

REIA Real Estate Agent Fact Sheet

Privacy and Real Estate

The Privacy Amendment (Enhancing Privacy Protection) Act 2012 (the Act)

On 12 March 2014, Australia's privacy laws will change.

From that day, thirteen new Australian Privacy Principles will take effect. They change some of the obligations that businesses have when handling "personal information". Personal information is information or an opinion about a person who is identified or could reasonably be identified. This will include things like records of names and contact details, emails from individuals, etc.

Do the privacy laws apply to your real estate business?

The new Australian Privacy Principles will apply to a real estate business if:

- It, or a related body corporate, has an annual turnover of more than \$3 million; or
- It operates a residential tenancy database providing information on tenants to other people (usually subscribers to a service).

If your business meets either of these requirements, action should be taken to ensure your business practices comply with the new Australian Privacy Principles.

A major change that may affect real estate businesses is the new Australian Principle 7. This sets out how and when personal information may be used for direct marketing purposes.

Expansion of enforcement powers of the Privacy Commissioner

In addition to the changes to the privacy principles, the amendments to the Privacy Act enhance the Privacy Commissioner's powers. This includes giving the Commissioner the power to require an entity to give an enforceable undertaking to take specified action or refrain from taking specified action to comply with the Privacy Act. The Commissioner will also have the power to seek civil penalties for breaches by an entity of some provisions of the Act.

Changes to credit reporting laws

The amendments also introduce more comprehensive credit reporting regime, which allow the reporting of information about an individual's current credit commitments and their repayment history information over the previous two years. The credit reporting amendments include:

- a simplified and enhanced correction and complaints process;
- a prohibition on the reporting of credit related information about children;
- a prohibition on the reporting of defaults of less than \$150;
- the introduction of specific rules to deal with pre-screening of credit offers;

- the introduction of specific provisions that allow an individual to freeze access to their credit related personal information in cases of suspected identity theft or fraud; and
- the introduction of civil penalties for breaches of certain credit reporting provisions.

Review of Privacy Policies

Real estate businesses regulated by the Privacy Act should review their practices to ensure compliance with the new Australian Privacy Principles. Businesses may need to review, update or rewrite any procedure manuals referring to the National Privacy Principles, so they refer to the correct Australian Privacy Principle, as well as to reflect the requirements of the new principles.

Where your business has engaged a tenancy database provider, you should check that the contractual and other arrangements with the tenancy data base provider are adequate to ensure compliance with the new Principles.

Businesses may wish to think about engaging a lawyer to review current practices and recommend changes to reflect the requirements of the new principles. Legal costs associated with a review or audit of entities' privacy policies and practices will vary depending on the volume of documents that needs to be reviewed and the nature of any other audit-related tasks required. An entity could carry out its own privacy audit without assistance from a lawyer provided the entity is confident they understand the requirements imposed by the amendments to the Privacy Act.

Further information about the amendments to the Privacy Act can be found at:

<http://www.oaic.gov.au/privacy/privacy-act/privacy-law-reform>

REIA is grateful to Simonetta Astolfi and Lottie Flaherty from Maddocks for their assistance in preparation of this Fact Sheet.

Simonetta Astolfi | Partner Maddocks

Direct 61 2 6120 4801 | Facsimile 61 2 6230 1479 | Mobile 0400 470 768

Email simonetta.astolfi@maddocks.com.au

Level 1, Maddocks Building, 40 Macquarie Street | Barton | Canberra
ACT 2600

www.maddocks.com.au

Lottie Flaherty | Senior Associate Maddocks

Direct 61 2 6120 4804 | Facsimile 61 2 6230 1479 | Mobile 0409 606 179

Email lottie.flaherty@maddocks.com.au

Level 1, Maddocks Building, 40 Macquarie Street | Barton | Canberra
ACT 2600

www.maddocks.com.au