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Privacy – What's changed?

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The New Privacy Act

- Current trends
  - Worldwide trend towards greater protection of individuals' personal information
  - Privacy requirements will continue to grow in coming years and privacy compliance will be increasingly important for private enterprise and the government sector.
- Commenced
  - 12 March 2014
- What's changed
  - Stronger powers for the Privacy Commissioner
  - Changes to the rules surrounding personal information
  - Changes to credit reporting

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When does the Privacy Act apply?

- Personal information provisions apply to:
  - acts done in Australia; and
  - acts done outside Australia if:
    - personal information relates to Australian citizens;
    - organisation has a continued presence in Australia; and
    - personal information was collected in Australia at or before the time the act was done outside Australia

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What is personal information?

- Personal information:
  - Information about an individual from which that individual can reasonably be identified
- Includes:
  - Credit information
  - Sensitive information
- Excludes:
  - Small business (with some exceptions)
  - Related body corporates
  - Employee records

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Personal Information – what is 'sensitive information'

- Sensitive information is:
  - information or an opinion about an individual's
    - racial or ethnic origin; or
    - political opinions or membership of a political association; or
    - religious beliefs or affiliations or philosophical beliefs; or
    - membership of a professional or trade association or trade union; or
    - sexual orientation or practices;
  - ***health information about an individual***; or
  - genetic information about an individual that is not otherwise health information; or
  - biometric information

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Personal Information - What is a ‘health service provider’?

- A person who provides a ‘health service’
- ***‘Health service’*** means:
  - an activity performed in relation to an individual that is intended :
    - to assess, record, maintain or improve the individual’s health; or
    - to diagnose the individual’s illness or disability; or
    - to treat the individual’s illness or disability or suspected illness or disability; or
  - the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

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Personal information – small business exemption

- Small business exemption
  - Annual turnover of $3 million or less
- Exemption does **not** apply if the small business is:
  - Health service provider**;
  - Organisation trading in personal information
  - Contractor that provides services under a Commonwealth contract
  - Reporting entity for the purposes of the AML/CTF Act
  - Operator of a residential tenancy database
  - Credit reporting body

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Personal Information – Employee exemption

- Employee exemption
  - Exempt if the act is ***directly*** related to:
    - a current or former employment relationship between the employer and the individual;
    - an employee record held by the organisation and relating to the individual.
  - Exemption will **not** apply if an organisation wants to use employee records for other purposes (eg marketing etc)

