

Implications of new privacy legislation

The Privacy Act 1988 was introduced mainly to address privacy issues applicable to Commonwealth and ACT government agencies. Due to subsequent amendments, this Act has now been extended to apply to a range of private sector organisations. State and Territory government agencies are not considered to be 'organisations' under the amendment, so they are still governed by their own state/territory arrangements.

The Privacy Amendment (Private Sector) Act 2000 came into effect on 21 December 2001. From this date, certain businesses, such as those with an annual turnover of \$3 million and all health service providers, have been required to comply with the Privacy Act. Some small businesses with an annual turnover of under \$3 million are also required to comply with the Privacy Act from 21 December 2002. This includes organisations that are Commonwealth contracted service providers. Contracted service providers include contractors under Commonwealth contracts and subcontractors for such contracts.

In carrying out their services, if the contracted service provider handles personal information on behalf of the agency, then the service provider must handle this information in accordance with the Privacy Act. This ensures that personal information for which the agency is responsible, is handled as required by the Privacy Act, regardless of whether it handled by the agency or a contracted service provider.

Commonwealth contracts should contain provisions regarding privacy, which are consistent with the agency's own obligations under the Privacy Act. In addition to complying with the Information Privacy Principles, as required by Commonwealth agencies, contracted service providers must also comply with additional obligations under the National Privacy Principles. This includes documenting a 'Privacy Policy' and 'Privacy Statement'. The agency may request copies of these documents from the contracted service provider.

The Australian Government Solicitor has prepared a Legal Briefing (No 63) on privacy and Commonwealth agency outsourcing which is called *Outsourcing: Agency Obligations under the Privacy Act*. The briefing includes a model clause for Commonwealth contracts. It is not necessary to revise contracts entered into before 21 December 2001. However, contracts which entered into or are renewed after 21 December 2001 should outline the contracted service provider's privacy obligations.

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