



# Australiawide Mercantile Agency

## Privacy Policy

GENERAL			
<b>Policy</b>	Privacy Policy		
<b>Description</b>	This Privacy Policy describes the personal information that may be collected by us and how we protect the information.		
<b>Purpose</b>	This document supports the Interview process		
<b>Applicable to</b>	All Management, all staff, contractors and sub-contractors		
<b>Drafted by</b>	Kobie Combrink	<b>Importance</b>	High
<b>Approved by</b>	David Combrink	<b>Escalation</b>	None
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**PRIVACY ACT**

**WI-13 Revision 2**

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## PURPOSE OF THIS POLICY

- To amend our existing policy.
- Know “what” personal information we collect, the primary purpose for collection and our responsibilities for storing, using and disclosing the information.
- Ensure private information stored are secure and protected against cross border disclosure.
- Review our inquiry and complaint handling process.
- To train and educate all staff.

## POLICY

Customers dealing directly with Australiawide Mercantile Agency have the right to:

- know **why** your personal information is being collected, **how** it will be used and **who** it will be disclosed to
- have the option of **not identifying yourself**, or of using a **pseudonym** in certain circumstances
- ask for **access** to your personal information (including your health information)
- ask for your personal information that is incorrect to be **corrected**
- **make a complaint**, if you consider that Australiawide Mercantile Agency or a representative of Australiawide Mercantile Agency have mishandled your personal information.

## PRIVACY ACT OVERVIEW

The new Australian Privacy Legislation came into effect on 12th March 2014. New data protection laws introduced restrict how Australian businesses collect, store and use data. The key changes include:

- Businesses must show transparency with regards to the use of a customers’ or prospected customers’ personal information.
- The Australian Privacy Legislation also gives the customer or prospect the opportunity to remain anonymous, unless this is deemed impractical.
- It also states that all personal information collected must directly relate to the business purpose at hand; Ensuring that all personal information held must be up to date, accurate, relevant and not misleading.
- The Australian Information Commissioner is given increased powers to enforce privacy laws.
- The 10 National Privacy Principles applicable to the private sector are replaced with 13 Australian Privacy Principles and extended to the public sector. This creates additional obligations for organisations.
- Organisations must comply with increased legal obligations regarding overseas disclosure of personal information and use of personal information for direct marketing.

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- Credit reporting provisions are overhauled, including the introduction of a comprehensive credit reporting system.
- Small business with a turnover under \$3 million are exempt from the Privacy Act, with certain other exceptions.

Failure to comply could result in fines from the Australian Privacy Commissioner of \$1.7m for each contravention.

The Privacy Act 1988 (as amended by the Privacy (Private Sector] Amendment Act 2000) (the **ACT**) sets out enforceable guidelines for the collection, use, storage and disclosure of personal information with the objective of protecting the privacy of individuals. It is the policy of AUSTRALIWI DE MERCANTILE AGENCY that all staff comply with both the letter and spirit of the Act. This is important both to AUSTRALIWI DE MERCANTILE AGENCY' reputation and for the customer confidence in AUSTRALIWI DE MERCANTILE AGENCY.

Every person is responsible and accountable for ensuring that their actions do not breach the provisions of the Act.

This module is not a complete statement of all the requirements and restrictions in the Act. Privacy forms and guidance on specific issues are contained in Intranet policies and procedures and other materials.

Each employee of AUSTRALIWI DE MERCANTILE AGENCY must become familiar with these policies, procedures and other materials.

## YOUR RESPONSIBILITIES

- Understand your obligations under the Privacy Act 1988 (Cth) (the Act)
- Comply with the Act, any breach of the Act will be regarded as serious misconduct under the terms of your employment with AUSTRALIWI DE MERCANTILE AGENCY that may lead to your dismissal.

If you have any doubt about anything to do with privacy you must seek help from the Compliance Manager.

**\*Note:** AUSTRALIWI DE MERCANTILE AGENCY will not indemnify any employee who knowingly breaches the Act.

- Report any incident which may have Privacy Act implications for Australiawide Mercantile Agency.

**\*Note:** If you are in doubt as to whether the particular matter has any privacy implications it is best to report it to the Compliance Manager anyway, no matter how insignificant it may appear to be.