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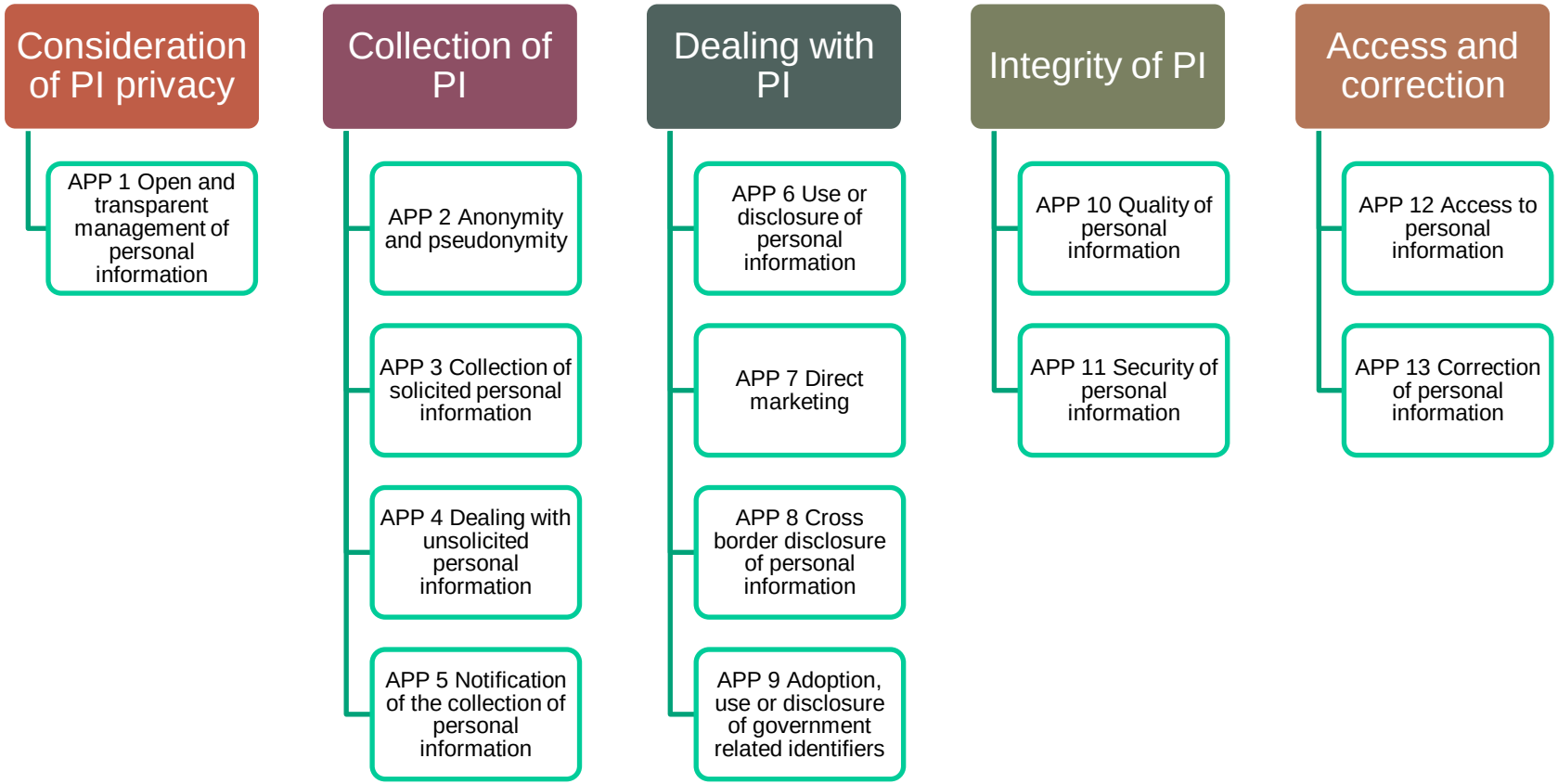
13 Australian Privacy Principles



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APP 1: Open and transparent management of information

- Organisations must have a Privacy Policy
- Privacy Policy **must** cover:
  - the **kinds** of personal information you collect and hold;
  - **how** you collect and hold personal information;
  - the **purposes** for which you collect, hold, use and disclose personal information;
  - **how** an individual may access personal information you hold about them and **how** to seek the correction of such information;
  - **how** a person can complain about a breach of the APPs and **how** you will deal with complaints
  - State if you are **likely** to disclose information overseas – and which countries the recipients are likely to be in

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APP 1: Open and transparent management of information

- Develop a Privacy Compliance Program
  - Develop and document a program to:
    - Ensure you comply with APPs;
    - Enable you to deal with inquiries and complaints
  - Should include:
    - **Procedures** to
      - identify and manage risks and compliance issues;
      - manage complaints and inquiries;
    - Information to explain your policies and procedures;
    - Training program for staff

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APP2 – Anonymity and pseudonymity

- Individuals must be able to deal with you anonymously
- Exception:
  - Not reasonably practical
  - Not permitted by law

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APP 3 – Collection of solicited information

- Must only collect information that is reasonably necessary or ***directly*** related to your functions and activities
- Collect information ***directly*** from the individual unless you have consent to collect otherwise
- Sensitive information
  - You **must** have the individual's consent
  - Unless:
    - The collection is necessary to prevent a serious threat to life, health or safety of the individual

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APP 4 – Dealing with unsolicited personal information

- If you receive information you did not solicit:
  - Determine whether you could have collected it under APP 3 within a ***reasonable period***
  - De-identify if could not have collected it

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APP 5 – Notification of the collection of personal information

