Privacy Act 1988

Act No. 119 of 1988 as amended

This compilation was prepared on 30 April 2012
taking into account amendments up to Act No. 24 of 2012

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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An Act to make provision to protect the privacy of individuals, and for related purposes

WHEREAS Australia is a party to the International Covenant on Civil and Political Rights, the English text of which is set out in Schedule 2 to the *Australian Human Rights Commission Act 1986*:

AND WHEREAS, by that Covenant, Australia has undertaken to adopt such legislative measures as may be necessary to give effect to the right of persons not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence:

AND WHEREAS Australia is a member of the Organisation for Economic Co-operation and Development:

AND WHEREAS the Council of that Organisation has recommended that member countries take into account in their domestic legislation the principles concerning the protection of privacy and individual liberties set forth in Guidelines annexed to the recommendation:

AND WHEREAS Australia has informed that Organisation that it will participate in the recommendation concerning those Guidelines:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Part I—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Privacy Act 1988*.

2 Commencement [*see* Note 1]

This Act commences on a day to be fixed by Proclamation.

3 Saving of certain State and Territory laws

It is the intention of the Parliament that this Act is not to affect the operation of a law of a State or of a Territory that makes provision with respect to the collection, holding, use, correction, disclosure or transfer of personal information (including such a law relating to credit reporting or the use of information held in connection with

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credit reporting) and is capable of operating concurrently with this Act.

Note: Such a law can have effect for the purposes of the provisions of the National Privacy Principles that regulate the handling of personal information by organisations by reference to the effect of other laws.

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

4 Act to bind the Crown

(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Australian Capital Territory, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

(3) Nothing in this Act shall be taken to have the effect of making the Crown in right of a State, of the Australian Capital Territory, of the Northern Territory or of Norfolk Island an agency for the purposes of this Act.

5 Interpretation of Information Privacy Principles

For the purposes of the interpretation of the Information Privacy Principles, each Information Privacy Principle shall be treated as if it were a section of this Act.

5A Extension to external Territories

This Act extends to all external Territories.

5B Extra-territorial operation of Act

Application to overseas acts and practices of organisations

(1) This Act (except Divisions 4 and 5 of Part III and Part IIIA) and approved privacy codes extend to an act done, or practice engaged in, outside Australia and the external Territories by an organisation if:

(a) subject to subsection (1A), the act or practice relates to personal information about an Australian citizen or a person whose continued presence in Australia is not subject to a limitation as to time imposed by law; and

(b) the requirements of subsection (2) or (3) are met.

Note: The act or practice overseas will not breach a National Privacy Principle or approved privacy code or be an interference with the privacy of an individual if the act or practice is required by an applicable foreign law. See sections 6A, 6B and 13A.

(1A) Paragraph (1)(a) does not apply in relation to National Privacy Principle 9.

Note: Because of subsection (1A), the extra-territorial application of National Privacy Principle 9 is not limited by the citizenship etc. requirement of paragraph (1)(a).

Organisational link with Australia

(2) The organisation must be:

(a) an Australian citizen; or

(b) a person whose continued presence in Australia is not subject to a limitation as to time imposed by law; or

(c) a partnership formed in Australia or an external Territory; or

(d) a trust created in Australia or an external Territory; or

(e) a body corporate incorporated in Australia or an external Territory; or

(f) an unincorporated association that has its central management and control in Australia or an external Territory.

Other link with Australia

(3) All of the following conditions must be met:

(a) the organisation is not described in subsection (2);

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(b) the organisation carries on business in Australia or an external Territory;

(c) the personal information was collected or held by the organisation in Australia or an external Territory, either before or at the time of the act or practice.

Power to deal with complaints about overseas acts and practices

(4) Part V of this Act has extra-territorial operation so far as that Part relates to complaints and investigation concerning acts and practices to which this Act extends because of subsection (1).

Note: This lets the Commissioner take action overseas to investigate complaints and lets the ancillary provisions of Part V operate in that context.

Part II—Interpretation

6 Interpretation

(1) In this Act, unless the contrary intention appears:

ACC means the Australian Crime Commission.

ACT enactment has the same meaning as ***enactment*** has in the *Australian Capital Territory (Self-Government) Act 1988*.

agency means:

(a) a Minister; or

(b) a Department; or

(c) a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a Commonwealth enactment, not being:

(i) an incorporated company, society or association; or

(ii) an organisation that is registered under the *Fair Work (Registered Organisations) Act 2009* or a branch of such an organisation; or

(d) a body established or appointed by the Governor-General, or by a Minister, otherwise than by or under a Commonwealth enactment; or

(e) a person holding or performing the duties of an office established by or under, or an appointment made under, a Commonwealth enactment, other than a person who, by virtue of holding that office, is the Secretary of a Department; or

(f) a person holding or performing the duties of an appointment, being an appointment made by the Governor-General, or by a Minister, otherwise than under a Commonwealth enactment; or

(g) a federal court; or

(h) the Australian Federal Police; or

(ha) a Norfolk Island agency; or

(i) an eligible case manager; or

(j) the nominated AGHS company; or

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(k) an eligible hearing service provider; or

(l) the service operator under the *Healthcare Identifiers Act 2010*.

annual turnover of a business has the meaning given by section 6DA.

approved privacy code means:

(a) a privacy code approved by the Commissioner under section 18BB; or

(b) a privacy code approved by the Commissioner under section 18BB with variations approved by the Commissioner under section 18BD.

authorised agent of a reporting entity means a person authorised to act on behalf of the reporting entity as mentioned in section 37 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

bank means:

(a) the Reserve Bank of Australia; or

(b) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; or

(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

Board of the ACC means the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002.*

breach an approved privacy code has the meaning given by section 6B.

breach an Information Privacy Principle has a meaning affected by subsection 6(2).

breach a National Privacy Principle has the meaning given by section 6A.

Cabinet, in relation to Norfolk Island, means a body that:

(a) consists of Norfolk Island Ministers; and

(b) corresponds to the Cabinet.

class member, in relation to a representative complaint, means any of the persons on whose behalf the complaint was lodged, but does not include a person who has withdrawn under section 38B.

code complaint means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because it breached an approved privacy code.

Code of Conduct means the Code of Conduct issued under section 18A.

commercial credit means a loan sought or obtained by a person, other than a loan of a kind referred to in the definition of ***credit*** in this subsection.

Commissioner means the Information Commissioner within the meaning of the *Australian Information Commissioner Act 2010*.

Commissioner of Police means the Commissioner of Police appointed under the *Australian Federal Police Act 1979*.

Commission of inquiry means:

(a) the Commission of inquiry within the meaning of the *Quarantine Act 1908*; or

(b) a Commission of inquiry within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Commonwealth contract means a contract, to which the Commonwealth, Norfolk Island or an agency is or was a party, under which services are to be, or were to be, provided to an agency.

Note: See also subsection (9) about provision of services to an agency.

Commonwealth enactment means:

(a) an Act other than:

(i) the *Northern Territory (Self-Government) Act 1978*; or

(ii) an Act providing for the administration or government of an external Territory; or

(iii) the *Australian Capital Territory (Self-Government) Act 1988*;

(b) an Ordinance of the Australian Capital Territory;

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(c) an instrument (including rules, regulations or by-laws) made under an Act to which paragraph (a) applies or under an Ordinance to which paragraph (b) applies; or

(d) any other legislation that applies as a law of the Commonwealth (other than legislation in so far as it is applied by an Act referred to in subparagraph (a)(i) or (ii)) or as a law of the Australian Capital Territory, to the extent that it operates as such a law.

Commonwealth officer means a person who holds office under, or is employed by, the Commonwealth, and includes:

(a) a person appointed or engaged under the *Public Service Act 1999*;

(b) a person (other than a person referred to in paragraph (a)) permanently or temporarily employed by, or in the service of, an agency;

(c) a member of the Defence Force; and

(d) a member, staff member or special member of the Australian Federal Police;

but does not include a person permanently or temporarily employed in the Australian Capital Territory Government Service or in the Public Service of the Northern Territory or of Norfolk Island.

consent means express consent or implied consent.

contracted service provider, for a government contract, means:

(a) an organisation that is or was a party to the government contract and that is or was responsible for the provision of services to an agency or a State or Territory authority under the government contract; or

(b) a subcontractor for the government contract.

corporation means a body corporate that:

(a) is a foreign corporation;

(b) is a trading corporation formed within the limits of Australia or is a financial corporation so formed; or

(c) is incorporated in a Territory, other than the Northern Territory.

credit means a loan sought or obtained by an individual from a credit provider in the course of the credit provider carrying on a

business or undertaking as a credit provider, being a loan that is intended to be used wholly or primarily for domestic, family or household purposes.

credit card means any article of a kind commonly known as a credit card, charge card or any similar article intended for use in obtaining cash, goods or services by means of loans, and includes any article of a kind commonly issued by persons carrying on business to customers or prospective customers of those persons for use in obtaining goods or services from those persons by means of loans.

credit enhancement, in relation to a loan, means:

(a) the process of insuring risk associated with purchasing or funding the loan by means of a securitisation arrangement; or

(b) any other similar process related to purchasing or funding the loan by those means.

credit information file, in relation to an individual, means any record that contains information relating to the individual and is kept by a credit reporting agency in the course of carrying on a credit reporting business (whether or not the record is a copy of the whole or part of, or was prepared using, a record kept by another credit reporting agency or any other person).

credit provider has the meaning given by section 11B, and, for the purposes of sections 7 and 8 and Parts III, IV and V, is taken to include a mortgage insurer and a trade insurer.

credit report means any record or information, whether in a written, oral or other form, that:

(a) is being or has been prepared by a credit reporting agency; and

(b) has any bearing on an individual's:

(i) eligibility to be provided with credit; or

(ii) history in relation to credit; or

(iii) capacity to repay credit; and

(c) is used, has been used or has the capacity to be used for the purpose of serving as a factor in establishing an individual's eligibility for credit.

credit reporting agency has the meaning given by section 11A.

credit reporting business means a business or undertaking (other than a business or undertaking of a kind in respect of which regulations made for the purposes of subsection (5C) are in force) that involves the preparation or maintenance of records containing personal information relating to individuals (other than records in which the only personal information relating to individuals is publicly available information), for the purpose of, or for purposes that include as the dominant purpose the purpose of, providing to other persons (whether for profit or reward or otherwise) information on an individual's:

(a) eligibility to be provided with credit; or

(b) history in relation to credit; or

(c) capacity to repay credit;

whether or not the information is provided or intended to be provided for the purposes of assessing applications for credit.

credit reporting complaint means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because:

(a) it breached the Code of Conduct; or

(b) it breached a provision of Part IIIA.

credit reporting infringement means:

(a) a breach of the Code of Conduct; or

(b) a breach of a provision of Part IIIA.

current credit provider, in relation to an individual, means a credit provider who has given, to the individual, credit that has not yet been fully repaid or otherwise fully discharged.

Defence Force includes the Australian Navy Cadets, the Australian Army Cadets and the Australian Air Force Cadets.

Department means an Agency within the meaning of the *Public Service Act 1999*.

eligible case manager means an entity (within the meaning of the *Employment Services Act 1994*):

(a) that is, or has at any time been, a contracted case manager within the meaning of that Act; and

(b) that is not covered by paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of the definition of ***agency***.

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eligible communications service means a postal, telegraphic, telephonic or other like service, within the meaning of paragraph 51(v) of the Constitution.

eligible hearing service provider means an entity (within the meaning of the *Hearing Services Administration Act 1997*):

(a) that is, or has at any time been, engaged under Part 3 of the *Hearing Services Administration Act 1997* to provide hearing services; and

(b) that is not covered by paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (j) of the definition of ***agency***.

employee record, in relation to an employee, means a record of personal information relating to the employment of the employee. Examples of personal information relating to the employment of the employee are health information about the employee and personal information about all or any of the following:

(a) the engagement, training, disciplining or resignation of the employee;

(b) the termination of the employment of the employee;

(c) the terms and conditions of employment of the employee;

(d) the employee's personal and emergency contact details;

(e) the employee's performance or conduct;

(f) the employee's hours of employment;

(g) the employee's salary or wages;

(h) the employee's membership of a professional or trade association;

(i) the employee's trade union membership;

(j) the employee's recreation, long service, sick, personal, maternity, paternity or other leave;

(k) the employee's taxation, banking or superannuation affairs.

enactment includes a Norfolk Island enactment.

enforcement body means:

(a) the Australian Federal Police; or

(aa) the Integrity Commissioner; or

(b) the ACC; or

(c) Customs; or

(d) the Australian Prudential Regulation Authority; or

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(e) the Australian Securities and Investments Commission; or

(f) another agency, to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law; or

(g) another agency, to the extent that it is responsible for administering a law relating to the protection of the public revenue; or

(h) a police force or service of a State or a Territory; or

(i) the New South Wales Crime Commission; or

(j) the Independent Commission Against Corruption of New South Wales; or

(k) the Police Integrity Commission of New South Wales; or

(ka) the Office of Police Integrity of Victoria; or

(l) the Crime and Misconduct Commission of Queensland; or

(m) another prescribed authority or body that is established under a law of a State or Territory to conduct criminal investigations or inquiries; or

(n) a State or Territory authority, to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law; or

(o) a State or Territory authority, to the extent that it is responsible for administering a law relating to the protection of the public revenue.

Federal Court means the Federal Court of Australia.

file number complaint means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant:

(a) because it breached a guideline issued under section 17; or

(b) because it involved an unauthorised requirement or request for disclosure of a tax file number.

financial corporation means a financial corporation within the meaning of paragraph 51(xx) of the Constitution.

foreign corporation means a foreign corporation within the meaning of paragraph 51(xx) of the Constitution.

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Freedom of Information Act means the *Freedom of Information Act 1982*.

generally available publication means a magazine, book, newspaper or other publication (however published) that is or will be generally available to members of the public.

genetic relative of an individual (the ***first individual***) means another individual who is related to the first individual by blood, including but not limited to a sibling, a parent or a descendant of the first individual.

government contract means a Commonwealth contract or a State contract.

guarantee includes an indemnity given against the default of a borrower in making a payment in respect of a loan.

healthcare identifier has the meaning given by the *Healthcare Identifiers Act 2010*.

healthcare identifier offence means:

(a) an offence against section 26 of the *Healthcare Identifiers Act 2010*; or

(b) an offence against section 6 of the *Crimes Act 1914* that relates to an offence mentioned in paragraph (a) of this definition.

Note: For ancillary offences, see section 11.6 of the *Criminal Code*.

health information means:

(a) information or an opinion about:

(i) the health or a disability (at any time) of an individual; or

(ii) an individual's expressed wishes about the future provision of health services to him or her; or

(iii) a health service provided, or to be provided, to an individual;

that is also personal information; or

(b) other personal information collected to provide, or in providing, a health service; or

(c) other personal information about an individual collected in connection with the donation, or intended donation, by the

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individual of his or her body parts, organs or body substances; or

(d) genetic information about an individual in a form that is, or could be, predictive of the health of the individual or a genetic relative of the individual.

health service means:

(a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it:

(i) to assess, record, maintain or improve the individual's health; or

(ii) to diagnose the individual's illness or disability; or

(iii) to treat the individual's illness or disability or suspected illness or disability; or

(b) the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

hearing services has the same meaning as in the *Hearing Services Administration Act 1997*.

individual means a natural person.

individual concerned, in relation to personal information or a record of personal information, means the individual to whom the information relates.

Information Privacy Principle means any of the Information Privacy Principles set out in section 14.

Integrity Commissioner has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

intelligence agency means:

(a) the Australian Security Intelligence Organisation;

(b) the Australian Secret Intelligence Service; or

(c) the Office of National Assessments.

IPP complaint means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because it breached an Information Privacy Principle.

loan means a contract, arrangement or understanding under which a person is permitted to defer payment of a debt, or to incur a debt and defer its payment, and includes:

(a) a hire-purchase agreement; and

(b) such a contract, arrangement or understanding for the hire, lease or renting of goods or services, other than a contract, arrangement or understanding under which:

(i) full payment is made before, or at the same time as, the goods or services are provided; and

(ii) in the case of a hiring, leasing or renting of goods—an amount greater than or equal to the value of the goods is paid as a deposit for the return of the goods.

media organisation means an organisation whose activities consist of or include the collection, preparation for dissemination or dissemination of the following material for the purpose of making it available to the public:

(a) material having the character of news, current affairs, information or a documentary;

(b) material consisting of commentary or opinion on, or analysis of, news, current affairs, information or a documentary.

medical research includes epidemiological research.

mortgage credit means credit provided in connection with the acquisition, maintenance or improvement of real property, being credit in respect of which the real property is security.

mortgage insurer means a corporation that carries on a business or undertaking (whether for profit, reward or otherwise) that involves providing insurance to credit providers in respect of mortgage credit given by credit providers to other persons.

National Privacy Principle means a clause of Schedule 3. A reference in this Act to a National Privacy Principle by number is a reference to the clause of Schedule 3 with that number.

nominated AGHS company means a company that:

(a) is the nominated company (within the meaning of Part 2 of the *Hearing Services and AGHS Reform Act 1997*); and

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(b) is either:

(i) Commonwealth-owned (within the meaning of that Part); or

(ii) a corporation.

Norfolk Island agency means:

(a) a Norfolk Island Minister; or

(b) a public sector agency (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island); or

(c) a body (whether incorporated or not), or a tribunal, established for a public purpose by or under a Norfolk Island enactment, other than a body established or registered under:

(i) the *Companies Act 1985* of Norfolk Island; or

(ii) the *Associations Incorporation Act 2005* of Norfolk Island; or

(d) a body established or appointed by:

(i) the Administrator of Norfolk Island; or

(ii) a Norfolk Island Minister;

otherwise than by or under a Norfolk Island enactment; or

(e) a person holding or performing the duties of:

(i) an office established by or under a Norfolk Island enactment; or

(ii) an appointment made under a Norfolk Island enactment; or

(f) a person holding or performing the duties of an appointment, where the appointment was made by:

(i) the Administrator of Norfolk Island; or

(ii) a Norfolk Island Minister;

otherwise than under a Norfolk Island enactment; or

(g) a court of Norfolk Island.

Norfolk Island enactment means:

(a) an enactment (within the meaning of the *Norfolk Island Act 1979*); or

(b) an instrument (including rules, regulations or by-laws) made under such an enactment;

and includes a Norfolk Island enactment as amended by another Norfolk Island enactment.

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Norfolk Island Justice Minister means the Norfolk Island Minister who is responsible, or principally responsible, for the administration of the *Interpretation Act 1979* of Norfolk Island.

Norfolk Island Minister means a Minister of Norfolk Island.

NPP complaint means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because it breached a National Privacy Principle.

Ombudsman means the Commonwealth Ombudsman.

organisation has the meaning given by section 6C.

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

principal executive, of an agency, has a meaning affected by section 37.

privacy code means a written code regulating acts and practices that affect privacy.

record means:

(a) a document; or

(b) a database (however kept); or

(c) a photograph or other pictorial representation of a person;

but does not include:

(d) a generally available publication; or

(e) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or

(f) Commonwealth records as defined by subsection 3(1) of the *Archives Act 1983* that are in the open access period for the purposes of that Act; or

(fa) records (as defined in the *Archives Act 1983*) in the care (as defined in that Act) of the National Archives of Australia in relation to which the Archives has entered into arrangements with a person other than a Commonwealth institution (as defined in that Act) providing for the extent to which the

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Archives or other persons are to have access to the records; or

(g) documents placed by or on behalf of a person (other than an agency) in the memorial collection within the meaning of the *Australian War Memorial Act 1980*; or

(h) letters or other articles in the course of transmission by post.

registered political party means a political party registered under Part XI of the *Commonwealth Electoral Act 1918*.

reporting entity has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

representative complaint means a complaint where the persons on whose behalf the complaint was made include persons other than the complainant, but does not include a complaint that the Commissioner has determined should no longer be continued as a representative complaint.

Secretary means an Agency Head within the meaning of the *Public Service Act 1999*.

securitisation arrangement means an arrangement:

(a) involving the funding, or proposed funding, of:

(i) loans that have been, or are to be, provided by a credit provider; or

(ii) the purchase of loans by a credit provider;

by issuing instruments or entitlements to investors; and

(b) under which payments to investors in respect of such instruments or entitlements are principally derived, directly or indirectly, from such loans.

sensitive information means:

(a) information or an opinion about an individual's:

(i) racial or ethnic origin; or

(ii) political opinions; or

(iii) membership of a political association; or

(iv) religious beliefs or affiliations; or

(v) philosophical beliefs; or

(vi) membership of a professional or trade association; or

(vii) membership of a trade union; or

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(viii) sexual preferences or practices; or

(ix) criminal record;

that is also personal information; or

(b) health information about an individual; or

(c) genetic information about an individual that is not otherwise health information.

serious credit infringement means an act done by a person:

(a) that involves fraudulently obtaining credit, or attempting fraudulently to obtain credit; or

(b) that involves fraudulently evading the person's obligations in relation to credit, or attempting fraudulently to evade those obligations; or

(c) that a reasonable person would consider indicates an intention, on the part of the first-mentioned person, no longer to comply with the first-mentioned person's obligations in relation to credit.

small business has the meaning given by section 6D.

small business operator has the meaning given by section 6D.

solicit, in relation to personal information, means request a person to provide that information, or a kind of information in which that information is included.

staff of the Ombudsman means the persons appointed or employed for the purposes of section 31 of the *Ombudsman Act 1976*.

State includes the Australian Capital Territory and the Northern Territory.

State contract means a contract, to which a State or Territory or State or Territory authority is or was a party, under which services are to be, or were to be, provided to a State or Territory authority.

Note: See also subsection (9) about provision of services to a State or Territory authority.

State or Territory authority has the meaning given by section 6C.

subcontractor, for a government contract, means an organisation:

(a) that is or was a party to a contract (the ***subcontract***):

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(i) with a contracted service provider for the government contract (within the meaning of paragraph (a) of the definition of ***contracted service provider***); or

(ii) with a subcontractor for the government contract (under a previous application of this definition); and

(b) that is or was responsible under the subcontract for the provision of services to an agency or a State or Territory authority, or to a contracted service provider for the government contract, for the purposes (whether direct or indirect) of the government contract.

tax file number means a tax file number as defined in Part VA of the *Income Tax Assessment Act 1936*.

tax file number information means information (including information forming part of a database), whether compiled lawfully or unlawfully, and whether recorded in a material form or not, that records the tax file number of a person in a manner connecting it with the person's identity.

temporary public interest determination means a determination made under section 80A.

trade insurer means a corporation that carries on a business or undertaking (whether for profit, reward or otherwise) that involves providing insurance to credit providers in respect of commercial credit given by credit providers to other persons.

trading corporation means a trading corporation within the meaning of paragraph 51(xx) of the Constitution.

use, in relation to information, does not include mere disclosure of the information, but does include the inclusion of the information in a publication.

(1A) In order to avoid doubt, it is declared that an ACT enactment is not a Commonwealth enactment for the purposes of this Act.

(2) For the purposes of this Act, an act or practice breaches an Information Privacy Principle if, and only if, it is contrary to, or inconsistent with, that Information Privacy Principle.

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(3) For the purposes of this Act, an act or practice breaches a guideline issued under section 17 if, and only if, it is contrary to, or inconsistent with, the guideline.

(3A) For the purposes of this Act, an act or practice breaches the Code of Conduct if, and only if, it is contrary to, or inconsistent with, the Code of Conduct.

(4) The definition of ***individual*** in subsection (1) shall not be taken to imply that references to persons do not include persons other than natural persons.

(5) For the purposes of this Act, a person shall not be taken to be an agency merely because the person is the holder of, or performs the duties of:

(a) a prescribed office; or

(b) an office prescribed by regulations made for the purposes of subparagraph 4(3)(b)(i) of the *Freedom of Information Act 1982*; or

(c) an office established by or under a Commonwealth enactment for the purposes of an agency; or

(ca) an office established by or under a Norfolk Island enactment for the purposes of a Norfolk Island agency; or

(d) a judicial office or of an office of magistrate; or

(e) an office of member of a tribunal that is established by or under a law of the Commonwealth and that is prescribed for the purposes of this paragraph; or

(f) an office of member of a tribunal that is established by or under a Norfolk Island enactment and that is prescribed for the purposes of this paragraph.

(5A) For the purposes of the definition of ***credit reporting business*** in subsection (1), information concerning commercial transactions engaged in by or on behalf of an individual is not to be taken to be information relating to an individual's:

(a) eligibility to be provided with credit; or

(b) history in relation to credit; or

(c) capacity to repay credit.

(5B) In considering whether a business or undertaking, carried on by a credit provider that is a corporation, is a credit reporting business

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within the meaning of this Act, the provision of information by the credit provider to corporations related to it is to be disregarded.

(5C) The regulations may provide that businesses or undertakings of a specified kind are not credit reporting businesses within the meaning of this Act.

(5D) A reference in this Act to the purchase of a loan includes a reference to the purchase of rights to receive payments under the loan.

(6) For the purposes of this Act, the Department of Defence shall be taken to include the Defence Force.

(7) Nothing in this Act prevents a complaint from:

(a) being both a file number complaint and an IPP complaint; or

(b) being both a file number complaint and a credit reporting complaint; or

(c) being both a file number complaint and a code complaint; or

(d) being both a file number complaint and an NPP complaint; or

(e) being both a code complaint and a credit reporting complaint; or

(f) being both an NPP complaint and a credit reporting complaint.

(8) For the purposes of this Act, the question whether bodies corporate are related to each other is determined in the manner in which that question is determined under the *Corporations Act 2001*.

(9) To avoid doubt, for the purposes of this Act, services ***provided*** to an agency or a State or Territory authority include services that consist of the provision of services to other persons in connection with the performance of the functions of the agency or State or Territory authority.

(10) For the purposes of this Act, a reference to family in the definition of ***credit*** in subsection 6(1), and in sections 6D and 16E, in relation to any individual is taken to include the following (without limitation):

(a) a de facto partner of the individual (within the meaning of the *Acts Interpretation Act 1901*);

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(b) someone who is the child of the person, or of whom the person is the child, because of the definition of ***child*** in subsection (11);

(c) anyone else who would be a member of the individual's family if someone mentioned in paragraph (a) or (b) is taken to be a member of the individual's family.

(10A) For the purposes of this Act, the Supreme Court of Norfolk Island is taken not to be a federal court.

(11) In this section:

child: without limiting who is a child of a person for the purposes of subsection (10), someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

6A Breach of a National Privacy Principle

Breach if contrary to, or inconsistent with, Principle

(1) For the purposes of this Act, an act or practice ***breaches*** a National Privacy Principle if, and only if, it is contrary to, or inconsistent with, that National Privacy Principle.

No breach—contracted service provider

(2) An act or practice does not ***breach*** a National Privacy Principle if:

(a) the act is done, or the practice is engaged in:

(i) by an organisation that is a contracted service provider for a Commonwealth contract (whether or not the organisation is a party to the contract); and

(ii) for the purposes of meeting (directly or indirectly) an obligation under the contract; and

(b) the act or practice is authorised by a provision of the contract that is inconsistent with the Principle.

No breach—disclosure to the National Archives of Australia

(3) An act or practice does not ***breach*** a National Privacy Principle if the act or practice involves the disclosure by an organisation of personal information in a record (as defined in the *Archives Act 1983*) solely for the purposes of enabling the National Archives of

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Australia to decide whether to accept, or to arrange, care (as defined in that Act) of the record.

No breach—act or practice outside Australia

(4) An act or practice does not ***breach*** a National Privacy Principle if:

(a) the act is done, or the practice is engaged in, outside Australia and the external Territories; and

(b) the act or practice is required by an applicable law of a foreign country.

Effect despite subsection (1)

(5) Subsections (2), (3) and (4) have effect despite subsection (1).

6B Breach of an approved privacy code

Breach if contrary to, or inconsistent with, code

(1) For the purposes of this Act, an act or practice ***breaches*** an approved privacy code if, and only if, it is contrary to, or inconsistent with, the code.

No breach—contracted service provider

(2) An act or practice does not ***breach*** an approved privacy code if:

(a) the act is done, or the practice is engaged in:

(i) by an organisation that is a contracted service provider for a Commonwealth contract (whether or not the organisation is a party to the contract); and

(ii) for the purposes of meeting (directly or indirectly) an obligation under the contract; and

(b) the act or practice is authorised by a provision of the contract that is inconsistent with the code.

No breach—disclosure to the National Archives of Australia

(3) An act or practice does not ***breach*** an approved privacy code if the act or practice involves the disclosure by an organisation of personal information in a record (as defined in the *Archives Act 1983*) solely for the purposes of enabling the National Archives of Australia to decide whether to accept, or to arrange, care (as defined in that Act) of the record.

No breach—act or practice outside Australia

(4) An act or practice does not ***breach*** an approved privacy code if:

(a) the act is done, or the practice is engaged in, outside Australia and the external Territories; and

(b) the act or practice is required by an applicable law of a foreign country.

Effect despite subsection (1)

(5) Subsections (2), (3) and (4) have effect despite subsection (1).

6C Organisations

*What is an **organisation**?*

(1) In this Act:

organisation means:

(a) an individual; or

(b) a body corporate; or

(c) a partnership; or

(d) any other unincorporated association; or

(e) a trust;

that is not a small business operator, a registered political party, an agency, a State or Territory authority or a prescribed instrumentality of a State or Territory.

Note: Regulations may prescribe an instrumentality by reference to one or more classes of instrumentality. See subsection 13(3) of the *Legislative Instruments Act 2003*.

Example: Regulations may prescribe an instrumentality of a State or Territory that is an incorporated company, society or association and therefore not a State or Territory authority.

Legal person treated as different organisations in different capacities

(2) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different ***organisation***.

Example: In addition to his or her personal capacity, an individual may be the trustee of one or more trusts. In his or her personal capacity, he or she

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is one organisation. As trustee of each trust, he or she is a different organisation.

*What is a **State or Territory authority**?*

(3) In this Act:

State or Territory authority means:

(a) a State or Territory Minister; or

(b) a Department of State of a State or Territory; or

(c) a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a law of a State or Territory, other than:

(i) an incorporated company, society or association; or

(ii) an association of employers or employees that is registered or recognised under a law of a State or Territory dealing with the resolution of industrial disputes; or

(d) a body established or appointed, otherwise than by or under a law of a State or Territory, by:

(i) a Governor of a State; or

(ii) the Australian Capital Territory Executive; or

(iii) the Administrator of the Northern Territory; or

(iv) the Administrator of Norfolk Island; or

(v) a State or Territory Minister; or

(e) a person holding or performing the duties of an office established by or under, or an appointment made under, a law of a State or Territory, other than the office of head of a State or Territory Department (however described); or

(f) a person holding or performing the duties of an appointment made, otherwise than under a law of a State or Territory, by:

(i) a Governor of a State; or

(ii) the Australian Capital Territory Executive; or

(iii) the Administrator of the Northern Territory; or

(iv) the Administrator of Norfolk Island; or

(v) a State or Territory Minister; or

(g) a State or Territory court.

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Making regulations to stop instrumentalities being organisations

(4) Before the Governor-General makes regulations prescribing an instrumentality of a State or Territory for the purposes of the definition of ***organisation*** in subsection (1), the Minister must:

(a) be satisfied that the State or Territory has requested that the instrumentality be prescribed for those purposes; and

(b) consider:

(i) whether treating the instrumentality as an organisation for the purposes of this Act adversely affects the government of the State or Territory; and

(ii) the desirability of regulating under this Act the collection, holding, use, correction, disclosure and transfer of personal information by the instrumentality; and

(iii) whether the law of the State or Territory regulates the collection, holding, use, correction, disclosure and transfer of personal information by the instrumentality to a standard that is at least equivalent to the standard that would otherwise apply to the instrumentality under this Act; and

(c) consult the Commissioner about the matters mentioned in subparagraphs (b)(ii) and (iii).

State does not include Territory

(5) In this section:

State does not include the Australian Capital Territory or the Northern Territory (despite subsection 6(1)).

6D Small business and small business operators

*What is a **small business**?*

(1) A business is a ***small business*** at a time (the ***test time***) in a financial year (the ***current year***) if its annual turnover for the previous financial year is $3,000,000 or less.

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Test for new business

(2) However, if there was no time in the previous financial year when the business was carried on, the business is a small business at the test time only if its annual turnover for the current year is $3,000,000 or less.

*What is a **small business operator**?*

(3) A ***small business operator*** is an individual, body corporate, partnership, unincorporated association or trust that:

(a) carries on one or more small businesses; and

(b) does not carry on a business that is not a small business.

Entities that are not small business operators

(4) However, an individual, body corporate, partnership, unincorporated association or trust is not a ***small business operator*** if he, she or it:

(a) carries on a business that has had an annual turnover of more than $3,000,000 for a financial year that has ended after the later of the following:

(i) the time he, she or it started to carry on the business;

(ii) the commencement of this section; or

(b) provides a health service to another individual and holds any health information except in an employee record; or

(c) discloses personal information about another individual to anyone else for a benefit, service or advantage; or

(d) provides a benefit, service or advantage to collect personal information about another individual from anyone else; or

(e) is a contracted service provider for a Commonwealth contract (whether or not a party to the contract).

Private affairs of small business operators who are individuals

(5) Subsection (4) does not prevent an individual from being a small business operator merely because he or she does something described in paragraph (4)(b), (c) or (d):

(a) otherwise than in the course of a business he or she carries on; and

(b) only for the purposes of, or in connection with, his or her personal, family or household affairs.

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Non-business affairs of other small business operators

(6) Subsection (4) does not prevent a body corporate, partnership, unincorporated association or trust from being a small business operator merely because it does something described in paragraph (4)(b), (c) or (d) otherwise than in the course of a business it carries on.

Disclosure compelled or made with consent

(7) Paragraph (4)(c) does not prevent an individual, body corporate, partnership, unincorporated association or trust from being a small business operator only because he, she or it discloses personal information about another individual:

(a) with the consent of the other individual; or

(b) as required or authorised by or under legislation.

Collection with consent or under legislation

(8) Paragraph (4)(d) does not prevent an individual, body corporate, partnership, unincorporated association or trust from being a small business operator only because he, she or it:

(a) collects personal information about another individual from someone else:

(i) with the consent of the other individual; or

(ii) as required or authorised by or under legislation; and

(b) provides a benefit, service or advantage to be allowed to collect the information.

Related bodies corporate

(9) Despite subsection (3), a body corporate is not a ***small business operator*** if it is related to a body corporate that carries on a business that is not a small business.

6DA What is the *annual turnover* of a business?

*What is the **annual turnover** of a business for a financial year?*

(1) The ***annual turnover*** of a business for a financial year is the total of the following that is earned in the year in the course of the business:

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(a) the proceeds of sales of goods and/or services;
(b) commission income;
(c) repair and service income;
(d) rent, leasing and hiring income;
(e) government bounties and subsidies;
(f) interest, royalties and dividends;
(g) other operating income.

Note: The annual turnover for a financial year of a business carried on by an entity that does not carry on another business will often be similar to the total of the instalment income the entity notifies to the Commissioner of Taxation for the 4 quarters in the year (or for the year, if the entity pays tax in annual instalments).

(2) However, if a business has been carried on for only part of a financial year, its ***annual turnover*** for the financial year is the amount worked out using the formula:

$$\text{Amount that would be the annual turnover of the business under subsection (1) if the part were a whole financial year} \times \frac{\text{Number of days in the whole financial year}}{\text{Number of days in the part}}$$

6E Small business operator treated as organisation

Small business operator that is a reporting entity

(1A) If a small business operator is a reporting entity or an authorised agent of a reporting entity because of anything done in the course of a small business carried on by the small business operator, this Act applies, with the prescribed modifications (if any), in relation to the activities carried on by the small business operator for the purposes of, or in connection with, activities relating to:

(a) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or
(b) regulations or AML/CTF Rules under that Act;

as if the small business operator were an organisation.

Note: The regulations may prescribe different modifications of the Act for different small business operators. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

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Small business operator that is a protected action ballot agent under the Fair Work Act 2009

(1B) If a small business operator is the protected action ballot agent for a protected action ballot conducted under Part 3-3 of the *Fair Work Act 2009*, this Act applies, with the prescribed modifications (if any), in relation to the activities carried on by the small business operator for the purpose of, or in connection with, the conduct of the protected action ballot, as if the small business operator were an organisation.

Note: The regulations may prescribe different modifications of the Act for different small business operators. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

Small business operator that is an association of employees that is registered or recognised under the Fair Work (Registered Organisations) Act 2009

(1C) If a small business operator is an association of employees that is registered or recognised under the *Fair Work (Registered Organisations) Act 2009*, this Act applies, with the prescribed modifications (if any), in relation to the activities carried on by the small business operator, as if the small business operator were an organisation (within the meaning of this Act).

