

PRIVACY AND YOUR BUSINESS

*Murray Thornhill, Commercial Law & Litigation Partner & Notary Public
and
Paul Greer, Commercial Law & Litigation Solicitor
Hudson Henning & Goodman*

In Australia, a Commonwealth privacy regime regulates the collection, use and disclosure of personal information. The privacy regime is centred on the Privacy Act and the National Privacy Principles (NPPs).

The privacy regime includes private sector business, but exempts "small business". A "small business" is defined by the Privacy Act to include a company, person, unincorporated association or trust, which has:

- an annual turnover for the previous financial year of \$3,000,000 or less, or
- an annual turnover for the current year of \$3,000,000 or less (if the business is a new business).

Businesses with an annual turnover in excess of \$3,000,000 are subject to the privacy regime.

Despite the small business exemption, certain types of small business activity are subject to the privacy laws, including trading in personal information, which may include the sale of client lists as part of the sale of a business.

For those business regulated by the privacy regime, the NPPs provide guidelines for dealings involving personal information, and include such matters as the collection, use and storage of information. The obligations of the privacy regime are not onerous and business operators can limit the impact of the laws by obtaining consent from clients to the collection and disclosure of their personal information.

When buying or selling a business, small business operators should ensure that customers can reasonably expect their personal data to be used only for the purpose for which it was originally provided. Where a business is sold as a going concern (offering the same services), the privacy regime has minimal impact. However, if the nature of the business is to change after its sale, business operators should seek permission from their customers to transfer their personal information to the new business owners.

Regardless of whether your business is subject to the privacy regime, NPPs remain a "best practice" system for the collection, use and disclosure of personal information. Implementing a privacy policy (including providing a privacy statement to clients) demonstrates that a business is committed to the appropriate management of personal information. A privacy statement may also serve to reduce potential disputes by clarifying the use and management of personal information.

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WA Solicitors Pty Ltd trading as
HHG Legal Group,
Hudson Henning & Goodman
and Wheatley's Legal
ACN 122 853 507
ABN 54 122 853 507

www.hhg.com.au
reception@hhg.com.au

Other privacy issues that business operators may want to consider include staff privacy training, the storage of client information, and the processes for dealing with clients. These matters can be addressed in a privacy policy.

Comprehensive information on how the privacy laws impact business operators can be obtained from the Office of the Federal Privacy Commissioner (www.privacy.gov.au). Alternatively, as a business operator you may want to seek legal advice on your obligations and benefits of a privacy policy for your business.

This is general information only, and does not constitute specific legal advice. If you would like further information in relation to Commercial Law or any other matters, or if we can assist you, please email us at reception@hhg.com.au.

Murray Thornhill, Director
Matthew Wallis, Senior Associate
Janene Bon, Commercial & Wills
Paul Greer, Commercial

Email: murray@hhg.com.au
Email: matthew@hhg.com.au
Email: Janene@hhg.com.au
Email: paul@hhg.com.au

Albany Ph: 08 9841 2322
Perth Ph: 08 9322 1966
Website: <http://www.hhg.com.au>