- Ensure individual is aware of:
  - Your identity and contact details;
  - The fact the information has been collected and the circumstances in which it was collected);
  - If collection was required / authorised by a law – details of that law;
  - Purposes for which you collected the information;
  - Anyone you usually disclose the information to;
  - Privacy policy contains details of:
    - how the individual can access the personal information you hold and seek correction of it;
    - How they may complain about a breach of the APPS;
  - If information will be disclosed overseas, the countries to which it is likely to be disclosed

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APP 6 – Use or disclosure of personal information

- Must only use information for:
  - Primary purpose it was collected for;
  - Unless:
    - Individual has consented; or
    - Individual would reasonably expect the information to be used for another ***directly*** related purpose;
    - The use is necessary to prevent a serious threat to life, health or safety of the individual; or
    - The use is authorised under a law.

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APP 7: Direct marketing

- Consent
- Simple means for ‘opting out’ of receiving direct marketing material
- Prominent statement advising the individual that they may request not to receive further direct marketing material.
- Must not send direct marketing material to an individual who has opted out of receiving direct marketing material from us.
- Must not charge individual to ‘opt out’ or disclose your source of the information

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APP 8: Cross-border issues

- Must take ‘reasonable steps’ to ensure overseas recipient does not breach APPs
  - Unless:
    - the overseas recipient is also subject to similar binding scheme; or
    - You inform the individual that you will not remain liable once disclosed and the individual consents; or
    - The disclosure is necessary to prevent a serious threat to life, health or safety of the individual

APP 9 – Adoption, use or disclosure of government identifiers

- Must not adopt a government identifier as your own identifier
- Unless:
  - Reasonably necessary to verify the identity of the individual;
  - Use or disclosure is authorisd by a law; or
  - Use or disclosure is necessary to prevent a serious threat to life, health or safety of the individual

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APP 10 – Quality of personal information

- Ensure the information you collect, hold and disclose is accurate, up-to-date and complete
- Reasonable steps!

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APP 11 – Security of personal information

- Must protect personal information from:
  - Misuse, interference or loss; and
  - Unauthorised access, modification or disclosure
- Destroy or de-identify information you no longer require

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APP 12 – Access to personal information

- Must give individual access to information you hold if requested
- Unless:
  - Giving access would impact the privacy of other individuals;
  - Giving access would pose a threat to the life, health or safety of a person;
  - Request is frivolous or vexatious;
  - Denying access is allowed under a law or giving access would be unlawful;
- Must respond within a ***reasonable time***

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APP 12 – Access to personal information (cont)

- Must give in a manner requested by the individual if *reasonably* practical;
- If refuse to give in manner requested:
  - Must give access in a way that meets the needs of the individual
- If refuse to give access:
  - Give written notice setting out:
    - Reasons for the refusal; and
    - Mechanisms to complain about refusal.
- Any charge must be ***reasonable***

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APP 13 – Correction of personal information

- If individual requests a correct of information you hold about them:
  - Take reasonable steps to determine whether information you hold is inaccurate, out-of-date or incomplete; and
  - If so, update.
  - If you have previously disclosed information that is inaccurate, out-of-date or incomplete to another organisation, you must advise other organisation if requested by individual.

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APP 13 – Correction of personal information (cont)

- Must respond to a request to correct within a ***reasonable time***;
- If refuse to correct:
  - Give written notice setting out:
    - Reasons for the refusal; and
    - Mechanisms to complain about refusal.
- If you refuse to update information, you must make note on information if requested by individual
- Must not charge for request to update information

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Penalties!!

- 2,000 penalty units
  - $1.7 million for companies
  - $340,000 for individuals

Consider other laws about privacy

- SPAM Act
- Do Not Call Register Act
- Telecommunications Act

Checklist

Assess	• Understand how you handle personal or sensitive information • Is there a registered APP Code for you business?
Update	• Privacy Policy for APPs • Application and consent forms
Access	• Make it accessible on the website • Have PDF and hard copy available on request
Plan	• Implement a privacy compliance plan • New procedures
Review	• Performance against the compliance plan • Security breaches
Training	• For privacy officer • For general staff

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Contact Us

For more information about how any of the issues discussed in this presentation may affect your organisation, please contact one of our presenters below.

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