Note: The regulations may prescribe different modifications of the Act for different small business operators. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

Regulations treating a small business operator as an organisation

(1) This Act applies, with the prescribed modifications (if any), in relation to a small business operator prescribed for the purposes of this subsection as if the small business operator were an organisation.

Note 1: The regulations may prescribe different modifications of the Act for different small business operators. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

Note 2: Regulations may prescribe a small business operator by reference to one or more classes of small business operator. See subsection 13(3) of the *Legislative Instruments Act 2003*.

Regulations treating a small business operator as an organisation for particular acts or practices

(2) This Act also applies, with the prescribed modifications (if any), in relation to the prescribed acts or practices of a small business operator prescribed for the purposes of this subsection as if the small business operator were an organisation.

Note 1: The regulations may prescribe different modifications of the Act for different acts, practices or small business operators. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

Note 2: Regulations may prescribe an act, practice or small business operator by reference to one or more classes of acts, practices or small business operators. See subsection 13(3) of the *Legislative Instruments Act 2003*.

Definition

(3) In this section:

protected action ballot agent means a person (other than the Australian Electoral Commission) that conducts a protected action ballot under Part 3-3 of the *Fair Work Act 2009*.

Making regulations

(4) Before the Governor-General makes regulations prescribing a small business operator, act or practice for the purposes of subsection (1) or (2), the Minister must:

(a) be satisfied that it is desirable in the public interest to regulate under this Act the small business operator, act or practice; and

(b) consult the Commissioner about the desirability of regulating under this Act the matters described in paragraph (a).

6EA Small business operators choosing to be treated as organisations

(1) This Act (except section 16D) applies in relation to a small business operator as if the operator were an organisation while a choice by the operator to be treated as an organisation is registered under this section.

(2) A small business operator may make a choice in writing given to the Commissioner to be treated as an organisation.

Note: A small business operator may revoke such a choice by writing given to the Commissioner. See subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) If the Commissioner is satisfied that a small business operator has made the choice to be treated as an organisation, the Commissioner must enter in a register of operators who have made such a choice:

(a) the name or names under which the operator carries on business; and

(b) the operator's ABN, if the operator has one under the *A New Tax System (Australian Business Number) Act 1999*.

(4) If a small business operator revokes a choice to be treated as an organisation, the Commissioner must remove from the register the material relating to the operator.

(5) The Commissioner may decide the form of the register and how it is to be kept.

(6) The Commissioner must make the register available to the public in the way that the Commissioner determines. However, the Commissioner must not make available to the public in the register information other than that described in subsection (3).

6F State instrumentalities etc. treated as organisations

Regulations treating a State instrumentality etc. as an organisation

(1) This Act applies, with the prescribed modifications (if any), in relation to a prescribed State or Territory authority or a prescribed instrumentality of a State or Territory (except an instrumentality that is an organisation because of section 6C) as if the authority or instrumentality were an organisation.

Note 1: The regulations may prescribe different modifications of the Act for different authorities or instrumentalities. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

Note 2: Regulations may prescribe an authority or instrumentality by reference to one or more classes of authority or instrumentality. See subsection 13(3) of the *Legislative Instruments Act 2003*.

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Making regulations to treat instrumentality etc. as organisation

(3) Before the Governor-General makes regulations prescribing a State or Territory authority or instrumentality of a State or Territory for the purposes of subsection (1), the Minister must:

(a) be satisfied that the relevant State or Territory has requested that the authority or instrumentality be prescribed for those purposes; and

(b) consult the Commissioner about the desirability of regulating under this Act the collection, holding, use, correction, disclosure and transfer of personal information by the authority or instrumentality.

7 Acts and practices of agencies, organisations etc.

(1) Except so far as the contrary intention appears, a reference in this Act (other than section 8) to an act or to a practice is a reference to:

(a) an act done, or a practice engaged in, as the case may be, by an agency (other than an eligible case manager or an eligible hearing service provider), a file number recipient, a credit reporting agency or a credit provider other than:

(i) an agency specified in any of the following provisions of the *Freedom of Information Act 1982*:

(A) Schedule 1;

(B) Division 1 of Part I of Schedule 2;

(C) Division 1 of Part II of Schedule 2; or

(ii) a federal court; or

(iia) a court of Norfolk Island; or

(iii) a Minister; or

(iiiaa) a Norfolk Island Minister; or

(iiia) the Integrity Commissioner; or

(iv) the ACC; or

(v) a Royal Commission; or

(vi) a Commission of inquiry; or

(b) an act done, or a practice engaged in, as the case may be, by a federal court or by an agency specified in Schedule 1 to the *Freedom of Information Act 1982*, being an act done, or a practice engaged in, in respect of a matter of an administrative nature; or

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(ba) an act done, or a practice engaged in, as the case may be, by a court of Norfolk Island, being an act done, or a practice engaged in, in respect of a matter of an administrative nature; or

(c) an act done, or a practice engaged in, as the case may be, by an agency specified in Division 1 of Part II of Schedule 2 to the *Freedom of Information Act 1982*, other than an act done, or a practice engaged in, in relation to a record in relation to which the agency is exempt from the operation of that Act; or

(ca) an act done, or a practice engaged in, as the case may be, by a part of the Department of Defence specified in Division 2 of Part I of Schedule 2 to the *Freedom of Information Act 1982*, other than an act done, or a practice engaged in, in relation to the activities of that part of the Department; or

(cb) an act done, or a practice engaged in, as the case may be, by an eligible case manager in connection with:

(i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or

(ii) the performance of functions conferred on the eligible case manager under that Act; or

(cc) an act done, or a practice engaged in, as the case may be, by an eligible hearing service provider in connection with the provision of hearing services under an agreement made under Part 3 of the *Hearing Services Administration Act 1997*; or

(d) an act done, or a practice engaged in, as the case may be, by a Minister in relation to the affairs of an agency (other than a Norfolk Island agency, an eligible hearing service provider or an eligible case manager), not being an act done, or a practice engaged in, in relation to an existing record; or

(e) an act done, or a practice engaged in, as the case may be, by a Minister in relation to a record that is in the Minister's possession in his or her capacity as a Minister and relates to the affairs of an agency (other than a Norfolk Island agency, an eligible hearing service provider or an eligible case manager); or

(eaa) an act done, or a practice engaged in, as the case may be, by a Norfolk Island Minister in relation to the affairs of a Norfolk Island agency, not being an act done, or a practice engaged in, in relation to an existing record; or

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(eab) an act done, or a practice engaged in, as the case may be, by a Norfolk Island Minister in relation to a record that is in the Norfolk Island Minister's possession in his or her capacity as a Norfolk Island Minister and relates to the affairs of a Norfolk Island agency; or

(ea) an act done, or a practice engaged in, as the case may be, by a Minister in relation to the affairs of an eligible case manager, being affairs in connection with:

(i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or

(ii) the performance of functions conferred on the eligible case manager under that Act; or

(eb) an act done, or a practice engaged in, as the case may be, by a Minister in relation to a record that is in the Minister's possession in his or her capacity as a Minister and relates to the affairs of an eligible case manager, being affairs in connection with:

(i) the provision of case management services (within the meaning of the *Employment Services Act 1994*) to persons referred to the eligible case manager under Part 4.3 of that Act; or

(ii) the performance of functions conferred on the eligible case manager under that Act; or

(ec) an act done, or a practice engaged in, as the case may be, by a Minister in relation to the affairs of an eligible hearing service provider, being affairs in connection with the provision of hearing services under an agreement made under Part 3 of the *Hearing Services Administration Act 1997*; or

(ed) an act done, or a practice engaged in, as the case may be, by a Minister in relation to a record that is in the Minister's possession in his or her capacity as a Minister and relates to the affairs of an eligible hearing service provider, being affairs in connection with the provision of hearing services under an agreement made under Part 3 of the *Hearing Services Administration Act 1997*; or

(ee) an act done, or a practice engaged in, by an organisation, other than an exempt act or exempt practice (see sections 7B and 7C);

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but does not include a reference to an act done, or a practice engaged in, in relation to a record that has originated with, or has been received from:

(f) an intelligence agency;

(g) the Defence Intelligence Organisation, the Defence Imagery and Geospatial Organisation or the Defence Signals Directorate of the Department of Defence; or

(ga) the Integrity Commissioner or a staff member of ACLEI (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or

(h) the ACC or the Board of the ACC.

(1A) Despite subsections (1) and (2), a reference in this Act (other than section 8) to an act or to a practice does not include a reference to the act or practice so far as it involves the disclosure of personal information to:

(a) the Australian Security Intelligence Organisation; or

(b) the Australian Secret Intelligence Service; or

(c) the Defence Signals Directorate of the Department of Defence.

(2) Except so far as the contrary intention appears, a reference in this Act (other than section 8) to an act or to a practice includes, in the application of this Act otherwise than in respect of the Information Privacy Principles, the National Privacy Principles, an approved privacy code and the performance of the Commissioner's functions under section 27, a reference to an act done, or a practice engaged in, as the case may be, by an agency specified in Part I of Schedule 2 to the *Freedom of Information Act 1982* or in Division 1 of Part II of that Schedule other than:

(a) an intelligence agency;

(b) the Defence Intelligence Organisation, the Defence Imagery and Geospatial Organisation or the Defence Signals Directorate of the Department of Defence; or

(c) the ACC or the Board of the ACC.

(3) Except so far as the contrary intention appears, a reference in this Act to doing an act includes a reference to:

(a) doing an act in accordance with a practice; or

(b) refusing or failing to do an act.

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(3A) For the purposes of this Act, an act is only to be taken to have been done, and a practice is only to be taken to have been engaged in, by a credit provider that is not a corporation if the act is done, or the practice is engaged in, in the course of, or for the purposes of, banking (other than State banking not extending beyond the limits of the State concerned) carried on by the credit provider.

(4) For the purposes of paragraphs 27(1)(b), (c), (d), (e), (g), (k) and (m), of subsection 31(2) and of Part VI, this section has effect as if a reference in subsection (1) of this section to an act done, or to a practice engaged in, included a reference to an act that is proposed to be done, or to a practice that is proposed to be engaged in, as the case may be.

7A Acts of certain agencies treated as acts of organisation

(1) This Act applies, with the prescribed modifications (if any), in relation to an act or practice described in subsection (2) or (3) as if:

(a) the act or practice were an act done, or practice engaged in, by an organisation; and

(b) the agency mentioned in that subsection were the organisation.

(2) Subsection (1) applies to acts done, and practices engaged in, by a prescribed agency. Regulations for this purpose may prescribe an agency only if it is specified in Part I of Schedule 2 to the *Freedom of Information Act 1982*.

(3) Subsection (1) also applies to acts and practices that:

(a) are done or engaged in by an agency specified in Division 1 of Part II of Schedule 2 to the *Freedom of Information Act 1982* in relation to documents in respect of its commercial activities or the commercial activities of another entity; and

(b) relate to those commercial activities.

(4) This section has effect despite subparagraph 7(1)(a)(i), paragraph 7(1)(c) and subsection 7(2).

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7B Exempt acts and exempt practices of organisations

Individuals in non-business capacity

(1) An act done, or practice engaged in, by an organisation that is an individual is ***exempt*** for the purposes of paragraph 7(1)(ee) if the act is done, or the practice is engaged in, other than in the course of a business carried on by the individual.

Note: See also section 16E which provides that the National Privacy Principles do not apply for the purposes of, or in connection with, an individual's personal, family or household affairs.

Organisation acting under Commonwealth contract

(2) An act done, or practice engaged in, by an organisation is ***exempt*** for the purposes of paragraph 7(1)(ee) if:

(a) the organisation is a contracted service provider for a Commonwealth contract (whether or not the organisation is a party to the contract); and

(b) the organisation would be a small business operator if it were not a contracted service provider for a Commonwealth contract; and

(c) the act is done, or the practice is engaged in, otherwise than for the purposes of meeting (directly or indirectly) an obligation under a Commonwealth contract for which the organisation is the contracted service provider.

Note: This puts the organisation in the same position as a small business operator as far as its activities that are not for the purposes of a Commonwealth contract are concerned, so the organisation need not comply with the National Privacy Principles or a binding approved privacy code in relation to those activities.

Employee records

(3) An act done, or practice engaged in, by an organisation that is or was an employer of an individual, is ***exempt*** for the purposes of paragraph 7(1)(ee) if the act or practice is directly related to:

(a) a current or former employment relationship between the employer and the individual; and

(b) an employee record held by the organisation and relating to the individual.

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Journalism

(4) An act done, or practice engaged in, by a media organisation is ***exempt*** for the purposes of paragraph 7(1)(ee) if the act is done, or the practice is engaged in:

(a) by the organisation in the course of journalism; and

(b) at a time when the organisation is publicly committed to observe standards that:

(i) deal with privacy in the context of the activities of a media organisation (whether or not the standards also deal with other matters); and

(ii) have been published in writing by the organisation or a person or body representing a class of media organisations.

Organisation acting under State contract

(5) An act done, or practice engaged in, by an organisation is ***exempt*** for the purposes of paragraph 7(1)(ee) if:

(a) the organisation is a contracted service provider for a State contract (whether or not the organisation is a party to the contract); and

(b) the act is done, or the practice is engaged in for the purposes of meeting (directly or indirectly) an obligation under the contract.

7C Political acts and practices are exempt

Members of a Parliament etc.

(1) An act done, or practice engaged in, by an organisation (the ***political representative***) consisting of a member of a Parliament, or a councillor (however described) of a local government authority, is ***exempt*** for the purposes of paragraph 7(1)(ee) if the act is done, or the practice is engaged in, for any purpose in connection with:

(a) an election under an electoral law; or

(b) a referendum under a law of the Commonwealth or a law of a State or Territory; or

(c) the participation by the political representative in another aspect of the political process.

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Contractors for political representatives etc.

(2) An act done, or practice engaged in, by an organisation (the ***contractor***) is ***exempt*** for the purposes of paragraph 7(1)(ee) if the act is done or the practice is engaged in:

(a) for the purposes of meeting an obligation under a contract between the contractor and a registered political party or a political representative described in subsection (1); and

(b) for any purpose in connection with one or more of the following:

(i) an election under an electoral law;

(ii) a referendum under a law of the Commonwealth or a law of a State or Territory;

(iii) the participation in another aspect of the political process by the registered political party or political representative;

(iv) facilitating acts or practices of the registered political party or political representative for a purpose mentioned in subparagraph (i), (ii) or (iii) of this paragraph.

Subcontractors for organisations covered by subsection (1) etc.

(3) An act done, or practice engaged in, by an organisation (the ***subcontractor***) is ***exempt*** for the purposes of paragraph 7(1)(ee) if the act is done or the practice is engaged in:

(a) for the purposes of meeting an obligation under a contract between the subcontractor and a contractor described in subsection (2); and

(b) for a purpose described in paragraph (2)(b).

Volunteers for registered political parties

(4) An act done voluntarily, or practice engaged in voluntarily, by an organisation for or on behalf of a registered political party and with the authority of the party is ***exempt*** for the purposes of paragraph 7(1)(ee) if the act is done or the practice is engaged in for any purpose in connection with one or more of the following:

(a) an election under an electoral law;

(b) a referendum under a law of the Commonwealth or a law of a State or Territory;

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(c) the participation in another aspect of the political process by the registered political party;

(d) facilitating acts or practices of the registered political party for a purpose mentioned in paragraph (a), (b) or (c).

Effect of subsection (4) on other operation of Act

(5) Subsection (4) does not otherwise affect the operation of the Act in relation to agents or principals.

*Meaning of **electoral law** and **Parliament***

(6) In this section:

electoral law means a law of the Commonwealth, or a law of a State or Territory, relating to elections to a Parliament or to a local government authority.

Parliament means:

(a) the Parliament of the Commonwealth; or

(b) a State Parliament; or

(c) the legislature of a Territory.

Note: To avoid doubt, this section does not make exempt for the purposes of paragraph 7(1)(ee) an act or practice of the political representative, contractor, subcontractor or volunteer for a registered political party involving the use or disclosure (by way of sale or otherwise) of personal information in a way not covered by subsection (1), (2), (3) or (4) (as appropriate). The rest of this Act operates normally in relation to that act or practice.

8 Acts and practices of, and disclosure of information to, staff of agency, organisation etc.

(1) For the purposes of this Act:

(a) an act done or practice engaged in by, or information disclosed to, a person employed by, or in the service of, an agency, organisation, file number recipient, credit reporting agency or credit provider in the performance of the duties of the person's employment shall be treated as having been done or engaged in by, or disclosed to, the agency, organisation, recipient, credit reporting agency or credit provider;

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(b) an act done or practice engaged in by, or information disclosed to, a person on behalf of, or for the purposes of the activities of, an unincorporated body, being a board, council, committee, sub-committee or other body established by or under a Commonwealth enactment or a Norfolk Island enactment for the purpose of assisting, or performing functions in connection with, an agency or organisation, shall be treated as having been done or engaged in by, or disclosed to, the agency or organisation; and

(c) an act done or practice engaged in by, or information disclosed to, a member, staff member or special member of the Australian Federal Police in the performance of his or her duties as such a member, staff member or special member shall be treated as having been done or engaged in by, or disclosed to, the Australian Federal Police.

(2) Where:

(a) an act done or a practice engaged in by a person, in relation to a record, is to be treated, under subsection (1), as having been done or engaged in by an agency; and

(b) that agency is not the record-keeper in relation to that record;

that act or practice shall be treated as the act or the practice of the record-keeper in relation to that record.

(3) For the purposes of the application of this Act in relation to an organisation that is a partnership:

(a) an act done or practice engaged in by a partner is taken to have been done or engaged in by the organisation; and

(b) a communication (including a complaint, notice, request or disclosure of information) made to a partner is taken to have been made to the organisation.

(4) For the purposes of the application of this Act in relation to an organisation that is an unincorporated association:

(a) an act done or practice engaged in by a member of the committee of management of the association is taken to have been done or engaged in by the organisation; and

(b) a communication (including a complaint, notice, request or disclosure of information) made to a member of the committee of management of the association is taken to have been made to the organisation.

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(5) For the purposes of the application of this Act in relation to an organisation that is a trust:

(a) an act done or practice engaged in by a trustee is taken to have been done or engaged in by the organisation; and

(b) a communication (including a complaint, notice or request or disclosure of information) made to a trustee is taken to have been made to the organisation.

9 Collectors

(1) An agency that collects personal information shall be treated, for the purposes of this Act, as a collector in relation to that information.

(2) Subject to subsection (3), where personal information is collected by a person:

(a) in the course of the person's employment by, or in the service of, an agency other than the Australian Federal Police; or

(b) as a member, staff member or special member of the Australian Federal Police in the performance of his or her duties as such a member, staff member or special member;

then, for the purposes of this Act:

(c) if paragraph (a) applies—the agency first referred to in that paragraph; and

(d) if paragraph (b) applies—the Australian Federal Police;

shall be treated as a collector in relation to that information.

(3) Where personal information is collected by a person for the purposes of the activities of, an unincorporated body, being a board, council, committee, sub-committee or other body established by or under a Commonwealth enactment or a Norfolk Island enactment for the purpose of assisting, or performing functions connected with, an agency, that agency shall be treated, for the purposes of this Act, as a collector in relation to that information.

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10 Record-keepers

(1) Subject to subsections (4) and (5), an agency that is in possession or control of a record of personal information shall be regarded, for the purposes of this Act, as the record-keeper in relation to that record.

(2) Subject to subsections (3), (4) and (5), where a record of personal information is in the possession or under the control of a person:

(a) in the course of the person's employment in the service of or by an agency other than the Australian Federal Police; or

(b) as a member, staff member or special member of the Australian Federal Police in the performance of his or her duties as such a member, staff member or special member;

then, for the purposes of this Act, the record-keeper in relation to that record shall be taken to be:

(c) if paragraph (a) applies—the agency first referred to in that paragraph; and

(d) if paragraph (b) applies—the Australian Federal Police.

(3) Where a record of personal information is in the possession or under the control of a person for the purposes of the activities of, an unincorporated body, being a board, council, committee, sub-committee or other body established by or under a Commonwealth enactment or a Norfolk Island enactment for the purpose of assisting, or performing functions connected with, an agency, that agency shall be regarded, for the purposes of this Act, as the record-keeper in relation to that record.

(4) Where:

(a) a record of personal information (not being a record relating to the administration of the National Archives of Australia) is in the care (within the meaning of the *Archives Act 1983*) of the National Archives of Australia; or

(b) a record of personal information (not being a record relating to the administration of the Australian War Memorial) is in the custody of the Australian War Memorial;

the agency by or on behalf of which the record was placed in that care or custody or, if that agency no longer exists, the agency to whose functions the contents of the record are most closely related, shall be regarded, for the purposes of this Act, as the record-keeper in relation to that record.

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(5) Where a record of personal information was placed by or on behalf of an agency in the memorial collection within the meaning of the *Australian War Memorial Act 1980*, that agency or, if that agency no longer exists, the agency to whose functions the contents of the record are most closely related, shall be regarded, for the purposes of this Act, as the record-keeper in relation to that record.

11 File number recipients

(1) A person who is (whether lawfully or unlawfully) in possession or control of a record that contains tax file number information shall be regarded, for the purposes of this Act, as a file number recipient.

(2) Subject to subsection (3), where a record that contains tax file number information is in the possession or under the control of a person:

(a) in the course of the person's employment in the service of or by a person or body other than an agency;

(b) in the course of the person's employment in the service of or by an agency other than the Australian Federal Police; or

(c) as a member, staff member or special member of the Australian Federal Police in the performance of his or her duties as such a member, staff member or special member;

then, for the purposes of this Act, the file number recipient in relation to that record shall be taken to be:

(d) if paragraph (a) applies—the person's employer;

(e) if paragraph (b) applies—the agency first referred to in that paragraph; and

(f) if paragraph (c) applies—the Australian Federal Police.

(3) Where a record that contains tax file number information is in the possession or under the control of a person for the purposes of the activities of, an unincorporated body, being a board, council, committee, sub-committee or other body established by or under a Commonwealth enactment or a Norfolk Island enactment for the purpose of assisting, or performing functions connected with, an agency, that agency shall be treated, for the purposes of this Act, as the file number recipient in relation to that record.

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11A Credit reporting agencies

For the purposes of this Act, a person is a credit reporting agency if the person is a corporation that carries on a credit reporting business.

11B Credit providers

(1) For the purposes of this Act, but subject to subsection (2), a person is a credit provider if the person is:

(a) a bank; or

(b) a corporation (other than an agency):

(iii) a substantial part of whose business or undertaking is the provision of loans (including the provision of loans by issuing credit cards); or

(iv) that carries on a retail business in the course of which it issues credit cards to members of the public in connection with the sale of goods, or the supply of services, by the corporation; or

(v) that:

(A) carries on a business or undertaking involving the provision of loans (including the provision of loans by issuing credit cards); and

(B) is included in a class of corporations determined by the Commissioner to be credit providers for the purposes of this Act; or

(c) a person:

(i) who is not a corporation; and

(ii) in relation to whom paragraph (b) would apply if the person were a corporation; or

(d) an agency that:

(i) carries on a business or undertaking that involves the making of loans; and

(ii) is determined by the Commissioner to be a credit provider for the purposes of this Act.

(1A) If an agency is a credit provider because of paragraph (1)(d), Part IIIA has effect in relation to the carrying on by the agency of a business or undertaking involving the making of loans despite anything in Part III or in the *Freedom of Information Act 1982*.

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(2) For the purposes of this Act, a corporation that would, but for this section, be a credit provider is not to be regarded as a credit provider if it is included in a class of corporations declared by the regulations not to be credit providers.

(3) A determination under sub-subparagraph (1)(b)(v)(B) or subparagraph (1)(d)(ii) is to be made by notice in writing published in the *Gazette*.

(4) A notice so published is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(4A) Subsection (4B) applies to a person who carries on a business that is involved in one or both of the following:

(a) a securitisation arrangement;

(b) managing loans that are the subject of a securitisation arrangement.

(4B) While a person to whom this subsection applies is performing a task that is reasonably necessary for purchasing, funding or managing, or processing an application for, a loan by means of a securitisation arrangement (being a loan that has been provided by, or in respect of which application has been made to, a credit provider):

(a) the person:

(i) is taken, for the purposes of this Act, to be another credit provider; and

(ii) is subject to the same obligations under this Act as any other credit provider; and

(b) for the purposes of this Act, the loan is taken to have been provided by, or the application for the loan is taken to have been made to, both the person and the first-mentioned credit provider.

(4C) Nothing in this Act prevents a report (within the meaning of subsection 18N(9)) to which section 18N applies being disclosed if:

(a) the disclosure is reasonably necessary for purchasing, funding or managing, or processing an application for, a loan by means of a securitisation arrangement (being a loan that has been provided by, or in respect of which an application has been made to, a credit provider); and

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(b) the disclosure takes place between a person to whom subsection (4B) applies in relation to that loan and:

(i) the credit provider; or

(ii) another person to whom that subsection applies in relation to that loan.

(4D) A reference in subsection (4B) or (4C) to purchasing or funding a loan by means of a securitisation arrangement includes a reference to credit enhancement of the loan.

(4E) A reference in subsection (4B) or (4C) to managing a loan does not include a reference to an act relating to the collection of overdue payments in respect of the loan if the act is undertaken by a person whose primary function in relation to the loan is the collection of overdue payments.

(5) Subject to subsection (6), while a person is acting as an agent of a credit provider in performing, on behalf of the credit provider, a task that is necessary:

(a) in processing an application for a loan; or

(b) in managing:

(i) a loan given by the credit provider; or

(ii) an account maintained by any person with the credit provider;

the first-mentioned person:

(c) is taken, for the purposes of this Act, to be another credit provider; and

(d) is subject to the same obligations under this Act as any other credit provider.

(6) Nothing in this Act prevents such an agent of a credit provider disclosing to the credit provider, in the agent's capacity as such an agent, a report (within the meaning of subsection 18N(9)) to which section 18N applies.

(7) The reference in subsection (5) to the management of a loan does not include a reference to any act relating to the collection of payments that are overdue in respect of the loan.

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12 Application of Information Privacy Principles to agency in possession

For the purposes of this Act, where an agency has possession but not control of a record of personal information, the Information Privacy Principles apply in relation to that agency to the extent only of the obligations or duties to which that agency is subject, otherwise than by virtue of the operation of this Act, because it is in possession of that particular record.

12A Act not to apply in relation to State banking or insurance within that State

Where, but for this section, a provision of this Act:

(a) would have a particular application; and

(b) by virtue of having that application, would be a law with respect to, or with respect to matters including:

(i) State banking not extending beyond the limits of the State concerned; or

(ii) State insurance not extending beyond the limits of the State concerned;

the provision is not to have that application.

12B Severability: additional effect of Act in relation to organisations

(1) Without limiting its effect apart from each of the following subsections of this section, this Act also has effect in relation to organisations as provided by that subsection.

(2) This Act also has the effect it would have if its operation in relation to organisations were expressly confined to an operation to give effect to the International Covenant on Civil and Political Rights, and in particular Article 17 of the Covenant.

Note: The text of the International Covenant on Civil and Political Rights is set out in Australian Treaty Series 1980 No. 23. In 2000, this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

(3) This Act also has the effect it would have if its operation in relation to organisations were expressly confined to acts or practices covered by subsection 5B(1) (which deals with acts and practices outside Australia and the external Territories by organisations).

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(4) This Act also has the effect it would have if its operation in relation to organisations were expressly confined to organisations that are corporations.

(5) This Act also has the effect it would have if its operation in relation to organisations were expressly confined to acts or practices of organisations taking place in the course of, or in relation to, trade or commerce:

(a) between Australia and places outside Australia; or

(b) among the States; or

(c) within a Territory, between a State and a Territory or between 2 Territories.

(6) This Act also has the effect it would have if its operation in relation to organisations were expressly confined to acts or practices of organisations taking place using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution.

(7) This Act also has the effect it would have if its operation in relation to organisations were expressly confined to acts or practices of organisations taking place in a Territory.

(8) This Act also has the effect it would have if its operation in relation to organisations were expressly confined to acts or practices of organisations taking place in a place acquired by the Commonwealth for public purposes.

Part III—Information privacy

Division 1—Interferences with privacy

13 Interferences with privacy [*see* Note 2]

For the purposes of this Act, an act or practice is an interference with the privacy of an individual if the act or practice:

(a) in the case of an act or practice engaged in by an agency (whether or not the agency is also a file number recipient, credit reporting agency or credit provider)—breaches an Information Privacy Principle in relation to personal information that relates to the individual; or

(b) in the case of an act or practice engaged in by a file number recipient (whether or not the file number recipient is also an agency, organisation, credit reporting agency or credit provider)—breaches a guideline under section 17 in relation to tax file number information that relates to the individual; or

(ba) constitutes a breach of Part 2 of the *Data-matching Program (Assistance and Tax) Act 1990* or the guidelines in force under that Act; or

(bb) constitutes a breach of the guidelines in force under section 135AA of the *National Health Act 1953*; or

(c) involves an unauthorised requirement or request for disclosure of the tax file number of the individual; or

(d) in the case of an act or practice engaged in by a credit reporting agency or credit provider (whether or not the credit reporting agency or credit provider is also an agency, organisation or file number recipient)—constitutes a credit reporting infringement in relation to personal information that relates to the individual.

Note 1: A contravention of the *Healthcare Identifiers Act 2010*, or of regulations made under that Act, is an interference with the privacy of an individual and is covered by this section (see subsection 29(1) of that Act).

Note 2: A breach of a requirement of Division 5A of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* by a credit reporting agency is an interference with the privacy of an individual and is covered by this section (see section 35L of that Act).

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Note: For the purposes of this section, each of the following is an interference with the privacy of an individual:

(a) a contravention of the requirement to ensure that notice is given in accordance with section 157 of the *Personal Property Securities Act 2009* (see subsection 157(4) of that Act);

(b) a search of the Personal Property Securities Register that is unauthorised under subsection 173(3) or (4) of that Act (see subsection 173(2) of that Act).

13A Interferences with privacy by organisations

General rule

(1) For the purposes of this Act, an act or practice of an organisation is an ***interference with the privacy*** of an individual if:

(a) the act or practice breaches an approved privacy code that binds the organisation in relation to personal information that relates to the individual; or

(b) both of the following apply:

(i) the act or practice breaches a National Privacy Principle in relation to personal information that relates to the individual;

(ii) the organisation is not bound by an approved privacy code in relation to the personal information; or

(c) all of the following apply:

(i) the act or practice relates to personal information that relates to the individual;

(ii) the organisation is a contracted service provider for a Commonwealth contract (whether or not the organisation is a party to the contract);

(iii) because of a provision of the contract that is inconsistent with an approved privacy code or a National Privacy Principle that applies to the organisation in relation to the personal information, the act or practice does not breach the code or Principle (see subsections 6A(2) and 6B(2));

(iv) the act is done, or the practice is engaged in, in a manner contrary to, or inconsistent with, that provision; or

(d) the act or practice involves the organisation in a contravention of section 16F (which limits direct marketing

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using information collected under a Commonwealth contract) involving personal information that relates to the individual.

Note 1: Sections 13B, 13C and 13D contain exceptions to this rule.

Note 2: A breach of a requirement of Division 5A of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* by a reporting entity is an interference with the privacy of an individual and is covered by this section (see section 35L of that Act).

Rule applies even if other rules also apply

(2) It does not matter whether the organisation is also a credit reporting agency, a credit provider or a file number recipient.

13B Related bodies corporate

Acts or practices that are not interferences with privacy

(1) Despite paragraphs 13A(1)(a) and (b), each of the following acts or practices of an organisation that is a body corporate is not an ***interference with the privacy*** of an individual:

(a) the collection of personal information (other than sensitive information) about the individual by the body corporate from a related body corporate;

(b) the disclosure of personal information (other than sensitive information) about the individual by the body corporate to a related body corporate.

Note: Subsection (1) lets related bodies corporate share personal information. However, in using or holding the information, they must comply with the National Privacy Principles or a binding approved privacy code. For example, there is an interference with privacy if:

(a) a body corporate uses personal information it has collected from a related body corporate; and

(b) the use breaches National Privacy Principle 2 (noting that the collecting body's primary purpose of collection will be taken to be the same as that of the related body) or a corresponding provision in a binding approved privacy code.

(1A) However, paragraph (1)(a) does not apply to the collection by a body corporate of personal information (other than sensitive information) from:

(a) a related body corporate that is not an organisation; or

(b) a related body corporate whose disclosure of the information to the body corporate is an exempt act or exempt practice for the purposes of paragraph 7(1)(ee); or

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(c) a related body corporate whose disclosure of the information to the body corporate is not an interference with privacy because of section 13D.

Note: The effect of subsection (1A) is that a body corporate's failure to comply with the National Privacy Principles, or a binding approved privacy code, in collecting personal information about an individual from a related body corporate covered by that subsection is an interference with the privacy of the individual.

Relationship with paragraphs 13A(1)(c) and (d)

(2) Subsection (1) does not prevent an act or practice of an organisation from being an ***interference with the privacy*** of an individual under paragraph 13A(1)(c) or (d).

13C Change in partnership because of change in partners

Acts or practices that are not interferences with privacy

(1) If:

(a) an organisation (the ***new partnership***) that is a partnership forms at the same time as, or immediately after, the dissolution of another partnership (the ***old partnership***); and

(b) at least one person who was a partner in the old partnership is a partner in the new partnership; and

(c) the new partnership carries on a business that is the same as, or similar to, a business carried on by the old partnership; and

(d) the new partnership holds, immediately after its formation, personal information about an individual that the old partnership held immediately before its dissolution;

neither the disclosure (if any) by the old partnership, nor the collection (if any) by the new partnership, of the information that was necessary for the new partnership to hold the information immediately after its formation constitutes an ***interference with the privacy*** of the individual.

Note: Subsection (1) lets personal information be passed on from an old to a new partnership. However, in using or holding the information, they must comply with the National Privacy Principles or a binding approved privacy code. For example, the new partnership's use of personal information collected from the old partnership may constitute an interference with privacy if it breaches National Privacy Principle 2 or a corresponding provision in a binding approved privacy code.

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Effect despite section 13A

(2) Subsection (1) has effect despite section 13A.

13D Overseas act required by foreign law

Acts or practices that are not interferences with privacy

(1) An act or practice of an organisation done or engaged in outside Australia and an external Territory is not an ***interference with the privacy*** of an individual if the act or practice is required by an applicable law of a foreign country.

Effect despite section 13A

(2) Subsection (1) has effect despite section 13A.

13E Effect on section 13 of sections 13B, 13C and 13D

Sections 13B, 13C and 13D do not prevent an act or practice of an organisation from being an ***interference with the privacy*** of an individual under section 13.

13F Act or practice not covered by section 13 or section 13A is not an interference with privacy

An act or practice that is not covered by section 13 or section 13A is not an ***interference with the privacy*** of an individual.

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Division 2—Information Privacy Principles

14 Information Privacy Principles

The Information Privacy Principles are as follows:

Information Privacy Principles

Principle 1

Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
   (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
   (b) the collection of the information is necessary for or directly related to that purpose.

2. Personal information shall not be collected by a collector by unlawful or unfair means.

Principle 2

Solicitation of personal information from individual concerned

Where:

(a) a collector collects personal information for inclusion in a record or in a generally available publication; and

(b) the information is solicited by the collector from the individual concerned;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:

(c) the purpose for which the information is being collected;

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(d) if the collection of the information is authorised or required by or under law—the fact that the collection of the information is so authorised or required; and

(e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first-mentioned person, body or agency to pass on that information.

Principle 3

Solicitation of personal information generally

Where:

(a) a collector collects personal information for inclusion in a record or in a generally available publication; and

(b) the information is solicited by the collector;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

(c) the information collected is relevant to that purpose and is up to date and complete; and

(d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 4

Storage and security of personal information

A record-keeper who has possession or control of a record that contains personal information shall ensure:

(a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and

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(b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information contained in the record.

Principle 5

Information relating to records kept by record-keeper

1. A record-keeper who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:
   (a) whether the record-keeper has possession or control of any records that contain personal information; and
   (b) if the record-keeper has possession or control of a record that contains such information:
      (i) the nature of that information;
      (ii) the main purposes for which that information is used; and
      (iii) the steps that the person should take if the person wishes to obtain access to the record.

2. A record-keeper is not required under clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

3. A record-keeper shall maintain a record setting out:
   (a) the nature of the records of personal information kept by or on behalf of the record-keeper;
   (b) the purpose for which each type of record is kept;
   (c) the classes of individuals about whom records are kept;
   (d) the period for which each type of record is kept;
   (e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
   (f) the steps that should be taken by persons wishing to obtain access to that information.

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4. A record-keeper shall:
   (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and
   (b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

Principle 6

Access to records containing personal information

Where a record-keeper has possession or control of a record that contains personal information, the individual concerned shall be entitled to have access to that record, except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

Principle 7

Alteration of records containing personal information

1. A record-keeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:
   (a) is accurate; and
   (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.

