BusinessPlus+ Newsletter

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Issue – February 2018

The New Privacy and Data Breaches Legislation – Watchout!!

The *Privacy Amendment (Notifiable Data Breaches) Act 2017* ("the Act") <u>commences to formally operate on 22 February 2018</u> and this is an important Act which has significant potential implications for most Businesses.

The Act, while mercifully brief coming to a mere 22 pages, is accompanied by an explanatory memorandum which runs to 104 pages. The explanatory memorandum's length in part explains some of the complexities that arise in the context of this legislation.

The net effect of the existing privacy laws and the laws that will come into effect on 22 February is that businesses who are handling documents which contain private data connected to a particular person, will need to take extra care to ensure that:

1. They have **taken all reasonable steps to handle personal information to protect that personal information from misuse, interference or loss, and from unauthorised access, modification or disclosure**; and
2. **If there is a suspected or known breach to take immediate steps to** limit any further access or distribution of the affected personal information or possible compromise of any information; and
3. **If there are reasonable grounds to believe that the data breach is likely to result in serious harm to any individuals whose information is involved**, the person responsible must notify the individual concerned and the Australian Information Commissioner of the eligible data breach.

In determining whether it is so <u>likely to result in serious harm</u>, you must have regard to:

- the kind of information;
- its sensitivity;
- whether the information is protected by security measures;
- whether any security measures that are in place to protect the information could be compromised;
- who has obtained or could obtain the information;
- whether a person could have obtained information or knowledge which could circumvent the relevant security technology or methodology;
- the nature of the harm; and
- any other relevant matter-see section 26WG of the Act.

Non-compliance could result in heavy penalties to the business.

In a practical sense, what it means is that first **you have to take reasonable care to ensure that information is appropriately protected.** Clearly, this would include taking reasonable steps to protect electronic records in relation to all known problems such as invasive computer viruses. Appropriate, up-to-date software protection is essential.

Secondly, as a result of the new legislation, **a business that knows that there has been a compromise of the privacy of the personal information it holds, or who recklessly fails to discover such a compromise in circumstances where by taking reasonable steps it would have been discovered, is likely to be in breach of the legislation.**

What this does mean, **is that care needs to be taken to ensure that the business has appropriately protected information, and that if there is a breach for whatever reason that the business should have known about by making reasonable enquiries, they will have a problem.**

In most cases, there should be no problem unless a business either deliberately ignores what is a clear breach of the privacy of the individual concerned, or sticks their head in the sand and by so doing, deliberately sets about not detecting a breach.

We can provide businesses with a an *IT Checklist for Small Business Checklist* and this includes guidance on what constitutes an "eligible data breach", what "serious Harm" means and details of the notification process required. If you would like a copy of this useful checklist, please contact Annabel at our office.

Effectively Planning Your Business Leadership Succession

Successful business leaders understand that significant business changes require planning. But they may fail to recognize that what is true for the enterprise is also true for the *individual*. Given the increasing number of post-retirement years in developed countries, it is surprising how little planning individuals typically do for this phase of life. **For example, a survey of recent retirees found that 62% had retired without *any idea* of how they would craft a life or adjust to retirement.** The trend has prompted experts to point out that many people spend more time planning a wedding than planning for retirement.

Popular books like Stephen Covey's excellent *The Seven Habits of Highly Effective People* encourage us to consider all our roles (e.g., mother, entrepreneur, friend or volunteer) and ensure we are investing time in the important priorities for each. In reality, many of us struggle to apply this practical wisdom consistently. In particular, ambitious and successful people tend to invest a significant percentage of their time and energy in the execution and development of their professional role. This makes us more likely to fall into what I call an "identity trap," where your career role comes to define too much of your identity, making it difficult to move comfortably into retirement.

If 80% or more of your waking hours are consumed with doing one thing and being one person (the boss, elite athlete, mom), when the time comes for you to relinquish that role in whole or in large part, it may lead to a tremendous sense of emptiness, confusion, or lack of purpose. Individuals in this situation may struggle with a sense of not knowing who they are anymore, a disorienting feeling, to say the least.

