New Privacy Laws: What you need to do to avoid problems

There have, in recent years, been significant reforms in privacy laws bearing on strata management and the process is not finished. Given additional penalties, more aggressive enforcement action and increasing agency involvement in activities engaging additional privacy obligations, e.g. use of artificial intelligence technology, it is becoming increasingly necessary to take a proactive approach to these issues. On the bright side, a proactive approach will likely greatly aid compliance, i.e. the adage "a stitch in time saves nine" is app here.

These are being introduced in stages as follows:

- The Commonwealth *Privacy and Other Legislation Amendment Act 2024* ('Act') introduced a number of changes which already commenced. These include:

    - **Civil penalties** – Introduction of:

        - High tier serious interference with privacy maximum penalties scaling up to greater of $50 million, 3 x the benefit gained or 30% of turnover for the breach period.

        - A new mid-tier involving an entity's interference with the privacy of an individual under Section 13H. Maximum penalty $728,000.

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- Infringement notices for administrative breaches under s13K, e.g. no privacy policy or missing content, failure to give requisite notices, failure to maintain "opt out" for direct marketing medications. Maximum penalty $72,800.

- Enhanced Commissioner investigative and enforcement powers.

- **Cross Border Disclosure -** New mechanism to facilitate ministerial "white list" of countries with substantially similar data privacy laws and binding schemes with adequate privacy protections, to aid entities relying on that pathway for cross-border disclosure.

- **Data Breaches -** Ministerial power to issue temporary declarations in response to eligible data breaches to prevent or reduce risk of harm to individuals.

- **Tort liability** - A new cause of action in tort for serious invasions of privacy, essentially a right to pursue a claim against person who “invaded the plaintiff’s privacy by… intruding upon the plaintiff's seclusion or… misusing information that relates to the plaintiff".

- **Doxing** - New offences under the Commonwealth Criminal Code Act 1995 relating to intentional exposure of private information without consent, involving use of a carriage service in a manner which is menacing or harassing and aggravated offences were based on factors such as race, religion or sexual orientation.

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- The Act also introduced changes which were deferred and commence on 10 December 2026:

    - **Automated decision-making -** This involves arranging for a computer program to do a thing substantially or directly related to making a decision, where the decision could reasonably be expected to affect the rights or interests of an individual and personal information about the individual is used in the operation of the program to make the decision or do a thing substantially and directly related to making the decision. In that case, the entity's privacy policy must contain specified information relating to the program and decisions.

- Further legislation is proposed and likely to be introduced Parliament in the near future making additional changes, particularly conferring additional rights on individuals relating to their personal information and imposing additional obligations on entities collecting, holding, using or disclosing that information. The key areas of concern are as follows:

    - Modernised definitions - A number of terms used in privacy law may be updated in ways which will impact on required compliance action, e.g. personal information, sensitive information, consent, collection, disclosure and de-identification.

    - Revised compliance requirements - A number of privacy principles may be reworked or replaced to shift focus from consent and expectation to objective fairness and reasonableness in the circumstances, assessed in light of a number of specified criteria.

    - Trading of information – The reforms may include prohibition of trading of information without consent, trading been defined so as to involve a disclosure for consideration or for direct marketing purposes.

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- Direct marketing – APP 7 may be reworked or replaced to make the event engaging the obligation the issue of direct marketing material, rather than use of or disclosure of personal information for that purpose, albeit with the solution remaining the same, i.e. provision of an "opt out" mechanism.

- Data security - Potential changes include imposition of obligations to implement a compliance program and to take reasonable steps to mitigate arm in the event of a data breach, as well as changes to existing notice obligations, penalties and Commissioner powers.

- Destruction/de-identification of redundant information – APP 11 may be replaced with a principle imposing title requirements with respect to information "no longer required".

- Access to information - APP 12 may be amended in relation to inability to provide access and processes following refusal to provide access.

- Destruction of information held on large platforms - A new APP 14 may be inserted providing for destruction on request of personal information held on large platforms.

It is clear that, to avoid a number of problems, ranging from disgruntled clients to penalties, organisations collecting personal information need to take address these issues, including by:

- Assessing their activities relating to personal information and how these engage privacy law.
- Reviewing and updating their public facing privacy policy.
- Initiating a compliance program, involving development of an internal staff policy and training staff.

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We have considerable expertise and experience with these issues and would be pleased to assist. Amongst other ways in which we could assist, we have prepared template documents aimed at addressing a number of compliance issues.

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Key takeaways

- Recent reforms in privacy laws significantly impact strata management practices.
- The new laws introduce substantial penalties for privacy breaches, necessitating proactive compliance.
- Entities must update their privacy policies to reflect changes in automated decision-making processes.
- Doxing has been criminalised under new legislation, increasing the importance of data protection.
- Ongoing legislative changes are expected to further enhance individual rights regarding personal information.

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