2. The obligation imposed on a record-keeper by clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.

3. Where:
   (a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and

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(b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth;

the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

Principle 8

Record-keeper to check accuracy etc. of personal information before use

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

Principle 9

Personal information to be used only for relevant purposes

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

Principle 10

Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:
   (a) the individual concerned has consented to use of the information for that other purpose;
   (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent

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or lessen a serious and imminent threat to the life or health of the individual concerned or another person;

(c) use of the information for that other purpose is required or authorised by or under law;

(d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or

(e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.

2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

Principle 11

Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:

(a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;

(b) the individual concerned has consented to the disclosure;

(c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;

(d) the disclosure is required or authorised by or under law; or

(e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue,

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the record-keeper shall include in the record containing that information a note of the disclosure.

3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

15 Application of Information Privacy Principles

(1) Information Privacy Principles 1, 2, 3, 10 and 11 apply only in relation to information collected after the commencement of this Act.

(1A) Information Privacy Principles 1, 2, 3, 10 and 11 do not apply to information collected by a Norfolk Island agency before the commencement of this subsection.

(2) Information Privacy Principles 4 to 9, inclusive, apply in relation to information contained in a record in the possession or under the control of an agency, whether the information was collected before, or is collected after, the commencement of this Act.

15B Special provision relating to the application of the Information Privacy Principles in relation to Norfolk Island

In relation to a record-keeper that is a Norfolk Island agency, a reference in Information Privacy Principle 5, 6 or 7 to a ***law of the Commonwealth*** includes a reference to a Norfolk Island enactment.

16 Agencies to comply with Information Privacy Principles

An agency shall not do an act, or engage in a practice, that breaches an Information Privacy Principle.

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Division 3—Approved privacy codes and the National Privacy Principles

16A Organisations to comply with approved privacy codes or National Privacy Principles

(1) An organisation must not do an act, or engage in a practice, that breaches an approved privacy code that binds the organisation.

(2) To the extent (if any) that an organisation is not bound by an approved privacy code, the organisation must not do an act, or engage in a practice, that breaches a National Privacy Principle.

(3) This section, approved privacy codes and the National Privacy Principles have effect in addition to sections 18 and 18A and Part IIIA, and do not derogate from them.

(4) To avoid doubt, an act done, or practice engaged in, by an organisation without breaching an approved privacy code or the National Privacy Principles is not authorised by law (or by this Act) for the purposes of Part IIIA merely because it does not breach the code or the Principles.

Note: If an act or practice is otherwise authorised by law, exceptions to the prohibitions in the National Privacy Principles and Part IIIA may mean that the act or practice does not breach the Principles or certain provisions of that Part.

16B Personal information in records

(1) This Act (except Divisions 4 and 5 of Part III and Part IIIA) applies to the collection of personal information by an organisation only if the information is collected for inclusion in a record or a generally available publication.

(2) This Act (except Divisions 4 and 5 of Part III and Part IIIA) applies to personal information that has been collected by an organisation only if the information is held by the organisation in a record.

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16C Application of National Privacy Principles

(1) National Privacy Principles 1, 3 (so far as it relates to collection of personal information) and 10 apply only in relation to the collection of personal information after the commencement of this section.

(1A) National Privacy Principle 2 applies only in relation to personal information collected after the commencement of this section.

(2) National Privacy Principles 3 (so far as it relates to personal information used or disclosed), 4, 5, 7 and 9 apply in relation to personal information held by an organisation regardless of whether the organisation holds the personal information as a result of collection occurring before or after the commencement of this section.

(3) National Privacy Principle 6 applies in relation to personal information collected after the commencement of this section. That Principle also applies to personal information collected by an organisation before that commencement and used or disclosed by the organisation after that commencement, except to the extent that compliance by the organisation with the Principle in relation to the information would:

(a) place an unreasonable administrative burden on the organisation; or

(b) cause the organisation unreasonable expense.

(4) National Privacy Principle 8 applies only to transactions entered into after the commencement of this section.

16D Delayed application of National Privacy Principles to small business

(1) This section deals with the application of the National Privacy Principles to an organisation that carries on one or more small businesses throughout the delayed application period for the organisation. This section has effect despite section 16C.

(2) National Privacy Principles 1, 3 (so far as it relates to collection of personal information) and 10 apply only in relation to the collection of personal information by the organisation after the delayed application period.

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(3) National Privacy Principles 3 (so far as it relates to personal information used or disclosed), 4, 5, 7 and 9 apply in relation to the organisation only after the delayed application period. Those Principles then apply in relation to personal information held by the organisation as a result of collection occurring before, during or after that period.

(4) National Privacy Principles 2 and 6 apply only in relation to personal information collected by the organisation after the delayed application period.

(5) National Privacy Principle 8 applies only to transactions entered into with the organisation after the delayed application period.

(6) In this section:

delayed application period, for an organisation, means the period:

(a) starting at the later of the following times:

(i) the start of the day when this section commences;

(ii) when the organisation became an organisation; and

(b) ending at the earlier of the following times:

(i) immediately before the first anniversary of the day when this section commences;

(ii) when the organisation carries on either a business that is not a small business or a business that involves the provision of health services.

16E Personal, family or household affairs

Nothing in the National Privacy Principles applies to:

(a) the collection, holding, use, disclosure or transfer of personal information by an individual; or

(b) personal information held by an individual;

only for the purposes of, or in connection with, his or her personal, family or household affairs.

16F Information under Commonwealth contract not to be used for direct marketing

(1) This section limits the use and disclosure of personal information collected:

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(a) for the purpose of meeting (directly or indirectly) an obligation under a Commonwealth contract; and

(b) by an organisation that is a contracted service provider for the contract.

Note: An organisation may be a contracted service provider for a Commonwealth contract whether or not the organisation is a party to the contract.

(2) An organisation that is a contracted service provider for the contract must not use or disclose the personal information for direct marketing, unless the use or disclosure is necessary to meet (directly or indirectly) an obligation under the contract.

(3) Subsection (2) has effect despite:

(a) an approved privacy code (if any) binding the organisation in relation to the personal information; and

(b) the National Privacy Principles.

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Division 4—Tax file number information

17 Guidelines relating to tax file number information

(1) The Commissioner shall, by notice in writing, issue guidelines concerning the collection, storage, use and security of tax file number information.

(2) A guideline issued under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

18 File number recipients to comply with guidelines

A file number recipient shall not do an act, or engage in a practice, that breaches a guideline issued under section 17.

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Division 5—Credit information

18A Code of Conduct relating to credit information files and credit reports

(1) The Commissioner must, by notice published in the *Gazette*, issue a Code of Conduct concerning:

(a) the collection of personal information for inclusion in individuals' credit information files; and

(b) the storage of, security of, access to, correction of, use of and disclosure of personal information included in individuals' credit information files or in credit reports; and

(c) the manner in which credit reporting agencies and credit providers are to handle disputes relating to credit reporting; and

(d) any other activities, engaged in by credit reporting agencies or credit providers, that are connected with credit reporting.

(2) Before issuing the Code of Conduct, the Commissioner must, to the extent that it is appropriate and practicable to do so, consult with government, commercial, consumer and other relevant bodies and organisations.

(3) In preparing the Code of Conduct, the Commissioner must have regard to:

(a) the Information Privacy Principles and the provisions of Part IIIA; and

(aa) the National Privacy Principles and the provisions of Part IIIAA; and

(b) the likely costs to credit reporting agencies and credit providers of complying with the Code of Conduct.

(4) The Code of Conduct is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

18B Credit reporting agencies and credit providers to comply with Code of Conduct

A credit reporting agency or credit provider must not do an act, or engage in a practice, that breaches the Code of Conduct.

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Part IIIAA—Privacy codes

18BA Application for approval of privacy code

An organisation may apply in writing to the Commissioner for approval of a privacy code.

18BAA Privacy codes may cover exempt acts or practices

(1) Despite paragraph 7(1)(ee), a privacy code may be approved even if it covers exempt acts or practices.

(2) If an approved privacy code covers exempt acts or practices, this Act applies in relation to the code as if those acts or practices were not exempt acts or practices.

Note: Because of subsection (2), if an approved privacy code covers an act or practice that would usually be exempt:

(a) the act or practice, if done or engaged in by an organisation bound by the code, may constitute an interference with the privacy of an individual as defined in section 13A; and

(b) section 16A obliges an organisation bound by the code not to breach the code by doing or engaging in the act or practice; and

(c) the act or practice, if done or engaged in by an organisation bound by the code, may be the subject of a complaint and investigation under Part V.

18BB Commissioner may approve privacy code

(1) Before deciding whether to approve a privacy code, the Commissioner may consult any person the Commissioner considers appropriate.

(2) The Commissioner may approve a privacy code if, and only if, the Commissioner is satisfied:

(a) that the code incorporates all the National Privacy Principles or sets out obligations that, overall, are at least the equivalent of all the obligations set out in those Principles; and

(b) that the code specifies the organisations bound by the code or a way of determining the organisations that are, or will be, bound by the code; and

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(c) that only organisations that consent to be bound by the code are, or will be, bound by the code; and

(d) that the code sets out a procedure by which an organisation may cease to be bound by the code and when the cessation takes effect; and

(e) of the matters mentioned in subsection (3), if the code sets out procedures for making and dealing with complaints in relation to acts or practices of an organisation bound by the code that may be an interference with the privacy of an individual; and

(f) that members of the public have been given an adequate opportunity to comment on a draft of the code.

(3) If the code sets out procedures for making and dealing with complaints, the Commissioner must be satisfied that:

(a) the procedures meet:

(i) the prescribed standards; and

(ii) the Commissioner's guidelines (if any) in relation to making and dealing with complaints; and

(b) the code provides for the appointment of an independent adjudicator to whom complaints may be made; and

(c) the code provides that, in performing his or her functions, and exercising his or her powers, under the code, an adjudicator for the code must have due regard to the matters that paragraph 29(a) requires the Commissioner to have due regard to; and

(d) the determinations, findings, declarations, orders and directions that the adjudicator may make under the code after investigating a complaint are the same as those that the Commissioner may make under section 52 after investigating a complaint under this Act; and

(e) the code obliges an organisation bound by the code not to repeat or continue conduct of the organisation declared by the adjudicator (after investigating a complaint) to constitute an interference with the privacy of the complainant; and

(f) the code obliges an organisation bound by the code to perform an act or course of conduct that the adjudicator has declared (after investigating a complaint) that the organisation should perform to redress loss or damage suffered by the complainant; and

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(g) the code requires organisations bound by the code to co-operate with the adjudicator when the adjudicator is performing functions or exercising powers under the code; and

(h) the code requires a report (in a form satisfactory to the Commissioner) to be prepared as soon as practicable after 30 June each year on the operation of the code during the financial year that ended on that 30 June; and

(i) the code requires that a copy of each report is to be given to the Commissioner within a timetable that is satisfactory to the Commissioner; and

(j) the code requires that a copy of each report is to be made available to anyone who asks for it; and

(k) the code requires the report prepared for each year to include the number and nature of complaints made to an adjudicator under the code during the relevant financial year; and

(ka) the code requires the report prepared for each year to include, for each complaint finally dealt with by an adjudicator under the code during the relevant financial year, a summary identifying:

(i) the nature of the complaint; and

(ii) the provisions of the code applied in dealing with the complaint; and

(iii) the outcome of the dealing;

whether or not the adjudicator made a determination, finding, declaration, order or direction in dealing with the complaint; and

(l) the code identifies an adjudicator for the code or another person as the person responsible for the requirements in this subsection relating to the annual report for the code.

(4) In deciding whether to approve a privacy code, the Commissioner may consider the matters specified in guidelines issued by the Commissioner (if any).

(5) An approval must be in writing.

(6) This section does not prevent the Commissioner approving a privacy code if:

(a) the code also sets out:

(i) the period during which it will operate; or

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(ii) the circumstances in which it will expire; and

(b) the Commissioner considers that the period or circumstances are appropriate.

(7) This section does not prevent the Commissioner approving a privacy code if the code is expressed to apply to:

(a) all personal information or a specified type of personal information; or

(b) a specified activity or class of activities of an organisation; or

(c) a specified industry sector and/or profession; or

(d) a specified class of industry sectors and/or professions.

18BC When approval takes effect

(1) The approval of a privacy code takes effect on the day specified in the approval.

(2) The day specified must not be before the day on which the approval is given.

18BD Varying an approved privacy code

(1) An organisation may apply in writing to the Commissioner for approval of a variation of an approved privacy code by giving the Commissioner a copy of the code that incorporates the variations.

(2) The Commissioner may approve in writing the variation.

(3) In deciding whether to approve the variation, the Commissioner must consider all of the matters that the Commissioner would consider in deciding whether to approve under section 18BB a privacy code identical to the approved privacy code with the variation.

(4) However, if the Commissioner thinks that a variation is minor, he or she need not be satisfied that members of the public have been given an adequate opportunity to comment on a draft variation of the code (as would otherwise be required by paragraph 18BB(2)(f)). Instead, the Commissioner may consult any person he or she thinks appropriate about the draft variation.

(5) The approval of the variation takes effect on the day specified in the approval.

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(6) The day specified must not be before the day on which the approval is given.

18BE Revoking the approval of an approved privacy code

(1) The Commissioner may revoke his or her approval of an approved privacy code or a variation of an approved privacy code:
   (a) on his or her own initiative; or
   (b) on application by an organisation that is bound by the code.

(2) Before deciding whether to revoke the approval of a code or variation, the Commissioner must:
   (a) if practicable, consult the organisation that originally sought approval of the code or variation; and
   (b) consult any other person the Commissioner considers appropriate; and
   (c) consider the extent to which members of the public have been given an opportunity to comment on the proposed revocation.

(3) A revocation must be in writing.

(4) A revocation comes into effect on the day specified in the revocation.

(5) The day specified must not be before the day on which the revocation is made.

18BF Guidelines about privacy codes

(1) The Commissioner may make:
   (a) written guidelines to assist organisations to develop privacy codes or to apply approved privacy codes; and
   (b) written guidelines relating to making and dealing with complaints under approved privacy codes; and
   (c) written guidelines about matters the Commissioner may consider in deciding whether to approve a privacy code or a variation of an approved privacy code.

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(1A) Before making guidelines for the purposes of paragraph (1)(b), the Commissioner must give everyone the Commissioner considers has a real and substantial interest in the matters covered by the proposed guidelines an opportunity to comment on them.

(2) The Commissioner may publish guidelines made under subsection (1) in any way the Commissioner considers appropriate.

18BG Register of approved privacy codes

(1) The Commissioner must keep a register of approved privacy codes.

(2) The Commissioner may decide the form of the register and how it is to be kept.

(3) The Commissioner must make the register available to the public in the way that the Commissioner determines.

(4) The Commissioner may charge fees for:
  (a) making the register available to the public; or
  (b) providing copies of, or extracts from, the register.

18BH Review of operation of approved privacy code

(1) The Commissioner may review the operation of an approved privacy code.

Note: The review may inform a decision by the Commissioner under section 18BE to revoke the approved privacy code.

(2) The Commissioner may do one or more of the following for the purposes of the review:
  (a) consider the process under the code for making and dealing with complaints;
  (b) inspect the records of an adjudicator for the code;
  (c) consider the outcome of complaints dealt with under the code;
  (d) interview an adjudicator for the code.

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18BI Review of adjudicator's decision under approved privacy code

(1) A person who is aggrieved by a determination made by an adjudicator (other than the Commissioner) under an approved privacy code after investigating a complaint may apply to the Commissioner for review of the determination.

Note: The review of the adjudicator's determination will include review of any finding, declaration, order or direction that is included in the determination.

(2) Divisions 1 and 2 of Part V apply in relation to the complaint covered by the application as if the complaint had been made to the Commissioner and subsection 36(1A) did not prevent the Commissioner from investigating it.

Note: Divisions 1 and 2 of Part V provide for the investigation and determination of complaints made to the Commissioner.

(3) The adjudicator's determination continues to have effect unless and until the Commissioner makes a determination under Division 2 of Part V relating to the complaint.

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Part IIIA—Credit reporting

18C Certain credit reporting only to be undertaken by corporations

(1) A person must not use an eligible communications service in the course of carrying on a credit reporting business unless the person is a corporation.

(2) A person must not:

(a) in the course of trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

(iii) between a State and a Territory; or

(iv) among the Territories; or

(b) in the course of banking (other than State banking not extending beyond the limits of the State concerned); or

(c) in the course of insurance business (other than insurance business relating to State insurance not extending beyond the limits of the State concerned); or

(d) in a Territory;

carry on a credit reporting business unless the person is a corporation.

(3) A person must not act on a corporation's behalf in the course of carrying on a credit reporting business unless the person is a corporation.

(4) A person who intentionally contravenes this section is guilty of an offence punishable, on conviction, by a fine not exceeding $30,000.

18D Personal information not to be given to certain persons carrying on credit reporting

(1) A person must not use an eligible communications service to give to a person carrying on a credit reporting business personal information in circumstances to which this section applies unless the last-mentioned person is a corporation.

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(2) A person must not:

(a) in the course of trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

(iii) between a State and a Territory; or

(iv) among the Territories; or

(b) in the course of banking (other than State banking not extending beyond the limits of the State concerned); or

(c) in the course of insurance business (other than insurance business relating to State insurance not extending beyond the limits of the State concerned); or

(d) in a Territory;

give to a person carrying on a credit reporting business personal information in circumstances to which this section applies unless the last-mentioned person is a corporation.

(3) A corporation must not give to a person carrying on a credit reporting business personal information in circumstances to which this section applies unless the last-mentioned person is a corporation.

(4) A person who intentionally contravenes this section is guilty of an offence punishable, on conviction, by a fine not exceeding $12,000.

(5) For the purposes of this section, personal information is to be taken to be given to a person in circumstances to which this section applies if the person to whom the information is given is likely to use the information in the course of carrying on a credit reporting business.

18E Permitted contents of credit information files

(1) A credit reporting agency must not include personal information in an individual's credit information file unless:

(a) the inclusion of the information in the file is reasonably necessary in order to identify the individual; or

(b) the information is a record of:

(i) both:

(A) a credit provider having sought a credit report in relation to an individual in connection with

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an application for credit or commercial credit made by the individual to the credit provider; and

(B) the amount of credit or commercial credit sought in the application; or

(ia) a person who is a credit provider because of the application of subsection 11B(4B) having sought a credit report in relation to the individual for the purpose of assessing:

(A) the risk in purchasing a loan by means of a securitisation arrangement; or

(B) the risk in undertaking credit enhancement of a loan that is, or is proposed to be, purchased or funded by means of a securitisation arrangement;

being a loan given to, or applied for by, the individual or a person in relation to whom the individual is, or is proposing to be, a guarantor; or

(ii) a mortgage insurer having sought a credit report in connection with the provision of insurance to a credit provider in respect of mortgage credit given by the credit provider to the individual, or to a person in relation to whom the individual is, or is proposing to be, a guarantor; or

(iii) a trade insurer having sought a credit report in connection with the provision of insurance to a credit provider in respect of commercial credit given by the credit provider to the individual or another person; or

(iv) a credit provider having sought a credit report in connection with the individual having offered to act as guarantor in respect of a loan or an application for a loan; or

(v) a credit provider being a current credit provider in relation to the individual; or

(vi) credit provided by a credit provider to an individual, being credit in respect of which:

(A) the individual is at least 60 days overdue in making a payment, including a payment that is wholly or partly a payment of interest; and

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(B) the credit provider has taken steps to recover the whole or any part of the amount of credit (including any amounts of interest) outstanding; or

(vii) a cheque, for an amount not less than $100, that:

(A) has been drawn by the individual; and

(B) has twice been presented and dishonoured; or

(viii) court judgments made against the individual; or

(ix) bankruptcy orders made against the individual; or

(x) the opinion of a credit provider that the individual has, in the circumstances specified, committed a serious credit infringement; or

(ba) the information is a record of an overdue payment by the individual as guarantor under a guarantee given against default by a person (the ***borrower***) in repaying all or any of an amount of credit obtained by the borrower from a credit provider, and the following subparagraphs apply:

(i) the credit provider is not prevented under any law of the Commonwealth, a State or a Territory from bringing proceedings against the individual to recover the amount of the overdue payment;

(ii) the credit provider has given the individual notice of the borrower's default that gave rise to the individual's obligation to make the payment;

(iii) 60 days have elapsed since the day on which the notice was given;

(iv) the credit provider has, separately from and in addition to the giving of the notice referred to in subparagraph (ii), taken steps to recover the amount of the overdue payment from the individual.

(c) the information is included in a statement provided by the individual under subsection 18J(2) for inclusion in the file; or

(d) the information is included in a note included in the file under subsection 18F(4) or 18K(5).

(2) A credit reporting agency must not include in an individual's credit information file personal information recording the individual's:

(a) political, social or religious beliefs or affiliations; or

(b) criminal record; or

(c) medical history or physical handicaps; or

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(d) race, ethnic origins or national origins; or

(e) sexual preferences or practices; or

(f) lifestyle, character or reputation.

(3) The Commissioner may determine, in writing, the kinds of information that are, for the purposes of paragraph (1)(a), reasonably necessary to be included in an individual's credit information file in order to identify the individual.

(4) Where the Commissioner so determines, information that is not of a kind so determined is to be taken not to be information that is permitted to be included in an individual's credit information file under paragraph (1)(a).

(5) A determination is to be made by notice published in the *Gazette*.

(6) A notice so published is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(7) A credit reporting agency must not open a credit information file in relation to an individual unless it has information, concerning the individual, to include in the file that is information of a kind referred to in paragraph (1)(b) or (ba).

(8) A credit provider must not give to a credit reporting agency personal information relating to an individual if:

(a) a credit reporting agency is prohibited, under subsection (1), from including the information in the individual's credit information file; or

(b) the credit provider does not have reasonable grounds for believing that the information is correct; or

(c) the credit provider did not, at the time of, or before, acquiring the information, inform the individual that the information might be disclosed to a credit reporting agency.

18F Deletion of information from credit information files

(1) A credit reporting agency must delete from an individual's credit information file maintained by the credit reporting agency any personal information of a kind referred to in paragraph 18E(1)(b) or (ba) within 1 month after the end of the maximum permissible period for the keeping of personal information of that kind.

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(2) For the purposes of subsection (1), the maximum permissible periods for the keeping of personal information of the kind referred to in paragraph 18E(1)(b) are as follows:

(a) in the case of information of a kind referred to in subparagraph (i), (ia), (ii), (iii) or (iv) of that paragraph—the period of 5 years commencing on the day on which the credit report concerned was sought;

(b) in the case of information of a kind referred to in subparagraph (v) of that paragraph—the period of 14 days commencing on the day on which the credit reporting agency is notified under subsection (5) that the credit provider concerned is no longer a current credit provider in relation to the individual concerned;

(c) in the case of information of a kind referred to in subparagraph (vi) of that paragraph—the period of 5 years commencing on the day on which the credit reporting agency was informed of the overdue payment concerned;

(d) in the case of information of a kind referred to in subparagraph (vii) of that paragraph—the period of 5 years commencing on the day on which the second dishonouring of the cheque occurred;

(e) in the case of information of a kind referred to in subparagraph (viii) of that paragraph—the period of 5 years commencing on the day on which the court judgment concerned was made;

(f) in the case of information of a kind referred to in subparagraph (ix) of that paragraph—the period of 7 years commencing on the day on which the bankruptcy order concerned was made;

(g) in the case of information of a kind referred to in subparagraph (x) of that paragraph—the period of 7 years commencing on the day on which the information was included in the credit information file concerned.

(2A) For the purposes of subsection (1), the maximum permissible period for the keeping of personal information of the kind referred to in paragraph 18E(1)(ba) is the period of 5 years beginning on the day when the credit reporting agency is informed of the overdue payment concerned.

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(3) Where:

(a) a credit reporting agency has been given information that an individual is overdue in making a payment in respect of credit provided by a credit provider; and

(b) the individual ceases to be overdue in making the payment or contends that he or she is not overdue in making the payment;

the credit provider must, as soon as practicable, inform the credit reporting agency that the individual has ceased to be overdue in making the payment, or contends that he or she is not overdue in making the payment, as the case may be.

(4) On being informed that the individual is no longer overdue in making the payment, or that the individual contends that he or she is not overdue in making the payment, the credit reporting agency must include in the individual's credit information file a note to that effect.

(5) Where a credit provider ceases to be a current credit provider in relation to an individual, the credit provider must, as soon as practicable, notify that fact to any credit reporting agency that was previously informed that the credit provider was a current credit provider in relation to the individual.

18G Accuracy and security of credit information files and credit reports

A credit reporting agency in possession or control of a credit information file, or a credit provider or credit reporting agency in possession or control of a credit report, must:

(a) take reasonable steps to ensure that personal information contained in the file or report is accurate, up-to-date, complete and not misleading; and

(b) ensure that the file or report is protected, by such security safeguards as are reasonable in the circumstances, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and

(c) if it is necessary for the file or report to be given to a person in connection with the provision of a service to the credit reporting agency or credit provider, ensure that everything reasonably within the power of the credit reporting agency or credit provider is done to prevent unauthorised use or

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disclosure of personal information contained in the file or report.

18H Access to credit information files and credit reports

(1) A credit reporting agency in possession or control of an individual's credit information file must take reasonable steps to ensure that the individual can obtain access to that file.

(2) A credit provider, or a credit reporting agency, in possession or control of a credit report containing personal information concerning an individual must take all reasonable steps to ensure that the individual can obtain access to that report.

(3) An individual's rights of access under this section may also be exercised by a person (other than a credit provider, mortgage insurer or trade insurer) authorised, in writing, by the individual to exercise those rights on the individual's behalf in connection with:

(a) an application, or a proposed application, by the individual for a loan; or

(b) the individual having sought advice in relation to a loan.

18J Alteration of credit information files and credit reports

(1) A credit reporting agency in possession or control of a credit information file, or a credit provider or credit reporting agency in possession or control of a credit report, must take reasonable steps, by way of making appropriate corrections, deletions and additions, to ensure that the personal information contained in the file or report is accurate, up-to-date, complete and not misleading.

(2) Where:

(a) a credit reporting agency in possession or control of a credit information file, or a credit provider or credit reporting agency in possession or control of a credit report, does not amend personal information contained in that file or report, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and

(b) the individual requests the credit reporting agency or credit provider to include in that file or report a statement provided by the individual of the correction, deletion or addition sought;

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the credit reporting agency or credit provider must take reasonable steps to include the statement in the file or report within 30 days after being requested to do so.

(3) Where the credit reporting agency or credit provider considers a statement included pursuant to subsection 18J(2) to be of undue length in the circumstances, the credit reporting agency or credit provider may refer the statement to the Commissioner for such reduction as is considered appropriate and, if the statement is altered, the statement as altered is to be included in the file or report.

18K Limits on disclosure of personal information by credit reporting agencies

(1) A credit reporting agency in possession or control of an individual's credit information file must not disclose personal information contained in the file to a person, body or agency (other than the individual) unless:

(a) the information is contained in a credit report given to a credit provider who requested the report for the purpose of assessing an application for credit made by the individual to the credit provider; or

(ab) the information:

(i) is contained in a credit report given to a person who is a credit provider because of the application of subsection 11B(4B); and

(ii) the person requested the report for the purpose of assessing the risk in purchasing a loan by means of a securitisation arrangement, being a loan given to or applied for by:

(A) the individual; or

(B) a person in relation to whom the individual is, or is proposing to be, a guarantor; or

(ac) the information:

(i) is contained in a credit report given to a person who is a credit provider because of the application of subsection 11B(4B); and

(ii) the person requested the report for the purpose of assessing the risk in undertaking credit enhancement of a loan that is, or is proposed to be, purchased or funded

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by means of a securitisation arrangement, being a loan given to or applied for by:

(A) the individual; or

(B) a person in relation to whom the individual is, or is proposing to be, a guarantor; or

(b) the information is contained in a credit report given to a credit provider who requested the report for the purpose of assessing an application for commercial credit made by a person to the credit provider, and the individual to whom the report relates has specifically agreed to the report being given to the credit provider for that purpose; or

(c) the information is contained in a credit report given to a credit provider who requested the report for the purpose of assessing whether to accept the individual as a guarantor in respect of:

(i) a loan provided by the credit provider to a person other than the individual; or

(ii) a loan for which an application has been made by a person other than the individual to the credit provider;

and the first-mentioned individual has specifically agreed, in writing, to the report being given to the credit provider for that purpose; or

(d) the information is contained in a credit report given to a mortgage insurer for the purpose of assessing:

(i) whether to provide insurance to, or the risk of providing insurance to, a credit provider in respect of mortgage credit given by the credit provider to the individual; or

(ii) the risk of the individual defaulting on mortgage credit in respect of which the mortgage insurer has provided insurance to a credit provider; or

(iii) the risk of the individual being unable to meet a liability that might arise under a guarantee entered into, or proposed to be entered into, in respect of mortgage credit given by a credit provider to another person; or

(e) the information is contained in a credit report given to a trade insurer for the purpose of assessing:

(i) whether to provide insurance to, or the risk of providing insurance to, a credit provider in respect of commercial credit given by the credit provider to the individual or another person; or

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(ii) the risk of a person defaulting on commercial credit in respect of which the trade insurer has provided insurance to a credit provider;

and the individual to whom the report relates has specifically agreed, in writing, to the report being given to the trade insurer for that purpose; or

(f) the credit reporting agency has, at least 30 days before the disclosure, received information of a kind referred to in subparagraph 18E(1)(b)(vi), and the information is contained in a credit report given to a credit provider referred to in the credit information file as a credit provider who is a current credit provider in relation to the individual; or

(g) the information is contained in a credit report given to a credit provider who requested the report for the purpose of the collection of payments that are overdue in respect of credit provided to the individual by the credit provider; or

(h) the information is contained in a credit report given to a credit provider who requested the report for the purpose of the collection of payments that are overdue in respect of commercial credit provided to a person by the credit provider, and:

(i) the individual to whom the report relates has specifically agreed, in writing, to the report being given to the credit provider for that purpose; or

(ii) that individual had specifically agreed, in writing, to a credit report relating to the individual being given to the credit provider for the purpose of the credit provider assessing the application that the first-mentioned person made to the credit provider for the provision of the commercial credit concerned; or

(iii) the credit provider provided the commercial credit concerned before the commencement of this section; or

(j) the information is contained in a credit report given to another credit reporting agency; or

(k) the information is contained in a record in which the only personal information relating to individuals is publicly available information; or

(m) the disclosure is required or authorised by or under law; or

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(n) the credit reporting agency is satisfied that a credit provider or law enforcement authority believes on reasonable grounds that the individual has committed a serious credit infringement and the information is given to that credit provider or law enforcement authority or to any other credit provider or law enforcement authority.

(1A) For the purposes of paragraph (1)(b), the individual's agreement to the report being given to the credit provider must be in writing unless:

(a) the report is requested for the purpose of assessing an application for commercial credit that was at first instance made orally; and

(b) the application has not yet been made in writing.

(2) A credit reporting agency must not disclose personal information contained in an individual's credit information file, or in any other record containing information derived from the file, that is in the possession or control of the credit reporting agency if the file or other record contains personal information that the credit reporting agency would be:

(a) prohibited from including in an individual's credit information file under section 18E; or

(b) required to delete from such a file under section 18F.

(3) Subsection (2) does not prohibit the credit reporting agency from disclosing personal information that it would be prohibited from including in an individual's credit information file under section 18E if:

(a) the credit reporting agency included the information in a credit information file or other record before the commencement of this section; and

(b) the information is information of a kind that the Commissioner has determined, in writing, to be information that the credit reporting agency may disclose without contravening that subsection.

(4) A credit reporting agency that intentionally contravenes subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding $150,000.

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(5) Where a credit reporting agency discloses personal information contained in an individual's credit information file, it must include in the file a note of that disclosure.

Note: A credit reporting agency must not include a note about the disclosure of information in a file if a notation has been made on a summons, or a notice, relating to the disclosure of the information and the notation has not been cancelled (see section 29A of the *Australian Crime Commission Act 2002* and sections 77A and 91 of the *Law Enforcement Integrity Commissioner Act 2006*).

(6) A credit reporting agency must not include in a credit report given to a credit provider under paragraph (1)(a) any information relating to an individual's commercial activities (other than information that the credit reporting agency is permitted under section 18E to include in the individual's credit information file).

(7) A determination under paragraph (3)(b) is to be made by notice published in the *Gazette*.

(8) A notice so published is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

18L Limits on use by credit providers of personal information contained in credit reports etc.

(1) A credit provider that is or has been in possession or control of a credit report must not use the report or any personal information derived from the report for any purpose other than assessing an application for credit made to the credit provider by the individual concerned unless:

(aa) the report was obtained under paragraph 18K(1)(a) or (ab) and the credit provider uses the report or information for the purpose of assessing the risk in purchasing a loan by means of a securitisation arrangement, being a loan given to or applied for by:

(i) the individual; or

(ii) a person in relation to whom the individual is, or is proposing to be, a guarantor; or

(ab) the report was obtained under paragraph 18K(1)(a) or (ac) and the credit provider uses the report or information for the purpose of assessing the risk in undertaking credit enhancement of a loan that is, or is proposed to be, purchased

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or funded by means of a securitisation arrangement, being a loan given to or applied for by:

(i) the individual; or

(ii) a person in relation to whom the individual is, or is proposing to be, a guarantor; or

(a) the report was obtained under paragraph 18K(1)(b) and the credit provider uses the report or information for the purpose of assessing an application for commercial credit made by a person to the credit provider; or

(b) the report was obtained under paragraph 18K(1)(c) and the credit provider uses the report or information for the purpose of assessing whether to accept the individual as a guarantor in respect of:

(i) a loan provided by the credit provider to a person other than the individual; or

(ii) a loan for which an application has been made by a person other than the individual to the credit provider; or

(ba) the report was obtained under paragraph 18K(1)(a), (b) or (c) and the credit provider uses the report or information for the internal management purposes of the credit provider, being purposes directly related to the provision or management of loans by the credit provider; or

(c) the report was obtained under paragraph 18K(1)(f) and the credit provider uses the information for the purpose of assisting the individual to avoid defaulting on his or her credit obligations; or

(d) the credit provider uses the report or information for the purpose of the collection of payments that are overdue in respect of credit provided to the individual by the credit provider; or

(da) the report was obtained under paragraph 18K(1)(h) and the credit provider uses the report or information for the purpose of the collection of payments that are overdue in respect of commercial credit provided to a person by the credit provider; or

(e) use of the report or information for that other purpose is required or authorised by or under law; or

(f) the credit provider believes on reasonable grounds that the individual has committed a serious credit infringement, and

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the report or information is used in connection with that infringement.

(2) A credit provider that intentionally contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding $150,000.

(3) A credit provider that is or has been in possession or control of a credit report must not:

(a) use the report unless all personal information concerning individuals that is not information of a kind referred to in subsection 18E(1) has been deleted from the report; or

(b) use any personal information derived from the report if the information is not information of a kind referred to in subsection 18E(1).

(4) Where a credit provider has received a credit report for the purpose of assessing an application for credit made to the credit provider by an individual, the credit provider must not, in assessing the application, use information that:

(a) concerns the individual's commercial activities or commercial credit worthiness; and

(b) was obtained from a person or body carrying on a business or undertaking involving the provision of information about the commercial credit worthiness of persons;

unless the individual has specifically agreed to the information being obtained by the credit provider for that purpose.

(4A) For the purposes of subsection (4), the individual's agreement to the information being obtained by the credit provider must be in writing unless:

(a) the information is obtained for the purpose of assessing an application for credit that was at first instance made orally; and

(b) the application has not yet been made in writing.

(5) References in subsection (3) to information that is not information of a kind referred to in subsection 18E(1) do not include references to information the disclosure of which is taken, because of the application of subsection 18K(3), not to be in contravention of subsection 18K(2).

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(6) The Commissioner may determine, in writing, the manner in which information of a kind referred to in subsection (4) may, under that subsection, be used (including the manner in which an individual's agreement may be obtained for the purposes of that subsection).

(7) A determination is to be made by notice published in the *Gazette*.

(8) A notice so published is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

18M Information to be given if an individual's application for credit is refused

(1) If:

(a) a credit provider refuses an application by an individual for credit (including an application made jointly by that individual and one or more other persons); and

(b) the refusal is based wholly or partly on information derived from a credit report relating to that individual that a credit reporting agency has given to the credit provider for the purpose of assessing the application;

the credit provider must give the individual a written notice:

(c) stating:

(i) that the application has been refused; and

(ii) that the refusal was based wholly or partly, as the case requires, on information derived from a credit report relating to that individual that a credit reporting agency has given to the credit provider; and

(iii) the name and address of the credit reporting agency; and

(d) notifying that individual of his or her right under this Act to obtain access to his or her credit information file maintained by the credit reporting agency.

