information sheet 1

Privacy and the non-government sector

Additional requirements are placed upon organisations relating to the collection of sensitive information. For example, consent is usually required when sensitive information is collected.

Health service providers

The *Privacy Act 1988 (Commonwealth)* defines *health services* quite broadly and includes an activity that is intended or claimed to assess, record or maintain an individual's health.

Organisations that provide a health service and hold health records—ranging from hospitals, pharmacies, and general practitioners to gyms and weight loss clinics—meet the definition and are subject to the *Privacy Act 1988 (Commonwealth)* regardless of the annual turnover of the organisation. This includes:

1. health organisations controlled by Indigenous communities
2. child care centres
3. health services provided in the non-government sector (e.g. phone counselling services or drug and alcohol services)
4. private aged-care facilities.

Due to the extra-sensitive nature of health information, all health service providers are subject to the *Privacy Act 1988 (Commonwealth)*.

National Privacy Principles

Schedule 3 of the *Privacy Act 1988 (Commonwealth)* sets out 10 National Privacy Principles (NPPs) that legally bind organisations in the way that they handle personal information. The NPPs apply to:

1. the collection of personal information
2. the use and disclosure of personal information
3. data quality
4. data security
5. openness
6. access and correction
7. identifiers
8. anonymity
9. transborder data flows (ie. sending personal information overseas)
10. dealing with sensitive information.

Privacy in practice

In practical terms, for organisations, complying with the *Privacy Act 1988 (Commonwealth)* is likely to mean:

1. informing people of the purpose for collecting their personal information and what the organisation is likely to do with the personal information
2. only using personal information about people in ways that they would reasonably expect
3. informing people before passing personal information on to a third party
4. providing people with the opportunity to see any information organisations may have about them
5. keeping personal information accurate and safe within organisations
6. providing people with information on how the organisation handles personal information.

Privacy information sheet 1

Privacy and the non-government sector

If NPP obligations conflict with other legislative requirements, the NPPs are overruled.

Additional Information

More information is available from:

1. the Office of the Federal Privacy Commissioner www.privacy.gov.au
2. the Privacy Hotline 1300 363 992 (local call charge)
3. the department's Privacy Contact Officer (07 3224 5850)

Disclaimer

This information sheet is intended as a reference to privacy legislation. It offers general discussion and explanation on a range of privacy issues. However, it does not cover all circumstances faced by the diverse range of organisations in the non-government sector. This information sheet is advisory only and does *not* represent legal advice. If advice of a legal nature is required, independent legal advice must be sought and the content of this information sheet cannot be relied upon.