



MADDENSLAWYERS
PRIVACY & CONFIDENTIALITY POLICY

Dated: 23/08/2011
Last Reviewed: 23/03/2014

1. Preamble

- 1.1 It is a policy of Maddens Lawyers (ML) to formulate, publish and abide by a policy on privacy and confidentiality within the firm's operations.
- 1.2 ML seeks to establish this policy by clear statements and procedures as a feature of the firm's responsibilities and in accordance with the commencement of Federal legislation which broadens the application of privacy obligations in the private sector.
- 1.3 The Federal Parliament in December 2000 passed the *Privacy Amendment (Private Sector) Act 2000*. The focus of this legislation is on the protection of personal information. It came into force on 21 December 2001.
- 1.4 ML is bound by the Privacy Amendment (Enhancing Privacy Protection) Act 2012 and the Australian Privacy Principles
- 1.5 ML has adopted this policy on privacy and confidentiality as a means of dealing in a commercial structure with something which was earlier covered by legal professional privilege. While this latter feature continues to apply, it is necessary to formalize a policy for application within the commercial operation of ML.

2. Purpose of the Policy

- 2.1 The purpose of ML policy on privacy and confidentiality is to articulate a standard for the way ML deals with personal information.
- 2.2 The standard set in this policy applies to procedures at ML for the way it deals with personal information by regulating its **collection, use and disclosure, data quality and security, storage, openness, individual access and correction and the international transfer of information**.
- 2.3 This policy sets out how ML will comply with the Privacy ACT 1988 Cth and the Privacy Amendment (enhancing Privacy Protection) Act 2012 Cth and the thirteen Australian Privacy Principles (APP's) as outlined in Annexure "A".

3. Exception to the Policy

- 3.1 This policy does not apply to personal information relating to the employment of an employee. This exemption includes information about training, disciplinary action, resignation, termination, terms and conditions of employment, wages or salary, personal and emergency contact details and health information.
- 3.2 ML will only use the employee records exemption for purposes related to the employment context.

4. Defined Terms

"ML" includes all of the entities associated with the firm including, Maddens Holdings Pty Ltd.

"Collection" is the act of gathering, acquiring or obtaining personal information from any source, including third parties, by any means. It does not include the receipt of unsolicited information.

“Consent” means free and informed agreement with what is being done or proposed. Consent can be either express or implied. Express consent is given explicitly, either orally or in writing. Express consent is unequivocal and does not require any inference on the part of the organisation seeking consent.

Implied consent arises where consent may reasonably be inferred from the action or inaction of the individual.

“Correct” in relation to personal information means to alter that information by way of amendment, deletion or addition.

“Disclosure” is the act of making personal information available to others outside the organisation other than the subject of the information. Disclosure includes publication of personal information through any medium.

“Personal Information” is information or an opinion about an individual through which the individual’s identity can be ascertained. It may be recorded in any form but does not include information contained in a generally available publication.

“Sensitive Information” includes information regarding racial/ethnic origin, political opinions, religious/philosophical beliefs, trade union membership or details about someone’s criminal record, health or sex life.

“Subject of the information” in relation to personal information means the individual to whom the information relates.

“Third Party” in relation to personal information is a person or body other than the organisation holding the information and the individual who is the subject of the information.

“Use” refers to the treatment and handling of personal information within an organisation.

5. Policy Principles

5.1 Collection

The Principle

At ML we will only collect personal information that is reasonably necessary for one or more of our legitimate functions or activities. Further, we will only collect personal information by lawful and fair means and not in an unreasonably intrusive way. We will usually be collecting information with prior consent of the subject of the information.

5.1.1 At or before we collect personal information, we will take reasonable steps to ensure that the subject of the information is aware of:

- who we are and how to contact us;
- the fact that he or she is able to gain access to the information;
- the purposes for which the information is collected;
- to whom we usually disclose information of this kind;
- any law which requires the information to be collected;
- the main consequences (if any) for the individual if all or part of the information is not provided.

5.1.2 ML will, where reasonable and practicable to do so, collect personal information directly from the subject of the information.

5.1.3 Where we collect from a third party, we will take reasonable steps to ensure that the subject of the information is or has been made aware of the matters listed in 5.1.1 above.

6. Use and Disclosure

The Principle

ML will only use or disclose information about an individual in ways that are consistent with that individual's expectations or are required in the public interest.