(2) If:

(a) a credit provider refuses an application by an individual for credit, being an application made jointly by that individual and one or more other persons; and

(b) the refusal is based wholly or partly on information derived from a credit report relating to one of those other persons that a credit reporting agency has given to the credit provider for the purpose of assessing the application;

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the credit provider must give to that individual a written notice stating:

(c) that the application has been refused; and

(d) that the refusal was based wholly or partly, as the case requires, on information derived from a credit report relating to that person that a credit reporting agency has given to the credit provider.

(3) If:

(a) a credit provider refuses an application by an individual for credit (including an application made jointly by that individual and one or more other persons); and

(b) the refusal is based wholly or partly on information derived from a credit report relating to another person who was proposing to be a guarantor in respect of the credit;

the credit provider must give that individual a written notice stating:

(c) that the application has been refused; and

(d) that the refusal was based wholly or partly, as the case requires, on information derived from a credit report relating to that person that a credit reporting agency has given to the credit provider.

18N Limits on disclosure by credit providers of personal information contained in reports relating to credit worthiness etc.

(1) A credit provider that is or has been in possession or control of a report must not disclose the report or any personal information derived from the report to another person for any purpose unless:

(a) the report or information is disclosed to a credit reporting agency for the purpose of being used:

(i) to create a credit information file in relation to the individual concerned; or

(ii) to include information in a credit information file, maintained by the credit reporting agency, in relation to the individual concerned; or

(b) the individual concerned has specifically agreed to the disclosure of the report or information to another credit provider for the particular purpose; or

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(ba) the report or information is disclosed:

(i) to the guarantor of a loan provided by the credit provider to the individual concerned; and

(ii) for any purpose related to the enforcement or proposed enforcement of the guarantee; or

(bb) the report or information is disclosed to a mortgage insurer:

(i) for the purpose of assessing whether to provide insurance to, or the risk of providing insurance to, a credit provider in respect of mortgage credit given by the credit provider to the individual concerned or applied for by the individual concerned to the credit provider; or

(ii) for the purpose of assessing the risk of the individual defaulting on mortgage credit in respect of which the mortgage insurer has provided insurance to the credit provider; or

(iii) for any purpose arising under a contract for mortgage insurance that has been entered into between the credit provider and the mortgage insurer; or

(bc) the report or information is disclosed:

(i) to a person or body generally recognised and accepted in the community as being a person appointed, or a body established, for the purpose of settling disputes between credit providers, acting in their capacity as credit providers, and their customers; and

(ii) for the purpose of settling a dispute between the credit provider and the individual concerned; or

(bd) the report or information is disclosed:

(i) to a Minister, Department or authority, of a State or Territory whose functions or responsibilities include giving assistance (directly or indirectly) that facilitates the giving of mortgage credit to individuals; and

(ii) for the purpose of enabling the Minister, Department or authority to determine the extent of assistance (if any) it will give in relation to the giving of mortgage credit to the individual concerned; or

(bda) the report or information is disclosed:

(i) to a Minister, Department or authority, of a State or Territory whose functions or responsibilities include the management or supervision of schemes or arrangements

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under which assistance is given (directly or indirectly) that facilitates the giving of mortgage credit to individuals; and

(ii) for the purpose of enabling the Minister, Department or authority to manage or supervise any such scheme or arrangement; or

(be) the report or information:

(i) is disclosed to a person or body carrying on a business of supplying goods or services; and

(ii) is disclosed for the purpose of enabling that person or body to decide whether to accept, as payment for goods or services supplied to the individual concerned, payment by means of credit card or electronic transfer of funds; and

(iii) does not contain or include any personal information derived from a credit report, other than:

(A) information of a kind referred to in paragraph 18E(1)(a); and

(B) information as to whether the individual has a line of credit with the credit provider, or funds deposited with the credit provider, sufficient to meet the payment concerned; or

(bf) the report or information:

(i) is disclosed to a person or body that is considering taking an assignment of, or discharging on the individual's behalf, a debt owed by the individual to the credit provider; and

(ii) does not contain or include any personal information derived from a credit report, other than:

(A) information of a kind referred to in paragraph 18E(1)(a); and

(B) information as to the amount of the debt, or the amount required to be paid in order to discharge the debt; or

(bg) the report or information is disclosed to a person who is a guarantor in respect of, or who has provided property as security for, a loan given by the credit provider to the individual concerned, and:

(i) the individual has specifically agreed to the disclosure of the report or information to any such person; or

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(ii) the following circumstances apply:

(A) the guarantee or security was given before the commencement of this paragraph;

(B) the report or information is disclosed for the purpose of giving to the person information that is relevant to the amount or possible amount of the person's liability under the contract of guarantee or security;

(C) the credit provider has, prior to the disclosure, informed the individual that such disclosures may take place; or

(bh) the report or information is disclosed to a person for the purpose of that person considering whether to offer to act as guarantor in respect of, or to offer property as security for:

(i) a loan given by the credit provider to the individual concerned; or

(ii) a loan for which the individual concerned has applied to the credit provider;

and the individual has specifically agreed to the disclosure of the report or information to any such person for that purpose; or

(c) the report (not being a credit report) or information:

(i) is disclosed to a person or body carrying on a business or undertaking that involves the collection of debts on behalf of others; and

(ii) is disclosed for the purpose of the collection of payments that are overdue in respect of credit provided to the individual concerned by the credit provider; and

(iii) does not contain or include any personal information derived from a credit report, other than:

(A) information of a kind referred to in paragraph 18E(1)(a); and

(B) information of a kind referred to in subparagraph 18E(1)(b)(vi), not being information that relates to an overdue payment in respect of which a note to the effect that the individual is no longer overdue in making the payment has been included, under subsection 18F(4), in the credit information file from which the credit report was prepared; and

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(C) information of a kind referred to in subparagraph 18E(1)(b)(viii) or (ix); or

(ca) the report (not being a credit report) or information:

(i) is disclosed to a person or body carrying on a business or undertaking that involves the collection of debts on behalf of others; and

(ii) is disclosed for the purpose of the collection of payments that are overdue in respect of commercial credit provided to a person by the credit provider; and

(iii) does not contain or include any personal information derived from a credit report, other than information of a kind referred to in paragraph 18E(1)(a) or subparagraph 18E(1)(b)(viii) or (ix); or

(d) where the credit provider is a corporation—the report or information is disclosed to a corporation that is related to the credit provider; or

(e) the report or information is disclosed to a corporation (including the professional legal advisers or professional financial advisers of that corporation) that proposes to use the report or information:

(i) in the process of considering whether to:

(A) accept an assignment of a debt owed to the credit provider; or

(B) accept a debt owed to the credit provider as security for a loan to the credit provider; or

(C) purchase an interest in the credit provider (including, in a case where the credit provider is a corporation, a corporation that is related to the credit provider); or

(ii) in connection with exercising rights arising from any acceptance or purchase of a kind referred to in subparagraph (i); or

(f) the report or information is disclosed to a person who manages loans made by the credit provider, for use in managing those loans; or

(fa) the report or information is disclosed to another credit provider in the following circumstances:

(i) the credit provider and the other credit provider have each provided to the individual concerned mortgage

credit in respect of which the same real property forms all or part of the security;

(ii) the individual is at least 60 days overdue in making a payment in respect of the mortgage credit provided by either credit provider;

(iii) the disclosure is for the purpose of either credit provider deciding what action to take in relation to the overdue payment; or

(g) disclosure of the report or information to that other person for the particular purpose is required or authorised by or under law; or

(ga) the report or information is disclosed to:

(i) the individual; or

(ii) a person (other than a credit provider, mortgage insurer or trade insurer) authorised, in writing, by the individual to seek access to the report or information; or

(gb) the report or information is disclosed in the following circumstances:

(i) the individual concerned maintains an account with the credit provider;

(ii) the report or information relates to the operation of the account;

(iii) the report or information is disclosed to another person who is authorised by the individual to operate the account;

(iv) either:

(A) the report or information contains no information about the credit worthiness, credit standing, credit history or credit capacity of the individual concerned, other than basic transaction information; or

(B) the disclosure takes place in the ordinary course of the other person operating the account in the way authorised by the individual concerned; or

(h) the credit provider believes on reasonable grounds that the individual concerned has committed a serious credit infringement and the report or information is given to another credit provider or a law enforcement authority.

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(1A) For the purposes of paragraph (1)(b), the individual's agreement to the disclosure of the report or information to another credit provider:

(a) must be in writing unless:

(i) the disclosure is sought for the purpose of assessing an application for credit or commercial credit that was initially made orally; and

(ii) the application has not yet been made in writing; and

(b) must be given to:

(i) the credit provider with possession or control of the report or information; or

(ii) the other credit provider.

(1B) For the purposes of paragraphs (1)(bg) and (bh), the individual's agreement to the disclosure of the report or information must be in writing unless:

(a) the disclosure relates to an application for a loan that was initially made orally; and

(b) the application has not yet been made in writing.

(1C) Paragraph (1)(ga) does not affect the operation of paragraph (1)(g) in relation to an individual obtaining access to credit report under section 18H.

(1D) For the purposes of paragraph (1)(gb), basic transaction information is any one or more of the following:

(a) the account balance;

(b) the amount of available credit in relation to the account;

(c) the minimum payment (if any) due on the account;

(d) information relating to transactions on the account by the other person.

(2) A credit provider that intentionally contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding $150,000.

(3) A credit provider that is or has been in possession or control of a credit report, or a report containing personal information derived from a credit report, must not:

(a) disclose the report to another person unless all personal information concerning individuals that is not information of

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a kind referred to in subsection 18E(1) has been deleted from the report; or

(b) disclose to another person any personal information derived from the report if the information is not information of a kind referred to in subsection 18E(1).

(4) References in subsection (3) to information that is not information of a kind referred to in subsection 18E(1) do not include references to information the disclosure of which is taken, because of the application of subsection 18K(3), not to be in contravention of subsection 18K(2).

(5) The Commissioner may determine, in writing, the manner in which a report or personal information derived from a report may, under subsection (1), be disclosed (including the manner in which an individual's agreement may be obtained for the purposes of paragraph (1)(b)).

(6) Where the Commissioner so determines, a report or information that is disclosed in a manner contrary to the determination is to be taken, except for the purposes of subsection (2), to have been disclosed contrary to subsection (1).

(7) A determination is to be made by notice published in the *Gazette*.

(8) A notice so published is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(9) In this section, unless the contrary intention appears:

report means:

(a) a credit report; or

(b) subject to subsection (10), any other record or information, whether in a written, oral or other form, that has any bearing on an individual's credit worthiness, credit standing, credit history or credit capacity;

but does not include a credit report or any other record or information in which the only personal information relating to individuals is publicly available information.

(10) For the purposes of the application of this section to a credit provider that is not a corporation, a record or information (other than a credit report) is not taken to be a report for the purposes of

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this section unless it is being or has been prepared by or for a corporation.

18NA Disclosure by credit providers to certain persons who gave indemnities

In respect of a disclosure by a credit provider of a report or information to a person who, on or after 7 December 1992 and before the commencement of this section, gave an indemnity against the default of a borrower in making a payment in respect of a loan given by the credit provider, subparagraph 18N(1)(bg)(ii) has effect as if the reference in sub-subparagraph 18N(1)(bg)(ii)(A) to the commencement of paragraph 18N(1)(bg) were a reference to the commencement of this section.

18P Limits on use or disclosure by mortgage insurers or trade insurers of personal information contained in credit reports

(1) A mortgage insurer that is or has been in possession or control of a credit report must not use the report or any personal information derived from the report for any purpose other than:

(a) assessing whether to provide insurance to, or the risk of providing insurance to, a credit provider in respect of mortgage credit given by the credit provider to the individual concerned or applied for by the individual concerned to the credit provider; or

(b) assessing the risk of the individual concerned defaulting on mortgage credit in respect of which the mortgage insurer has provided insurance to a credit provider; or

(ba) assessing the risk of the individual concerned being unable to meet a liability that might arise under a guarantee entered into, or proposed to be entered into, in respect of mortgage credit given by the credit provider to another person; or

(c) any purpose arising under the contract for mortgage insurance that has been entered into between a credit provider and the mortgage insurer;

unless use of the report or information for that other purpose is required or authorised by or under law.

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(2) A trade insurer that is or has been in possession or control of a credit report must not use the report or any personal information derived from the report for any purpose other than assessing:

(a) whether to provide insurance to, or the risk of providing insurance to, a credit provider in respect of commercial credit given by the credit provider to another person; or

(b) the risk of a person defaulting on commercial credit in respect of which the trade insurer has provided insurance to a credit provider;

unless use of the report or information for that other purpose is required or authorised by or under law.

(3) A mortgage insurer or trade insurer that is or has been in possession or control of a credit report must not:

(a) use the report unless all personal information concerning individuals that is not information of a kind referred to in subsection 18E(1) has been deleted from the report; or

(b) use any personal information derived from the report if the information is not information of a kind referred to in subsection 18E(1).

(4) References in subsection (3) to information that is not information of a kind referred to in subsection 18E(1) do not include references to information the disclosure of which is taken, because of the application of subsection 18K(3), not to be in contravention of subsection 18K(2).

(5) A mortgage insurer or trade insurer that is or has been in possession or control of a credit report must not disclose the report or any personal information derived from the report to another person for any purpose unless disclosure of the report or information to that other person for that purpose is required or authorised by or under law.

(6) A mortgage insurer or trade insurer that knowingly or recklessly contravenes subsection (1), (2) or (5) is guilty of an offence punishable, on conviction, by a fine not exceeding $150,000.

(7) A reference in this section (other than subsection (3)) to a credit report is taken to include a reference to a report or information disclosed to a mortgage insurer under paragraph 18N(1)(bb).

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18Q Limits on use by certain persons of personal information obtained from credit providers

(1) A corporation that has obtained a report or information under paragraph 18N(1)(d) must not:

(a) use the report or information, or any personal information derived from the report or information, otherwise than for a purpose for which, or in circumstances under which, a credit provider would be permitted under section 18L to use the report or information; or

(b) disclose the report or information, or any personal information derived from the report or information, to another person otherwise than for a purpose for which, or in circumstances under which, a credit provider would be permitted under section 18N to disclose the report or information to another person.

(2) A corporation that has obtained a report or information under paragraph 18N(1)(e) must not use the report or information, or any personal information derived from the report or information, for any purpose other than:

(a) for use in the process of considering whether to:

(i) accept an assignment of a debt owed to the credit provider from whom the report or information was obtained; or

(ii) accept a debt owed to the credit provider as security for a loan to the credit provider; or

(iii) purchase an interest in the credit provider (including, where the credit provider is a corporation, a corporation that is related to the credit provider); or

(b) for use in connection with exercising rights arising from any acceptance or purchase of a kind referred to in paragraph (a).

(3) A professional legal adviser or professional financial adviser of a corporation who has obtained a report or information under paragraph 18N(1)(e) must not use the report or information, or any personal information derived from the report or information, for any purpose other than use by the person, in his or her capacity as such a professional legal or financial adviser, in connection with advising the corporation:

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(a) whether to accept an assignment of a debt owed to the credit provider from whom the report or information was obtained; or

(b) whether to accept a debt owed to the credit provider as a security for a loan to the credit provider; or

(c) whether to purchase an interest in the credit provider (including, in a case where the credit provider is a corporation, a corporation that is related to the credit provider);

(d) in connection with exercising rights arising from any acceptance or purchase of a kind referred to in paragraph (a), (b) or (c);

unless use of the report or information, or the information so derived, is required or authorised by or under law.

(4) A person who has obtained a report or information under paragraph 18N(1)(f) must not use the report or information, or any personal information derived from the report or information, for any purpose other than use by the person in managing loans made by the credit provider from whom the person obtained the report or information, unless use of the report or information, or the information so derived, for that other purpose is required or authorised by or under law.

(5) A person who has obtained a report or information under paragraph 18N(1)(e) or (f) must not disclose the report or information, or any personal information derived from the report or information, to another person unless disclosure of the report or information, or the information so derived, is required or authorised by or under law.

(6) If:

(a) a person was, because of the application of subsection 11B(4B), a credit provider in relation to a loan; and

(b) the person has ceased to be such a credit provider in relation to the loan; and

(c) the person had, while such a credit provider in relation to the loan, obtained possession or control of a credit report;

the person must not use the report, or any personal information derived from the report, otherwise than for a purpose for which, or in circumstances under which, a credit provider would be permitted under section 18L to use the report or information.

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(7) Subject to subsection (7A), if:

(a) a person was, because of the application of subsection 11B(4B), a credit provider in relation to a loan; and

(b) the person has ceased to be such a credit provider in relation to the loan; and

(c) the person had, while such a credit provider in relation to the loan, obtained possession or control of a report (within the meaning of subsection 18N(9));

the person must not disclose the report, or any personal information derived from the report, to another person otherwise than for the purposes for which, or in circumstances under which, a credit provider would be permitted under section 18N to disclose the report or information to another person.

(7A) For the purposes of the application of subsection (7) to a person other than a corporation, a record or information (other than a credit report) is not taken to be a report for the purposes of that subsection unless it is being or has been prepared by or for a corporation.

(8) In spite of anything in this section to the contrary, this section does not impose any obligations on a person in relation to a report or information obtained under paragraph 18N(1)(e) or (f), or in relation to any personal information derived from such a report or information, unless:

(a) the person is a corporation; or

(b) the credit provider from whom the person obtained the report or information is a corporation.

(9) A person who intentionally contravenes this section is guilty of an offence punishable, on conviction, by a fine not exceeding $30,000.

18R False or misleading credit reports

(1) A credit reporting agency or credit provider must not give to any other person or body (whether or not the other person or body is a credit reporting agency or credit provider) a credit report that contains false or misleading information.

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(2) A credit reporting agency or credit provider that intentionally contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding $75,000.

18S Unauthorised access to credit information files or credit reports

(1) A person must not obtain access to an individual's credit information file in the possession or control of a credit reporting agency unless the access is authorised by this Act.

(2) A person must not obtain access to a credit report in the possession or control of a credit provider or credit reporting agency unless:

(a) the person is given the report in accordance with this Act; or

(b) the access is otherwise authorised by this Act.

(3) A person who intentionally contravenes this section is guilty of an offence punishable, on conviction, by a fine not exceeding $30,000.

18T Obtaining access to credit information files or credit reports by false pretences

(1) A person must not, by a false pretence, obtain access to an individual's credit information file in the possession or control of a credit reporting agency.

Penalty: $30,000.

(2) A person must not, by a false pretence, obtain access to a credit report in the possession or control of a credit provider or credit reporting agency.

Penalty: $30,000.

18U Application of section 4B of Crimes Act

Subsection 4B(3) of the *Crimes Act 1914* does not apply in relation to an offence against subsection 18K(4), 18L(2), 18N(2) or 18R(2) or section 18P.

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18V Application of this Part

(1) Subject to this section, this Part applies in relation to any credit information file, any credit report or any report of a kind referred to in section 18N, in existence on or after the commencement of this section, whether or not it was in existence before that commencement.

(2) Paragraph 18E(8)(c) does not apply in relation to information acquired by a credit provider before 25 February 1992.

(3) Section 18F applies in relation to personal information that was, immediately before 25 February 1992, contained in an individual's credit information file as if the references to the days mentioned in the paragraphs of subsection 18F(2) were all references to 25 February 1992.

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Part IV—Functions of the Information Commissioner

Division 2—Functions of Commissioner

27 Functions of Commissioner in relation to interferences with privacy

(1) Subject to this Part, the Commissioner has the following functions:

(a) to investigate an act or practice of an agency that may breach an Information Privacy Principle and, where the Commissioner considers it appropriate to do so, to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the investigation;

(aa) to approve privacy codes and variations of approved privacy codes and to revoke those approvals;

(ab) subject to Part V—to investigate an act or practice of an organisation that may be an interference with the privacy of an individual because of section 13A and, if the Commissioner considers it appropriate to do so, to attempt, by conciliation, to effect a settlement of the matters that gave rise to the investigation;

(ac) to perform functions, and exercise powers, conferred on an adjudicator by an approved privacy code under which the Commissioner has been appointed as an independent adjudicator to whom complaints may be made;

(ad) to review the operation of approved privacy codes under section 18BH;

(ae) on application under section 18BI for review of the determination of an adjudicator (other than the Commissioner) in relation to a complaint—to deal with the complaint in accordance with that section;

(b) to examine (with or without a request from a Minister or a Norfolk Island Minister) a proposed enactment that would require or authorise acts or practices of an agency or organisation that might, in the absence of the enactment, be interferences with the privacy of individuals or which may otherwise have any adverse effects on the privacy of

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individuals and to ensure that any adverse effects of such proposed enactment on the privacy of individuals are minimised;

(c) to undertake research into, and to monitor developments in, data processing and computer technology (including data-matching and data-linkage) to ensure that any adverse effects of such developments on the privacy of individuals are minimised, and to report to the Minister the results of such research and monitoring;

(d) to promote an understanding and acceptance of the Information Privacy Principles and of the objects of those Principles and of the National Privacy Principles;

(e) to prepare, and to publish in such manner as the Commissioner considers appropriate, guidelines for the avoidance of acts or practices of an agency or an organisation that may or might be interferences with the privacy of individuals or which may otherwise have any adverse effects on the privacy of individuals;

(ea) to prepare, and to publish in the way that the Commissioner considers appropriate, guidelines:

(i) to assist organisations to develop privacy codes or to apply approved privacy codes; or

(ii) relating to making and dealing with complaints under approved privacy codes; or

(iii) about matters the Commissioner may consider in deciding whether to approve a privacy code or a variation of an approved privacy code;

(f) to provide (on request or on the Commissioner's own initiative) advice to a Minister, a Norfolk Island Minister, agency or organisation on any matter relevant to the operation of this Act;

(fa) to provide advice to an adjudicator for an approved privacy code on any matter relevant to the operation of this Act or the code, on request by the adjudicator;

(g) to maintain, and to publish annually, a record (to be known as the Personal Information Digest) of the matters set out in records maintained by record-keepers in accordance with clause 3 of Information Privacy Principle 5;

(h) to conduct audits of records of personal information maintained by agencies for the purpose of ascertaining

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whether the records are maintained according to the Information Privacy Principles;

(ha) to conduct audits of particular acts done, and particular practices engaged in, by agencies in relation to personal information, if those acts and practices, and those agencies, are prescribed by regulations made for the purposes of this paragraph;

(j) whenever the Commissioner thinks it necessary, to inform the Minister of action that needs to be taken by an agency in order to achieve compliance by the agency with the Information Privacy Principles;

(k) to examine (with or without a request from a Minister or a Norfolk Island Minister) a proposal for data matching or data linkage that may involve an interference with the privacy of individuals or which may otherwise have any adverse effects on the privacy of individuals and to ensure that any adverse effects of such proposal on the privacy of individuals are minimised;

(m) for the purpose of promoting the protection of individual privacy, to undertake educational programs on the Commissioner's own behalf or in co-operation with other persons or authorities acting on behalf of the Commissioner;

(p) to issue guidelines under the *Data-matching Program (Assistance and Tax) Act 1990*;

(pa) to issue guidelines under section 135AA of the *National Health Act 1953*;

(q) to monitor and report on the adequacy of equipment and user safeguards;

(r) may, and if requested to do so, shall make reports and recommendations to the Minister in relation to any matter that concerns the need for or the desirability of legislative or administrative action in the interests of the privacy of individuals;

(s) to do anything incidental or conducive to the performance of any of the Commissioner's other functions.

(1A) To avoid doubt, the Commissioner is not subject to Part V in performing functions, and exercising powers, conferred on an adjudicator by an approved privacy code under which the Commissioner has been appointed as an independent adjudicator to whom complaints may be made.

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(2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).

(3) Without limiting subsection (2), the Commissioner may, at the request of an organisation, examine the records of personal information maintained by the organisation, for the purpose of ascertaining whether the records are maintained according to:

(a) an approved privacy code that binds the organisation; or

(b) to the extent (if any) that the organisation is not bound by an approved privacy code—the National Privacy Principles.

27A Functions of Commissioner in relation to healthcare identifiers

(1) In addition to the functions under sections 27, 28, 28A and 28B, the Commissioner has the following functions in relation to healthcare identifiers:

(a) to investigate an act or practice that may be an interference with the privacy of an individual under subsection 29(1) of the *Healthcare Identifiers Act 2010* and, if the Commissioner considers it appropriate to do so, to attempt by conciliation, to effect a settlement of the matters that gave rise to the investigation;

(b) to do anything incidental or conducive to the performance of that function.

(2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).

(3) Section 38 (severability) of the *Healthcare Identifiers Act 2010* applies to this section in the same way as it applies to Parts 3 and 4 of that Act.

28 Functions of Commissioner in relation to tax file numbers

(1) In addition to the functions under sections 27, 27A, 28A and 28B, the Commissioner has the following functions in relation to tax file numbers:

(a) to issue guidelines under section 17;

(b) to investigate acts or practices of file number recipients that may breach guidelines issued under section 17;

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(c) to investigate acts or practices that may involve unauthorised requests or requirements for the disclosure of tax file numbers;

(d) to examine the records of the Commissioner of Taxation to ensure that:

(i) he or she is not using tax file number information for purposes beyond his or her powers; and

(ii) he or she is taking adequate measures to prevent the unlawful disclosure of the tax file number information that he or she holds;

(e) to conduct audits of records of tax file number information maintained by file number recipients for the purpose of ascertaining whether the records are maintained according to any relevant guidelines issued under section 17;

(f) to evaluate compliance with guidelines issued under section 17;

(g) to provide advice (with or without a request) to file number recipients on their obligations under the *Taxation Administration Act 1953* with regard to the confidentiality of tax file number information and on any matter relevant to the operation of this Act;

(h) to monitor the security and accuracy of tax file number information kept by file number recipients;

(j) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).

28A Functions of Commissioner in relation to credit reporting

(1) In addition to the functions under sections 27, 27A, 28 and 28B, the Commissioner has the following functions in relation to credit reporting:

(a) to develop the Code of Conduct in consultation with government, commercial, consumer and other relevant bodies and organisations;

(b) to investigate an act or practice of a credit reporting agency or credit provider that may constitute a credit reporting infringement and, where the Commissioner considers it

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appropriate to do so, to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the investigation;

(c) to promote an understanding and acceptance of:
  (i) the Code of Conduct and the provisions of Part IIIA; and
  (ii) the objects of those provisions;

(d) to make such determinations as the Commissioner is empowered to make under section 11B or Part IIIA; and

(e) to prepare, and to publish in such manner as the Commissioner considers appropriate, guidelines for the avoidance of acts or practices of a credit reporting agency or credit provider that may or might be interferences with the privacy of individuals;

(f) to provide advice (with or without a request) to a Minister, a credit reporting agency or a credit provider on any matter relevant to the operation of this Act;

(g) to conduct audits of credit information files maintained by credit reporting agencies, and credit reports in the possession, or under the control, of credit providers or credit reporting agencies, for the purpose of ascertaining whether the files or reports are maintained in accordance with the Code of Conduct and the provisions of Part IIIA;

(h) to monitor the security and accuracy of personal information contained in credit information files maintained by credit reporting agencies and in credit reports in the possession, or under the control, of credit providers or credit reporting agencies;

(j) to examine the records of credit reporting agencies and credit providers to ensure that:
  (i) credit reporting agencies and credit providers are not using personal information contained in credit information files and credit reports for unauthorised purposes; and
  (ii) credit reporting agencies and credit providers are taking adequate measures to prevent the unlawful disclosure of personal information contained in credit information files and credit reports;

(k) for the purpose of promoting the protection of individual privacy, to undertake educational programs on the

Commissioner's own behalf or in co-operation with other persons or authorities on the Commissioner's behalf;

(m) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).

28B Functions of Commissioner in relation to personal property securities

(1) In addition to the functions under sections 27, 27A, 28 and 28A, the Commissioner has the following functions in relation to personal property securities:

(a) to investigate an act or practice that may be an interference with the privacy of an individual under subsection 157(4) or 173(2) of the *Personal Property Securities Act 2009* and, if the Commissioner considers it appropriate to do so, to attempt by conciliation, to effect a settlement of the matters that gave rise to the investigation;

(b) to do anything incidental or conducive to the performance of that function.

(2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).

29 Commissioner to have regard to certain matters

In the performance of his or her functions, and the exercise of his or her powers, under this Act, the Commissioner shall:

(a) have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information (through the media and otherwise) and the recognition of the right of government and business to achieve their objectives in an efficient way;

(b) take account of:

(i) international obligations accepted by Australia, including those concerning the international technology of communications; and

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(ii) developing general international guidelines relevant to the better protection of individual privacy;

(c) ensure that his or her recommendations and guidelines are, within the limitations of the powers of the Commonwealth, capable of acceptance, adaptation and extension throughout Australia; and

(d) ensure that his or her directions and guidelines are consistent with whichever of the following (if any) are relevant:

(i) the Information Privacy Principles;

(ii) the National Privacy Principles;

(iii) the Code of Conduct and Part IIIA.

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Division 3—Reports by Commissioner

30 Reports following investigation of act or practice

(1) Where the Commissioner has investigated an act or practice without a complaint having been made under section 36, the Commissioner may report to the Minister about the act or practice, and shall do so:

(a) if so directed by the Minister; or

(b) if the Commissioner:

(i) thinks that the act or practice is an interference with the privacy of an individual; and

(ii) has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the investigation or has endeavoured without success to effect such a settlement.

(2) Where the Commissioner reports under subsection (1) about an act done in accordance with a practice, the Commissioner shall also report to the Minister about the practice.

(3) Where, after an investigation under paragraph 27(1)(a), 28(1)(b) or (c) or 28A(1)(b) of an act or practice of an agency, file number recipient, credit reporting agency or credit provider, the Commissioner is required by virtue of paragraph (1)(b) of this section to report to the Minister about the act or practice, the Commissioner:

(a) shall set out in the report his or her findings and the reasons for those findings;

(b) may include in the report any recommendations by the Commissioner for preventing a repetition of the act or a continuation of the practice;

(c) may include in the report any recommendation by the Commissioner for either or both of the following:

(i) the payment of compensation in respect of a person who has suffered loss or damage as a result of the act or practice;

(ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;

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(d) shall serve a copy of the report on the agency, file number recipient, credit reporting agency or credit provider concerned and the Minister (if any) or Norfolk Island Minister (if any) responsible for the agency, recipient, credit reporting agency or credit provider; and

(e) may serve a copy of the report on any person affected by the act or practice.

(4) Where, at the end of 60 days after a copy of a report about an act or practice of an agency, file number recipient, credit reporting agency or credit provider was served under subsection (3), the Commissioner:

(a) still thinks that the act or practice is an interference with the privacy of an individual; and

(b) is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice;

the Commissioner shall give to the Minister a further report that:

(c) incorporates the first-mentioned report and any document that the Commissioner has received, in response to the first-mentioned report, from the agency, file number recipient, credit reporting agency or credit provider;

(d) states whether, to the knowledge of the Commissioner, any action has been taken as a result of the findings, and recommendations (if any), set out in the first-mentioned report and, if so, the nature of that action; and

(e) states why the Commissioner is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice;

and shall serve a copy of the report on the Minister (if any) or Norfolk Island Minister (if any) responsible for the agency, recipient, credit reporting agency or credit provider.

(5) The Minister shall cause a copy of a report given to the Minister under subsection (4) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

(6) This section does not apply to:

(a) a complaint made under section 36 in relation to an act or practice of an organisation; or

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(b) a complaint the Commissioner accepts under subsection 40(1B).

31 Report following examination of proposed enactment

(1) Where the Commissioner has examined a proposed enactment under paragraph 27(1)(b), subsections (2) and (3) of this section have effect.

(2) If the Commissioner thinks that the proposed enactment would require or authorise acts or practices of an agency or organisation that would be interferences with the privacy of individuals, the Commissioner shall:

(a) report to the Minister about the proposed enactment; and

(b) include in the report any recommendations he or she wishes to make for amendment of the proposed enactment to ensure that it would not require or authorise such acts or practices.

(3) Otherwise, the Commissioner may report to the Minister about the proposed enactment, and shall do so if so directed by the Minister.

(4) Where the Commissioner is of the belief that it is in the public interest that the proposed enactment should be the subject of a further report, the Commissioner may give to the Minister a further report setting out the Commissioner's reasons for so doing.

(5) The Minister shall cause a copy of a report given under subsection (4) to be laid before each House of the Parliament as soon as practicable, and no later than 15 sitting days of that House, after the report is received by the Minister.

32 Report following monitoring of certain activities

(1) Where the Commissioner, in the performance of the function referred to in paragraph 27(1)(c), (h), (ha), (j), (k), (m) or (r), 28(1)(e), (f) or (h) or 28A(1)(g), (h), (j) or (k), has monitored an activity or conducted an audit, the Commissioner may report to the Minister about that activity or audit, and shall do so if so directed by the Minister.

(2) Where the Commissioner is of the belief that it is in the public interest that the activity should be the subject of a further report,

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the Commissioner may give to the Minister a further report setting out the Commissioner's reasons for so doing.

(3) The Minister shall cause a copy of a report given under subsection (2) to be laid before each House of the Parliament as soon as practicable, and no later than 15 sitting days of that House, after the report is received by the Minister.

33 Exclusion of certain matters from reports

(1) In setting out findings, opinions and reasons in a report to be given under section 30, 31 or 32, the Commissioner may exclude a matter if the Commissioner considers it desirable to do so having regard to the obligations of the Commissioner under subsections (2) and (3).

(2) In deciding under subsection (1) whether or not to exclude matter from a report, the Commissioner shall have regard to the need to prevent:

(a) prejudice to the security, defence or international relations of Australia;

(b) prejudice to relations between the Commonwealth Government and the Government of a State or between the Government of a State and the Government of another State;

(c) the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State;

(d) the disclosure of deliberations or advice of the Federal Executive Council or the Executive Council of a State;

(da) the disclosure of the deliberations or decisions of the Australian Capital Territory Executive or of a committee of that Executive;

(e) the disclosure, or the ascertaining by a person, of the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;

(f) the endangering of the life or safety of any person;

(g) prejudice to the proper enforcement of the law or the protection of public safety;

(h) the disclosure of information the disclosure of which is prohibited, absolutely or subject to qualifications, by or under another enactment;

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(j) the unreasonable disclosure of the personal affairs of any person; and

(k) the unreasonable disclosure of confidential commercial information.

(3) The Commissioner shall try to achieve an appropriate balance between meeting the need referred to in subsection (2) and the desirability of ensuring that interested persons are sufficiently informed of the results of the Commissioner's investigation, examination or monitoring.

(4) Where the Commissioner excludes a matter from a report, he or she shall give to the Minister a report setting out the excluded matter and his or her reasons for excluding the matter.

Norfolk Island

(5) In this section:

State includes Norfolk Island.

33B Copies of certain reports to be given to the Norfolk Island Justice Minister

(1) If:

(a) the Commissioner gives a report to the Minister under section 30, 31 or 32; and

(b) the report relates to a Norfolk Island matter;

the Commissioner must, at the same time, give a copy of the report to the Norfolk Island Justice Minister.

(2) For the purposes of this section, a report relates to a Norfolk Island matter if:

(a) in the case of a report under section 30—the report relates to an act or practice of a Norfolk Island agency; or

(b) in the case of a report under section 31—the report relates to a proposed Norfolk Island enactment; or

(c) in the case of a report under section 32—the report relates to an activity or audit of a Norfolk Island agency.

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Division 4—Miscellaneous

34 Provisions relating to documents exempt under the *Freedom of Information Act 1982*

(1) The Commissioner shall not, in connection with the performance of the functions referred to in section 27, give to a person information as to the existence or non-existence of a document where information as to the existence or non-existence of that document would, if included in a document of an agency, cause the last-mentioned document to be an exempt document by virtue of section 33 or subsection 37(1), of the *Freedom of Information Act 1982*.

(2) The Commissioner shall not, in connection with the performance of the functions referred to in section 27, give to a person information:

(a) about the contents of a document of an agency, or the contents of an official document of a Minister or a Norfolk Island Minister, being a document that is an exempt document; or

(b) about exempt matter contained in a document of an agency or in an official document of a Minister or a Norfolk Island Minister.

(3) An expression used in this section and in the *Freedom of Information Act 1982* has the same meaning in this section as in that Act.

35 Direction where refusal or failure to amend exempt document

(1) Where:

(a) an application made under subsection 55(1) of the *Freedom of Information Act 1982* for review of a decision under that Act refusing access to a document has been finally determined or otherwise disposed of;

(b) the period within which an appeal may be made to the Federal Court has expired or, if such an appeal has been instituted, the appeal has been determined;

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(c) the effect of the review and any appeal is that access is not to be given to the document;

(d) the applicant has requested the agency concerned to amend the document;

(e) the applicant has complained to the Commissioner under this Act about the refusal or failure of the agency to amend the document;

(f) the Commissioner has, as a result of the complaint, recommended under subsection 30(3) of this Act that the agency amend the document, or amend a part of the document, to which the applicant has been refused access; and

(g) as at the end of 60 days after a copy of the report containing the recommendation was served on the agency, the Commissioner:

(i) still thinks that the agency should amend the document in a particular manner; and

(ii) is not satisfied that the agency has amended the document in that manner;

the Commissioner may direct the agency to add to the document an appropriate notation setting out particulars of the amendments of the document that the Commissioner thinks should be made.