## INTRODUCTION

In Australia, privacy law generally relates to the protection of an individual's personal information. Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable.

The Act includes:

- the Australian Privacy Principles (**APPs**); and
  - the credit reporting provisions in Part 111A
- 
- 13 Australian Privacy Principles that apply to the handling of personal information by most Australian and Norfolk Island Government agencies and some private sector organisations
  - Credit reporting provisions that apply to the handling of credit-related personal information that credit providers are permitted to disclose to credit reporting bodies for inclusion on individuals' credit reports.

The Privacy Act also:

- Regulates the collection, storage, use, disclosure, security and disposal of individuals' tax file numbers
- Permits the handling of health information for health and medical research purposes in certain circumstances, where researchers are unable to seek individuals' consent
- Allows the information commissioner to approve and register enforceable app codes that have been developed by an app code developer, or developed by the information commissioner directly
- Permits a small business operator, who would otherwise not be subject to the Australian privacy principles (apps) and any relevant privacy code, to opt-in to being covered by the apps and any relevant app code
- Allows for privacy regulations to be made.

From 12 March 2014, the Australian Privacy Principles (APPs) will replace the National Privacy Principles and Information Privacy Principles and will apply to organisations, and Australian Government (and Norfolk Island Government) agencies. AUSTRALIAWIDE MERCANTILE AGENCY has decided that it will, where possible, treat all personal information collected before 12 March 2014 as if it had the full protection of the APPs.

## DOES THE ACT APPLY TO OUR BUSINESS

The APPs are a single set of principles that apply to both agencies and organisations, which are together defined as APP entities. While the APPs apply to all APP entities, in some cases, they impose specific obligations that apply only to organisations or only to agencies.

The Act also apply to a small business if it has a turnover of more than \$3 million and either:

- Trades in person
- Provides services under a Commonwealth contract
- Runs a residential tenancy database
- **Is related to a larger business**
  - Is a reporting entity under the Anti-Money Laundering and Counter-Terrorism Financing Act.

If you could answer yes to any of these, your small business may need to comply to the Privacy Act.

## PENALTIES (PART 11A)

Failure to comply could result in fines from the Australian Privacy Commissioner of \$1.7m for each contravention.

## PERSONAL INFORMATION GENERALLY VS. CREDIT INFORMATION

**Personal information** is defined in the Act as information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in material form or not about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

**Credit information** is a specific type of personal information and is given a higher level of protection by the Act. Credit information is any information which has any bearing on an individual's credit worthiness, credit standing, and credit history or credit capacity. The rules specifically relating to credit information are discussed in detail below.

## AUSTRALIAN PRIVACY PRINCIPLES

### Part APP 1 — Open and transparent management of personal information

Ensures that APP entities manage personal information in an open and transparent way. This includes having a clearly expressed and up to date APP privacy policy.

### APP 2 — Anonymity and pseudonymity

Requires APP entities to give individuals the option of not identifying themselves, or of using a pseudonym. Limited exceptions apply.

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### **APP 3 — Collection of solicited personal information**

Outlines when an APP entity can collect personal information that is solicited. It applies higher standards to the collection of 'sensitive' information.

### **APP 4 — Dealing with unsolicited personal information**

Outlines how APP entities must deal with unsolicited personal information.

### **APP 5 — Notification of the collection of personal information**

Outlines when and in what circumstances an APP entity that collects personal information must notify an individual of certain matters.

### **APP 6 — Use or disclosure of personal information**

Outlines the circumstances in which an APP entity may use or disclose personal information that it holds.

### **APP 7 — Direct marketing**

An organisation may only use or disclose personal information for direct marketing purposes if certain conditions are met.

### **APP 8 — Cross-border disclosure of personal information**

Outlines the steps an APP entity must take to protect personal information before it is disclosed overseas.

### **APP 9 — Adoption, use or disclosure of government related identifiers**

Outlines the limited circumstances when an organisation may adopt a government related identifier of an individual as its own identifier, or use or disclose a government related identifier of an individual.

### **APP 10 — Quality of personal information**

An APP entity must take reasonable steps to ensure the personal information it collects is accurate, up to date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.

### **APP 11 — Security of personal information**

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An APP entity must take reasonable steps to protect personal information it holds from misuse, interference and loss, and from unauthorised access, modification or disclosure. An entity has obligations to destroy or de-identify personal information in certain circumstances.

