

## COLLECTION OF PERSONAL DATA IN PUBLIC SPACES

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All businesses should be aware of the obligations of the National Privacy Principles contained in the *Privacy Act 1988 (Cth)*. Since amendment to the Act in 2014, the requirements of how organisations collect and deal with personal information of individuals have increased and non-compliance can have legal consequences.

An example of a case where an organisation failed to comply with the National Privacy Principles is *BO and AeroCare Pty Ltd [2014] AICmr 32*. In 2013, a sight-impaired Queensland man underwent surgery interstate in Victoria. He travelled by plane with his Seeing Eye dog and a Sighted Guide. After the surgery, the man was required to wear a medical device as part of his recovery.

At the airport, AeroCare Pty Ltd staff questioned the traveller to determine if he was fit to fly. The man provided a letter to the airline from the treating hospital stating that he had the medical device in place and that the device should only be turned off for take-off and landing purposes. Additional questions were asked by the staff at the check-in counter, in the presence of his Sighted Guide (who did not know the particular nature of his medical condition) and other passengers in the airport lounge. Question included his name, date of birth, details of his medical condition the location of his wound. The staff did not offer a more private location to discuss the sensitive information.

A complaint was later made to the Office of the Australian Information Commission against AeroCare staff alleging they interfered with his privacy by collecting personal information in an intrusive and unreasonable manner, disclosing this information to third parties, and failing to advise the reason for collecting his personal information.

The Commission made a determination that the complaint was substantiated, and ordered AeroCare to:

1. apologise in writing within 4 weeks,
2. review its training of staff in handling of personal information,
3. confirm training had been undertaken by staff, and
4. pay general damages of \$8,500 for interference with the passenger's privacy.

This is an example to Australian businesses that there is no current definition of what constitutes 'unreasonably intrusive' personal data collection, and this concept will be applied on a case by case based on the individual facts. The Commissioner accepted that AeroCare was required to collect this information to ascertain if the man was fit to fly, however manner in which it was collected this information breached the National Privacy Principle 1.2.

If you require assistance with in relation to your privacy obligations, or need advice generally, our team at SHG can help you through the process. Call us today on 02 6285 8000.



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