(2) An agency shall comply with a direction given in accordance with subsection (1).

(3) In subsection (1), ***amend***, in relation to a document, means amend by making a correction, deletion or addition.

(4) An expression used in this section and in the *Freedom of Information Act 1982* has the same meaning in this section as in that Act.

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Part V—Investigations

Division 1—Investigation of complaints and investigations on the Commissioner's initiative

36 Complaints

(1) Subject to subsection (1A), an individual may complain to the Commissioner about an act or practice that may be an interference with the privacy of the individual.

(1A) Subsection (1) does not apply to a complaint by an individual about an act or practice of an organisation that is bound by an approved privacy code that:

(a) contains a procedure for making and dealing with complaints to an adjudicator in relation to acts or practices that may be an interference with the privacy of an individual; and

(b) is relevant to the act or practice complained of.

(1B) Subsection (1A) does not prevent an individual from making a complaint under an approved privacy code to the adjudicator for the code if the adjudicator is the Commissioner.

(1C) Subsection (1A) does not prevent an individual from complaining under this Part to the Commissioner about an act done, or practice engaged in, by an organisation purportedly for the purpose of meeting (directly or indirectly) an obligation under a Commonwealth contract (whether or not the organisation is a party to the contract).

Note: Section 40A requires an adjudicator for an approved privacy code to refer a code complaint to the Commissioner if the complaint is about an act or practice of a contracted service provider for a Commonwealth contract.

(2) In the case of an act or practice that may be an interference with the privacy of 2 or more individuals, any one of those individuals may make a complaint under subsection (1) on behalf of all of the individuals.

(2A) In the case of a representative complaint, this section has effect subject to section 38.

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(3) A complaint shall be in writing.

(4) It is the duty of:
   (a) members of the staff of the Commissioner; and
   (b) members of the staff of the Ombudsman who have had powers of the Commissioner delegated to them under section 99;

to provide appropriate assistance to a person who wishes to make a complaint and requires assistance to formulate the complaint.

(5) The complaint shall specify the respondent to the complaint.

(6) In the case of a complaint about an act or practice of an agency:
   (a) if the agency is an individual or a body corporate, the agency shall be the respondent; and
   (b) if the agency is an unincorporated body, the principal executive of the agency shall be the respondent.

(7) In the case of a complaint about an act or practice of an organisation, the organisation is the respondent.

Note: Section 70A contains further rules about how this Part operates in relation to respondent organisations that are not legal persons.

(8) The respondent to a complaint about an act or practice described in one of paragraphs 13(b) to (d) (inclusive), other than an act or practice of an agency or organisation, is the person who engaged in the act or practice.

37 Principal executive of agency

The principal executive of an agency of a kind specified in column 1 of an item in the following table is the person specified in column 2 of the item:

Item	Column 1 Agency	Column 2 Principal executive
1	Department	The Secretary of the Department
2	An unincorporated body, or a tribunal, referred to in paragraph (c) of the definition of ***agency*** in subsection 6(1)	The chief executive officer of the body or tribunal

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Item	Column 1 Agency	Column 2 Principal executive
3	A body referred to in paragraph (d) of the definition of ***agency*** in subsection 6(1)	The chief executive officer of the body
4	A federal court	The registrar or principal registrar of the court or the person occupying an equivalent office
5	The Australian Federal Police	The Commissioner of Police
5A	A public sector agency (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island)	The Chief Executive Officer (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island)
5B	An unincorporated body, or a tribunal, referred to in paragraph (c) of the definition of ***Norfolk Island agency*** in subsection 6(1)	The Chief Executive Officer (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island)
5C	A body referred to in paragraph (d) of the definition of ***Norfolk Island agency*** in subsection 6(1)	The Chief Executive Officer (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island)
5D	A court of Norfolk Island	The registrar or principal registrar of the court or the person occupying an equivalent office
6	An eligible case manager that is an individual	The individual
7	An eligible case manager that is not an individual	The individual primarily responsible for the management of the eligible case manager
8	The nominated AGHS company	The chief executive officer of the company
9	An eligible hearing service provider that is an individual	The individual

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Item	Column 1 Agency	Column 2 Principal executive
10	An eligible hearing service provider that is not an individual	The individual primarily responsible for the management of the eligible hearing service provider

38 Conditions for making a representative complaint

(1) A representative complaint may be lodged under section 36 or accepted under subsection 40(1B) only if:

(a) the class members have complaints against the same person; and

(b) all the complaints are in respect of, or arise out of, the same, similar or related circumstances; and

(c) all the complaints give rise to a substantial common issue of law or fact.

(2) A representative complaint made under section 36 or accepted under subsection 40(1B) must:

(a) describe or otherwise identify the class members; and

(b) specify the nature of the complaints made on behalf of the class members; and

(c) specify the nature of the relief sought; and

(d) specify the questions of law or fact that are common to the complaints of the class members.

In describing or otherwise identifying the class members, it is not necessary to name them or specify how many there are.

(3) A representative complaint may be lodged without the consent of class members.

38A Commissioner may determine that a complaint is not to continue as a representative complaint

(1) The Commissioner may, on application by the respondent or on his or her own initiative, determine that a complaint should no longer continue as a representative complaint.

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(2) The Commissioner may only make such a determination if the Commissioner is satisfied that it is in the interests of justice to do so for any of the following reasons:

(a) the costs that would be incurred if the complaint were to continue as a representative complaint are likely to exceed the costs that would be incurred if each class member lodged a separate complaint;

(b) the representative complaint will not provide an efficient and effective means of dealing with the complaints of the class members;

(c) the complaint was not brought in good faith as a representative complaint;

(d) it is otherwise inappropriate that the complaints be pursued by means of a representative complaint.

(3) If the Commissioner makes such a determination:

(a) the complaint may be continued as a complaint by the complainant on his or her own behalf against the respondent; and

(b) on the application of a person who was a class member for the purposes of the former representative complaint, the Commissioner may join that person as a complainant to the complaint as continued under paragraph (a).

38B Additional rules applying to the determination of representative complaints

(1) The Commissioner may, on application by a class member, replace the complainant with another class member, where it appears to the Commissioner that the complainant is not able adequately to represent the interests of the class members.

(2) A class member may, by notice in writing to the Commissioner, withdraw from a representative complaint at any time before the Commissioner begins to hold an inquiry into the complaint.

(3) The Commissioner may at any stage direct that notice of any matter be given to a class member or class members.

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38C Amendment of representative complaints

If the Commissioner is satisfied that a complaint could be dealt with as a representative complaint if the class of persons on whose behalf the complaint is lodged is increased, reduced or otherwise altered, the Commissioner may amend the complaint so that the complaint can be dealt with as a representative complaint.

39 Class member for representative complaint not entitled to lodge individual complaint

A person who is a class member for a representative complaint is not entitled to lodge a complaint in respect of the same subject matter.

40 Investigations

(1) Subject to subsection (1A), the Commissioner shall investigate an act or practice if:

(a) the act or practice may be an interference with the privacy of an individual; and

(b) a complaint about the act or practice has been made under section 36.

(1A) The Commissioner must not investigate a complaint if the complainant did not complain to the respondent before making the complaint to the Commissioner under section 36. However, the Commissioner may decide to investigate the complaint if he or she considers that it was not appropriate for the complainant to complain to the respondent.

(1B) The Commissioner must investigate under this Part a complaint about an act or practice of an organisation that is bound by a relevant approved privacy code that contains a procedure for making and dealing with complaints in relation to acts or practices that may be an interference with the privacy of an individual if:

(a) the act or practice occurred after the approval of the code came into effect; and

(b) the adjudicator for the code refers the complaint to the Commissioner; and

(c) the Commissioner accepts the complaint; and

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(d) the Commissioner consults the complainant before accepting the complaint.

(1C) If the Commissioner accepts a complaint mentioned in subsection (1B), the Commissioner must deal with it as if it were a complaint made under section 36 in relation to an act or practice of the organisation.

(2) The Commissioner may investigate an act or practice if:

(a) the act or practice may be an interference with the privacy of an individual; and

(b) the Commissioner thinks it is desirable that the act or practice be investigated.

(3) This section has effect subject to section 41.

40A Referring complaint about act under Commonwealth contract

(1) This section applies if:

(a) a complaint is made to an adjudicator for an approved privacy code; and

(b) the adjudicator forms the view that the complaint is about an act done or practice engaged in:

(i) by an organisation that is a contracted service provider for a Commonwealth contract; and

(ii) for the purposes of meeting (directly or indirectly) an obligation under the contract.

(2) Despite the code, the adjudicator must:

(a) stop investigating the complaint under the code (without making a determination under the code about the complaint); and

(b) refer the complaint to the Commissioner under subsection 40(1B) for investigation under this Part.

(3) The Commissioner must accept the complaint under subsection 40(1B).

Note: This means that the Commissioner must investigate the complaint (subject to section 41) as if the complaint had been made to the Commissioner under section 36. See subsections 40(1B) and (1C).

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41 Circumstances in which Commissioner may decide not to investigate or may defer investigation

(1) The Commissioner may decide not to investigate, or not to investigate further, an act or practice about which a complaint has been made under section 36, or which the Commissioner has accepted under subsection 40(1B), if the Commissioner is satisfied that:

(a) the act or practice is not an interference with the privacy of an individual;

(c) the complaint was made more than 12 months after the complainant became aware of the act or practice;

(d) the complaint is frivolous, vexatious, misconceived or lacking in substance;

(e) the act or practice is the subject of an application under another Commonwealth law, or a State or Territory law, and the subject-matter of the complaint has been, or is being, dealt with adequately under that law; or

(f) another Commonwealth law, or a State or Territory law, provides a more appropriate remedy for the act or practice that is the subject of the complaint.

(2) The Commissioner may decide not to investigate, or not to investigate further, an act or practice about which a complaint has been made under section 36, or accepted by the Commissioner under subsection 40(1B), if the Commissioner is satisfied that the complainant has complained to the respondent about the act or practice and either:

(a) the respondent has dealt, or is dealing, adequately with the complaint; or

(b) the respondent has not yet had an adequate opportunity to deal with the complaint.

(3) The Commissioner may defer the investigation or further investigation of an act or practice about which a complaint has been made under section 36, or accepted by the Commissioner under subsection 40(1B), if:

(a) an application has been made by the respondent for a determination under section 72 in relation to the act or practice; and

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(b) the Commissioner is satisfied that the interests of persons affected by the act or practice would not be unreasonably prejudiced if the investigation or further investigation were deferred until the application had been disposed of.

42 Preliminary inquiries

Where a complaint has been made to the Commissioner, or the Commissioner accepts a complaint under subsection 40(1B), the Commissioner may, for the purpose of determining:

(a) whether the Commissioner has power to investigate the matter to which the complaint relates; or

(b) whether the Commissioner may, in his or her discretion, decide not to investigate the matter;

make inquiries of the respondent.

43 Conduct of investigations

(1) Before commencing an investigation of a matter to which a complaint relates, the Commissioner shall inform the respondent that the matter is to be investigated.

(1A) Before starting to investigate an act done, or practice engaged in, by a contracted service provider for the purpose of providing (directly or indirectly) a service to an agency under a Commonwealth contract, the Commissioner must also inform the agency that the act or practice is to be investigated.

Note: See subsection 6(9) about provision of services to an agency.

(2) An investigation under this Division shall be conducted in private but otherwise in such manner as the Commissioner thinks fit.

(3) The Commissioner may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as he or she thinks fit.

(4) Subject to subsection (5), it is not necessary for a complainant or respondent to be afforded an opportunity to appear before the Commissioner in connection with an investigation under this Division.

(5) The Commissioner shall not make a finding under section 52 that is adverse to a complainant or respondent unless the Commissioner

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has afforded the complainant or respondent an opportunity to appear before the Commissioner and to make submissions, orally, in writing or both, in relation to the matter to which the investigation relates.

(6) Where the Commissioner affords an agency, organisation or person an opportunity to appear before the Commissioner under subsection (5), the agency, organisation or person may, with the approval of the Commissioner, be represented by another person.

(7) Where, in connection with an investigation of a matter under this Division, the Commissioner proposes to afford the complainant or respondent an opportunity to appear before the Commissioner and to make submissions under subsection (5), or proposes to make a requirement of a person under section 44, the Commissioner shall, if he or she has not previously informed the responsible Minister (if any) or Norfolk Island Minister (if any) that the matter is being investigated, inform that Minister accordingly.

(8) The Commissioner may, either before or after the completion of an investigation under this Division, discuss any matter that is relevant to the investigation with a Minister or a Norfolk Island Minister concerned with the matter.

(8A) Subsection (8) does not allow the Commissioner to discuss a matter relevant to an investigation of a breach of an approved privacy code or the National Privacy Principles with a Minister or a Norfolk Island Minister, unless the investigation is of an act done, or practice engaged in:

(a) by a contracted service provider for a Commonwealth contract; and

(b) for the purpose of providing a service to an agency to meet (directly or indirectly) an obligation under the contract.

(9) Where the Commissioner forms the opinion, either before or after completing an investigation under this Division, that there is evidence that an officer of an agency has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify the Commissioner doing so, the Commissioner shall bring the evidence to the notice of:

(a) an appropriate officer of an agency; or

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(b) if the Commissioner thinks that there is no officer of an agency to whose notice the evidence may appropriately be drawn—an appropriate Minister or Norfolk Island Minister.

44 Power to obtain information and documents

(1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:

(a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or

(b) to produce the document to the Commissioner.

(2) A notice given by the Commissioner under subsection (1) shall state:

(a) the place at which the information or document is to be given or produced to the Commissioner; and

(b) the time at which, or the period within which, the information or document is to be given or produced.

(2A) If documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner:

(a) may take possession of, and may make copies of, or take extracts from, the documents; and

(b) may retain possession of the documents for any period that is necessary for the purposes of the investigation to which the documents relate; and

(c) during that period must permit a person who would be entitled to inspect any one or more of the documents if they were not in the Commissioner's possession to inspect at all reasonable times any of the documents that the person would be so entitled to inspect.

(3) If the Commissioner has reason to believe that a person has information relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person to attend before the Commissioner at a time and place specified in the notice to answer questions relevant to the investigation.

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(4) This section is subject to sections 69 and 70 but it has effect regardless of any other enactment.

(5) A person is not liable to a penalty under the provisions of any other enactment because he or she gives information, produces a document or answers a question when required to do so under this Division.

45 Power to examine witnesses

(1) The Commissioner may administer an oath or affirmation to a person required under section 44 to attend before the Commissioner and may examine such a person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

46 Directions to persons to attend compulsory conference

(1) For the purposes of performing the Commissioner's functions in relation to a complaint (except an NPP complaint or a code complaint accepted under subsection 40(1B)), the Commissioner may, by written notice, direct:

(a) the complainant;

(b) the respondent; and

(c) any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the matter to which the complaint relates or whose presence at the conference is, in the opinion of the Commissioner, likely to assist in connection with the performance of the Commissioner's functions in relation to the complaint;

to attend, at a time and place specified in the notice, a conference presided over by the Commissioner.

(2) A person who has been directed to attend a conference and who:

(a) fails to attend as required by the direction; or

(b) fails to attend from day to day unless excused, or released from further attendance, by the Commissioner;

is guilty of an offence punishable on conviction:

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(c) in the case of an individual—by a fine not exceeding $1,000 or imprisonment for a period not exceeding 6 months, or both; or

(d) in the case of a body corporate—by a fine not exceeding $5,000.

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(3) A person who has been directed under subsection (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference.

(4) The Commissioner may, in a notice given to a person under subsection (1), require the person to produce such documents at the conference as are specified in the notice.

47 Conduct of compulsory conference

(1) The Commissioner may require a person attending a conference under this Division to produce a document.

(2) A conference under this Division shall be held in private and shall be conducted in such manner as the Commissioner thinks fit.

(3) A body of persons, whether corporate or unincorporate, that is directed under section 46 to attend a conference shall be deemed to attend if a member, officer or employee of that body attends on behalf of that body.

(4) Except with the consent of the Commissioner:

(a) an individual is not entitled to be represented at the conference by another person; and

(b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than a member, officer or employee of that body.

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48 Complainant and certain other persons to be informed of various matters

(1) Where the Commissioner decides not to investigate, or not to investigate further, a matter to which a complaint relates, the Commissioner shall, as soon as practicable and in such manner as the Commissioner thinks fit, inform the complainant and the respondent of the decision and of the reasons for the decision.

(2) If the Commissioner decides not to investigate (at all or further) an act done, or practice engaged in, by a contracted service provider for the purpose of providing (directly or indirectly) a service to an agency under a Commonwealth contract, the Commissioner must also inform the agency of the decision.

Note: See subsection 6(9) about provision of services to an agency.

49 Investigation under section 40 to cease if certain offences may have been committed

(1) Where, in the course of an investigation under section 40, the Commissioner forms the opinion that a tax file number offence, a healthcare identifier offence, an AML/CTF verification offence or a credit reporting offence may have been committed, the Commissioner shall:

(a) inform the Commissioner of Police or the Director of Public Prosecutions of that opinion;

(b) in the case of an investigation under subsection 40(1), give a copy of the complaint to the Commissioner of Police or the Director of Public Prosecutions, as the case may be; and

(c) subject to subsection (3), discontinue the investigation except to the extent that it concerns matters unconnected with the offence that the Commissioner believes may have been committed.

(2) If, after having been informed of the Commissioner's opinion under paragraph (1)(a), the Commissioner of Police or the Director of Public Prosecutions, as the case may be, decides that the matter will not be, or will no longer be, the subject of proceedings for an offence, he or she shall give a written notice to that effect to the Commissioner.

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(3) Upon receiving such a notice the Commissioner may continue the investigation discontinued under paragraph (1)(c).

(4) In subsection (1):

AML/CTF verification offence (short for anti-money laundering and counter-terrorism financing offence) means an offence against section 35H, 35J or 35K of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

credit reporting offence means:

(a) an offence against subsection 18C(4), 18D(4), 18K(4), 18L(2), 18N(2), 18R(2) or 18S(3) or section 18T; or

(b) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to an offence referred to in paragraph (a) of this definition.

tax file number offence means:

(a) an offence against section 8WA or 8WB of the *Taxation Administration Act 1953*; or

(b) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to an offence referred to in paragraph (a) of this definition.

49A Investigation under section 40 to cease if civil penalty provision under *Personal Property Securities Act 2009* may have been contravened

(1) If, in the course of an investigation under section 40, the Commissioner forms the opinion that subsection 172(3) of the *Personal Property Securities Act 2009* (civil penalty for searching otherwise than for authorised purposes) may have been contravened, the Commissioner must:

(a) inform the Registrar of Personal Property Securities under the *Personal Property Securities Act 2009* of that opinion; and

(b) in the case of an investigation under subsection 40(1), give a copy of the complaint to the Registrar of Personal Property Securities; and

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(c) discontinue the investigation except to the extent that it concerns matters unconnected with the contravention that the Commissioner believes may have taken place.

(2) The Registrar of Personal Property Securities must notify the Commissioner in writing if, after having been informed of the Commissioner's opinion under paragraph (1)(a), the Registrar decides:

(a) not to apply for an order under section 222 of the *Personal Property Securities Act 2009*; or

(b) to discontinue a proceeding that is an application for an order under section 222 of that Act.

(3) Upon receiving a notice under subsection (2), the Commissioner may continue an investigation discontinued under paragraph (1)(c).

50 Reference of matters to other authorities

(1) In this section:

Australian Human Rights Commission includes a person performing functions of that Commission.

Norfolk Island Public Service Board means the Public Service Board established under the *Public Sector Management Act 2000* of Norfolk Island.

Ombudsman means the Commonwealth Ombudsman.

(2) Where, before the Commissioner commences, or after the Commissioner has commenced, to investigate a matter to which a complaint relates, the Commissioner forms the opinion that:

(a) a complaint relating to that matter has been, or could have been, made by the complainant:

(i) to the Australian Human Rights Commission under Division 3 of Part II of the *Australian Human Rights Commission Act 1986*; or

(ii) to the Ombudsman under the *Ombudsman Act 1976*; or

(iia) to the Ombudsman under a particular Norfolk Island enactment; or

(iii) to the Postal Industry Ombudsman under the *Ombudsman Act 1976*; or

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(iv) to the Overseas Students Ombudsman under the *Ombudsman Act 1976*; or

(b) an application with respect to that matter has been, or could have been, made by the complainant to the Public Service Commissioner under the *Public Service Act 1999*; or

(ba) an application with respect to that matter has been, or could have been, made by the complainant to the Norfolk Island Public Service Board under the *Public Sector Management Act 2000* of Norfolk Island;

and that that matter could be more conveniently or effectively dealt with by the Australian Human Rights Commission, the Ombudsman, the Postal Industry Ombudsman, the Overseas Students Ombudsman or the Public Service Commissioner, as the case may be, the Commissioner may decide not to investigate the matter, or not to investigate the matter further, as the case may be, and, if the Commissioner so decides, he or she shall:

(c) transfer the complaint to the Australian Human Rights Commission, the Ombudsman, the Postal Industry Ombudsman, the Overseas Students Ombudsman or the Public Service Commissioner; and

(d) give notice in writing to the complainant stating that the complaint has been so transferred; and

(e) give to the Australian Human Rights Commission, the Ombudsman, the Postal Industry Ombudsman, the Overseas Students Ombudsman or the Public Service Commissioner any information or documents that relate to the complaint and are in the possession, or under the control, of the Commissioner.

(3) A complaint transferred under subsection (2) shall be taken to be:

(a) a complaint made:

(i) to the Australian Human Rights Commission under Division 3 of Part II of the *Australian Human Rights Commission Act 1986*; or

(ii) to the Ombudsman under the *Ombudsman Act 1976*; or

(iia) to the Ombudsman under the Norfolk Island enactment concerned; or

(iii) to the Postal Industry Ombudsman under the *Ombudsman Act 1976*; or

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(iv) to the Overseas Students Ombudsman under the *Ombudsman Act 1976*; or

(b) an application made to the Public Service Commissioner under the *Public Service Act 1999*; or

(c) an application made to the Norfolk Island Public Service Board under the *Public Sector Management Act 2000* of Norfolk Island;

as the case requires.

50A Substitution of respondent to complaint

(1) This section lets the Commissioner substitute an agency for an organisation as respondent to a complaint if:

(a) the organisation is a contracted service provider for a Commonwealth contract to provide services to the agency; and

(b) before the Commissioner makes a determination under section 52 in relation to the complaint, the organisation:

(i) dies or ceases to exist; or

(ii) becomes bankrupt or insolvent, commences to be wound up, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any property for the benefit of creditors.

(2) The Commissioner may amend the complaint to specify as a respondent to the complaint the agency or its principal executive, instead of the organisation.

Note 1: The complaint still relates to the act or practice of the organisation.

Note 2: Section 53B lets the Commissioner treat an agency as a respondent to a determination if the organisation cannot comply with a determination to pay an amount to a complainant.

(3) Before amending the complaint, the Commissioner must:

(a) give the agency a notice stating that the Commissioner proposes to amend the complaint and stating the reasons for the proposal; and

(b) give the agency an opportunity to appear before the Commissioner and to make oral and/or written submissions relating to the proposed amendment.

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(4) If the Commissioner amends the complaint after starting to investigate it, the Commissioner is taken to have satisfied subsection 43(1A) in relation to the agency.

51 Effect of investigation by Auditor-General

Where the Commissioner becomes aware that a matter being investigated by the Commissioner is, or is related to, a matter that is under investigation by the Auditor-General, the Commissioner shall not, unless the Commissioner and Auditor-General agree to the contrary, continue to investigate the matter until the investigation by the Auditor-General has been completed.

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Division 2—Determinations following investigation of complaints

52 Determination of the Commissioner

(1) After investigating a complaint, the Commissioner may:

(a) make a determination dismissing the complaint; or

(b) find the complaint substantiated and make a determination that includes one or more of the following:

(i) a declaration:

(A) where the principal executive of an agency is the respondent—that the agency has engaged in conduct constituting an interference with the privacy of an individual and should not repeat or continue such conduct; or

(B) in any other case—that the respondent has engaged in conduct constituting an interference with the privacy of an individual and should not repeat or continue such conduct;

(ii) a declaration that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

(iii) a declaration that the complainant is entitled to a specified amount by way of compensation for any loss or damage suffered by reason of the act or practice the subject of the complaint;

(iv) a declaration that it would be inappropriate for any further action to be taken in the matter.

(1A) The loss or damage referred to in paragraph (1)(b) includes injury to the complainant's feelings or humiliation suffered by the complainant.

(1B) A determination of the Commissioner under subsection (1) is not binding or conclusive between any of the parties to the determination.

(2) The Commissioner shall, in a determination, state any findings of fact upon which the determination is based.

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(3) In a determination under paragraph (1)(a) or (b) (other than a determination made on a representative complaint), the Commissioner may include a declaration that the complainant is entitled to a specified amount to reimburse the complainant for expenses reasonably incurred by the complainant in connection with the making of the complaint and the investigation of the complaint.

(3A) The Commissioner may include an order mentioned in subsection (3B) in a determination under subparagraph (1)(b)(i) or (ii) that concerns a breach of:

(a) Information Privacy Principle 7; or

(b) National Privacy Principle 6, to the extent that it deals with the correction of personal information; or

(c) a provision of an approved privacy code that corresponds to National Privacy Principle 6, to the extent that it deals with the correction of personal information; or

(d) section 18J.

(3B) A determination may include an order that:

(a) an agency or respondent make an appropriate correction, deletion or addition to a record, or to a credit information file or credit report, as the case may be; or

(b) an agency or respondent attach to a record, or include in a credit information file or credit report, as the case may be, a statement provided by the complainant of a correction, deletion or addition sought by the complainant.

(4) A determination by the Commissioner under subparagraph (1)(b)(iii) on a representative complaint:

(a) may provide for payment of specified amounts or of amounts worked out in a manner specified by the Commissioner; and

(b) if the Commissioner provides for payment in accordance with paragraph (a), must make provision for the payment of the money to the complainants concerned.

(5) If the Commissioner makes a determination under subparagraph (1)(b)(iii) on a representative complaint, the Commissioner may give such directions (if any) as he or she thinks just in relation to:

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(a) the manner in which a class member is to establish his or her entitlement to the payment of an amount under the determination; and

(b) the manner for determining any dispute regarding the entitlement of a class member to the payment.

(6) In this section:

complainant, in relation to a representative complaint, means the class members.

53 Determination must identify the class members who are to be affected by the determination

A determination under section 52 on a representative complaint must describe or otherwise identify those of the class members who are to be affected by the determination.

53A Notice to be given to outsourcing agency

(1) If the Commissioner makes a determination to which a contracted service provider for a Commonwealth contract is the respondent, the Commissioner:

(a) must give a copy of the determination to each agency:

(i) to which services are or were to be provided under the contract; and

(ii) to which the Commissioner considers it appropriate to give a copy; and

(b) may give such an agency a written recommendation of any measures that the Commissioner considers appropriate.

(2) The Commissioner may give an agency a recommendation only after consulting the agency.

(3) An agency that receives a recommendation from the Commissioner must tell the Commissioner in writing of any action the agency proposes to take in relation to the recommendation. The agency must do so within 60 days of receiving the recommendation.

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53B Substituting respondent to determination

(1) This section applies if:

(a) the respondent to a determination under subsection 52(1) is a contracted service provider for a Commonwealth contract; and

(b) the determination includes:

(i) a declaration under subparagraph 52(1)(b)(iii) that the complainant is entitled to a specified amount by way of compensation; or

(ii) a declaration under subsection 52(3) that the complainant is entitled to a specified amount by way of reimbursement; and

(c) at a particular time after the determination was made, the respondent:

(i) dies or ceases to exist; or

(ii) becomes bankrupt or insolvent, commences to be wound up, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any property for the benefit of creditors; and

(d) at that time, the complainant had not been paid the whole or part of an amount referred to in subparagraph (b)(i) or (b)(ii).

(2) The Commissioner may determine in writing that a specified agency to which services were or were to be provided under the contract is the respondent to the determination under section 52. The determination has effect according to its terms for the purposes of section 60.

Note: This means that the amount owed by the contracted service provider will be a debt due by the agency to the complainant.

(3) Before making a determination, the Commissioner must give the agency:

(a) a notice stating that the Commissioner proposes to make the determination and stating the reasons for the proposal; and

(b) an opportunity to appear before the Commissioner and to make oral and/or written submissions relating to the proposed determination.

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Division 3—Enforcement

54 Application of Division

(1) This Division applies to a determination made under section 52 after the commencement of this Division, except where the respondent to the determination is an agency or the principal executive of an agency.

(1A) This Division also applies to a determination made by an adjudicator for an approved privacy code under the code in relation to a complaint made under the code.

Note: The making of a determination by the Commissioner under this Act is subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.

(2) In this section:

agency does not include the nominated AGHS company, an eligible hearing service provider or an eligible case manager.

55 Obligations of respondent organisation

Determination under section 52

(1) An organisation that is the respondent to a determination made under section 52:

(a) must not repeat or continue conduct that is covered by a declaration that is included in the determination under sub-subparagraph 52(1)(b)(i)(B); and

(b) must perform the act or course of conduct that is covered by a declaration that is included in the determination under subparagraph 52(1)(b)(ii).

Determination under approved privacy code

(2) An organisation that is the respondent to a determination made under an approved privacy code:

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(a) must not repeat or continue conduct that is covered by a declaration that is included in the determination and that corresponds to a declaration mentioned in paragraph (1)(a); and

(b) must perform the act or course of conduct that is covered by a declaration that is included in the determination and that corresponds to a declaration mentioned in paragraph (1)(b).

55A Proceedings in the Federal Court or Federal Magistrates Court to enforce a determination

(1) Any of the following persons may commence proceedings in the Federal Court or the Federal Magistrates Court for an order to enforce a determination:

(a) the complainant;

(b) the Commissioner, if the determination was made under section 52;

(c) the adjudicator for the approved privacy code under which the determination was made, if it was made under an approved privacy code.

(2) If the court is satisfied that the respondent has engaged in conduct that constitutes an interference with the privacy of the complainant, the court may make such orders (including a declaration of right) as it thinks fit.

(3) The court may, if it thinks fit, grant an interim injunction pending the determination of the proceedings.

(4) The court is not to require a person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(5) The court is to deal by way of a hearing de novo with the question whether the respondent has engaged in conduct that constitutes an interference with the privacy of the complainant.

(6) Despite subsection (5), the court may receive any of the following as evidence in proceedings about a determination made by the Commissioner under section 52:

(a) a copy of the Commissioner's written reasons for the determination;

(b) a copy of any document that was before the Commissioner;

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(c) a copy of a record (including any tape recording) of any appearance before the Commissioner (including any oral submissions made) under subsection 43(5).

(7) Despite subsection (5), the court may receive any of the following as evidence in proceedings about a determination made by an adjudicator under an approved privacy code:

(a) a copy of the adjudicator's written reasons for the determination;

(b) a copy of any document that was before the adjudicator;

(c) a copy of a record (including any tape recording) of any appearance before the adjudicator (including any oral submissions made).

(7A) In conducting a hearing and making an order under this section, the court is to have due regard to the matters that paragraph 29(a) requires the Commissioner to have due regard to.

(8) In this section:

complainant, in relation to a representative complaint, means any of the class members.

55B Evidentiary certificate

(1) The Commissioner may issue a written certificate setting out the findings of fact upon which the Commissioner based his or her determination that:

(a) a specified agency had breached an Information Privacy Principle; or

(b) a specified organisation had breached an approved privacy code or a National Privacy Principle.

(2) An adjudicator for an approved privacy code may issue a written certificate setting out the findings of fact upon which the adjudicator based his or her determination that a specified organisation had breached an approved privacy code.

(3) In any proceedings under section 55A, a certificate under subsection (1) or (2) of this section is prima facie evidence of the facts found by the Commissioner or adjudicator and set out in the certificate. However, the certificate is not prima facie evidence of a finding that:

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(a) a specified agency had breached an Information Privacy Principle; or

(b) a specified organisation had breached an approved privacy code or a National Privacy Principle.

(4) A document purporting to be a certificate under subsection (1) or (2) must, unless the contrary is established, be taken to be a certificate and to have been properly given.

Division 4—Review and enforcement of determinations involving Commonwealth agencies

57 Application of Division

(1) This Division applies to a determination that is made under section 52 and has an agency, or the principal executive of an agency, as the respondent.

(2) In this section:

agency does not include the nominated AGHS company, an eligible hearing service provider or an eligible case manager.

58 Obligations of respondent agency

If an agency is the respondent to a determination to which this Division applies:

(a) the agency must not repeat or continue conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(i); and

(b) the agency must perform the act or course of conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(ii).

59 Obligations of principal executive of agency

If the principal executive of an agency is the respondent to a determination to which this Division applies, the principal executive must take all such steps as are reasonably within his or her power to ensure:

(a) that the terms of the determination are brought to the notice of all members, officers and employees of the agency whose duties are such that they may engage in conduct of the kind to which the determination relates; and

(b) that no member, officer or employee of the agency repeats or continues conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(i); and

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(c) the performance of any act or course of conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(ii).

60 Compensation and expenses

(1) If a determination to which this Division applies includes a declaration of the kind referred to in subparagraph 52(1)(b)(iii) or subsection 52(3), the complainant is entitled to be paid the amount specified in the declaration.

(2) If the respondent is an agency that has the capacity to sue and be sued, the amount is recoverable as a debt due by the agency to the complainant. In any other case, the amount is recoverable as a debt due by the Commonwealth to the complainant.

(2B) If a determination relates to a Norfolk Island agency, the reference in subsection (2) to the ***Commonwealth*** is to be read as a reference to Norfolk Island.

(3) In this section:

complainant, in relation to a representative complaint, means a class member.

61 Review of determinations regarding compensation and expenses

(1) Application may be made to the Administrative Appeals Tribunal for review of:

(a) a declaration of the kind referred to in subparagraph 52(1)(b)(iii) or subsection 52(3) that is included in a determination to which this Division applies; or

(b) a decision of the Commissioner refusing to include such a declaration in a determination to which this Division applies.

(2) An agency, or the principal executive of an agency, may not apply for review without the permission of the Minister.

62 Enforcement of determination against an agency

(1) If an agency fails to comply with section 58, an application may be made to the Federal Court or the Federal Magistrates Court for an order directing the agency to comply.

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(2) If the principal executive of an agency fails to comply with section 59, an application may be made to the Federal Court or the Federal Magistrates Court for an order directing the principal executive to comply.

(3) The application may be made by the Commissioner or by the complainant. In the case of a representative complaint, ***complainant*** means a class member.

(4) On an application under this section, the court may make such other orders as it thinks fit with a view to securing compliance by the respondent.

(5) An application may not be made under this section in relation to a determination under section 52 until:

(a) the time has expired for making an application under section 61 for review of the determination; or

(b) if such an application is made, the decision of the Administrative Appeals Tribunal on the application has come into operation.

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Division 5—Miscellaneous

63 Legal assistance

(1) If:

(a) the Commissioner has dismissed a file number complaint; and

(b) the respondent to the complaint is not an agency or the principal executive of an agency;

the respondent may apply to the Attorney-General for assistance under this section.

(2) A person who:

(a) has commenced or proposes to commence proceedings in the Federal Court or the Federal Magistrates Court under section 55; or

(b) has engaged in conduct or is alleged to have engaged in conduct in respect of which proceedings have been commenced in the Federal Court or the Federal Magistrates Court under section 55;

may apply to the Attorney-General for the provision of assistance under this section in respect of the proceedings.

(2A) Subsection (2) does not permit an application relating to proceedings under section 55A to enforce a determination relating to a code complaint or an NPP complaint.

(3) If the Attorney-General is satisfied that in all the circumstances it is reasonable to grant an application made under this section, he or she may authorise the provision by the Commonwealth to the applicant of:

(a) in the case of an application under subsection (1)—such financial assistance in connection with the investigation of the complaint as the Attorney-General determines; or

(b) in the case of an application under subsection (2)—such legal or financial assistance in respect of the proceeding as the Attorney-General determines.

(4) An authorisation under subsection (3) may be made subject to such conditions (if any) as the Attorney-General determines.

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(5) In considering an application made under this section, the Attorney-General must have regard to any hardship to the applicant that refusal of the application would involve.

64 Commissioner etc. not to be sued

(1) Neither the Commissioner nor a person acting under his or her direction or authority is liable to an action, suit or proceeding in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred by this Act.

(2) Neither an adjudicator for an approved privacy code, nor a person acting under his or her direction or authority, is liable to an action, suit or proceeding in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred by this Act or the code.

