

Legislation Note

Some Final Words On Privacy

Catherine Dickson provides some final words on implementation of privacy law compliance for the private sector.

With December 21 2001 having been & gone, most organisations should be in full swing implementing the National Privacy Principles (NPPs). With your preparation almost complete, you may be considering some of the more difficult aspects of the new privacy legislation. Dealing with information that is sent overseas is an issue that most organisations have left to last. This activity is regulated by NPP 9. It is a difficult area to prepare for, particularly given the lack of guidance as to what constitutes effective data protection standards in other countries. However, transborder transfers of information should not be ignored. They are high risk because the Australian entity is effectively responsible for the handling of all personal information collected in Australia that it sends overseas. Some important issues to consider in this context are:

Who are you transferring to? If you are transferring within the Australian-based collecting entity then NPP 9 does not apply. There is also an argument that if the disclosure is to a related body corporate, then it is not an interference with privacy by virtue of section 13B of the new privacy laws, so NPP 9 does not apply. However the better view is that NPP 9 applies to transfers rather than disclosures so that NPP 9 applies to any disclosure that involves a transfer overseas.

How are you transferring? Personal information that is collected at an Australian website and transferred to an overseas company (whether related or not) for processing will be subject to NPP 9.

What are you transferring? Remember the employee records exemption only

applies to employee information when it is in the hands of the employer. Once it is transferred overseas to a parent company the NPPs apply.

Why are you transferring? You may also be wondering about the utility of some of the conditions listed in NPP 9. You are not alone! Contracts concluded in the interest of the individual are going to be difficult to establish. Also satisfaction of all but the conditions allowing transfer with consent or to a recipient that is subject to an equivalent law, binding scheme or contract, will most likely have to be established on a case by case basis.

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