While the loss of one's central identity is certainly a major challenge, there are a number of additional, more practical losses that come with the end of the leadership role and may contribute further to the challenge CEOs have with their transition. Specifically, positions of leadership at work often come with perks, authority, privilege, and status that may not be readily available in retirement, representing further costs of movement into the post-work stage.

A Few Tips to Consider to smooth the transition…..

1. Recognize over-commitment to your professional identity: Be aware of the extent to which you are committed to your professional role to the exclusion of the development of other meaningful roles and pursuits.

Even if you recognize over-commitment, addressing it immediately may not always be practical. So, at the very least find ways to enrich and broaden your professional roles where possible. For example, ensure your leadership gives you a chance to engage in both analytical work and mentorship (at the team or individual level).

2. Develop other interests: While it's important to have interests outside of work, sometimes you can leverage roles you play through work or family to start with minor *extensions* of your interests. For example, get involved in leadership for your industry trade association or serve on the board of your kids' school or a small not-for-profit. Ideally, over time you can broaden your outreach to invest yourself in athletic interests, hobbies, or community organisations that are fulfilling to you as a person. It's important that the interests feel genuine to you.

3. Take planning seriously: Give real time and thought to how you will fill your days when you are no longer leading the business. "Play golf" is not a sufficient answer, unless you are a passionate golfer with many friends with whom you can share this interest and who can push you to keep growing your skills. The same applies for "I'll travel," unless you are determined to see most of the world, have the means to do so, and multiple people with whom you would enjoy travelling.

Sit down and think through your daily routine, asking yourself serious questions. What goals will you pursue? How will you pursue them? Who will it involve? Where will you go and how often? How will you feel you are making a meaningful impact and leveraging your knowledge and contacts productively? Think about which of those "things" you most want to pursue in retirement.

4. Understand — and plan for — what you'll lose: As you plan your transition out of leadership, take stock of all the perks and benefits that come with your current role and consider which you need to replace. Bear in mind that this can impact your personal income.

Take honest stock of the personal (not related to business leadership) work your administrative team supports today, and think through how you will get this work done going forward. Do you need to hire a part-time administrative assistant? Where will you house the files you need to access for your board or other professionally related roles?

5. Formalise your role: Give yourself a post-work title. That may sound funny or contrived, but it helps to think through how you want to describe what it is you do now that you are not going to be the CEO or Managing Director of the enterprise. A simple adjustment like that can elegantly maintain your affiliation with your family's business.

6. Practice your pitch: Just as you practiced for countless presentations and speeches as Managing Director, it can be helpful to practice describing what you do in your post-work life. Ideally, you will have started to envision a role or series of roles for yourself now that you have the new bandwidth to deploy. Think through how you would articulate this to an old friend at a reunion or to a person you meet at a conference.

What Is Keeping The SME Owner Awake?

Recent Australian SME Survey results have indicated the following top three issues/matters are concerning business owners:-

(1) Business planning
Is the #1 Business Concern, unchanged from last year. 98% of business owners believe there are opportunities to grow their business, and most have ideas to do so. What they lack is a plan - only 20% had prepared a business plan.

(2) Protecting the Business and Family Assets.
Business owners want to protect what they have worked hard to achieve, and become more resilient. An emerging trend is that business owners are protecting these assets by focusing on identifying and removing risk from their business. The majority of SMEs are planning to stay involved in their business. Only 15% had set a retirement date. Business owners know that taking care of themselves is key to staying in business for the long term.

(3) Stress and Lifestyle
The increasing importance of this concern reflects the personal impact on business owners who are having to process and adapt to a rapidly changing environment. This is particularly important for SMEs because of the heavy reliance on their owners. Only 27% of business owners believed their business could operate without them, declining for the third consecutive year.

What are SMEs focusing on?
SMEs are prioritising important, strategic business issues above purely financial KPIs. They are tackling risk management, improving efficiency and working smarter to keep their business healthy and ready to cope with new challenges.