65 Failure to attend etc. before Commissioner

(1) A person shall not:

(a) refuse or fail to attend before the Commissioner; or

(b) refuse or fail to be sworn or make an affirmation;

when so required under this Act.

Penalty: $2,000 or imprisonment for 12 months, or both.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Penalty: $2,000 or imprisonment for 12 months, or both.

(3) A person shall not furnish information or make a statement to the Commissioner knowing that it is false or misleading in a material particular.

Penalty: $2,000 or imprisonment for 12 months, or both.

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66 Failure to give information etc.

(1) A person shall not refuse or fail:

(a) to give information; or

(b) to answer a question or produce a document or record;

when so required under this Act.

Penalty:

(a) in the case of an individual—$2,000 or imprisonment for 12 months, or both; or

(b) in the case of a body corporate—$10,000.

(1A) For the purposes of subsection (1B), a journalist has a reasonable excuse if giving the information, answering the question or producing the document or record would tend to reveal the identity of a person who gave information or a document or record to the journalist in confidence.

(1B) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

(2) For the purposes of subsections (3) to (11) (inclusive):

document includes a record.

information includes an answer to a question.

(3) Subject to subsections (4), (7) and (10), it is a reasonable excuse for the purposes of subsection (1B) for an individual:

(a) to refuse or fail to give information when so required under this Act; or

(b) to refuse or fail to produce a document when so required under this Act;

that giving the information, or producing the document, as the case may be, might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(4) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make

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him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the individual a written undertaking under subsection (5).

(5) An undertaking by the Director of Public Prosecutions shall:

(a) be an undertaking that:

(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

(c) state the general nature of those reasons.

(6) The Commissioner may recommend to the Director of Public Prosecutions that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (5).

(7) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the individual a written undertaking under subsection (8).

(8) An undertaking by the Attorney-General of the State, or authorised person, shall:

(a) be an undertaking that:

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(i) information given, or a document produced, by the individual; or

(ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the State, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

(b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

(c) state the general nature of those reasons.

(9) The Commissioner may recommend to the Attorney-General of a State that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (8).

(10) For the purposes of subsection (1B):

(a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and

(b) it is not a reasonable excuse for an individual to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the individual in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(11) Subsections (4), (7) and (10) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate an individual or make an individual liable to forfeiture or a penalty, have been commenced against the individual and have not been finally dealt with by a court or otherwise disposed of.

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Norfolk Island

(12) In this section:

Attorney-General, in relation to Norfolk Island, means the Norfolk Island Justice Minister.

State includes Norfolk Island.

67 Protection from civil actions

Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

(a) the making of a complaint under this Act;

(aa) the making of a complaint under an approved privacy code;

(ab) the acceptance of a complaint under subsection 40(1B);

(b) the making of a statement to, or the giving of a document or information to, the Commissioner, whether or not pursuant to a requirement under section 44.

68 Power to enter premises

(1) Subject to subsection (3), for the purposes of the performance by the Commissioner of his or her functions under this Act, a person authorised by the Commissioner in writing for the purposes of this section may, at any reasonable time of the day, enter premises occupied by an agency, an organisation, a file number recipient, a credit reporting agency or a credit provider and inspect any documents that are kept at those premises and that are relevant to the performance of those functions, other than documents in respect of which the Attorney-General has furnished a certificate under subsection 70(1) or (2) or documents in respect of which the Norfolk Island Justice Minister has given a certificate under subsection 70(4).

(1A) The Commissioner may authorise a person only while the person is a member of the staff assisting the Commissioner.

(2) The occupier or person in charge of the premises shall provide the authorised person with all reasonable facilities and assistance for the effective exercise of the authorised person's powers under subsection (1).

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(3) A person shall not enter under subsection (1) premises other than premises that are occupied by an agency unless:

(a) the occupier of the premises has consented to the person entering the premises; or

(b) the person is authorised, pursuant to a warrant issued under subsection (4), to enter the premises.

(3A) Before obtaining the consent, the authorised person must inform the occupier or person in charge that he or she may refuse to consent.

(3B) An entry by an authorised person with the consent of the occupier or person in charge is not lawful if the consent was not voluntary.

(3C) The authorised person may not enter premises (other than premises occupied by an agency) if:

(a) the occupant or person in charge asks the authorised person to produce his or her identity card; and

(b) the authorised person does not produce it.

(3D) If an authorised person is on premises with the consent of the occupier or person in charge, the authorised person must leave the premises if the occupier or person in charge asks the authorised person to do so.

(4) If, on an application made by a person authorised by the Commissioner under subsection (1), a Magistrate is satisfied, by information on oath, that it is reasonably necessary, for the purposes of the performance by the Commissioner of his or her functions under this Act, that the person be empowered to enter the premises, the Magistrate may issue a warrant authorising the person, with such assistance as the person thinks necessary, to enter the premises, if necessary by force, for the purpose of exercising those powers.

(5) A warrant issued under subsection (4) shall state:

(a) whether entry is authorised to be made at any time of the day or during specified hours of the day; and

(b) a day, not being later than one month after the day on which the warrant was issued, at the end of which the warrant ceases to have effect.

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(6) Nothing in subsection (1) restricts the operation of any other provision of this Part.

68A Identity cards

(1) The Commissioner must issue to a person authorised for the purposes of section 68 an identity card in the form approved by the Commissioner. The identity card must contain a recent photograph of the authorised person.

(2) As soon as practicable after the person ceases to be authorised, he or she must return the identity card to the Commissioner.

(3) A person must not contravene subsection (2).

Penalty: 1 penalty unit.

69 Restrictions on Commissioner obtaining personal information and documents

(1) Information relating to an individual shall not be furnished, in connection with a complaint, in such a manner as to reveal the individual's identity, unless the individual has made the complaint or has consented to the information being so furnished.

(2) A document that contains information relating to an individual and that reveals the individual's identity shall not be produced, in connection with a complaint, unless:

(a) the person has made the complaint or has consented to the document being so produced; or

(b) the document is a copy of another document and has had deleted from it such information as reveals the identity of the person.

(3) A person shall not furnish, in connection with a complaint, prescribed information that relates to an individual other than the complainant and does not also relate to the complainant.

(4) A person shall not furnish, in connection with a complaint, prescribed information that relates both to the complainant and to another individual, unless the information is so furnished in such a manner as not to reveal the identity of the other person.

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(5) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates to an individual other than the complainant and does not also relate to the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it.

(6) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates both to the complainant and to another individual, unless the document is a copy of another prescribed document and has had deleted from it such information as reveals the identity of the other individual.

(7) This section has effect notwithstanding any other provision of this Part.

(8) A reference in this section to furnishing information, or to producing a document, in connection with a complaint is a reference to furnishing the information, or to producing the document, as the case may be, to the Commissioner in connection with the performance or exercise by the Commissioner, in relation to that complaint, of the Commissioner's functions or powers.

(9) In this section:

complaint means:

(a) a complaint under section 36; or

(b) a complaint the Commissioner accepts under subsection 40(1B).

document includes any other record.

prescribed document means a document that was furnished or obtained under or for the purposes of a relevant law or a copy of such a document.

prescribed information means information that the person furnishing the information acquired by reason of holding or having held an office, or being or having been employed, under or for the purposes of a relevant law.

relevant law means a taxation law or a law of the Commonwealth relating to census and statistics.

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taxation law means:

(a) an Act of which the Commissioner of Taxation has the general administration (other than an Act prescribed for the purposes of paragraph (b) of the definition of ***taxation law*** in section 2 of the *Taxation Administration Act 1953*); or

(b) regulations under an Act referred to in paragraph (a) of this definition.

70 Certain documents and information not required to be disclosed

(1) Where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information concerning a specified matter (including the giving of information in answer to a question), or the production to the Commissioner of a specified document or other record, would be contrary to the public interest because it would:

(a) prejudice the security, defence or international relations of Australia;

(b) involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State;

(c) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;

(d) involve the disclosure of deliberations or advice of the Executive Council;

(e) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person;

(f) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;

(g) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or

(h) endanger the life or physical safety of any person;

the Commissioner is not entitled to require a person to give any information concerning the matter or to produce the document or other record.

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(2) Without limiting the operation of subsection (1), where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information as to the existence or non-existence of information concerning a specified matter (including the giving of information in answer to a question) or as to the existence or non-existence of any document or other record required to be produced to the Commissioner would be contrary to the public interest:

(a) by reason that it would prejudice the security, defence or international relations of Australia; or

(b) by reason that it would prejudice the proper performance of the functions of the ACC; or

(c) by reason that it would prejudice the proper performance of the functions of the Integrity Commissioner;

the Commissioner is not entitled, pursuant to this Act, to require a person to give any information as to the existence or non-existence of information concerning that matter or as to the existence of that document or other record.

(4) If the Norfolk Island Justice Minister gives to the Commissioner a certificate certifying that:

(a) the giving to the Commissioner of information concerning a specified matter (including the giving of information in answer to a question); or

(b) the production to the Commissioner of a specified document or other record;

would be contrary to the public interest because it would:

(c) involve the disclosure of communications between a Norfolk Island Minister and a Minister of the Commonwealth or of a State, being a disclosure that would prejudice relations between the Government of Norfolk Island and the Government of the Commonwealth or of a State; or

(d) involve the disclosure of deliberations or decisions of the Cabinet of Norfolk Island; or

(e) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person; or

(f) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law; or

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(g) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or

(h) endanger the life or physical safety of any person;

the Commissioner is not entitled to require a person to give any information concerning the matter or to produce the document or other record.

70A Application of Part to organisations that are not legal persons

Partnerships

(1) If, apart from this subsection, this Part would impose an obligation to do something (or not to refuse or fail to do something) on an organisation that is a partnership, the obligation is imposed instead on each partner but may be discharged by any of the partners.

Unincorporated associations

(2) If, apart from this subsection, this Part would impose an obligation to do something (or not to refuse or fail to do something) on an organisation that is an unincorporated association, the obligation is imposed instead on each member of the committee of management of the association but may be discharged by any of the members of that committee.

Trusts

(3) If, apart from this subsection, this Part would impose an obligation to do something (or not to refuse or fail to do something) on an organisation that is a trust, the obligation is imposed instead on each trustee but may be discharged by any of the trustees.

70B Application of this Part to former organisations

If an individual, body corporate, partnership, unincorporated association or trust ceases to be an organisation but continues to exist, this Part operates in relation to:

(a) an act or practice of the organisation (while it was an organisation); and

(b) the individual, body corporate, partnership, unincorporated association or trust;

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as if he, she or it were still (and had been at all relevant times) an organisation.

Example 1: If an individual carrying on a business was not a small business operator, but later became one and remained alive:

(a) a complaint may be made under this Part about an act or practice of the individual in carrying on the business before he or she became a small business operator; and

(b) the complaint may be investigated (and further proceedings taken) under this Part as though the individual were still an organisation.

Example 2: A small business operator chooses under section 6EA to be treated as an organisation, but later revokes the choice. A complaint about an act or practice the operator engaged in while the choice was registered under that section may be made and investigated under this Part as if the operator were an organisation.

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Part VI—Public interest determinations and temporary public interest determinations

Division 1—Public interest determinations

71 Interpretation

For the purposes of this Part, a person is interested in an application made under section 73 if, and only if, the Commissioner is of the opinion that the person has a real and substantial interest in the application.

72 Power to make, and effect of, determinations

Determinations about an agency's acts and practices

(1) Subject to this Division, where the Commissioner is satisfied that:

(a) an act or practice of an agency breaches, or may breach, an Information Privacy Principle; and

(b) the public interest in the agency doing the act, or engaging in the practice, outweighs to a substantial degree the public interest in adhering to that Information Privacy Principle;

the Commissioner may make a written determination to that effect and, if the Commissioner does so, the fact that the act or practice breaches that Information Privacy Principle shall:

(c) if the agency does the act while the determination is in force; or

(d) in so far as the agency engages in the practice while the determination is in force;

as the case may be, be disregarded for the purpose of section 16.

Determinations about an organisation's acts and practices

(2) Subject to this Division, if the Commissioner is satisfied that:

(a) an act or practice of an organisation breaches, or may breach, an approved privacy code, or a National Privacy Principle, that binds the organisation; but

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(b) the public interest in the organisation doing the act, or engaging in the practice, substantially outweighs the public interest in adhering to that code or Principle;

the Commissioner may make a written determination to that effect.

Effect of determination under subsection (2)

(3) The organisation is taken not to contravene section 16A if the organisation does the act, or engages in the practice, while the determination is in force under subsection (2).

Giving a determination under subsection (2) general effect

(4) The Commissioner may make a written determination that no organisation is taken to contravene section 16A if, while that determination is in force, an organisation does an act, or engages in a practice, that is the subject of a determination under subsection (2) in relation to that organisation or any other organisation.

Effect of determination under subsection (4)

(5) A determination under subsection (4) has effect according to its terms.

73 Application by agency or organisation

(1) An agency or organisation may apply in accordance with the regulations for a determination under section 72 about an act or practice of the agency or organisation.

(2) The CEO of the National Health and Medical Research Council may make an application under subsection (1) on behalf of other agencies concerned with medical research or the provision of health services.

(3) Where an application is made by virtue of subsection (2), a reference in the succeeding provisions of this Part to the agency is a reference to the CEO of the National Health and Medical Research Council.

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(4) Where the Commissioner makes a determination under section 72 on an application made by virtue of subsection (2), that section has effect, in relation to each of the agencies on whose behalf the application was made as if the determination had been made on an application by that agency.

74 Publication of application

(1) Subject to subsection (2), the Commissioner shall publish, in such manner as he or she thinks fit, notice of the receipt by the Commissioner of an application.

(2) The Commissioner shall not, except with the consent of the agency, permit the disclosure to another body or person of information contained in a document provided by an agency as part of, or in support of, an application if the agency has informed the Commissioner in writing that the agency claims that the document is an exempt document within the meaning of Part IV of the *Freedom of Information Act 1982*.

75 Draft determination

(1) The Commissioner shall prepare a draft of his or her proposed determination in relation to the application.

(2) If the applicant is an agency, the Commissioner must send to the agency, and to each other person (if any) who is interested in the application, a written invitation to notify the Commissioner, within the period specified in the invitation, whether or not the agency or other person wishes the Commissioner to hold a conference about the draft determination.

(2A) If the applicant is an organisation, the Commissioner must:

(a) send a written invitation to the organisation to notify the Commissioner, within the period specified in the invitation, whether or not the organisation wishes the Commissioner to hold a conference about the draft determination; and

(b) issue, in any way the Commissioner thinks appropriate, an invitation in corresponding terms to the other persons (if any) that the Commissioner thinks appropriate.

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(3) An invitation under subsection (2) or subsection (2A) shall specify a period that begins on the day on which the invitation is sent and is not shorter than the prescribed period.

76 Conference

(1) If an agency, organisation or person notifies the Commissioner, within the period specified in an invitation sent to the agency, organisation or person, that the agency, organisation or person wishes a conference to be held about the draft determination, the Commissioner shall hold such a conference.

(2) The Commissioner shall fix a day, time and place for the holding of the conference.

(3) The day fixed shall not be more than 30 days after the latest day on which a period specified in any of the invitations sent in relation to the draft determination expires.

(4) The Commissioner shall give notice of the day, time and place of the conference to the agency or organisation and to each person to whom an invitation was sent.

77 Conduct of conference

(1) At the conference, the agency or organisation is entitled to be represented by a person who is, or persons each of whom is, an officer or employee of the agency or organisation.

(2) At the conference, a person to whom an invitation was sent, or any other person who is interested in the application and whose presence at the conference is considered by the Commissioner to be appropriate, is entitled to attend and participate personally or, in the case of a body corporate, to be represented by a person who is, or persons each of whom is, a director, officer or employee of the body corporate.

(3) The Commissioner may exclude from the conference a person who:

(a) is entitled neither to participate in the conference nor to represent a person who is entitled to be represented at the conference;

(b) uses insulting language at the conference;

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(c) creates, or takes part in creating or continuing, a disturbance at the conference; or

(d) repeatedly disturbs the conference.

78 Determination of application

The Commissioner shall, after complying with this Part in relation to the application, make:

(a) such determination under section 72 as he or she considers appropriate; or

(b) a written determination dismissing the application.

79 Making of determination

(1) The Commissioner shall, in making a determination, take account of all matters raised at the conference.

(2) The Commissioner shall, in making a determination, take account of all submissions about the application that have been made, whether at a conference or not, by the agency, organisation or any other person.

(3) The Commissioner shall include in a determination a statement of the reasons for the determination.

80 Determinations disallowable

A determination referred to in paragraph 78(a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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Division 2—Temporary public interest determinations

80A Temporary public interest determinations

(1) This section applies if the Commissioner is satisfied that:

(a) the act or practice of an agency or organisation that is the subject of an application under section 73 for a determination under section 72 breaches, or may breach:

(i) in the case of an agency—an Information Privacy Principle; and

(ii) in the case of an organisation—an approved privacy code, or a National Privacy Principle, that binds the organisation; and

(b) the public interest in the agency or organisation doing the act, or engaging in the practice, outweighs to a substantial degree the public interest in adhering to that Principle or code; and

(c) the application raises issues that require an urgent decision.

(2) The Commissioner may make a written temporary public interest determination that he or she is satisfied of the matters set out in subsection (1). The Commissioner may do so:

(a) on request by the agency or organisation; or

(b) on the Commissioner's own initiative.

(3) The Commissioner must:

(a) specify in the determination a period of up to 12 months during which the determination is in force (subject to subsection 80D(2)); and

(b) include in the determination a statement of the reasons for the determination.

80B Effect of temporary public interest determination

Agency covered by a determination

(1) If an act or practice of an agency is the subject of a temporary public interest determination, the agency is taken not to breach section 16 if the agency does the act, or engages in the practice, while the determination is in force.

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Organisation covered by a determination

(2) If an act or practice of an organisation is the subject of a temporary public interest determination, the organisation is taken not to contravene section 16A if the organisation does the act, or engages in the practice, while the determination is in force.

Giving a temporary public interest determination general effect

(3) The Commissioner may make a written determination that no organisation is taken to contravene section 16A if, while that determination is in force, an organisation does an act, or engages in a practice, that is the subject of a temporary public interest determination in relation to that organisation or another organisation.

Effect of determination under subsection (3)

(4) A determination under subsection (3) has effect according to its terms.

80C Determinations disallowable

A determination under this Division is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

80D Commissioner may continue to consider application

(1) The fact that the Commissioner has made a determination under this Division about an act or practice does not prevent the Commissioner from dealing under Division 1 with an application made under section 73 in relation to that act or practice.

(2) A determination under this Division about an act or practice ceases to be in effect when:

(a) a determination made under subsection 72(1) or (2) (as appropriate) about the act or practice comes into effect; or

(b) a determination is made under paragraph 78(b) to dismiss the application.

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Division 3—Register of determinations

80E Register of determinations

(1) The Commissioner must keep a register of determinations made under Division 1 or 2.

(2) The Commissioner may decide the form of the register and how it is to be kept.

(3) The Commissioner must make the register available to the public in the way that the Commissioner determines.

(4) The Commissioner may charge fees for:
  (a) making the register available to the public; or
  (b) providing copies of, or extracts from, the register.

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Part VIA—Dealing with personal information in emergencies and disasters

Division 1—Object and interpretation

80F Object

The object of this Part is to make special provision for the collection, use and disclosure of personal information in emergencies and disasters.

80G Interpretation

(1) In this Part:

duty of confidence means any duty or obligation arising under the common law or at equity pursuant to which a person is obliged not to disclose information, but does not include legal professional privilege.

emergency declaration means a declaration under section 80J or 80K.

permanent resident means a person, other than an Australian citizen:

(a) whose normal place of residence is situated in Australia; and

(b) whose presence in Australia is not subject to any limitation as to time imposed by law; and

(c) who is not an illegal entrant within the meaning of the *Migration Act 1958*.

secrecy provision means a provision of a law of the Commonwealth (including a provision of this Act), or of a Norfolk Island enactment, that prohibits or regulates the use or disclosure of personal information, whether the provision relates to the use or disclosure of personal information generally or in specified circumstances.

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(2) For the purposes of this Part, a reference in the definition of ***personal information*** in subsection 6(1) to an individual is taken to include a reference to an individual who is not living.

80H Meaning of *permitted purpose*

(1) For the purposes of this Part, a ***permitted purpose*** is a purpose that directly relates to the Commonwealth's response to an emergency or disaster in respect of which an emergency declaration is in force.

(2) Without limiting subsection (1), any of the following is a ***permitted purpose*** in relation to an emergency or disaster:

(a) identifying individuals who:

(i) are or may be injured, missing or dead as a result of the emergency or disaster; or

(ii) are or may be otherwise involved in the emergency or disaster;

(b) assisting individuals involved in the emergency or disaster to obtain services such as repatriation services, medical or other treatment, health services and financial or other humanitarian assistance;

(c) assisting with law enforcement in relation to the emergency or disaster;

(d) coordination or management of the emergency or disaster;

(e) ensuring that people who are ***responsible*** (within the meaning of subclause 2.5 of Schedule 3) for individuals who are, or may be, involved in the emergency or disaster are appropriately informed of matters that are relevant to:

(i) the involvement of those individuals in the emergency or disaster; or

(ii) the response to the emergency or disaster in relation to those individuals.

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Division 2—Declaration of emergency

80J Declaration of emergency—events of national significance

The Prime Minister or the Minister may make a declaration under this section if the Prime Minister or the Minister (as the case may be) is satisfied that:

(a) an emergency or disaster has occurred; and

(b) the emergency or disaster is of such a kind that it is appropriate in the circumstances for this Part to apply in relation to the emergency or disaster; and

(c) the emergency or disaster is of national significance (whether because of the nature and extent of the emergency or disaster, the direct or indirect effect of the emergency or disaster, or for any other reason); and

(d) the emergency or disaster has affected one or more Australian citizens or permanent residents (whether within Australia or overseas).

Note: A declaration under this section is merely a trigger for the operation of this Part and is not directly related to any other legislative or non-legislative scheme about emergencies.

80K Declaration of emergency—events outside Australia

(1) The Prime Minister or the Minister may make a declaration under this section if the Prime Minister or the Minister (as the case may be) is satisfied that:

(a) an emergency or disaster has occurred outside Australia; and

(b) the emergency or disaster is of such a kind that it is appropriate in the circumstances for this Part to apply in relation to the emergency or disaster; and

(c) the emergency or disaster has affected one or more Australian citizens or permanent residents (whether within Australia or overseas).

(2) The Minister must consult the Minister administering the *Diplomatic Privileges and Immunities Act 1967* before the Minister makes a declaration under this section.

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Note: A declaration under this section is merely a trigger for the operation of this Part and is not directly related to any other legislative or non-legislative scheme about emergencies.

80L Form of declarations

(1) An emergency declaration must be in writing and signed by:
  (a) if the Prime Minister makes the declaration—the Prime Minister; or
  (b) if the Minister makes the declaration—the Minister.

(2) An emergency declaration must be published, as soon as practicable after the declaration has effect:
  (a) on the website maintained by the Department; and
  (b) by notice published in the *Gazette*.

(3) An emergency declaration is not a legislative instrument.

80M When declarations take effect

An emergency declaration has effect from the time at which the declaration is signed.

80N When declarations cease to have effect

An emergency declaration ceases to have effect at the earliest of:
  (a) if a time at which the declaration will cease to have effect is specified in the declaration—at that time; or
  (b) the time at which the declaration is revoked; or
  (c) the end of 12 months starting when the declaration is made.

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Division 3—Provisions dealing with the use and disclosure of personal information

80P Authorisation of collection, use and disclosure of personal information

(1) At any time when an emergency declaration is in force in relation to an emergency or disaster, an entity may collect, use or disclose personal information relating to an individual if:

(a) the entity reasonably believes that the individual concerned may be involved in the emergency or disaster; and

(b) the collection, use or disclosure is for a permitted purpose in relation to the emergency or disaster; and

(c) in the case of a disclosure of the personal information by an agency—the disclosure is to:

(i) an agency; or

(ii) a State or Territory authority; or

(iii) an organisation; or

(iv) an entity not covered by subparagraph (i), (ii) or (iii) that is, or is likely to be, involved in managing, or assisting in the management of, the emergency or disaster; or

(v) a person who is ***responsible*** for the individual (within the meaning of subclause 2.5 of Schedule 3); and

(d) in the case of a disclosure of the personal information by an organisation or another person—the disclosure is to:

(i) an agency; or

(ii) an entity that is directly involved in providing repatriation services, medical or other treatment, health services or financial or other humanitarian assistance services to individuals involved in the emergency or disaster; or

(iii) a person or entity prescribed by the regulations for the purposes of this paragraph; or

(iv) a person or entity specified by the Minister, by legislative instrument, for the purposes of this paragraph; and

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(e) in the case of any disclosure of the personal information—the disclosure is not to a media organisation.

(2) An entity is not liable to any proceedings for contravening a secrecy provision in respect of a use or disclosure of personal information authorised by subsection (1), unless the secrecy provision is a designated secrecy provision (see subsection (7)).

(3) An entity is not liable to any proceedings for contravening a duty of confidence in respect of a disclosure of personal information authorised by subsection (1).

(4) An entity that is an agency does not breach an Information Privacy Principle in respect of a collection, use or disclosure of personal information authorised by subsection (1).

(5) An entity that is an organisation does not breach an approved privacy code or a National Privacy Principle in respect of a collection, use or disclosure of personal information authorised by subsection (1).

(6) A collection, use or disclose of personal information by an officer or employee of an agency in the course of duty as an officer or employee is authorised by subsection (1) only if the officer or employee is authorised by the agency to collect, use or disclose the personal information.

(7) In this section:

designated secrecy provision means any of the following:

(a) sections 18 and 92 of the *Australian Security Intelligence Organisation Act 1979*;

(b) section 34 of the *Inspector-General of Intelligence and Security Act 1986*;

(c) section 39, 39A, 40 and 41 of the *Intelligence Services Act 2001*;

(d) a provision of a law of the Commonwealth prescribed by the regulations for the purposes of this paragraph;

(e) a provision of a law of the Commonwealth of a kind prescribed by the regulations for the purposes of this paragraph.

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entity includes the following:

(a) a person;

(b) an agency;

(c) an organisation.

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Division 4—Other matters

80Q Disclosure of information—offence

(1) A person (the ***first person***) commits an offence if:

(a) personal information that relates to an individual is disclosed to the first person because of the operation of this Part; and

(b) the first person subsequently discloses the personal information; and

(c) the first person is not ***responsible*** for the individual (within the meaning of subclause 2.5 of Schedule 3).

Penalty: 60 penalty units or imprisonment for 1 year, or both.

(2) Subsection (1) does not apply to the following disclosures:

(a) if the first person is an agency—a disclosure permitted under an Information Privacy Principle;

(b) if the first person is an organisation—a disclosure permitted under an approved privacy code or a National Privacy Principle;

(c) a disclosure permitted under section 80P;

(d) a disclosure made with the consent of the individual to whom the personal information relates;

(e) a disclosure to the individual to whom the personal information relates;

(f) a disclosure to a court;

(g) a disclosure prescribed by the regulations.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

(3) If a disclosure of personal information is covered by subsection (2), the disclosure is authorised by this section.

(4) For the purposes of paragraph (2)(f), ***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

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80R Operation of Part

(1) The operation of this Part is not limited by a secrecy provision of any other law of the Commonwealth (whether made before or after the commencement of this Act) except to the extent that the secrecy provision expressly excludes the operation of this section.

Note: Section 3 provides for the concurrent operation of State and Territory laws.

(1A) The operation of this Part is not limited by a secrecy provision of a Norfolk Island enactment (whether made before or after the commencement of this subsection) except to the extent that the secrecy provision expressly excludes the operation of this subsection.

(2) Nothing in this Part is to be taken to require an entity to collect, use or disclose personal information.

80S Severability—additional effect of Part

(1) Without limiting its effect apart from each of the following subsections of this section, this Part has effect in relation to a collection, use or disclosure as provided by that subsection.

(2) This Part has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure by a corporation.

(3) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure taking place in the course of, or in relation to, trade or commerce:

(a) between Australia and places outside Australia; or

(b) among the States; or

(c) within a Territory, between a State and a Territory or between 2 Territories.

(4) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution.

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(5) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure taking place in a Territory.

(6) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure taking place in a place acquired by the Commonwealth for public purposes.

(7) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure by an agency.

(8) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure for purposes relating to the defence of the Commonwealth.

(9) This Part also has the effect that it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure taking place outside Australia.

(10) This Part also has the effect that it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure:

(a) in relation to which the Commonwealth is under an obligation under an international agreement; or

(b) that is of international concern.

(11) This Part also has the effect that it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure in relation to an emergency of national significance.

80T Compensation for acquisition of property—constitutional safety net

(1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a

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court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

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Part VII—Privacy Advisory Committee

81 Interpretation

In this Part, unless the contrary intention appears:

Advisory Committee means the Privacy Advisory Committee established by subsection 82(1).

member means a member of the Advisory Committee.

82 Establishment and membership

(1) A Privacy Advisory Committee is established.

(2) The Advisory Committee shall consist of:
  (a) the Commissioner; and
  (b) not more than 6 other members.

(3) A member other than the Commissioner:
  (a) shall be appointed by the Governor-General; and
  (b) shall be appointed as a part-time member.

(4) An appointed member holds office, subject to this Act, for such period, not exceeding 5 years, as is specified in the instrument of the member's appointment, but is eligible for re-appointment.

(5) The Commissioner shall be convenor of the Committee.

(6) The Governor-General shall so exercise the power of appointment conferred by subsection (3) that a majority of the appointed members are persons who are neither officers nor employees, nor members of the staff of an authority or instrumentality, of the Commonwealth.

(7) Of the appointed members:
  (a) at least one shall be a person who has had at least 5 years' experience at a high level in industry, commerce, public administration or the service of a government or an authority of a government;

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(b) at least one shall be a person who has had at least 5 years' experience in the trade union movement;

(c) at least one shall be a person who has had extensive experience in electronic data-processing;

(d) at least one shall be appointed to represent general community interests, including interests relating to social welfare; and

(e) at least one shall be a person who has had extensive experience in the promotion of civil liberties.

(10) An appointed member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined, in writing, by the Governor-General.

(11) The performance of a function of the Advisory Committee is not affected because of a vacancy or vacancies in the membership of the Advisory Committee.

83 Functions

The functions of the Advisory Committee are:

(a) on its own initiative, or when requested by the Commissioner, to advise the Commissioner on matters relevant to his or her functions;

(b) to recommend material to the Commissioner for inclusion in guidelines to be issued by the Commissioner pursuant to his or her functions; and

(c) subject to any direction given by the Commissioner, to engage in and promote community education, and community consultation, in relation to the protection of individual privacy.

84 Leave of absence

The convenor may, on such terms and conditions as the convenor thinks fit, grant to another member leave to be absent from a meeting of the Advisory Committee.

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85 Removal and resignation of members

(1) The Governor-General may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(2) The Governor-General shall terminate the appointment of an appointed member if the member:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit;

(b) fails, without reasonable excuse, to comply with the member's obligations under section 86; or

(c) is absent, without the leave of the convenor, from 3 consecutive meetings of the Advisory Committee.

(3) An appointed member may resign from office by delivering a signed notice of resignation to the Governor-General.

86 Disclosure of interests of members

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Advisory Committee, being an interest that could conflict with the proper performance of that member's functions in relation to the consideration of the matter, shall, as soon as practicable after the relevant facts have come to the knowledge of that member, disclose the nature of that interest at a meeting of the Advisory Committee.

(2) A disclosure under subsection (1) at a meeting of the Advisory Committee shall be recorded in the minutes of the meeting.

87 Meetings of Advisory Committee

(1) The convenor may convene such meetings of the Advisory Committee as the convenor considers necessary for the performance of the Committee's functions.

(2) Meetings of the Advisory Committee shall be held at such places and at such times as the convenor determines.

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(3) The convenor shall preside at all meetings of the Advisory Committee at which the convenor is present.

(4) If, at a meeting of the Advisory Committee, the convenor is not present, the members who are present shall elect one of their number to preside at the meeting.

(5) At a meeting of the Advisory Committee:

(a) 3 members constitute a quorum;

(b) all questions shall be decided by a majority of votes of the members present and voting; and

(c) the person presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) The Advisory Committee shall keep a record of its proceedings.

88 Travel allowance

An appointed member is entitled to be paid travelling allowance in accordance with the regulations.

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Part VIII—Obligations of confidence

89 Obligations of confidence to which Part applies

Unless the contrary intention appears, a reference in this Part to an obligation of confidence is a reference to an obligation of confidence:

(a) to which an agency or a Commonwealth officer is subject, however the obligation arose; or

(b) that arises under or by virtue of the law in force in the Australian Capital Territory; or

(c) that arises under or by virtue of a Norfolk Island enactment that is in force.

90 Application of Part

(1) This Part applies where a person (in this Part called a ***confidant***) is subject to an obligation of confidence to another person (in this Part called a ***confider***) in respect of personal information, whether the information relates to the confider or to a third person, being an obligation in respect of a breach of which relief may be obtained (whether in the exercise of a discretion or not) in legal proceedings.

(2) This Part does not apply where a criminal penalty only may be imposed in respect of the breach.

91 Effect of Part on other laws

This Part does not, except to the extent that it does so expressly or by necessary implication, limit or restrict the operation of any other law or of any principle or rule of the common law or of equity, being a law, principle or rule:

(a) under or by virtue of which an obligation of confidence exists; or

(b) that has the effect of restricting or prohibiting, or imposing a liability (including a criminal liability) on a person in respect of, a disclosure or use of information.

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92 Extension of certain obligations of confidence

Where a person has acquired personal information about another person and the first-mentioned person knows or ought reasonably to know that the person from whom he or she acquired the information was subject to an obligation of confidence with respect to the information, the first-mentioned person, whether he or she is in the Australian Capital Territory or not, is subject to a like obligation.

93 Relief for breach etc. of certain obligations of confidence

(1) A confider may recover damages from a confidant in respect of a breach of an obligation of confidence with respect to personal information.

(2) Subsection (1) does not limit or restrict any other right that the confider has to relief in respect of the breach.

(3) Where an obligation of confidence exists with respect to personal information about a person other than the confider, whether the obligation arose under a contract or otherwise, the person to whom the information relates has the same rights against the confidant in respect of a breach or threatened breach of the obligation as the confider has.

94 Jurisdiction of courts

(1) The jurisdiction of the courts of the Australian Capital Territory extends to matters arising under this Part.

(2) Subsection (1) does not deprive a court of a State or of another Territory of any jurisdiction that it has.

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Part IX—Miscellaneous

95 Medical research guidelines

(1) The CEO of the National Health and Medical Research Council may, with the approval of the Commissioner, issue guidelines for the protection of privacy in the conduct of medical research.

(2) The Commissioner shall not approve the issue of guidelines unless he or she is satisfied that the public interest in the promotion of research of the kind to which the guidelines relate outweighs to a substantial degree the public interest in maintaining adherence to the Information Privacy Principles.

(3) Guidelines shall be issued by being published in the *Gazette*.

(4) Where:

(a) but for this subsection, an act done by an agency would breach an Information Privacy Principle; and

(b) the act is done in the course of medical research and in accordance with guidelines under subsection (1);

the act shall be regarded as not breaching that Information Privacy Principle.

(5) Where the Commissioner refuses to approve the issue of guidelines under subsection (1), an application may be made to the Administrative Appeals Tribunal for review of the Commissioner's decision.

95A Guidelines for National Privacy Principles about health information

Overview

(1) This section allows the Commissioner to approve for the purposes of the National Privacy Principles (the ***NPPs***) guidelines that are issued by the CEO of the National Health and Medical Research Council or a prescribed authority.

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Approving guidelines for use and disclosure

(2) For the purposes of subparagraph 2.1(d)(ii) of the NPPs, the Commissioner may, by notice in the *Gazette*, approve guidelines that relate to the use and disclosure of health information for the purposes of research, or the compilation or analysis of statistics, relevant to public health or public safety.

Public interest test

(3) The Commissioner may give an approval under subsection (2) only if satisfied that the public interest in the use and disclosure of health information for the purposes mentioned in that subsection in accordance with the guidelines substantially outweighs the public interest in maintaining the level of privacy protection afforded by the NPPs (other than paragraph 2.1(d)).

Approving guidelines for collection

(4) For the purposes of subparagraph 10.3(d)(iii) of the NPPs, the Commissioner may, by notice in the *Gazette*, approve guidelines that relate to the collection of health information for the purposes of:

(a) research, or the compilation or analysis of statistics, relevant to public health or public safety; or

(b) the management, funding or monitoring of a health service.

Public interest test

(5) The Commissioner may give an approval under subsection (4) only if satisfied that the public interest in the collection of health information for the purposes mentioned in that subsection in accordance with the guidelines substantially outweighs the public interest in maintaining the level of privacy protection afforded by the NPPs (other than paragraph 10.3(d)).