#### **APP 12 — Access to personal information**

Outlines an APP entity's obligations when an individual requests to be given access to personal information held about them by the entity. This includes a requirement to provide access unless a specific exception applies.

#### **APP 13 — Correction of personal information**

Outlines an APP entity's obligations in relation to correcting the personal information it holds about individuals.

#### Credit Reporting

One of the objects of the Privacy Act is to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected. In recognition of that objective, the laws about credit reporting are intended to balance individuals' interest in protecting their personal information with the need to ensure that credit providers have sufficient information available to assist them to decide whether to provide an individual with credit. The Australian credit reporting system also helps ensure that credit providers are able to comply with their responsible lending obligations under the *National Consumer Credit Protection Act 2009* administered by the Australian Securities and Investment Commission (ASIC).

## WHAT IS A CREDIT REPORT?

One of the objects of the Privacy Act is to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected. In recognition of that objective, the laws about credit reporting are intended to balance individuals' interest in protecting their personal information with the need to ensure that credit providers have sufficient information available to assist them to decide whether to provide an individual with credit. The Australian credit reporting system also helps ensure that credit providers are able to comply with their responsible lending obligations under the *National Consumer Credit Protection Act 2009* administered by the Australian Securities and Investment Commission (ASIC).

**A credit report is defined in the Act to mean any record or information, in whatever form, whether written, oral or other, that:**

- Is being used or has been prepared by a credit reporting agency; and

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- Has any impact on an individual's: Eligibility to be provided with credit;  
Capacity to repay credit; and
- Has been used, or is used or has the capacity to be used, for the purposes of serving as a factor in establishing an individual's eligibility for credit.

### **Who Provides Credit Reports?**

Credit reporting agencies provide credit reports.

A **credit-reporting agency** is defined in the Act as a company that carries on a credit reporting business. A **credit reporting business** is one which involves the preparation or maintenance of records containing personal information relating to individuals which is not publicly available and which is used for the purpose, among others, of providing other persons with information on an individual's:

- Eligibility for credit; or
- Credit history; or
- Capacity to repay credit.

### **What information is in a Credit Report?**

The Act regulates:

- The types of personal information that credit providers can disclose to a credit reporting body (CRB), for the purpose of that information being included in an individual's credit report
  - What entities can handle that information, and
  - The purposes for which that information may be handled.
- Identify information – a person's name, sex, date of birth, address (current and up to 2 previous addresses), name of current or last known employer and drivers licence number;
  - Details of an individual's current credit provider(s);
  - Details of credit provided to an individual where the individual is at least 60 days overdue in payment and recovery action has commenced;
  - Details of applications for a credit report on the individual by credit providers, mortgage insurers, trade insurers and certain other entities;
  - The fact that a cheque for over \$100 drawn by an individual has been presented and dishonoured twice;
  - Where the individual is a guarantor, certain information in relation to overdue payment under the guarantee (but only if specified steps have been taken in relation to the overdue payment);
  - Court judgements and bankruptcy orders made against the individual;

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- A record of any report by a credit provider, that in its opinion, the individual has, in the circumstances specified, committed a serious credit infringement;
- A statement provided by the individual describing a correction, deletion or addition he or she ought to have made to personal information contained in his/her credit information file;
- A record of any disclosures made by a credit reporting agency of personal information contained in the individual's credit information file;
- A note to the effect that the individual is no longer overdue in making the payment, or that the individual contends that he or she is not overdue, as the case may be.

There are rules about how long this information can be retained. For example, information on defaults and dishonoured cheques must be removed once it is 5 years old. Information on bankruptcies and serious credit infringements must be removed once it is 7 years old.

A credit report must **not** contain any information about:

- Political, social or religious beliefs;
- Criminal record;
- Medical history or physical handicaps;
- Race, ethnic or racial origin;
- Sexual preferences or practices; or
- Lifestyle, character or reputation

**AUSTRALIAWIDE MERCANTILE AGENCY must not give any information relating to any of these matters to a credit reporting agency. AUSTRALIAWIDE MERCANTILE AGENCY should rarely hold this type of information. The collection, use and disclosure of this type of information are governed by the NPPs under 'sensitive information' (disclosed below).**

## TAX FILE NUMBERS

Tax file numbers (tfn's) are unique numbers issued by the Australian Taxation Office (ATO) to identify individuals, corporations and others who lodge income tax returns with the ATO.

