

# AANA



Five things every brand owner  
should know about the  
General Data Protection Regulation (GDPR)

# WHAT THE GDPR IS COMING

GDPR sets a new standard for consumer rights when it comes to protecting their data – so what is the GDPR?

GDPR stands for General Data Protection Regulation. It is a European privacy regulation that will ensure the same set of data privacy rules will apply throughout the EU. Importantly, its scope goes beyond the EU meaning all marketers should be aware of GDPR requirements.

GDPR will apply from 25 May 2018.

## GDPR IS IMPORTANT FOR AUSTRALIAN MARKETERS

# WHY

- GDPR will affect almost all large multinational companies.
- GDPR will significantly change how and when companies can use consumer data.
- GDPR and the Australian Privacy Act 1988 share many common requirements but GDPR also introduces new requirements relating to personal data.
- Under GDPR, companies run the risk of paying huge fines for non-compliance that could reach up to 4% of a company's annual global turnover.

# WHO DOES GDPR APPLY TO YOUR BUSINESS?

GDPR applies to the personal data processing activities of businesses, regardless of size, that have an establishment in the EU.

Personal data can be a name, an identification number, location data, an online identifier, one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of a person.

Australian businesses that may be covered include those:

- With an office in the EU
- Who offer goods or services in the EU
- Whose website targets EU customers or mentions customers or users in the EU
- Who monitor the behaviour of individuals in the EU

Tracking individuals in the EU on the internet and using data processing techniques to profile individuals to analyse and predict personal preferences, behaviours and attitudes may also be caught.

CONSIDER TAKING  
THE FOLLOWING  
STEPS

HOW

## CHECKLIST

When **GDPR** comes into effect on **25 May 2018**, marketers will need to be prepared. At the very least, you should consider taking these steps:



Assess whether GDPR will apply to your organisation.



Explore creative ways to build information about privacy into online marketing campaigns and digital assets.



Review digital assets with your legal team and if needed, update all consumer touch-points to comply with the new rules on consent.



Devise a standard template to use for any new process or activity that involves processing personal data.



Review all campaigns and digital assets that may involve the use of children's data as parental consent may be required.



When looking to reuse data collected from historical campaigns, discuss with your legal team whether this is still possible.



Review data collection practices of agencies and other third parties to assess compliance with GDPR.

# FIVE THINGS MARKETERS SHOULD BE AWARE OF

## 1 CONSENT

Consumers are empowered to decide how their personal data is used by brand owners. GDPR sets out new and extensive conditions for consent to be valid.

It is likely you will need to ask consumers for consent more often, because consent is needed for each purpose you may wish to process personal data. Bundling together multiple requests for consent to a range of different data uses is not considered consent where separate consents are appropriate.

In many cases it will no longer be enough to rely on a general permission through ticking a box. Silence, pre-ticked boxes or inactivity are not considered consent.

You need to give consumers the possibility to withdraw consent at any time.

You must be able to show all of these conditions are met even if the data was collected by a third party. You will need to work with agency partners and other associates to make sure this is possible.

### FREELY GIVEN

Consumers cannot be forced to provide consent to their data being collected when they sign up to a service, unless the data is necessary for the service to work.

### SPECIFIC

Consent needs to be specifically given - ticking one box linked to a privacy policy in many cases won't be enough.

### INFORMED

Large amounts of information must be provided about how data will be used.

### UNAMBIGUOUS

Consent must be clear, not passive such as continuing to use a website without reading the privacy notice.

## 2 TRANSPARENCY

GDPR requires companies to provide information to consumers about how they are using (or planning to use) their personal data. This information must be provided in a concise and intelligible form, using clear and plain language.

As a marketer, this will create a balancing act for you. On the one hand, more information needs to be provided to consumers but on the other hand it must be done in a way that isn't overwhelming or difficult to understand. You will need to explore creative ways to build transparency into data-driven digital campaigns.

The World Federation of Advertisers has developed six key principles to consider.

### MAKE IT VISUAL

Use easy to understand symbols or videos to explain privacy policies.

### SHORT & SIMPLE

Use language a 13 year old could understand. Highlight what is important.

### DON'T BE ANNOYING

Only ask for consent when it's required and don't get in the way of the user experience.