Revocation of approval

(6) The Commissioner may, by notice in the *Gazette*, revoke an approval of guidelines under this section if he or she is no longer satisfied of the matter that he or she had to be satisfied of to approve the guidelines.

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Review by AAT

(7) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Commissioner to refuse to approve guidelines or to revoke an approval of guidelines.

95AA Guidelines for National Privacy Principles about genetic information

Overview

(1) This section allows the Commissioner to approve for the purposes of the National Privacy Principles (the ***NPPs***) guidelines that are issued by the National Health and Medical Research Council.

Approving guidelines for use and disclosure

(2) For the purposes of subparagraph 2.1(ea)(ii) of the NPPs, the Commissioner may, by legislative instrument, approve guidelines that relate to the use and disclosure of genetic information for the purposes of lessening or preventing a serious threat to the life, health or safety (whether or not the threat is imminent) of an individual who is a genetic relative of the individual to whom the genetic information relates.

Review by AAT

(3) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Commissioner to refuse to approve guidelines.

95B Requirements for Commonwealth contracts

(1) This section requires an agency entering into a Commonwealth contract to take contractual measures to ensure that a contracted service provider for the contract does not do an act, or engage in a practice, that would breach an Information Privacy Principle if done or engaged in by the agency.

(2) The agency must ensure that the Commonwealth contract does not authorise a contracted service provider for the contract to do or engage in such an act or practice.

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(3) The agency must also ensure that the Commonwealth contract contains provisions to ensure that such an act or practice is not authorised by a subcontract.

(4) For the purposes of subsection (3), a ***subcontract*** is a contract under which a contracted service provider for the Commonwealth contract is engaged to provide services to:

(a) another contracted service provider for the Commonwealth contract; or

(b) any agency;

for the purposes (whether direct or indirect) of the Commonwealth contract.

(5) This section applies whether the agency is entering into the Commonwealth contract on behalf of the Commonwealth or in the agency's own right.

95C Disclosure of certain provisions of Commonwealth contracts

If a person asks a party to a Commonwealth contract to be informed of the content of provisions (if any) of the contract that are inconsistent with an approved privacy code binding a party to the contract or with a National Privacy Principle, the party requested must inform the person in writing of that content (if any).

98 Injunctions

(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted or would constitute a contravention of this Act, the Federal Court or the Federal Magistrates Court may, on the application of the Commissioner or any other person, grant an injunction restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to do any act or thing.

(2) Where:

(a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and

(b) the refusal or failure was, is, or would be a contravention of this Act;

the Federal Court or the Federal Magistrates Court may, on the application of the Commissioner or any other person, grant an

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injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under this section, the court may, if in the court's opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

(4) The court may discharge or vary an injunction granted under this section.

(5) The power of the court to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:

(a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) The power of the court to grant an injunction requiring a person to do a particular act or thing may be exercised:

(a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the Commissioner makes an application to the court for the grant of an injunction under this section, the court shall not require the Commissioner or any other person, as a condition of the

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granting of an interim injunction, to give any undertakings as to damages.

(8) The powers conferred on the court under this section are in addition to, and not in derogation of, any powers of the court, whether conferred by this Act or otherwise.

99A Conduct of directors, employees and agents

(1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, employee or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and

(b) that the employee or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of a person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where:

(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against this Act includes a reference to an offence created by section 6 of the *Crimes Act 1914*, or section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to this Act.

100 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Subject to subsection (3), before the Governor-General makes regulations for the purposes of subclause 7.1A or paragraph 7.2(c) of the National Privacy Principles prescribing an organisation, identifier and circumstances, the Minister must be satisfied that:

(a) the agency or the principal executive of the agency (if the agency has a principal executive) has agreed that adoption,

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use or disclosure by the organisation of the identifier in the circumstances is appropriate; and

(b) the agency or the principal executive of the agency (if the agency has a principal executive) has consulted the Commissioner about adoption, use or disclosure by the organisation of the identifier in the circumstances; and

(c) adoption, use or disclosure by the organisation of the identifier in the circumstances can only be for the benefit of the individual concerned.

(3) Subsection (2) does not apply to the making of regulations for the purposes of paragraph 7.2(c) of the National Privacy Principles if:

(a) the regulations prescribe an organisation, or class of organisations; and

(b) the regulations prescribe an identifier, or class of identifiers, of a kind commonly used in the processing of pay, or deductions from pay, of Commonwealth officers, or a class of Commonwealth officers; and

(c) the circumstances prescribed by the regulations for the use or disclosure by the organisation, or an organisation in the class, of the identifier, or an identifier in the class, relate to the provision by the organisation of superannuation services for the benefit of Commonwealth officers; and

(d) before the regulations are made, the Minister consults the Commissioner about the proposed regulations.

(4) In subsection (3):

superannuation services includes the management, processing, allocation and transfer of superannuation contributions.

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Part X—Amendments of other Acts

101 Amendments of other Acts

(1) The Acts specified in Schedule 1 are amended as set out in Schedule 1.

(2) Section 27A of the *Freedom of Information Act 1982* as amended by this Act applies in relation to:

(a) a request that is received after the commencement of this Act; and

(b) a request that was received before that commencement if a decision to grant access under the *Freedom of Information Act 1982* to the document to which the request related had not been made before that commencement by the officer or Minister dealing with the request or a person reviewing, under section 54 of that Act, a decision refusing to grant that access.

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Schedule 1—Amendments of other Acts

Section 101

Freedom of Information Act 1982

Subsection 19(4)

Omit "or 27", substitute ", 27 or 27A".

After section 27

Insert the following section:

27A Procedure on request in respect of document relating to personal affairs

(1) Where:

(a) a request has been received by an agency or Minister in respect of a document containing information relating to the personal affairs of a person (including a deceased person); and

(b) it appears to the officer or Minister dealing with the request, or to a person reviewing under section 54 a decision refusing the request, that the person referred to in paragraph (a), or, if that person is deceased, the legal personal representative of that person, might reasonably wish to contend that the document, so far as it contains that information, is an exempt document under section 41;

a decision to grant access under this Act to the document, so far as it contains that information, shall not be made unless, where it is reasonably practicable to do so having regard to all the circumstances, including the application of section 19:

(c) the agency or Minister has given to that person or to the legal personal representative of that person, as the case may be, a reasonable opportunity of making submissions in support of a contention that the document, so far as it contains that information, is an exempt document under section 41; and

(d) the person making the decision has had regard to any submissions so made.

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(2) Where, after any submissions have been made in accordance with subsection (1), a decision is made that the document, so far as it contains the information referred to in paragraph (1)(a), is not an exempt document under section 41:

(a) the agency or Minister shall cause notice in writing of the decision to be given to the person who made the submissions, as well as to the person who made the request; and

(b) access shall not be given to the document, so far as it contains the information referred to in paragraph (1)(a), unless:

(i) the time for an application to the Tribunal in accordance with section 59A by the person who made the submissions has expired and such an application has not been made; or

(ii) such an application has been made and the Tribunal has confirmed the decision.

Section 38

Add at the end the following subsection:

(2) Where a person requests access to a document, this section does not apply in relation to the document so far as it contains information relating to the person's personal affairs.

Section 48

(a) Omit "section", substitute "Part".

(b) Omit "provided to the claimant under this Act", substitute "lawfully provided to the claimant, whether under this Act or otherwise,".

After section 59

Insert the following section:

59A Review of certain decisions in respect of documents relating to personal affairs

(1) Where notice of a decision that a document, so far as it contains certain information, is not an exempt document under section 41 has been given, in accordance with subsection 27A(2), to a person who made submissions in accordance with that section, that person may apply to the Tribunal for a review of that decision.

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(2) Where an application is made in accordance with subsection (1):

(a) the provisions of this Part (other than sections 55 and 61) apply in like manner as they apply in relation to an application for review of a decision refusing to grant access to a document; and

(b) the agency or Minister concerned shall forthwith inform the person who made the request of the application.

(3) Where:

(a) upon a request referred to in subsection 27A(1), a decision is made, after the making of submissions by a person in accordance with that subsection, not to grant access to the document to which the request relates, so far as it contains the information referred to in paragraph 27A(1)(a); and

(b) an application is made to the Tribunal for a review of the decision;

the agency or Minister concerned shall forthwith inform the person who made the submissions of the application.

Human Rights and Equal Opportunity Commission Act 1986

Subsection 3(1)

Insert the following definition:

Privacy Commissioner means the Privacy Commissioner appointed under the *Privacy Act 1988*.

Paragraph 8(1)(c)

Omit "and".

Paragraph 8(1)(d)

Omit the paragraph, substitute the following paragraphs:

(d) the Sex Discrimination Commissioner; and

(e) the Privacy Commissioner.

Subsection 8(7)

Omit "or Sex Discrimination Commissioner", substitute ", Sex Discrimination Commissioner or Privacy Commissioner".

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Subsection 20(4)

After "shall" insert ", unless the complaint has been transferred under subsection (4A),".

After subsection 20(4)

Insert the following subsections:

(4A) Where:

(a) a complaint has been made to the Commission in relation to an act or practice; and

(b) because the Commission is of the opinion that the subject-matter of the complaint could be more effectively or conveniently dealt with by the Privacy Commissioner in the performance of the functions referred to in paragraph 27(1)(a) or 28(1)(b) or (c) of the *Privacy Act 1988*, the Commission decides not to inquire, or not to continue to inquire, into that act or practice;

the Commission shall:

(c) transfer the complaint to the Privacy Commissioner;

(d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and

(e) give to the Privacy Commissioner any information or documents that relate to the complaint and are in the possession, or under the control, of the Commission.

(4B) A complaint transferred under subsection (4A) shall be taken to be a complaint made to the Privacy Commissioner under Part V of the *Privacy Act 1988*.

After subsection 49(4)

Insert the following subsection:

(4A) Subsection (1) does not prevent the Commission, or a person acting on behalf of the Commission, from giving information or documents in accordance with paragraph 20(4A)(e).

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Merit Protection (Australian Government Employees) Act 1984

After subsection 49(1)

Insert the following subsections:

(1A) Where:

(a) an application has been made to the Agency with respect to particular action; and

(b) because the Agency is of the opinion that it is more appropriate that the action be dealt with by the Privacy Commissioner in the performance of the functions referred to in paragraph 27(1)(a) or 28(1)(b) or (c) of the *Privacy Act 1988*, the Agency decides, under subparagraph (1)(b)(ii) of this section, not to investigate the action, or not to investigate the action further;

the Agency shall:

(c) transfer the application to the Privacy Commissioner;

(d) forthwith give notice in writing to the applicant stating that the application has been so transferred; and

(e) give to the Privacy Commissioner any information or documents that relate to the application and are in the possession, or under the control, of the Agency.

(1B) An application transferred under subsection (1A) shall be deemed to be a complaint made in writing to the Privacy Commissioner under Part V of the *Privacy Act 1988*.

(1C) In subsections (1A) and (1B), ***Privacy Commissioner*** means the Privacy Commissioner within the meaning of the *Privacy Act 1988*.

Paragraph 49(3)(a)

After "further" insert ", and subsection (1A) does not require the Agency to transfer the application".

After subsection 84(4)

Insert the following subsection:

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(4A) Subsection (2) does not prevent the Agency, or an officer acting on behalf of the Agency, from giving information or documents under paragraph 49(1A)(e).

Ombudsman Act 1976

After subsection 6(4)

Insert the following subsections:

(4A) Where, before the Ombudsman commences, or after the Ombudsman has commenced, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint, the Ombudsman becomes of the opinion that:

(a) a complaint with respect to the action has been, or could have been, made by the complainant to the Privacy Commissioner under Part V of the *Privacy Act 1988*; and

(b) the action could be more conveniently or effectively dealt with by the Privacy Commissioner;

the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and, if the Ombudsman so decides, the Ombudsman shall:

(c) transfer the complaint to the Privacy Commissioner;

(d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and

(e) give to the Privacy Commissioner any information or documents that relate to the complaint and are in the possession, or under the control, of the Ombudsman.

(4B) A complaint transferred under subsection (4A) shall be deemed to be a complaint made to the Privacy Commissioner under Part V of the *Privacy Act 1988*.

(4C) In subsections (4A) and (4B), ***Privacy Commissioner*** means the Privacy Commissioner within the meaning of the *Privacy Act 1988*.

After subsection 35(6)

Insert the following subsection:

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(6A) Subsection (2) does not prevent the Ombudsman, or an officer acting on behalf of the Ombudsman, from giving information or documents under paragraph 6(4A)(e).

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Schedule 3—National Privacy Principles

Note: See section 6.

1 Collection

1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.

1.2 An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.

1.3 At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of:

(a) the identity of the organisation and how to contact it; and

(b) the fact that he or she is able to gain access to the information; and

(c) the purposes for which the information is collected; and

(d) the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and

(e) any law that requires the particular information to be collected; and

(f) the main consequences (if any) for the individual if all or part of the information is not provided.

1.4 If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.

1.5 If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

2 Use and disclosure

2.1 An organisation must not use or disclose personal information about an individual for a purpose (the ***secondary purpose***) other than the primary purpose of collection unless:

(a) both of the following apply:

(i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;

(ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or

(b) the individual has consented to the use or disclosure; or

(c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:

(i) it is impracticable for the organisation to seek the individual's consent before that particular use; and

(ii) the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications; and

(iii) the individual has not made a request to the organisation not to receive direct marketing communications; and

(iv) in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a notice, that he or she may express a wish not to receive any further direct marketing communications; and

(v) each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organisation's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically; or

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(d) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:

(i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and

(ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph; and

(iii) in the case of disclosure—the organisation reasonably believes that the recipient of the health information will not disclose the health information, or personal information derived from the health information; or

(e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:

(i) a serious and imminent threat to an individual's life, health or safety; or

(ii) a serious threat to public health or public safety; or

(ea) if the information is genetic information and the organisation has obtained the genetic information in the course of providing a health service to the individual:

(i) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of an individual who is a genetic relative of the individual to whom the genetic information relates; and

(ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95AA for the purposes of this subparagraph; and

(iii) in the case of disclosure—the recipient of the genetic information is a genetic relative of the individual; or

(f) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or

(g) the use or disclosure is required or authorised by or under law; or

(h) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:

(i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;

(ii) the enforcement of laws relating to the confiscation of the proceeds of crime;

(iii) the protection of the public revenue;

(iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;

(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter organisations from lawfully co-operating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 2.1 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 2.1 requires an organisation to disclose personal information; an organisation is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.

Note 3: An organisation is also subject to the requirements of National Privacy Principle 9 if it transfers personal information to a person in a foreign country.

2.2 If an organisation uses or discloses personal information under paragraph 2.1(h), it must make a written note of the use or disclosure.

2.3 Subclause 2.1 operates in relation to personal information that an organisation that is a body corporate has collected from a related body corporate as if the organisation's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.

2.4 Despite subclause 2.1, an organisation that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:

(a) the individual:

(i) is physically or legally incapable of giving consent to the disclosure; or

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(ii) physically cannot communicate consent to the disclosure; and

(b) a natural person (the ***carer***) providing the health service for the organisation is satisfied that either:

(i) the disclosure is necessary to provide appropriate care or treatment of the individual; or

(ii) the disclosure is made for compassionate reasons; and

(c) the disclosure is not contrary to any wish:

(i) expressed by the individual before the individual became unable to give or communicate consent; and

(ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and

(d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).

2.5 For the purposes of subclause 2.4, a person is ***responsible*** for an individual if the person is:

(a) a parent of the individual; or

(b) a child or sibling of the individual and at least 18 years old; or

(c) a spouse or de facto partner of the individual; or

(d) a relative of the individual, at least 18 years old and a member of the individual's household; or

(e) a guardian of the individual; or

(f) exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or

(g) a person who has an intimate personal relationship with the individual; or

(h) a person nominated by the individual to be contacted in case of emergency.

2.6 In subclause 2.5:

child: without limiting who is a child of an individual for the purposes of this clause, each of the following is the ***child*** of an individual:

(a) an adopted child, stepchild, exnuptial child or foster child of the individual; and

(b) someone who is a child of the individual within the meaning of the *Family Law Act 1975*.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

parent: without limiting who is a parent of an individual for the purposes of this clause, someone is the ***parent*** of an individual if the individual is his or her child because of the definition of ***child*** in this subclause.

relative of an individual means a grandparent, grandchild, uncle, aunt, nephew or niece, of the individual.

sibling of an individual includes a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster-brother and foster-sister, of the individual.

stepchild: without limiting who is a stepchild of an individual for the purposes of this clause, someone is the ***stepchild*** of an individual if he or she would be the individual's stepchild except that the individual is not legally married to the individual's de facto partner.

2.7 For the purposes of the definition of ***relative*** in subclause 2.6, relationships to an individual may also be traced to or through another individual who is:

(a) a de facto partner of the first individual; or

(b) the child of the first individual because of the definition of ***child*** in that subclause.

2.8 For the purposes of the definition of ***sibling*** in subclause 2.6, an individual is also a sibling of another individual if a relationship referred to in that definition can be traced through a parent of either or both of them.

3 Data quality

An organisation must take reasonable steps to make sure that the personal information it collects, uses or discloses is accurate, complete and up-to-date.

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4 Data security

4.1 An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.

4.2 An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

5 Openness

5.1 An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.

5.2 On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

6 Access and correction

6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that:

(a) in the case of personal information other than health information—providing access would pose a serious and imminent threat to the life or health of any individual; or

(b) in the case of health information—providing access would pose a serious threat to the life or health of any individual; or

(c) providing access would have an unreasonable impact upon the privacy of other individuals; or

(d) the request for access is frivolous or vexatious; or

(e) the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; or

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(f) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or

(g) providing access would be unlawful; or

(h) denying access is required or authorised by or under law; or

(i) providing access would be likely to prejudice an investigation of possible unlawful activity; or

(j) providing access would be likely to prejudice:

(i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or

(ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or

(iii) the protection of the public revenue; or

(iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or

(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders;

by or on behalf of an enforcement body; or

(k) an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.

Note: An organisation breaches subclause 6.1 if it relies on subclause 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.2 does not apply.

6.3 If the organisation is not required to provide the individual with access to the information because of one or more of paragraphs 6.1(a) to (k) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.

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6.4 If an organisation charges for providing access to personal information, those charges:

(a) must not be excessive; and

(b) must not apply to lodging a request for access.

6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up-to-date.

6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up-to-date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up-to-date, the organisation must take reasonable steps to do so.

6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.

7 Identifiers

7.1 An organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by:

(a) an agency; or

(b) an agent of an agency acting in its capacity as agent; or

(c) a contracted service provider for a Commonwealth contract acting in its capacity as contracted service provider for that contract.

7.1A However, subclause 7.1 does not apply to the adoption by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before those matters are prescribed: see subsection 100(2).

7.2 An organisation must not use or disclose an identifier assigned to an individual by an agency, or by an agent or contracted service provider mentioned in subclause 7.1, unless:

(a) the use or disclosure is necessary for the organisation to fulfil its obligations to the agency; or

(b) one or more of paragraphs 2.1(e) to 2.1(h) (inclusive) apply to the use or disclosure; or

(c) the use or disclosure is by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsections 100(2) and (3).

7.3 In this clause:

identifier includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organisation's operations. However, an individual's name or ABN (as defined in the *A New Tax System (Australian Business Number) Act 1999*) is not an ***identifier***.

8 Anonymity

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

9 Transborder data flows

An organisation in Australia or an external Territory may transfer personal information about an individual to someone (other than the organisation or the individual) who is in a foreign country only if:

(a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or

(b) the individual consents to the transfer; or

(c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request; or

(d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or

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(e) all of the following apply:

(i) the transfer is for the benefit of the individual;

(ii) it is impracticable to obtain the consent of the individual to that transfer;

(iii) if it were practicable to obtain such consent, the individual would be likely to give it; or

(f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

10 Sensitive information

10.1 An organisation must not collect sensitive information about an individual unless:

(a) the individual has consented; or

(b) the collection is required by law; or

(c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:

(i) is physically or legally incapable of giving consent to the collection; or

(ii) physically cannot communicate consent to the collection; or

(d) if the information is collected in the course of the activities of a non-profit organisation—the following conditions are satisfied:

(i) the information relates solely to the members of the organisation or to individuals who have regular contact with it in connection with its activities;

(ii) at or before the time of collecting the information, the organisation undertakes to the individual whom the information concerns that the organisation will not disclose the information without the individual's consent; or

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

10.2 Despite subclause 10.1, an organisation may collect health information about an individual if:

(a) the information is necessary to provide a health service to the individual; and

(b) the information is collected:

(i) as required or authorised by or under law (other than this Act); or

(ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

10.3 Despite subclause 10.1, an organisation may collect health information about an individual if:

(a) the collection is necessary for any of the following purposes:

(i) research relevant to public health or public safety;

(ii) the compilation or analysis of statistics relevant to public health or public safety;

(iii) the management, funding or monitoring of a health service; and

(b) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and

(c) it is impracticable for the organisation to seek the individual's consent to the collection; and

(d) the information is collected:

(i) as required by law (other than this Act); or

(ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation; or

(iii) in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph.

10.4 If an organisation collects health information about an individual in accordance with subclause 10.3, the organisation must take reasonable steps to permanently de-identify the information before the organisation discloses it.

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10.5 In this clause:

non-profit organisation means a non-profit organisation that has only racial, ethnic, political, religious, philosophical, professional, trade, or trade union aims.

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Notes to the *Privacy Act 1988*

Note 1

The *Privacy Act 1988* as shown in this compilation comprises Act No. 119, 1988 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, *see* Act No. 55, 2001.

For application, saving or transitional provisions made by the *Freedom of Information Amendment (Reform) Act 2010*, *see* Act No. 51, 2010.

All relevant information pertaining to application, saving or transitional provisions prior to 18 June 1997 is not included in this compilation. For subsequent information *see* Table A.

The *Privacy Act 1988* was modified by the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* (No. 92, 1994) as amended by the *Employment Services (Consequential Amendments) Act 1994* (No. 177, 1994). The modifications are not incorporated in this compilation.

The *Privacy Act 1988* was modified by the *Banking (State Bank of South Australia and Other Matters) Act 1994* (No. 69, 1994) *see* Table B.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Privacy Act 1988	119, 1988	14 Dec 1988	1 Jan 1989 (*see Gazette* 1988, No. S399)	
Law and Justice Legislation Amendment Act 1989	11, 1990	17 Jan 1990	Part 1 (ss. 1, 2) and Part 3 (ss. 6, 7): Royal Assent Ss. 8–10: 17 July 1990 Ss. 12, 13 and 51(1)(b), (2): 17 Jan 1990 (*see* s. 2(5)) Remainder: 14 Feb 1990	—
Defence Legislation Amendment Act 1990	75, 1990	22 Oct 1990	S. 5: Royal Assent *(a)*	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Privacy Amendment Act 1990	116, 1990	24 Dec 1990	24 Sept 1991	S. 25 (ad. by 136, 1991, s. 21)
as amended by				
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Part 4 (s. 21): 24 Sept 1991 *(b)*	—
Law and Justice Legislation Amendment Act (No. 3) 1992	165, 1992	11 Dec 1992	S. 4: *(c)*	—
Data-matching Program (Assistance and Tax) Act 1990	20, 1991	23 Jan 1991	23 Jan 1991	—
Crimes Legislation Amendment Act 1991	28, 1991	4 Mar 1991	S. 74(1): Royal Assent *(d)*	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (*see Gazette* 1991, No. S332) Remainder: Royal Assent	S. 31(2)
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Part 3 (ss. 10–20): *(e)*	—
Social Security Legislation Amendment Act (No. 4) 1991	194, 1991	13 Dec 1991	Schedule 5 (Part 2): *(f)*	—
Law and Justice Legislation Amendment Act (No. 4) 1992	143, 1992	7 Dec 1992	7 Dec 1992	—
National Health Amendment Act 1993	28, 1993	9 June 1993	9 June 1993	—
Law and Justice Legislation Amendment Act 1993	13, 1994	18 Jan 1994	S. 22: 13 Jan 1993 Part 6 (ss. 27–41): 11 Apr 1994 (*see Gazette* 1994, No. S126) Remainder: Royal Assent	S. 16
Law and Justice Legislation Amendment Act 1994	84, 1994	23 June 1994	S. 71: Royal Assent *(g)*	—
Australian Capital Territory Government Service (Consequential Provisions) Act 1994	92, 1994	29 June 1994	1 July 1994 (*see Gazette* 1994, No. S256)	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Employment Services (Consequential Amendments) Act 1994	177, 1994	19 Dec 1994	Ss. 1, 2(1), (3) and Part 2 (ss. 3–8): 19 Dec 1994 (*see* s. 2(1)) S. 2(2) and Div. 4 of Part 6 (ss. 32–39): Royal Assent Remainder: 1 Jan 1995 (*see* s. 2(3) and *Gazette* 1994, No. S472)	S. 19
Human Rights Legislation Amendment Act 1995	59, 1995	28 June 1995	Schedule (item 25): 30 Oct 1992 Remainder: Royal Assent	Ss. 4 and 5
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (item 122): Royal Assent *(h)*	—
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Schedule 13: Royal Assent *(i)*	—
Hearing Services and AGHS Reform Act 1997	82, 1997	18 June 1997	Schedule 4 (items 1, 2, 4–12): Royal Assent *(j)* Schedule 4 (item 3): *(j)*	Sch. 4 (item 12) [*see* Table A]
as amended by				
Statute Law Revision Act 2005	100, 2005	6 July 2005	Schedule 2 (item 20): *(ja)*	—
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Schedule 2 (item 19): (*see* 9, 2006 below)	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Schedule 1 (item 133): 1 July 1998 (*see Gazette* 1998, No. S316) *(k)*	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Schedule 7 (items 126–128): *(l)*	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 738–747): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(m)*	—
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Schedule 3 (items 1, 49): *(n)*	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Privacy Amendment (Office of the Privacy Commissioner) Act 2000	2, 2000	29 Feb 2000	1 July 2000 (*see Gazette* 2000, No. S229)	Sch. 1 (item 15) (am. by 70, 2009, Sch. 3 [items 58, 59]) [*see* Table A]
as amended by				
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Schedule 3 (items 58, 59): 5 Aug 2009	—
Australian Federal Police Legislation Amendment Act 2000	9, 2000	7 Mar 2000	2 July 2000 (*see Gazette* 2000, No. S328)	Sch. 3 (items 20, 29, 34, 35) [*see* Table A]
Privacy Amendment (Private Sector) Act 2000	155, 2000	21 Dec 2000	Schedule 3: Royal Assent Remainder: 21 Dec 2001	Sch. 1 (items 37, 53, 57, 76, 100, 124, 130) and Sch. 3 (item 4) [*see* Table A]
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 40 (items 1–9, 11–13): *(o)* Schedule 40 (item 10): *(o)*	S. 4(1) and (2) [*see* Table A]
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (item 437): 15 July 2001 (*see Gazette* 2001, No. S285) *(p)* Schedule 3 (item 438): *(p)*	S. 2(8) (am. by 116, 2003, Sch. 4 [item 1]) Ss. 4–14 [*see* Note 1]
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2003	116, 2003	27 Nov 2003	Schedule 4 (item 1): *(q)*	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
National Crime Authority Legislation Amendment Act 2001	135, 2001	1 Oct 2001	Schedules 1–7 and 9–12: 12 Oct 2001 (*see Gazette* 2001, No. S428) Schedule 8: 13 Oct 2001 (*see Gazette* 2001, No. S428) Remainder: Royal Assent	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [*see* Table A]
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (items 99–106): 1 Jan 2003	—
Defence Legislation Amendment Act 2003	135, 2003	17 Dec 2003	Schedule 2 (item 39): 17 June 2004	—
Privacy Amendment Act 2004	49, 2004	21 Apr 2004	21 Apr 2004	Sch. 1 (items 3, 5) [*see* Table A]
as amended by				
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Schedule 2 (item 21): (*see* 9, 2006 below)	—
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Schedule 1 (item 229): 16 May 2005	—
Statute Law Revision Act 2005	100, 2005	6 July 2005	Schedule 1 (item 38): Royal Assent	—
Intelligence Services Legislation Amendment Act 2005	128, 2005	4 Nov 2005	Schedules 1–8: 2 Dec 2005 Remainder: Royal Assent	—
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Schedule 1 (item 21) and Schedule 2 (items 19, 21): *(r)*	—
Postal Industry Ombudsman Act 2006	25, 2006	6 Apr 2006	Schedule 1 (items 17–19, 20(2)): 6 Oct 2006	Sch. 1 (item 20(2)) [*see* Table A]
as amended by				
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 2 (item 24): *(s)*	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
National Health and Medical Research Council Amendment Act 2006	50, 2006	9 June 2006	Schedule 1: 1 July 2006 Remainder: Royal Assent	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Schedule 1 (items 48–53): 30 Dec 2006 (*see* s. 2(1))	—
Privacy Legislation Amendment Act 2006	99, 2006	14 Sept 2006	14 Sept 2006	—
Privacy Legislation Amendment (Emergencies and Disasters) Act 2006	148, 2006	6 Dec 2006	7 Dec 2006	—
Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006	170, 2006	12 Dec 2006	Schedule 1 (item 152): 13 Dec 2006 (*see* s. 2(1))	—
Quarantine Amendment (Commission of Inquiry) Act 2007	158, 2007	24 Sept 2007	24 Sept 2007	—
Archives Amendment Act 2008	113, 2008	31 Oct 2008	1 Nov 2008	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Schedule 13: 1 July 2009	—
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Schedule 2 (item 46): 23 May 2009	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Schedule 16 (items 1–3): *(t)*	—
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Schedule 3 (items 47–57): 5 Aug 2009	—
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Act 2009	102, 2009	8 Oct 2009	Schedule 1 (items 62M, 62N): 9 Oct 2009	—
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Schedule 5 (items 25–30): 30 Jan 2012 (*see* F2011L02397)	—

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Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 10 (item 23): 20 Feb 2010	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 5 (items 77, 78): Royal Assent	—
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Schedule 3 (item 38), Schedule 5 (items 52–58) and Schedule 7: *(u)*	Sch. 7 [*see* Note 1]
Healthcare Identifiers (Consequential Amendments) Act 2010	73, 2010	28 June 2010	Schedule 2 (items 1–7): 29 June 2010 (*see* s. 2(1)) Schedule 2 (items 8–11): *(v)*	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Schedule 1 (item 76): 11 Dec 2010 Schedule 1 (items 244–297): 1 Jan 2011	Sch. 1 (item 297) [*see* Table A]
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Schedule 2 (items 62, 63): 17 Dec 2010	—
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011	3, 2011	2 Mar 2011	Schedule 7 (item 4): 3 Mar 2011	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 1 (items 93–95): Royal Assent	—
Education Services for Overseas Students Legislation Amendment Act 2011	11, 2011	8 Apr 2011	Schedule 2 (items 5–7): 9 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 915–922) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11) [*see* Table A]
Combating the Financing of People Smuggling and Other Measures Act 2011	60, 2011	28 June 2011	Schedule 3 (items 11–20): Royal Assent	—
Crimes Legislation Amendment (Powers and Offences) Act 2012	24, 2012	4 Apr 2012	Schedule 4 (item 52): 5 Apr 2012	—

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Act Notes

(a) The *Privacy Act 1988* was amended by section 5 only of the *Defence Legislation Amendment Act 1990*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(b) The *Privacy Amendment Act 1990* was amended by Part 4 (section 21) only of the *Law and Justice Legislation Amendment Act 1991*, subsection 2(3) of which provides as follows:

(3) Part 4 commences on 24 September 1991.

(c) The *Privacy Amendment Act 1990* was amended by section 4 only of the *Law and Justice Legislation Amendment Act (No. 3) 1992*, subsection 2(6) of which provides as follows:

(6) The amendment of the *Privacy Amendment Act 1990* made by this Act is taken to have commenced immediately after the commencement of section 18 of that Act.

Section 18 commenced on 24 September 1991.

(d) The *Privacy Act 1988* was amended by subsection 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(e) The *Privacy Act 1988* was amended by Part 3 (sections 10–20) only of the *Law and Justice Legislation Amendment Act 1991*, subsection 2(2) of which provides as follows:

(2) Part 3 commences immediately after the commencement of the *Privacy Amendment Act 1990*.

The *Privacy Amendment Act 1990* came into operation on 24 September 1991.

(f) The *Privacy Act 1988* was amended by Schedule 5 (Part 2) only of the *Social Security Legislation Amendment Act (No. 4) 1991*, subsection 2(13) of which provides as follows:

(13) Part 2 of Schedule 5 is taken to have commenced immediately after the commencement of the *Data-matching Program (Assistance and Tax) Act 1990*.

The *Data-matching Program (Assistance and Tax) Act 1990* came into operation on 23 January 1991.

(g) The *Privacy Act 1988* was amended by section 71 only of the *Law and Justice Legislation Amendment Act 1994*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(h) The *Privacy Act 1988* was amended by Schedule 4 (item 122) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(i) The *Privacy Act 1988* was amended by Schedule 13 only of the *Law and Justice Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(j) The *Privacy Act 1988* was amended by Schedule 4 (items 1–12) only of the *Hearing Services and AGHS Reform Act 1997*, subsections 2(1) and (3) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(3) If Schedule 2 to the *Reform of Employment Services (Consequential Provisions) Act 1997* does not commence before the day on which this Act receives the Royal Assent, the amendment of the definition of ***eligible employment services provider*** in subsection 6(1) of the *Privacy Act 1988* made by this Act commences immediately after the commencement of Schedule 2 to the *Reform of Employment Services (Consequential Provisions) Act 1997*.

The *Reform of Employment Services (Consequential Provisions) Bill* was never enacted. Therefore this amendment does not commence.

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Act Notes

(ja) Subsection 2(1) (item 38) of the *Statute Law Revision Act 2005* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
38. Schedule 2, item 20	Immediately after the time specified in the *Hearing Services and AGHS Reform Act 1997* for the commencement of item 6 of Schedule 4 to that Act.	18 June 1997

(k) The *Privacy Act 1988* was amended by Schedule 1 (item 133) only of the *Financial Sector Reform (Consequential Amendments) Act 1998,* subsection 2(2) of which provides as follows:

(2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.

(l) The *Privacy Act 1988* was amended by Schedule 7 (items 126–128) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provide as follows:

(2) The following provisions commence on the transfer date:

(e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).

(16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.

The transfer date was 1 July 1999 (*see Gazette* 1999, No. S283).

(m) The *Privacy Act 1988* was amended by Schedule 1 (items 738–747) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

(n) The *Privacy Act 1988* was amended by Schedule 3 (items 1 and 49) only of the *Australian Security Intelligence Organisation Legislation Amendment Act 1999*, subsection 2(2) of which provides as follows:

(2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.

The other Schedules commenced on Royal Assent.

(o) The *Privacy Act 1988* was amended by Schedule 40 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsections 2(1)(a) and (7) of which provide as follows:

(1) Subject to this section, this Act commences at the later of the following times:

(a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;

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Act Notes

(7) If item 106 of Schedule 1 to the *Privacy Amendment (Private Sector) Act 2000* has not commenced before the commencement of section 1 of this Act, item 10 of Schedule 40 to this Act commences immediately after the commencement of the first-mentioned item.

Schedule 1 (item 15) commenced on 24 May 2001.

Schedule 1 (item 106) commenced on 21 December 2001.

(p) The *Privacy Act 1988* was amended by Schedule 3 (items 437 and 438) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsections 2(3) and (8) of which provide as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

(8) Item 438 of Schedule 3 commences at the same time as item 35 of Schedule 1 to the *Privacy Amendment (Private Sector) Act 2000* commences.