The **Tax File Number Guidelines** issued under the Act protect the privacy of individuals by regulating the collection, storage, use and security of tax file number information.

A person who (lawfully or unlawfully) is in possession or control of a record that contains a tax file number is regarded as a **file number recipient**.

The **Guidelines** provide that: or disclosed by file number recipients for the purposes of carrying out responsibilities under taxation law; and

- **The tax file number may not be used or disclosed to establish or confirm the identity of, or obtain information about, an individual for any purpose not authorised by taxation law.**

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It is unlawful for AUSTRALIAWIDE MERCANTILE AGENCY to ask a customer (or a guarantor) to provide their tax file number.

If a customer provides a document (such as a tax return) to AUSTRALIAWIDE MERCANTILE AGENCY as proof of income they may delete their tax file number from it. If they choose not to do so then AUSTRALIAWIDE MERCANTILE AGENCY has an obligation to delete the tax file number from the document.

AUSTRALIAWIDE MERCANTILE AGENCY is not permitted to retain tax file numbers for individuals.

It is therefore important to ensure that tax file numbers are always carefully deleted from any documents supplied by customers and retained on AUSTRALIAWIDE MERCANTILE AGENCY files.

This includes:

- Tax assessment notices
- Tax returns
- Accountant reports etc.

The Act provides that a breach of **Guidelines** is an interference with the privacy of an individual.

Apart from penalties provided for by the Act, unauthorised use or disclosure of tax file numbers is an offence under the *Taxation Administration Act 1953* with a penalty of up to \$10,000 fine; 2 years imprisonment; or both.

## ACCOUNT ADMINISTRATION

### Security of Information

AUSTRALIAWIDE MERCANTILE AGENCY must take reasonable steps to protect all personal information it holds from misuse, loss, unauthorised access, modification or disclosure.

AUSTRALIAWIDE MERCANTILE AGENCY must destroy or de-identify information it no longer needs for any of permitted purposes.

The credit reporting provisions also specifically require AUSTRALIAWIDE MERCANTILE AGENCY to ensure that any credit information file or report is protected, by such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure and against other misuse.

These requirements relate to information held electronically and in paper form.

'Sensitive information' is defined in s 6(1), and is discussed in more detail in Chapter B (Key concepts).

'Consent' is defined in s 6(1) as 'express consent or implied consent', and is discussed in more detail in Chapter B (Key concepts). The four key elements of consent are:

- The individual is adequately informed before giving consent
- The individual gives consent voluntarily
- The consent is current and specific, and
- The individual has the capacity to understand and communicate their consent.

AUSTRALIAWIDE MERCANTILE AGENCY should not collect sensitive information without the consent of the relevant individual. Sensitive information includes information about a person's health, sexual preferences, religious beliefs, political or philosophical beliefs and racial or ethnic origin.

AUSTRALIAWIDE MERCANTILE AGENCY should not need to collect this type of information. Sensitive information may be volunteered where a customer is unable to meet their obligations under a finance contract see the section on collection activities.

We only ask for personal information relevant to our Business relation with a customer.

- Identifying information, like customers name, address and other contact details and date of birth.
- Information about the customers financial position, like income and expenses.
- The customers employment information.
- The customers reasons for non payment/default on account.
- We may also collect personal information and credit-related information from third parties, such as any referees that the customer provided, employment, third party service providers including credit reporting bodies i.e VEDA. Credit reporting bodies collect credit information about individuals which they provide as credit reports to credit providers and others in the credit industry to assist them in managing credit risk, collecting debts and other activities.
- We may use personal and credit-related information for the purpose of providing debt collection or recovery services to the Credit providers by;
  - Executing the Credit providers instructions.
  - Charging and billing.
  - Collecting overdue payments.

In general we do not use or disclose personal and credit-related information for a purpose other than:

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- A purpose set out in this policy.
- A purpose you would reasonably expect.
- A purpose required or permitted by law, or
- A purpose otherwise disclosed to you to which you have consented.

