

## **PTA Member Awareness – Australia’s new Privacy Laws**

**Australia’s new Privacy Laws may affect how you collect, store and use information you gather from and about people.**

### **Privacy and Security**

The Commonwealth Government Privacy Act 1988 and the amendments made in 2024 give consumers more control over their personal data and forces organisations to improve security and accountability. Almost all businesses from startups to mature businesses, including in healthcare, will need to review how they collect, store and use personal information. To ensure compliance with the new laws members need to review their policies and processes for collecting customer email and other information (for promotional purposes) and for keeping this information secure.

These changes align Australia’s laws more closely with the EU’s General Data Protection Rights (GDPR).

Australia’s Privacy Act and the Australian SPAM Act work together. The privacy act to protect consumer information and the Spam act to prevent invasion of privacy with relentless emails. To comply with the Privacy Act, you should have a clear policy on what information you collect, why and how you will keep it secure.

The key changes you need to be aware of are:

- The Right to Erasure – people can now request that you delete their personal data when you no longer need it, when consent has been withdrawn, or you have collected it without consent.
- Stricter Consent Requirements – consent must be freely given; it must be specific and informed, and it must be unambiguous.
- Third party data sharing and sensitive data collection needs explicit permission from the individual.

The penalties for breaches range up to \$50 million or 30% of turnover for the period in which the breaches took place and apply to companies with a turnover of more than \$3 million pa. PTA members who use email to promote products or services should review their privacy policies and update them accordingly.

Consumers have much stronger rights under the new laws. They can request access to their data, request corrections, request their data be “ported” to another provider and are able to lodge complaints to the Office of the Australian Information Commissioner (OAIC).

### **Quick Guide**

1. You can collect email addresses for people who you wish to send information that is not promotional in nature, such as product advice, technical information, quotes, proposals, field corrective notices and the like.
2. If you collect personal information from people you email, you need to have policies and processes in place to keep the information secure, and you must erase it if the person so wishes.
3. You cannot share email address or personal information with a third party without the consent of the individual.
4. If you collect email addresses for promotional or marketing purposes, you must seek informed consent from the person, indicating they wish to receive promotional or marketing materials from you by email - and **opt in** function.
5. Promotional and marketing emails must provide a visible and functioning “Unsubscribe” or **opt out** function and you must remove the email address from your system within 5 days and without cost.

Below are further details and references to best practice.

### **Email and eCommerce**

There is a clear distinction in the laws related to the Australian Spam Act where electronic communications with a clear marketing and promotional imperative are included, but email that provides advice, offers a price or a quote, provides a product description, or are sent as a safety notice or field correction notification, are not.

The advice is that emailing a customer more than 3 times a day with sales or marketing material is likely to be considered spam.

If you share information with a third party, without informed consent from the consumer you risk breaching the Privacy Act. This includes if you inadvertently share information, for example because the data was not reasonably secured.

Email marketers need to understand that the Spam Act and the Privacy Act work together to protect consumer rights. You need to get express and informed consent from prospective email recipients, you must identify yourself as the sender and included contact details, and you need to provide a functional unsubscribe link within the email. See more detail on this below.

Obtaining permission from your customers to send them email marketing or promotional messages can be via a tick box saying, “I consent to receiving marketing communications”. Consent can be “inferred” based on your relationship with the customer. You need to be clear in your privacy policy when “inferred” consent applies.

### **Best Practice When Seeking Consent**

The strong recommendation when seeking consent to email promotional material to customers is to use very clear and concise language. State the reasons for seeking consent and the nature of communications the recipient will receive. Make the process of **opting in** simple but deliberate. Allow the customer to check the boxes that relate to the information they consent to receive.

Offering a double opt-in process, where the customer is sent a confirmation email asking them to verify their intent, is an extra security step for both you and the customer. This helps eliminate non-genuine subscribers.

Always ensure your marketing emails to customers correctly identify you or your company as the sender, along with your contact details. The company's phone number, address and ABN should be included. You must ensure these details remain current for at least 30 days post sending the email.

You must include a visible and functional "Unsubscribe" link with all marketing email. It is advisable to be very specific about what the **opt out** refers to. For example, a customer may wish to continue receiving important technical and product related information. The opt out should relate to communications of a promotional or marketing nature.

Your **opt out** function, if not automatic, needs to be actively managed, and the customer must be off your promotional mailing list within 5 days. Your **opt out** link must remain functional for at least 30 days post sending your promotional email, and you cannot charge the customer for the **opt out** process.

You cannot harvest email addresses for any purpose and strong penalties exist.

### **Exceptions to Email Marketing Laws**

Factual email that are not promoting products or services do not need the consent or unsubscribe requirements of promotional emails. Such email might include information describing a product or service, technical information, pricing and quotes, safety and product recall information. They can also include advice to customers that is not promotional in nature.

### **Disclaimer**

This PTA Member Advisory is general in nature and does not consider the specific circumstances or needs of an individual member. For individual advice specific to your needs, members should contact a trusted legal practitioner.