- 6.1 We will use or disclose personal information for the primary purpose of performing legal work and only for a secondary purpose if:
- 6.1.1 the secondary purpose is related to the primary purpose of collection and the subject of the information would reasonably expect ML to use or disclose information for the secondary purpose; or
 - 6.1.2 the individual has consented to the use or disclosure; or
 - 6.1.3 when the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:
 - it is impracticable for ML to seek the individual's consent; and
 - ML will not charge for giving effect to a request by the individual not to receive direct marketing communications; and
 - the individual has not made a request to ML not to receive direct marketing communications; and
 - in each direct marketing communication ML provides the individual the opportunity to advise that he/she does not wish to receive any further direct marketing communications; and
 - each written direct marketing communication by ML sets out the firm's business address and telephone number and, if the communication with the individual is made by electronic means, a number or address at which ML can be directly contacted electronically.
 - 6.1.4 ML reasonably believes that the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health or safety or a serious threat to public health or public safety; or
 - 6.1.5 the use or disclosure is required or specifically authorised by law; or
 - 6.1.6 Police or any regulatory authority, in connection with its functions, has requested ML to disclose the personal information and ML complies with that request directly to an officer or employee of that authority who is authorised to receive the disclosure; or
 - 6.1.7 ML reasonably believes that the use or disclosure is reasonably necessary for:
 - prevention, detection, investigation, prosecution or punishment of criminal offences or of breaches of a law which imposes penalties or sanctions;
 - enforcement of laws relating to confiscation of proceeds of crime;
 - protection of the public revenue;
 - prevention, detection, investigation or remedying of seriously improper conduct;
 - preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal;by or on behalf of an enforcement agency

6.2 The principles described in 6.1 do not override any existing legal obligations which ML has not to disclose personal information; and

Nothing in 6.1 requires ML to disclose personal information and ML is always entitled not to disclose personal information in the absence of a legal obligation to do so.

6.3 In the event ML uses or discloses information it will record the use or disclosure.

7. Data Quality

The Principle

ML will use its best endeavours to ensure that information about an individual is accurate when it is collected or used.

7.1 ML will take reasonable steps to make sure that the personal information collected or used or disclosed about an individual is complete and up to date. In the event ML is in doubt about this data quality, it will check with the individual concerned. Where the information is provided to ML by the individual, ML will rely on that information being accurate.

8. Data Security

The Principle

ML will keep information secure.

8.1 ML will take reasonable steps to protect the personal information it holds from misuse, loss and from unauthorized access, modification or disclosure.

8.2 ML will take reasonable steps to destroy by safe means, any information which it no longer needs for any purpose.

9. Openness

The Principle

ML will be open with an individual about what kinds of personal information it holds and what it will do with that information.

9.1 This policy shall apply to Maddens Lawyers' management of personal information and will be available to individuals who make access inquiries regarding the information held about them.

9.2 ML will, on request, take reasonable steps to inform an individual generally about:

9.2.1 what sort of personal information ML holds;

9.2.2 the purpose for which it is held;

9.2.3 how it is collected, held and used;

9.2.4 the circumstances in which it would be disclosed.

10. Access and Correction

The Principle

Where it is possible and practicable to do so, ML will allow an individual to see the information it holds about that individual and will allow the individual to correct the information if it is wrong.

10.1 ML retains the discretion to assess a request by an individual to see personal information and in some circumstances, the request can be denied. Access will normally be provided except in cases where:

10.1.1 providing it would pose a serious and imminent threat to the life or health of an individual; or

10.1.2 providing it would have an unreasonable impact on the privacy of other individuals; or

10.1.3 the request is frivolous or vexatious; or

10.1.4 the information relates to existing or anticipated legal dispute resolution proceedings between ML and the individual and the information would not normally be discoverable in those proceedings; or

10.1.5 providing access would prejudice ML in its negotiations with the individual; or

10.1.6 providing access would be unlawful; or

10.1.7 denying access is specifically authorised by law; or

10.1.8 providing access would threaten to prejudice an investigation into possible unlawful activity; or

10.1.9 providing access would be likely to prejudice any of the following:

- prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of laws imposing penalties;
- enforcement of law relating to confiscation of the proceeds of crime;
- protection of the public revenue;
- preparation for or conduct of proceedings before any court or tribunal or implementation of its orders.

10.1.10 Any enforcement body performing a lawful national security function asks ML not to provide access on the grounds that providing access would be likely to cause damage to the national security of Australia.

10.1.11 Where providing access would reveal evaluative information generated within ML in connection with the commercially sensitive decision making process, ML may give the individual an explanation for the decision rather than direct access to the information.