(1) De-risking the Business

An emerging trend is how important it is to business owners to protect their business, personal and family assets from risks. SMEs are focusing on ways to de-risk the business. But only **32%** of business owners had identified their top 5 business risks and how they were to be managed.

(2) Improving Efficiency

Another emerging trend is the search for increased efficiency and productivity. SMEs know that it is hard to achieve growth, so they want to do more with their existing resources. The focus is moving to cost control, and increasing margins. SMEs are monitoring Operating and Financial KPIs to target improvement in their business.

(3) Working Smarter

86% of business owners love their work, and **75%** spend time doing the things they enjoy so it is not surprising that business owners intend to remain in their business longer. **35%** of owners are deferring thinking about succession planning for at least 5 years and only **15%** have set a retirement date. To be able to do so, they need to work smarter, not harder. A key indicator for most business owners is a good work/life balance. Unfortunately, **only 47%** of owners felt they spent enough time with their family.

How are SMEs taking action?

Successful SMEs are focusing on what is vitally important and making changes to improve their position. **40%** of business owners are working to increase their own business expertise, by investing in their personal training and development. They are also seeking out external support, using their networks, mentors and professional advisers, to support their goals. If you don't know where you're going, you might not get there.
SMEs can measure their success in many ways, but we have observed **two key constants** in their approach – confidence and accountability.
Confidence is needed to maintain the effort to change, and overcome resistance to change. Business owners need to believe in their goals and trust in the plan to reach them, if they are to make changes to their business model. **Accountability** is key to successful implementation. Plans only work when individuals take responsibility for making it happen.
CBSW is helping SME's take positive steps to overcome their key issues and in helping them satisfy their objectives around the matters they are focused on with the business. We have developed a comprehensive program that will assist SME business owners review all of these areas and much more, through an in-depth review conducted in conjunction with a few other like-minded businesses, over a period of about ten months. This is the best way to get real and sustainable changes implemented and working in your business.

For full details of the CBSW Agile Executive Program, please contact our office, to get a copy of the brochure.

GST Withholding Changes

- Residential property and GST rules are changing and these changes, are going to cause a lot of cash flow problems for people that are in the residential property development area and those who use the GST margin scheme in their residential property development.

- From 1 July 2018, all purchasers of new residential premises or new residential subdivisions will be required to pay the GST component of the purchase price directly to the Australian Taxation Office and not to the vendor. This means that 1/11th of the purchase of any new residential premise or new residential subdivisions will be paid directly to the Australian Taxation Office upon settlement of the purchase of the property and the vendor will claim the GST paid upon lodgement of their Business Activity Statement (BAS).

- These changes are arising as part of the Phoenix Activities Anti Avoidance taskforce targeting what has been alleged to be happening in the building industry for many years, in particular where the Australian Taxation Office is left holding the unpaid debts for a liquidated company, and as part of the crack down on those areas, these changes have been implemented which are a significant shift from the usual way in which the GST Law applies.

- Under this new scheme, the vendor must provide the purchaser with a GST withholding notice which tells the purchaser whether they are required to withhold GST and if so how much. This notice must be provided at least fourteen days before making a supply (property being settled). This notice applies to the supply of any residential premise or any potential residential land.

- If this notice is not supplied before the relevant period, upon settlement the monies must be remitted to the Australian Taxation Office and the vendor will have to report a credit on their next BAS for a refund of the GST paid. The refund will usually only occur where the margin scheme has been applied or a notice has not been provided in due time.

- The biggest issue for taxpayers is the notice period and the payment of the GST upfront and claiming back the GST when the BAS is lodged. The cashflow implications can make a large difference as well as the difficulties which will initially arise as banks and lawyers adjust to the differences this will create at settlement and what effect it will have on cashflow and lending capacity.

- Taxpayers are entitled to use a new refund mechanism to receive their refund back in much more timely manner if they are quarterly lodgers for GST purposes, however, this new scheme basically requires the vendor to prove that they are entitled to a refund, often by providing their margin scheme calculations in order to demonstrate they are entitled to the refund.

If you have any questions on how these rules might affect you, please do not hesitate to contact us.