### CHANGE OF MIND

Let users control all their privacy settings in one place. Give users the chance to easily opt out or back in.

### MAKE IT EASY

Make getting out easier and faster than getting in, like a swipe instead of a click.

### EXPLAIN

Tell users why you want their personal data - what happens if they say yes or no. Explain the value exchange.

## 3 PROCESSING CHILDREN'S DATA

You need to get parental consent to process personal data related to children. GDPR sets the age of a child at 'below 16 years old'. In Australia the age of a child is not specified, but a company may generally presume that someone aged 15 or over has capacity to consent, unless there is something to suggest otherwise.

This means you will need mechanisms to ask for and verify parental consent. GDPR doesn't lay out specific details on how to do this. If your company has services or products that appeal primarily to children you should talk with your legal team to devise a strategy.

## 4 RE-USING DATA FOR OTHER PURPOSES

Data may be collected for a specific purpose like email addresses to send out newsletters. As a marketer you may then be interested in using this data to develop insights that could be used in other marketing campaigns or for targeting messages about other products or services. GDPR only allows this under specific circumstances.

If it's not possible or appropriate to ask the consumer for consent again, you will need to work with your legal team to assess whether the data can be used for the other purpose without consent. You will need to consider factors such as the original collection purpose, the context in which it was collected, the reasonable expectation of the consumer, whether the data has been anonymised.

## 5 NEW INDIVIDUAL RIGHTS

GDPR includes a range of new and enhanced rights for individuals. There are no equivalent rights in Australia for individuals, however companies do have some similar obligations. A new Australian 'Consumer Data Right' is proposed to be introduced in 2018, starting with the banking, energy and telecommunications sectors, allowing customers open access to their banking, energy, phone and internet transactions.

### ERASURE

A right to require deletion of personal data in certain circumstances.

### OBJECTION

A right to object at any time to the processing of personal data (including profiling).

### PORTABILITY

A right to receive personal data that has been provided.

### RESTRICTIONS

A right to restrict processing of data e.g. where accuracy is disputed.

## DON'T FORGET... DATA BREACH NOTIFICATIONS

Any security incidents related to personal data, such as a hack or a leak will need to be notified within 72 hours. Marketers should consider working with their legal and IT teams to develop a standard communication strategy to respond to personal data security incidents, including how to notify consumers with minimal damage to your brand's reputation.

From 22 February 2018, mandatory data breach notification laws became applicable to all Australian businesses under the Privacy Act. While some small businesses are exempt, most businesses (whether based in Australia or overseas) that collect personal information from Australian residents are subject to the new regime. Companies are required to notify the Australian Information Commissioner, and any affected consumers, when an 'eligible data breach' occurs.

## FURTHER INFORMATION

The European Commission has released [guidance](#) on GDPR ahead of its commencement on 25 May 2018.

The guidance, which is targeted to businesses and individuals, largely summarises GDPR's main obligations, presents work undertaken so far and makes a number of recommendations.

According to the guidance, businesses should review their data policy cycle to clearly identify which data they hold, for what purpose and on what legal basis. They should also assess the contracts they have in place, the avenues for international data transfers and their overall governance.

The Commission encourages businesses to see GDPR as:

- an opportunity to put their house in order in terms of what personal data they process and how they manage it;
- an obligation to develop privacy and data protection friendly products and build a new relationship with their customers based on transparency and trust; and
- an opportunity to reset their relations with data protection authorities through accountability and proactive compliance.

Together with this guidance, the Commission launched an [online portal](#) which attempts to answer in plain language questions businesses may have on GDPR and explains steps towards compliance.

This guide does not constitute legal advice.

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### [About the AANA](#)

*For 90 years the AANA has represented Australia's largest and well-known brands across all major sectors, including FMCG, automotive, banking, finance and insurance, travel, health and beauty, media and communications. The AANA works to protect the interests of those businesses that contribute to an estimated advertising spend of more than \$14 billion a year. On behalf of our members, the AANA's mandate is to maintain and evolve the advertising codes which underpin the system of self-regulation in Australia, safeguard the rights of its members to commercial free speech and protect consumers by ensuring marketing communication is conducted responsibly.*