(q) Subsection 2(1) (item 5) of the *Financial Sector Legislation Amendment Act (No. 1) 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
5. Schedule 4, item 1	Immediately after the time specified in the *Corporations (Repeals, Consequentials and Transitionals) Act 2001* for the commencement of subsection 2(8) of that Act	15 July 2001

(r) Subsection 2(1) (items 13, 34 and 36) of the *Statute Law Revision Act 2006* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
13. Schedule 1, item 21	Immediately after the commencement of Schedule 1 to the *Privacy Amendment (Private Sector) Act 2000*.	21 December 2001
34. Schedule 2, item 19	Immediately after the time specified in the *Hearing Services and AGHS Reform Act 1997* for the commencement of item 6 of Schedule 4 to that Act.	18 June 1997
36. Schedule 2, item 21	Immediately after the time specified in the *Privacy Amendment Act 2004* for the commencement of item 11 of Schedule 1 to that Act.	21 April 2004

(s) Subsection 2(1) (item 59) of the *Statute Law Revision Act 2008* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Act Notes

Provision(s)	Commencement	Date/Details
59. Schedule 2, item 24	Immediately after the time specified in the *Postal Industry Ombudsman Act 2006* for the commencement of item 18 of Schedule 1 to that Act.	6 October 2006

(t) Subsection 2(1) (item 39) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
39. Schedule 16	Immediately after the commencement of Part 2-4 of the *Fair Work Act 2009*.	1 July 2009

(u) Subsection 2(1) (items 6 and 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
6. Schedule 3, items 16 to 40	Immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*. However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all.	1 November 2010
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*. However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all.	1 November 2010

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Act Notes

(v) Subsection 2(1) (item 4) of the *Healthcare Identifiers (Consequential Amendments) Act 2010* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
4. Schedule 2, Part 2	The later of: (a) immediately after the commencement of item 26 of Schedule 5 to the *Personal Property Securities (Consequential Amendments) Act 2009*; and (b) immediately after the commencement of the *Healthcare Identifiers Act 2010*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	30 January 2012 (paragraph (a) applies)

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Preamble	am. No. 70, 2009
Part I	
S. 3	am. No. 116, 1990; No. 155, 2000
Note to s. 3	ad. No. 155, 2000
S. 3A	ad. No. 24, 2001
S. 4	am. No. 92, 1994
S. 5A	ad. No. 116, 1990
S. 5B	ad. No. 155, 2000 am. No. 49, 2004
Part II	
S. 6	am. Nos. 11 and 116, 1990; Nos. 28 and 136, 1991; No. 143, 1992; Nos. 13, 92 and 177, 1994; Nos. 34 and 82, 1997; No. 48, 1998; Nos. 44, 146 and 161, 1999; No. 155, 2000; No. 55, 2001; No. 125, 2002; No. 135, 2003; No. 100, 2005; Nos. 86 and 99, 2006; No. 158, 2007; Nos. 113 and 144, 2008; Nos. 33, 54 and 102, 2009; Nos. 51, 73 and 139, 2010; Nos. 3 and 60, 2011
Subhead. to s. 6A(3)	am. No. 113, 2008
S. 6A	ad. No. 155, 2000 am. No. 113, 2008
Subhead. to s. 6B(3)	am. No. 113, 2008
S. 6B	ad. No. 155, 2000 am. No. 113, 2008
S. 6C	ad. No. 155, 2000 am. No. 139, 2010; No. 46, 2011
S. 6D	ad. No. 155, 2000
S. 6DA	ad. No. 155, 2000
Subhead. to s. 6E(3)	rs. No. 54, 2009; No. 46, 2011
S. 6E	ad. No. 155, 2000 am. No. 170, 2006; No. 54, 2009; Nos. 46 and 60, 2011
Note 2 to s. 6E(1)	am. No. 46, 2011
Note 2 to s. 6E(2)	am. No. 46, 2011
S. 6EA	ad. No. 155, 2000
S. 6F	ad. No. 155, 2000 am. No. 46, 2011
Note 2 to s. 6F(1)	am. No. 46, 2011
Heading to s. 7	am. No. 155, 2000
S. 7	am. Nos. 75 and 116, 1990; Nos. 13, 84, 92 and 177, 1994; No. 82, 1997 (as am. by No. 100, 2005 and No. 9, 2006); No. 155, 2000; No. 125, 2002; No. 128, 2005; No. 86, 2006; No. 158, 2007; No. 102, 2009; No. 139, 2010
S. 7A	ad. No. 155, 2000 am. No. 46, 2011

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 7B, 7C	ad. No. 155, 2000
Heading to s. 8	am. No. 155, 2000
S. 8	am. No. 116, 1990; No. 28, 1991; No. 155, 2000; No. 139, 2010
S. 9	am. No. 28, 1991; No. 139, 2010
S. 10	am. No. 28, 1991; No. 113, 2008; No. 139, 2010
S. 11	am. No. 28, 1991; No. 139, 2010
S. 11A	ad. No. 116, 1990
S. 11B	ad. No. 116, 1990 am. No. 136, 1991; No. 143, 1992; No. 34, 1997; No. 44, 1999
S. 12A	ad. No. 116, 1990
S. 12B	ad. No. 155, 2000
Note to s. 12B(2)	am. No. 8, 2010
Part III	
Division 1	
Heading to Div. 1 of Part III	ad. No. 155, 2000
S. 13	am. No. 116, 1990; Nos. 20 and 194, 1991; No. 28, 1993; No. 155, 2000; No. 131, 2009
Note to s. 13	ad. No. 73, 2010
Renumbered Note 1	No. 60, 2011
Note 2 to s. 13	ad. No. 60, 2011
Note to s. 13	ad. No. 131, 2009
S. 13A	ad. No. 155, 2000
Note to s. 13A(1) Renumbered Note 1	No. 60, 2011
Note 2 to s. 13A(1)	ad. No. 60, 2011
Ss. 13B–13F	ad. No. 155, 2000
Division 2	
Heading to Div. 2 of Part III	ad. No. 155, 2000
S. 15	am. No. 139, 2010
S. 15B	ad. No. 139, 2010
Division 3	
Div. 3 of Part III	ad. No. 155, 2000
Ss. 16A–16F	ad. No. 155, 2000
Division 4	
Heading to Div. 4 of Part III	ad. No. 155, 2000
S. 17	am. No. 116, 1990; No. 145, 2010; No. 5, 2011

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 5	
Heading to Div. 5 of Part III	ad. No. 155, 2000
S. 18A	ad. No. 116, 1990 am. No. 155, 2000
S. 18B	ad. No. 116, 1990
Part IIIAA	
Part IIIAA	ad. No. 155, 2000
S. 18BA	ad. No. 155, 2000
S. 18BAA	ad. No. 49, 2004
Ss. 18BB–18BI	ad. No. 155, 2000
Part IIIA	
Part IIIA	ad. No. 116, 1990
Ss. 18C, 18D	ad. No. 116, 1990 am. No. 24, 2001
Ss. 18E, 18F	ad. No. 116, 1990 am. No. 143, 1992; No. 34, 1997
S. 18G	ad. No. 116, 1990
S. 18H	ad. No. 116, 1990 am. No. 136, 1991
S. 18J	ad. No. 116, 1990
S. 18K	ad. No. 116, 1990 am. No. 136, 1991; No. 143, 1992; No. 24, 2001
Note to s. 18K(5)	ad. No. 135, 2001 am. No. 125, 2002; No. 86, 2006; No. 24, 2012
S. 18L	ad. No. 116, 1990 am. No. 136, 1991; No. 143, 1992; No. 24, 2001
S. 18M	ad. No. 116, 1990 rs. No. 136, 1991 am. No. 143, 1992
S. 18N	ad. No. 116, 1990 am. No. 136, 1991; No. 143, 1992; No. 13, 1994; No. 24, 2001
S. 18NA	ad. No. 34, 1997
S. 18P	ad. No. 116, 1990 am. No. 136, 1991; No. 143, 1992
S. 18Q	ad. No. 116, 1990 am. No. 136, 1991; No. 143, 1992; No. 24, 2001
Ss. 18R, 18S	ad. No. 116, 1990 am. No. 24, 2001
Ss. 18T, 18U	ad. No. 116, 1990
S. 18V	ad. No. 116, 1990 am. No. 136, 1991

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part IV	
Heading to Part IV	rs. No. 2, 2000; No. 51, 2010
Heading to Div. 1 of Part IV	rs. No. 2, 2000 rep. No. 51, 2010
Div. 1 of Part IV	rep. No. 51, 2010
S. 19	ad. No. 2, 2000 rep. No. 51, 2010
S. 19	am. No. 59, 1995
Renumbered s. 19A	No. 2, 2000
S. 19A	rep. No. 51, 2010
S. 20	am. No. 159, 2001 rep. No. 51, 2010
S. 21	am. No. 59, 1995 rep. No. 51, 2010
S. 22	rs. No. 122, 1991 am. No. 146, 1999 rep. No. 51, 2010
Ss. 23, 24	rep. No. 51, 2010
S. 25	am. No. 122, 1991 rep. No. 51, 2010
S. 26	rep. No. 51, 2010
S. 26A	ad. No. 2, 2000 am. No. 146, 1999 rep. No. 51, 2010
Part IV	
Division 2	
S. 27	am. No. 20, 1991; No. 28, 1993; No. 155, 2000; No. 49, 2004; No. 139, 2010
S. 27A	ad. No. 73, 2010 am. No. 73, 2010
S. 28	am. No. 116, 1990; No. 131, 2009; No. 73, 2010
S. 28A	ad. No. 116, 1990 am. No. 131, 2009; No. 73, 2010
S. 28B	ad. No. 131, 2009 am. No. 73, 2010
S. 29	am. No. 116, 1990; No. 155, 2000
Division 3	
S. 30	am. No. 116, 1990; No. 155, 2000; No. 139, 2010
S. 31	am. No. 20, 1991; No. 155, 2000; No. 51, 2010
S. 32	am. No. 116, 1990 (as am. by No. 165, 1992); No. 20, 1991; No. 49, 2004 (as am. by No. 9, 2006); No. 51, 2010
S. 33	am. No. 92, 1994; No. 139, 2010
S. 33B	ad. No. 139, 2010
Division 4	
S. 34	am. Nos. 51 and 139, 2010

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part V	
Division 1	
S. 36	am. No. 11, 1990; No. 13, 1994; Nos. 2 and 155, 2000; No. 51, 2010
S. 37	am. Nos. 92 and 177, 1994; No. 82, 1997; No. 155, 2000; No. 139, 2010
S. 38	rs. No. 13, 1994 am. No. 155, 2000
Ss. 38A–38C	ad. No. 13, 1994
S. 39	rs. No. 13, 1994
S. 40	am. No. 155, 2000
S. 40A	ad. No. 155, 2000
S. 41	am. No. 155, 2000; No. 49, 2004
S. 42	am. No. 155, 2000
S. 43	am. No. 155, 2000; No. 139, 2010
S. 44	am. No. 34, 1997
S. 46	am. No. 155, 2000; No. 24, 2001
S. 48	am. No. 155, 2000
S. 49	am. No. 116, 1990; No. 24, 2001; No. 73, 2010; No. 60, 2011
S. 49A	ad. No. 131, 2009
S. 50	am. No. 146, 1999; No. 25, 2006 (as am. by No. 73, 2008); No. 70, 2009; No. 139, 2010; No. 11, 2011
S. 50A	ad. No. 155, 2000
Division 2	
S. 52	am. No. 116, 1990; No. 13, 1994; No. 155, 2000
S. 53	rs. No. 13, 1994
Ss. 53A, 53B	ad. No. 155, 2000
Division 3	
Heading to Div. 3 of Part V	rs. No. 155, 2000
Div. 3 of Part V	rs. No. 13, 1994; No. 59, 1995
S. 54	rs. No. 13, 1994 am. No. 177, 1994 rs. No. 59, 1995 am. No. 82, 1997; No. 155, 2000
Note to s. 54(1A)	am. No. 9, 2006
S. 55	rs. No. 13, 1994; No. 59, 1995; No. 155, 2000
Ss. 55A, 55B	ad. No. 155, 2000
S. 56	rs. No. 13, 1994 rep. No. 59, 1995

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 4	
Heading to Div. 4 of Part V	am. No. 116, 1990 rs. No. 13, 1994
Div. 4 of Part V	rs. No. 13, 1994
S. 57	rs. No. 13, 1994 am. No. 177, 1994; No. 82, 1997
Ss. 58, 59	rs. No. 13, 1994
S. 60	am. No. 116, 1990 rs. No. 13, 1994 am. No. 139, 2010
S. 61	rs. No. 13, 1994 am. No. 38, 2005
S. 62	rs. No. 13, 1994 am. No. 155, 2000
Division 5	
S. 63	rs. No. 13, 1994 am. No. 59, 1995; No. 155, 2000
Heading to s. 64	am. No. 155, 2000
S. 64	am. No. 155, 2000
S. 65	am. No. 24, 2001
S. 66	am. No. 155, 2000; No. 24, 2001; No. 139, 2010
S. 67	am. No. 155, 2000
S. 68	am. No. 116, 1990; No. 155, 2000; No. 139, 2010
S. 68A	ad. No. 155, 2000
S. 69	am. No. 155, 2000
S. 70	am. No. 125, 2002; No. 86, 2006; No. 139, 2010
Ss. 70A, 70B	ad. No. 155, 2000
Part VI	
Heading to Part VI	rs. No. 155, 2000
Division 1	
Heading to Div. 1 of Part VI	ad. No. 155, 2000
Subhead. to s. 72(1)	ad. No. 155, 2000
S. 72	am. No. 155, 2000
Heading to s. 73	am. No. 155, 2000
S. 73	am. No. 155, 2000; No. 50, 2006
Ss. 75–77	am. No. 155, 2000
S. 79	am. No. 155, 2000
S. 80	am. No. 5, 2011
Division 2	
Heading to Div. 2 of Part VI	ad. No. 155, 2000
Ss. 80A–80D	ad. No. 155, 2000

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 3	
Heading to Div. 3 of Part VI	ad. No. 155, 2000
S. 80E	ad. No. 155, 2000
Part VIA	
Part VIA	ad. No. 148, 2006
Division 1	
S. 80F	ad. No. 148, 2006
S. 80G	ad. No. 148, 2006 am. No. 139, 2010; No. 46, 2011
S. 80H	ad. No. 148, 2006
Division 2	
Ss. 80J, 80K	ad. No. 148, 2006
S. 80L	ad. No. 148, 2006 am. No. 8, 2010
Ss. 80M, 80N	ad. No. 148, 2006
Division 3	
S. 80P	ad. No. 148, 2006
Division 4	
S. 80Q	ad. No. 148, 2006
S. 80R	ad. No. 148, 2006 am. No. 139, 2010
Ss. 80S, 80T	ad. No. 148, 2006
Part VII	
S. 82	am. No. 159, 2001
S. 83	am. No. 2, 2000
Part VIII	
S. 89	am. No. 139, 2010
Part IX	
S. 95	am. No. 50, 2006
S. 95A	ad. No. 155, 2000 am. No. 50, 2006
S. 95AA	ad. No. 99, 2006
Ss. 95B, 95C	ad. No. 155, 2000
S. 96	am. No. 2, 2000 rep. No. 51, 2010
Note to s. 96(1)	ad. No. 2, 2000 rep. No. 51, 2010
S. 97	am. No. 155, 2000 rep. No. 51, 2010
S. 98	am. No. 155, 2000
S. 99	am. No. 11, 1990; No. 2, 2000 rep. No. 51, 2010

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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 99A	am. No. 155, 2000
S. 99A	ad. No. 116, 1990 am. No. 155, 2000; No. 24, 2001; No. 4, 2010
S. 100	am. No. 155, 2000; No. 49, 2004
Schedule 2	rep. No. 145, 2010
Introduction	am. No. 51, 2010 rep. No. 145, 2010
Cc. 1–5	rep. No. 145, 2010
C. 6	am. No. 51, 2010 rep. No. 145, 2010
C. 7	rep. No. 145, 2010
Schedule 3	
Schedule 3	ad. No. 155, 2000
C. 1	ad. No. 155, 2000
C. 2	ad. No. 155, 2000 am. No. 99, 2006; No. 144, 2008
Cc. 3–7	ad. No. 155, 2000
Note to c. 7.2	am. No. 49, 2004
Cc. 8, 9	ad. No. 155, 2000
C. 10	ad. No. 155, 2000 am. No. 99, 2006

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Note 2

Section 13—Schedule 2 (items 8 and 9) of the *Healthcare Identifiers (Consequential Amendments) Act 2010* (No. 73, 2010) provide as follows:

Schedule 2

8 Section 13 (note) (the note added by item 4 of this Schedule)

After "Note", insert "1".

9 Section 13 (note) (the note added by item 26 of Schedule 5 to the *Personal Property Securities (Consequential Amendments) Act 2009*)

After "Note", insert "2".

The proposed amendments were misdescribed and are not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Hearing Services and AGHS Reform Act 1997 (No. 82, 1997)

Schedule 4

12 Transitional regulations

(1) The Governor-General may make regulations in relation to transitional matters arising from the amendments made by this Schedule.

(2) The Governor-General may make regulations modifying the application of the *Privacy Act 1988* in relation to transitional matters in connection with the transfer of any of the operations or records of the Australian Government Health Service to the nominated AGHS company.

(3) Subitems (1) and (2) do not limit each other.

(4) In this item:

modifications includes additions, omissions and substitutions.

Privacy Amendment (Office of the Privacy Commissioner) Act 2000 (No. 2, 2000)

Schedule 1

15 Section 96 still applies to pre-commencement staff

Despite the amendment of section 96 of the *Privacy Act 1988* by item 7 of this Schedule, that section continues to apply, in relation to persons who, at any time before this item commenced, were staff referred to in section 43 of the *Human Rights and Equal Opportunity Commission Act 1986*, as if the amendment had not been made.

Note 1: Section 96 of the *Privacy Act 1988* is about non-disclosure of private information.

Note 2: The *Human Rights and Equal Opportunity Act 1986* has been renamed the *Australian Human Rights Commission Act 1986*. See Part 1 of Schedule 3 to the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009*.

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Australian Federal Police Legislation Amendment Act 2000 (No. 9, 2000)

Schedule 3

20 Definition

In this Part:

commencing time means the time when this Part commences.

29 Amendment of the *Privacy Act 1988*

Continuation of Act in relation to things done before the commencing time

(1) The *Privacy Act 1988* as in force at and after the commencing time applies to things of the kind mentioned in section 8, 9, 10 or 11 of that Act in relation to members, staff members or special members of the Australian Federal Police that occurred before the commencing time in the same way as it does to such things that occur at or after the commencing time in relation to AFP employees or special members (both within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Obligations of confidence

(2) The amendment of the *Privacy Act 1988* made by item 42 of Schedule 2 to this Act applies to obligations of confidence that arise under Part VIII of that Act at or after the commencing time in relation to:

(a) the Commissioner of the Australian Federal Police; or

(b) a Deputy Commissioner of the Australian Federal Police; or

(c) an AFP employee; or

(d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

34 Warrants or writs etc. may continue to be executed

If, immediately before the commencing time, any warrant, writ, order, permission or other instrument (the ***authority***) issued under a law of the Commonwealth, a State or a Territory could be executed by a person who was at that time a member, staff member or special member of the Australian Federal Police, the authority continues to be able to be

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executed at and after the commencing time by the person in his or her capacity as:

(a) the Commissioner of the Australian Federal Police; or

(b) a Deputy Commissioner of the Australian Federal Police; or

(c) an AFP employee; or

(d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Note: A person who is a member or staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee. Similarly, a person who is a special member of the Australian Federal Police immediately before the commencing time is taken to be appointed as a special member. See item 2 of this Schedule.

35 Regulations dealing with matters of a transitional or saving nature

(1) The Governor-General may make regulations, not inconsistent with any other provision of this Schedule, prescribing matters of a transitional or saving nature in relation to the amendments made by Schedule 1 or 2.

(2) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

Privacy Amendment (Private Sector) Act 2000 (No. 155, 2000)

Schedule 1

37 Application

Under subsection 6A(2) or 6B(2) of the *Privacy Act 1988* (as amended by this Schedule), a Commonwealth contract may prevent an act or practice from being a breach of a National Privacy Principle or an approved privacy code (as appropriate) regardless of whether the contract was made before or after the commencement of that subsection.

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53 Application

An act or practice of an organisation may be an interference with the privacy of an individual under paragraph 13A(1)(c) of the *Privacy Act 1988* whether the contract mentioned in that paragraph was made before or after the commencement of section 13A of that Act.

57 Application

The amendment of section 18A of the *Privacy Act 1988* by this Schedule applies to the preparation of the Code of Conduct for issue after the commencement of the amendment.

76 Application

Subsection 36(8) of the *Privacy Act 1988* as amended by this Schedule applies in relation to complaints made after the commencement of this Schedule.

100 Application

Enforcement of determinations

(1) Division 3 of Part V of the *Privacy Act 1988* as amended by this Schedule applies to a determination made as a result of a complaint made after the commencement of this Schedule.

Evidentiary certificates

(2) Section 55B of the *Privacy Act 1988* applies in relation to a determination made by the Commissioner in relation to an agency before or after the commencement of that section.

124 Application and saving

(1) The amendments of section 75 of the *Privacy Act 1988* made by this Schedule apply in relation to applications that are made under section 73 of that Act after the commencement of this Schedule.

(2) Regulations (if any) in force for the purposes of subsection 75(3) of the *Privacy Act 1988* immediately before the commencement of this Schedule have effect, after that commencement, as if they had been made for the purposes of that subsection after that commencement.

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(3) Subitem (2) does not prevent the amendment or repeal of the regulations.

130 Application

Section 80A of the *Privacy Act 1988* as amended by this Schedule applies in relation to an application made by or on behalf of an agency under section 73 of that Act, whether the application was made before or after the commencement of this Schedule.

Schedule 3

4 Application

The amendment of the *Privacy Act 1988* made by this Schedule applies for the purposes of determining the operation of that Act in relation to an act or practice, regardless of whether the act or practice occurred before or after the commencement of this Schedule.

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

(1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

Privacy Amendment Act 2004 (No. 49, 2004)

Schedule 1

3 Application of amendments

The amendments made by items 1 and 2 apply to acts done, or practices engaged in, after the commencement of this Part.

5 Application of amendment

The amendment made by item 4 applies to acts done, or practices engaged in, after the commencement of this Part.

Postal Industry Ombudsman Act 2006 (No. 25, 2006)

Schedule 1

20 Application

(2) The amendments made by items 17, 18 and 19 of this Schedule apply in relation to complaints made after the commencement of this Part.

Table A

Territories Law Reform Act 2010 (No. 139, 2010)

Schedule 1

297 Application—Commonwealth contracts

To the extent that the amendment of the definition of ***Commonwealth contract*** in subsection 6(1) of the *Privacy Act 1988* made by this Part is relevant to section 95B of that Act, the amendment applies in relation to a contract entered into after the commencement of this item.

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

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Table B

Modifications

Banking (State Bank of South Australia and Other Matters) Act 1994 (No. 69, 1994)

Part 2.3—Modifications of the Privacy Act 1988 relating to the restructuring of the State Bank of South Australia

Division 1—Preliminary

12 Object of Part

The object of this Part is to facilitate the restructuring of the State Bank of South Australia by modifying the effect of the *Privacy Act 1988*.

13 Interpretation

An expression used in this Part and in the *Privacy Act 1988* has the same meaning in this Part as it has in that Act.

14 Definitions

In this Part:

account includes a deposit or loan.

appointed day has the same meaning as in the *State Bank (Corporatisation) Act 1994* of South Australia.

borrower has a meaning corresponding to ***loan***.

designated subsidiary of the State Bank of South Australia means a company that is an SBSA subsidiary within the meaning of the *State Bank (Corporatisation) Act 1994* of South Australia.

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eligible customer, in relation to a person, means:

(a) an individual who is, or has sought to become:

(i) a customer of the person within the ordinary meaning of that expression; or

(ii) a depositor with the person; or

(iii) a borrower from the person; or

(b) a guarantor or prospective guarantor of an individual who is, or has sought to become, a borrower from the person.

re-transfer provision means:

(a) section 16 of the *State Bank (Corporatisation) Act 1994* of South Australia; or

(b) a corresponding provision of a law of another State or of a Territory.

transfer provision means:

(a) section 7 of the *State Bank (Corporatisation) Act 1994* of South Australia; or

(b) a corresponding provision of a law of another State or of a Territory.

15 State banking

(1) Section 12A of the *Privacy Act 1988* has effect as if the provisions of this Part were provisions of that Act.

(2) A reference in the *Privacy Act 1988* to State banking does not include a reference to State banking to the extent to which the matter of State banking has been referred to the Parliament under section 21 of the *State Bank (Corporatisation) Act 1994* of South Australia.

Division 2—Transfers of loans–transferee bank deemed to have provided credit

16 Transfers to Bank of South Australia Limited

(1) This section applies if:

(a) a loan or prospective loan is transferred on a particular day (the ***transfer day***) under a transfer provision to Bank of South Australia Limited from:

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(i) the State Bank of South Australia; or

(ii) a designated subsidiary of the State Bank of South Australia; and

(b) immediately before the transfer, the loan or prospective loan was credit provided by the State Bank of South Australia or the designated subsidiary, as the case may be.

(2) This Part and the *Privacy Act 1988* have effect, on and after the transfer day, as if the loan or prospective loan were credit provided by Bank of South Australia Limited instead of by the State Bank of South Australia or the designated subsidiary, as the case requires.

17 Re-transfers to the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia

(1) This section applies if:

(a) a loan or prospective loan is transferred on a particular day (the ***re-transfer day***) under a re-transfer provision from Bank of South Australia Limited to:

(i) the State Bank of South Australia; or

(ii) a designated subsidiary of the State Bank of South Australia; and

(b) immediately before the transfer, the loan or prospective loan was credit provided by Bank of South Australia Limited.

(2) This Part and the *Privacy Act 1988* have effect, on and after the re-transfer day, as if the loan or prospective loan were credit provided by the State Bank of South Australia or by the designated subsidiary, as the case requires, instead of by Bank of South Australia Limited.

Division 3—Disclosure of reports

Subdivision A—Transfers to Bank of South Australia Limited

18 Disclosure of information about transferred eligible customers

(1) This section applies to the disclosure of a report (within the meaning of subsection 18N(9) of the *Privacy Act 1988*) or any personal information derived from such a report if:

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(a) the disclosure is by:
(i) the State Bank of South Australia; or
(ii) a designated subsidiary of the State Bank of South Australia; or
(iii) an agent of a body covered by subparagraph (i) or (ii); and
(b) the report or information is disclosed to:
(i) Bank of South Australia Limited; or
(ii) an agent of Bank of South Australia Limited; and
(c) the report or information relates to the affairs of an individual who:
(i) was an eligible customer of the State Bank of South Australia or the designated subsidiary, as the case may be; and
(ii) became an eligible customer of Bank of South Australia Limited as a result of the operation of a transfer provision; and
(d) the report or information is disclosed for the purposes of facilitating the operation of a transfer provision in relation to the individual.

(2) The disclosure does not breach:
(a) the *Privacy Act 1988*; or
(b) the Code of Conduct.

Subdivision B—Re-transfers to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

19 Disclosure of information where account is re-transferred to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

(1) This section applies to the disclosure of a report (within the meaning of subsection 18N(9) of the *Privacy Act 1988*) or any personal information derived from such a report if:

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(a) the disclosure is by:
  (i) Bank of South Australia Limited; or
  (ii) an agent of Bank of South Australia Limited; and
(b) the report or information is disclosed to:
  (i) the State Bank of South Australia; or
  (ii) a designated subsidiary of the State Bank of South Australia; or
  (iii) an agent of a body covered by subparagraph (i) or (ii); and
(c) the report relates to the affairs of an eligible customer of the State Bank of South Australia or of the designated subsidiary, as the case requires, whose account was transferred to that Bank or subsidiary from Bank of South Australia Limited as a result of the operation of a re-transfer provision; and
(d) the report or information is disclosed for the purposes of facilitating the operation of the re-transfer provision in relation to the eligible customer.

(2) The disclosure does not breach:
  (a) the *Privacy Act 1988*; or
  (b) the Code of Conduct.

Subdivision C—Management of accounts by Bank of South Australia Limited

20 Disclosure of information where Bank of South Australia Limited manages the account of an eligible customer of the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia

(1) This section applies to the disclosure of a report (within the meaning of subsection 18N(9) of the *Privacy Act 1988*) or any personal information derived from such a report if:
  (a) the disclosure is by:
    (i) the State Bank of South Australia; or
    (ii) a designated subsidiary of the State Bank of South Australia; or

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(iii) an agent of a body covered by subparagraph (i) or (ii); and

(b) the report or information is disclosed to Bank of South Australia Limited; and

(c) the report or information relates to the affairs of an eligible customer of the State Bank of South Australia or of the designated subsidiary, as the case may be; and

(d) an account of the eligible customer is being managed by Bank of South Australia Limited as agent for the State Bank of South Australia or the designated subsidiary, as the case may be; and

(e) the report or information is disclosed for the purposes of facilitating the management of the account.

(2) The disclosure does not breach:

(a) the *Privacy Act 1988*; or

(b) the Code of Conduct.

Subdivision D—Dissolution of designated subsidiaries of the State Bank of South Australia

21 Disclosure of information where a designated subsidiary of the State Bank of South Australia is about to be dissolved

(1) This section applies if:

(a) a designated subsidiary of the State Bank of South Australia is proposed to be dissolved under subsection 23(1) of the *State Bank (Corporatisation) Act 1994* of South Australia; and

(b) as a result of the dissolution, an account with the designated subsidiary will be vested in the State Bank of South Australia under subsection 23(2) of that Act.

(2) In applying paragraph 18N(1)(d) of the *Privacy Act 1988* to a disclosure that is relevant to that account, the designated subsidiary is taken to be related to the State Bank of South Australia.

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Division 4—Authorities and notifications

Subdivision A—Transfers to Bank of South Australia Limited

22 Authorities relating to the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia deemed to relate to Bank of South Australia Limited

(1) This section applies to an authority (however described) given under the *Privacy Act 1988* if:

(a) the authority was given to:

(i) the State Bank of South Australia; or

(ii) a designated subsidiary of the State Bank of South Australia; and

(b) the authority authorised the State Bank of South Australia or the designated subsidiary, as the case may be, to disclose, use or receive:

(i) a credit report; or

(ii) any other information that has or has had any bearing on an individual's credit worthiness, credit standing, credit history or credit capacity; and

(c) the authority relates to the affairs of an individual who:

(i) was an eligible customer of the State Bank of South Australia or the designated subsidiary, as the case may be; and

(ii) became an eligible customer of Bank of South Australia Limited on a particular day (the ***transfer day***) as a result of the operation of a transfer provision.

(2) This Part and the *Privacy Act 1988* have effect, on and after the transfer day, as if the authority had been given to, and had so authorised, Bank of South Australia Limited instead of the State Bank of South Australia or the designated subsidiary, as the case requires.

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Table B

23 Notifications given by the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia deemed to have been given by Bank of South Australia Limited

(1) This section applies to a notification (however described) given under the *Privacy Act 1988* if:

(a) the notification was given by:

(i) the State Bank of South Australia; or

(ii) a designated subsidiary of the State Bank of South Australia; and

(b) the notification was given to an individual who:

(i) was an eligible customer of the State Bank of South Australia or the designated subsidiary, as the case may be; and

(ii) became an eligible customer of Bank of South Australia Limited on a particular day (the ***transfer day***) as a result of the operation of a transfer provision.

(2) This Part and the *Privacy Act 1988* have effect, on and after the transfer day, as if the notification had been given by Bank of South Australia Limited instead of by the State Bank of South Australia or the designated subsidiary, as the case requires.

Subdivision B—Re-transfers to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

24 Authorities relating to Bank of South Australia Limited deemed to relate to the State Bank of South Australia or the designated subsidiary concerned

(1) This section applies to an authority (however described) given under the *Privacy Act 1988* if:

(a) the authority was given to Bank of South Australia Limited; and

(b) the authority authorised Bank of South Australia Limited to disclose, use or receive:

(i) a credit report; or

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(ii) any other information that has or has had any bearing on an individual's credit worthiness, credit standing, credit history or credit capacity; and

(c) the authority relates to the affairs of an individual who:

(i) was an eligible customer of Bank of South Australia Limited; and

(ii) became an eligible customer of the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia on a particular day (the ***re-transfer day***) as a result of the operation of a re-transfer provision.

(2) The *Privacy Act 1988* has effect, on and after the re-transfer day, as if the authority had been given to, and had so authorised, the State Bank of South Australia or the designated subsidiary, as the case requires, instead of Bank of South Australia Limited.

25 Notifications given by Bank of South Australia Limited deemed to have been given by the State Bank of South Australia or the designated subsidiary concerned

(1) This section applies to a notification (however described) given under the *Privacy Act 1988* if:

(a) the notification was given by Bank of South Australia Limited; and

(b) the notification was given to an individual who:

(i) was an eligible customer of Bank of South Australia Limited; and

(ii) became an eligible customer of the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia on a particular day (the ***re-transfer day***) as a result of the operation of a re-transfer provision.

(2) The *Privacy Act 1988* has effect, on and after the re-transfer day, as if the notification had been given by the State Bank of South Australia or the designated subsidiary, as the case requires, instead of by Bank of South Australia Limited.

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Table B

Division 5—Deletion of information from credit information files

Subdivision A—Transfers to Bank of South Australia Limited

26 Credit reporting agencies that have been given information about overdue payments

(1) This section applies if:

(a) the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia was a credit provider in relation to credit provided to an individual; and

(b) as a result of the operation of a transfer provision, the individual's account was transferred to Bank of South Australia Limited on a particular day (the ***transfer day***); and

(c) a credit reporting agency had been given information that the individual was overdue in making a payment in respect of the credit provided by the State Bank of South Australia or the designated subsidiary, as the case may be.

(2) This Division and subsection 18F(3) of the *Privacy Act 1988* have effect, on and after the transfer day, as if the credit reporting agency had been given information that the individual was overdue in making a payment in respect of credit provided by Bank of South Australia Limited.

27 Credit reporting agencies that have previously been informed about current credit provider status

(1) This section applies if:

(a) the State Bank of South Australia or a designated subsidiary of the State Bank of South Australia was a credit provider in relation to credit provided to an individual; and

(b) as a result of the operation of a transfer provision, the individual's account was transferred to Bank of South Australia Limited on a particular day (the ***transfer day***); and

(c) a credit reporting agency had previously been informed that the State Bank of South Australia or the designated subsidiary, as the case may be, was a current credit provider in relation to the individual.

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(2) This Division and subsection 18F(5) of the *Privacy Act 1988* have effect, on and after the transfer day, as if the credit reporting agency had previously been informed that Bank of South Australia Limited was a current credit provider in relation to the individual.

28 Credit provider ceasing to be current credit provider

An obligation is not imposed on the State Bank of South Australia, or a designated subsidiary of the State Bank of South Australia, under subsection 18F(5) of the *Privacy Act 1988* merely because of the operation of a transfer provision.

Subdivision B—Re-transfers to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia

29 Credit reporting agencies that have been given information about overdue payments

(1) This section applies if:

(a) Bank of South Australia Limited was a credit provider in relation to credit provided to an individual; and

(b) as a result of the operation of a re-transfer provision, the individual's account was transferred to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia on a particular day (the ***re-transfer day***); and

(c) a credit reporting agency had been given information that the individual is overdue in making a payment in respect of the credit provided by Bank of South Australia Limited.

(2) Subsection 18F(3) of the *Privacy Act 1988* has effect, on and after the re-transfer day, as if the credit reporting agency had been given information that the individual was overdue in making a payment in respect of credit provided by the State Bank of South Australia or the designated subsidiary, as the case requires.

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Table B

30 Credit reporting agencies that have previously been informed about current credit provider status

(1) This section applies if:

(a) Bank of South Australia Limited was a credit provider in relation to credit provided to an individual; and

(b) as a result of the operation of a re-transfer provision, the individual's account was transferred to the State Bank of South Australia or to a designated subsidiary of the State Bank of South Australia on a particular day (the ***re-transfer day***); and

(c) a credit reporting agency had previously been informed that Bank of South Australia Limited was a current credit provider in relation to the individual.

(2) Subsection 18F(5) of the *Privacy Act 1988* has effect, on and after the re-transfer day, as if the credit reporting agency had previously been informed that the State Bank of South Australia or the designated subsidiary, as the case requires, was a current credit provider in relation to the individual.

31 Credit provider ceasing to be current credit provider

An obligation is not imposed on Bank of South Australia Limited under subsection 18F(5) of the *Privacy Act 1988* merely because of the operation of a re-transfer provision.

Division 6—Banks to publish information about the operation of this Part

32 Publication of information about the operation of this Part

(1) On or before the appointed day, or as soon as practicable after that day, the State Bank of South Australia or Bank of South Australia Limited must prepare a written statement setting out information about:

(a) the kinds of reports and information that will be, or that have been, disclosed under section 18; and

(b) the kinds of authorities and notifications that will be, or have been, affected by the operation of sections 22 and 23.

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(2) The statement must not be prepared in a manner that is likely to enable the identification of a particular eligible customer.

(3) As soon as practicable after the preparation of the statement, the State Bank of South Australia or Bank of South Australia Limited, as the case requires, must make copies of the statement generally available to:

(a) in any case—its eligible customers; and

(b) if the statement is prepared by the State Bank of South Australia—the eligible customers of Bank of South Australia Limited.

(4) For the purposes of the *Privacy Act 1988*, a contravention of this section is taken to be a credit reporting infringement by the State Bank of South Australia and Bank of South Australia Limited.

Division 7—This Part to be disregarded in determining the meaning that a provision of the Privacy Act 1988 has apart from this Part

33 This Part to be disregarded in determining the meaning that a provision of the *Privacy Act 1988* has apart from this Part

In determining the meaning that a provision of the *Privacy Act 1988* has apart from this Part, this Part is to be disregarded.