Information to Guide You - Part 3

A key question for business operators is to decide what information sources you should be using to guide you in formulating business decisions. This is the third part of this series which commenced in November 2017.

You will probably benefit by monitoring other key data including:
- population forecasts that relate to the areas where you operate your business
- currency exchange rates
- interest rates

A key source of information is from:
- Australian Bureau of Statistics – http://www.abs.gov.au/
- Reserve Bank of Australia – https://www.rba.gov.au/

If you would like to discuss any of these key data sources, please contact us.

Business Prompts

- A medical certificate should state that the employee has an injury or illness that prevents them from undertaking their work on a specific date. (For more information – refer "Personal Leave Rules" – December 2017 - Business Plus).
- The. Fair Work Ombudsman is reported to be pursuing a national franchise for its compliance with workplace laws and is now alleging one franchisee knowingly used payroll software to produce false records.

The Fair Work Ombudsman has alleged the time and wage records provided could not be correct, because the company had been knowingly using its payroll software in a manner that produced false records.

The Fair Work Ombudsman has indicated that payroll record-keeping practises are high on the regulators hit list. In 2016/17 about 66% of the Fair Work Ombudsman court cases involved alleged poor record-keeping or pay slip contraventions.

Crowd-Sourced Funding - Gets the Starting Signal at Last!

After a long wait the Australian Securities and Investments Commission (ASIC) has licensed the first group of crowd sourced funding intermediaries under the Australian government's new Crowd-Sourced Funding Capital Raising Regime.

The announcement by ASIC Commissioner, John Price, that seven companies had been appointed as part of the initial group of intermediaries, enabled the "start button" to be pushed on what could be one of the most significant contributions to the growth of small and medium size companies in Australian history.

The opportunity to consider raising up to $5 million every 12 months from the public is available to every private company that agrees to convert to an unlisted public company. This process is not complicated and ASIC has released new forms and procedures to make this process relatively simple.

Companies which have converted to an unlisted public company and which have an annual group turnover of less than $25 million and group gross assets of less than $25 million and are not listed on any Stock Exchange will be able to utilise the Crowd Sourced Funding Capital Raising Regime.

The Federal Treasurer has tabled proposed amendments in Federal Parliament which would enable private companies to be able to raise capital utilising crowd sourced funding without having to convert to an unlisted public company. The proposed legislation has not yet been debated nor passed by Parliament. Based on the timelines that were adopted by the government for the commencement of the present version of Crowd Sourced Funding and Early Stage Innovation Company Legislation, it would probably be October/November 2018 before the amended legislation would be able to be used.

In the meanwhile, significant numbers of companies are expected to commence the process to be able to raise capital under the current rules.

The initial group of intermediaries who each hold an Australian Financial Services Licence appointed by ASIC are:

- Big Start - http://bigstart.com.au/
- Billfolda - https://billfolda.com/
- Birchal Financial Services - https://www.birchal.com/companies
- Equitise - https://equitise.com/invest
- Global Funding Partners - http://atlasca.com.au/taxonomy/term/20
- IQX Investment Services - https://www.capitallabs.com.au/#/
- On – Market Bookbuilds - https://www.onmarket.com.au/crowdfunding-investment/

Are You Using the PPSR to Safeguard Your Assets?

Unfortunately many businesses, both small and large, still encounter significant financial costs because their businesses have not registered a customer, or the owner of a property at which the business had an asset situated, on the Personal Property Securities Register.

One area that is causing a lot of problems, particularly for subcontractors, is preferential payment claims received from liquidators of companies that were customers of the business. In most cases, the subcontractor could have avoided the financial costs, if the subcontractor had registered their customer on the Personal Property Securities Register.