10.1.12 If ML gives an individual an explanation and the individual believes that direct access to evaluative information is necessary to provide a reasonable explanation of the reasons for the decision, the matter may be referred to the Privacy Commissioner for resolution.

10.1.13 It shall be open to ML and the individual to consider the use of a mutually agreed intermediary other than the Privacy Commissioner.

- 10.1.14 If ML charges a fee for providing access to personal information, those fees will be reasonable and will not apply to the lodging of a request for access.
- 10.1.15 If ML holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up to date, ML will take reasonable steps to correct the information.
- 10.1.16 If ML disagrees about whether the information is accurate, complete and up to date, and the individual asks ML to link to the information a statement claiming that the information is not accurate, complete or up to date, ML will take reasonable steps to do so.
- 10.1.17 ML will provide reasons for any denial of access or of correction.

11. Identifiers

The Principle

ML will use its own identifiers within its system operations and will not use identifiers assigned to an individual by a government agency or other body contracted to a government agency. (It is noted that an individual's name or ABN is not an identifier).

12. Onward transfer of personal information

The principle

ML will take steps to protect the privacy of an individual where it sends personal information to a third party.

- 12.1 ML will only transfer personal information to a third party if:
- 12.1.1 ML reasonably believes the receipt of the information is subject to a statute, binding scheme or contract which effectively upholds principles for fair information handling that are substantially similar to these principles; or
- 12.1.2 the individual consents to the transfer; or
- 12.1.3 the transfer is necessary for the performance of a contract between the individual and ML or for the implementation of pre-contractual measures taken in response to the individual's request; or
- 12.1.4 the transfer is necessary for the conclusion or performance of the contract concluded in the interest of the individual concerned between ML and the third party; or
- 12.1.5 the transfer is for the benefit of the individual concerned and:
- it is not practicable to obtain the consent of the subject of the information to that transfer; and
 - if it were practicable to obtain such consent, the subject of the information would be likely to give it; or
- 12.1.6 ML has taken reasonable steps to ensure that the information which it has transferred will not be collected, held, used or disclosed by the recipient of the information inconsistently with this ML policy.

13. Sensitive Information

The Principle

ML will not collect personal information which is sensitive to the individual.

13.1 ML will only collect sensitive information if:

13.1.1 the individual has consented; or

13.1.2 the collection is required by law; or

13.1.3 the collection is necessary to prevent or lessen a serious and imminent threat to the life or the health of any individual where:

- he/she is physically or legally incapable of giving consent to the collection; or
- physically cannot communicate consent to the collection; or

13.1.4 the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

14. Confidentiality

The Principle

Within ML operations, personal information held by ML for its commercial functions is treated as confidential.

14.1 Only authorized personnel in ML may access stored personal information. Particular persons in the ML entities are granted special authority based on the need to have access to personal information for purposes of discharging their duties in ML. These authorities are restricted to essential persons only.

14.2 ML has by the nature of its business an implied policy on confidentiality within the entities' operations which is reiterated from time to time by written memorandums to staff. This policy restrains the unnecessary discussion of personal information by staff and confines its use to business purposes only.

15. Complaints

15.1 If an individual has any enquiries or complaints about ML's privacy practices, all enquiries should be directed to ML's Privacy Officer.

15.2 ML's Privacy Officer can be contacted in the following ways:

15.2.1 Email: privacy@maddenslawyers.com.au

15.2.2 Phone: +61 3 5560 2000

15.2.3 Fax: +61 3 5560 2099

15.2.4 Postal: Privacy Officer
Maddens Lawyers
PO Box 320
WARRNAMBOOL VIC 3280

Annexure A

The Australian Privacy Principals (APP's)

Australian Privacy Principle 1—open and transparent management of personal information

Australian Privacy Principle 2—anonymity and pseudonymity

Australian Privacy Principle 3—collection of solicited personal information

Australian Privacy Principle 4—dealing with unsolicited personal information

Australian Privacy Principle 5—notification of the collection of personal information

Australian Privacy Principle 6—use or disclosure of personal information

Australian Privacy Principle 7—direct marketing

Australian Privacy Principle 8—cross-border disclosure of personal information

Australian Privacy Principle 9—adoption, use or disclosure of government related identifiers

Australian Privacy Principle 10—quality of personal information

Australian Privacy Principle 11—security of personal information

Australian Privacy Principle 12—access to personal information

Australian Privacy Principle 13—correction of personal information

More information can be obtained from the Office of the Australian Information Commissioner's website - <http://www.oaic.gov.au/>