

Australia – Data Privacy

The Federal Constitution of Australia and the Constitutions of Australia's six states do not contain express privacy provisions. The Privacy Act 1988 (the "**Privacy Act**") specifies the standards for the collection and handling of personal information. The Privacy Amendment (Private Sector) Act 2000 amended the Privacy Act and established the National Privacy Principles ("**NPPs**") as the minimum privacy standards for the private sector concerning the collection, storage, access to, correction, use and disclosure, and transfer of personal information. The Office of the Federal Privacy Commissioner (the "**Privacy Commissioner**") enforces the Privacy Act.

Collection and Processing of Personal Data	
<i>Compliance Alternatives</i>	<p>Employee consent is not required if the collection and processing of personal information falls within the employee records exemption.</p> <p>The employee records exemption to the Privacy Act provides that the provisions of the Privacy Act, including the NPPs, do not apply to an employer when it is collecting, storing, or using personal information in an employee's record that is directly related to the current or former employment relationship.</p> <p>Generally, an employer must not collect sensitive information (e.g., racial or ethnic origin, political opinions, party affiliation, religion and beliefs and sexual preferences) about an employee unless the employee has consented or collection is required by law.</p> <p>The exemption only applies to the employee record when in the hands of the employer. If it is passed to another entity, including a related entity, it ceases to be an employee record in the new entity's hands.</p> <p>A business with an annual turnover of AUD\$3m or less is exempt from the Act unless, among other conditions, it is related to another business (e.g., its holding company or a subsidiary) that has an annual turnover of more than \$3m.</p> <p>Fair Work Regulations ("FW Regulations") enacted under the Fair Work Act ("FW Act") require employers to keep records of certain employment matters (including pay, which would include awards under employee share plans). Employees have the right to access their records maintained under the FW Act and an employer must correct any errors it becomes aware of. The FW Regulations do not prohibit an employer from publishing or disclosing information in an employee record to a third party.</p>
<i>Disclosure/ Registration</i>	None applicable.
<i>Other Requirements</i>	<p>As an alternative to the NPPs, the Privacy Act allows private sector employers to develop and implement their own privacy codes which contain equivalent obligations that equal or exceed the NPPs. The Federal Privacy Commissioner must approve privacy codes developed by private organizations. Once approved, the standards in a privacy code are binding on an employer that agrees to be bound by the code. Employers not bound by an approved code must comply with the default provisions of the NPPs.</p> <p>A privacy code can include records, such as employee records, that would otherwise be exempt under the Privacy Act.</p> <p>An employer must take reasonable steps to make sure that the personal information it collects, uses, or discloses is accurate, complete, and up-to-date.</p>

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans. With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

Transfer of Personal Data

Compliance Alternatives

Employee consent is not required for cross-border transfer if the transfer of personal information falls within the employee records exemption. The employee records exemption provides that the provisions of the Privacy Act, including the NPPs, do not apply to a private sector Australian employer when it is transferring employee records outside Australia (i.e., overseas to its affiliates) as part of an act or practice that is directly related to the current or former employment relationship.

If the employee records exemption does not apply to a cross-border transfer, an employer may transfer the information overseas if:

- a) the employee consents to the transfer;
- b) if the overseas entity is subject to a law, binding scheme or contract which effectively upholds privacy standards substantially similar to the NPPs; or
- c) if the employer has taken reasonable steps to ensure that the information will not be held, used or disclosed by the overseas entity inconsistently with the NPPs.

The employer must, among other conditions, provide employees with information including who the information is being transferred to and for what purpose. In such cases, transfer agreements should be used to facilitate transfers to countries that are not bound by a law, binding scheme or contract which effectively upholds privacy standards substantially similar to the NPPs.

Other Requirements

None applicable.

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