Non-registration on the PPSR can cause significant problems for other types of businesses. There are a number of different issues that vary from business to business relating to the PPSR summarised as follows:

Retail Business:

- supplying goods to business customers on credit
- supplying goods on a consignment basis to another business
- storing goods and equipment in someone else's property
- leasing of business premises (potential problems with fixtures, plant and equipment if the business remains in the premises when the lease ends)

Trades/Subcontractors:

- supplying products to customers which are added to other products within their customer's business (accession)
- customer may be on-selling products before paying the tradesman for the products
- preferential payments risk – this is a big problem for subcontractors if they have not lodged a registration (security interest) relative to the contract with the customer on the PPSR
- tools, equipment, motor vehicles, portable buildings, formwork and scaffolding stored on a third-party site

Farmers/Primary Producers:

- supplying goods which are mixed with products supplied by other farmers (co-mingled)
- storing goods on someone else's property e.g. grain in a grain silo owned by another business
- supplying crops to a livestock owner to be fed to livestock

Farm Suppliers:

- supply of goods for growing crops e.g. seeds, fertilisers, pest control
- supplier products for feeding cattle
- supplying consignment stock to retailers and other businesses

Thoroughbred Horses:
- leasing of thoroughbred horses
- thoroughbred horses stabled on someone else's property
- preferential payment claims relative to payments of fees

Manufacturers:
- supply of stock to wholesalers and retailers
- supply of products that are affixed to other products by the customer (accession)
- preferential payment claims by the liquidator of a customer
- storing property at someone else's premises

Wholesalers:
- supply of the stock to retailers without using a Retention of Title and Terms of Trade Agreements
- supplying stock on a consignment basis
- preferential payment claims by the liquidator of a customer

These are some of the items that should be examined to determine whether a registration should be made on the Personal Property Securities Register to protect the business' assets. If you would like to have a discussion about the implementation of a strategy, appropriate for your business, please do not hesitate to contact us.

Early Stage Innovation Company Investment - Attractive for Investors

When the government established the Early Stage Innovation Company amendments to the Taxation Act some people were surprised as to why this legislation was enacted via the Taxation Act and not the Companies Act.

The reason was that the Early Stage Innovation Company legislation introduced some attractive taxation benefits for investors. The company that receives investors' funds, for the issue of ordinary shares, do not receive any taxation benefit relating to the receipt of those funds (other than much needed capital for their businesses) the taxation benefits are solely for investors.

Retail investors can invest up to $50,000, in a 12 month period, to an Early Stage Innovation Company to be eligible to obtain the taxation benefits. There is no limit to the amount of investment that a sophisticated investor can make.

Subject to the Australian Taxation Office and AusIndustry being satisfied that the company is an Early Stage Innovation Company, investors will obtain a 20% tax rebate on the amount of the investment that they made. The maximum tax rebate for a retail investor is $10,000 and for a sophisticated investor the maximum tax rebate is $200,000.

The investors are also potentially entitled to the benefit of a capital gains tax exemption if they hold those shares in the company for more than 12 months and less than 10 years.

The government has introduced these incentives to encourage investors to consider investing in new innovative companies in Australia that have developed new products, processes, services, marketing or organisational methodologies.

An eligible company will normally be under three years of age (although in some cases the company could be up to 6 years of age) with expenditure in the previous year of less than $1 million and income in the previous year of less than $200,000, not including any grant income received from the Accelerating Commercialisation Grant.

If you would like to have a discussion with us about potential investment into an Early Stage Innovation Company, please do not hesitate to contact us.

Grants Update

The Australian government's Business Growth Grants Program is targeted at companies which operate in one of the following sectors:
- Advanced Manufacturing
- Food and Agribusiness
- Medical Technologies and Pharmaceuticals
- Mining Equipment, Technology and Services
- Oil, Gas and Energy Resources

Businesses that provide enabling or supporting technologies, inputs or services to drive business growth or improve business competitiveness in one or more of the above sectors from the enabling technologies sectors including:

- freight and logistics
- Infrastructure related construction and services
- information and communications technologies
- digital technologies and
- professional services

with turnovers over $1.5 million per annum (in northern Australia $750,000) and under $100 million that have been in operation for more than three years could be eligible for a Business Growth Grant of up to $20,000, on a 50% funding basis, to undertake virtually any activity which will contribute to an improvement in the company's performance.

If your company operates in any of these industry sectors and you are interested in applying for this grant, could you please contact us?