## UNSOLICITED INFORMATION

Where a customer provide us with unsolicited personal or sensitive information, we may ask for permission to disclose such information. We may choose to de-identify and destroy this information if we consider it is not relevant or otherwise not required to be retained by us in accordance with the law and where it is otherwise reasonable to do so.

## CUSTOMER INFORMATION GENERALLY

Individuals have a right to obtain access to most personal information AUSTRALIAWIDE MERCANTILE AGENCY holds about them. There are no time limits for c o m p l i a n c e . However the time limits imposed in respect of access to credit reports should be used as a guide.

Access can be provided by giving the customer a copy of the information, letting them view the original documents or providing them with a print out where the information is recorded electronically.

However, there may be reasons why AUSTRALIAWIDE MERCANTILE AGENCY wants to, or has to, deny a request for access. The obvious example is any record of a credit assessing or credit decision where to give the customer the whole record or file would reveal commercially sensitive decision making material.

Requests for access should be referred to the manager who will supervise the access arrangements and will determine whether access needs to be restricted or denied in each case. Serious Credit Infringements

A **serious credit infringement** is defined in the Act to mean an act done by a person:

That involves fraudulently obtaining credit or attempting to fraudulently obtain credit;

- That involves fraudulently evading the person's obligations in relation to credit, or attempting fraudulently to evade those obligations; or
- That a reasonable person would consider indicates an intention, on the part of a person, no longer to comply with that person's obligations in relation to credit.
- Examples of what could reasonably be considered an intention on the part of an individual no longer to comply with credit obligations include:
- The individual has stopped making payments or breached the credit contract in some other serious way, and the Financier has made reasonable efforts to contact the individual either in person or in writing, but has been unsuccessful in establishing contact; or

- The Financier has made contact with the individual and the individual has unlawfully refused to meet his or her credit obligations by resuming payments: or
- The individual does not comply with the terms of a debt judgement.

## MERCANTILE AGENTS

### *Can a Mercantile Agent Have Access to the Records Held By a Credit Reporting Agency?*

A mercantile agent is not permitted to have direct access to consumer credit reports issued by a credit reporting agency for the purpose of collecting overdue payments on behalf of the Financier.

### *What Information Can be disclosed to a Mercantile Agent?*

Where a Financier uses a mercantile agent to collect an overdue **consumer** debt, the Financier may disclose certain information derived from a consumer credit report obtained from a credit reporting agency. Such information is limited to:

- Information identifying the individual;
- Information about overdue payments; and
- Information about court judgements and bankruptcy orders (publicly available information).

The Financier may disclose to the mercantile agent other information in its possession as long as the information was not originally contained in, or derived from, a credit report issued by a credit reporting agency, and the information is provided only for the purpose of collecting overdue payments.

When collecting an overdue **commercial** debt, the Financier may only provide a mercantile agent with information contained in a credit report that is identifying information about court judgements and bankruptcy orders.

### *What Should AUSTRALIAWIDE MERCANTILE AGENCY Do When Actioning a File?*

- When a borrower requests AUSTRALIAWIDE MERCANTILE AGENCY to deal with a third Party in relation to their loan, then AUSTRALIAWIDE MERCANTILE AGENCY, or the agent should ensure that the borrower has supplied a Letter of Authority (LOA) authorising the LOA to act on his behalf. This LOA should always be dated, signed and specify the account that the Authority relates too. A copy should be obtained and attached to the file.
- When approaching a borrower, in person or by phone, then AUSTRALIAWIDE MERCANTILE AGENCY should identify and confirm that the person is the

borrower by using information at hand e.g. DOB, middle name etc.

- When AUSTRALIAWIDE MERCANTILE AGENCY receives an incoming phone call then the person making the call should be identified as above BEFORE and the account is discussed.
- When AUSTRALIAWIDE MERCANTILE AGENCY leaves a message for the borrower, either by phone message or at an address on a person or not, then that message must only give the agents name and contact phone number. No other information should be divulged.
- If a message is left by leaving a business card then that card should be placed into an envelope, sealed and addressed to the borrower.
- When AUSTRALIAWIDE MERCANTILE AGENCY attempts to contact a borrower at their employment, then no person at the work place, other than the borrower, should be advised why the agent is making that contact.
- If any person (who will not identify themselves as the borrower) demands any information on a file, the request should be politely refused and they should be referred to the Compliance Manager