Privacy Act 1988

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About this compilation

This compilation

This is a compilation of the *Privacy Act 1988* that shows the text of the law as amended and in force on 1 July 2022 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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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

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

2 Commencement

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

2A Objects of this Act

The objects of this Act are:

(a) to promote the protection of the privacy of individuals; and

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(b) to recognise that the protection of the privacy of individuals is balanced with the interests of entities in carrying out their functions or activities; and

(c) to provide the basis for nationally consistent regulation of privacy and the handling of personal information; and

(d) to promote responsible and transparent handling of personal information by entities; and

(e) to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected; and

(f) to facilitate the free flow of information across national borders while ensuring that the privacy of individuals is respected; and

(g) to provide a means for individuals to complain about an alleged interference with their privacy; and

(h) to implement Australia's international obligation in relation to privacy.

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 or disclosure of personal information (including such a law relating to credit reporting or the use of information held in connection with 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 Australian 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.

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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 and of the Northern Territory.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Australian Capital Territory or of the Northern Territory 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 or of the Northern Territory an agency for the purposes of this Act.

5A Extension to external Territories

This Act extends to all external Territories.

5B Extra-territorial operation of Act

Agencies

(1) This Act, a registered APP code and the registered CR code extend to an act done, or practice engaged in, outside Australia and the external Territories by an agency.

Note: The act or practice overseas will not breach an Australian Privacy Principle or a registered APP code if the act or practice is required by an applicable foreign law (see sections 6A and 6B).

Organisations and small business operators

(1A) This Act, a registered APP code and the registered CR code extend to an act done, or practice engaged in, outside Australia and the external Territories by an organisation, or small business operator, that has an Australian link.

Note: The act or practice overseas will not breach an Australian Privacy Principle or a registered APP code if the act or practice is required by an applicable foreign law (see sections 6A and 6B).

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Australian link

(2) An organisation or small business operator has an ***Australian link*** if the organisation or operator is:

(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.

(3) An organisation or small business operator also has an ***Australian link*** if all of the following apply:

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

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

(c) the personal information was collected or held by the organisation or operator 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) or (1A).

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

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Part II—Interpretation

Division 1—General definitions

6 Interpretation

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

ACC means the Australian Crime Commission.

access seeker has the meaning given by subsection 6L(1).

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

advice related functions has the meaning given by subsection 28B(1).

affected information recipient means:

(a) a mortgage insurer; or

(b) a trade insurer; or

(c) a body corporate referred to in paragraph 21G(3)(b); or

(d) a person referred to in paragraph 21G(3)(c); or

(e) an entity or adviser referred to in paragraph 21N(2)(a).

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 law, 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

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(ca) a body (whether incorporated or not), or a tribunal, established for a public purpose by or under a law (other than a law providing for the incorporation of companies, societies or associations) of a State or Territory as in force in an external Territory, other than a body exempted by the Minister under subsection (5A); or

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

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

(ea) 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 as in force in an external Territory, other than an office or appointment exempted by the Minister under subsection (5A); 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 law; or

(g) a federal court; or

(h) the Australian Federal Police; or

(ha) a court of Norfolk Island; or

(k) an eligible hearing service provider; or

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

amount of credit has the meaning given by subsection 6M(2).

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

APP code has the meaning given by section 26C.

APP code developer means:

(a) an APP entity; or

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(b) a group of APP entities; or
(c) a body or association representing one or more APP entities.

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

APP entity means an agency or organisation.

APP privacy policy has the meaning given by Australian Privacy Principle 1.3.

at risk from an eligible data breach has the meaning given by section 26WE.

Australian law means:
(a) an Act of the Commonwealth or of a State or Territory; or
(b) regulations, or any other instrument, made under such an Act; or
(c) any other law in force in the Jervis Bay Territory or an external Territory; or
(d) a rule of common law or equity.

Australian link has the meaning given by subsections 5B(2) and (3).

Australian Privacy Principle has the meaning given by section 14.

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.

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Bankruptcy Act means the *Bankruptcy Act 1966*.

ban period has the meaning given by subsection 20K(3).

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

breach:

(a) in relation to an Australian Privacy Principle, has the meaning given by section 6A; and

(b) in relation to a registered APP code, has the meaning given by section 6B; and

(c) in relation to the registered CR code, has the meaning given by section 6BA.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

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 an individual because it breached a registered APP code.

Codes Register has the meaning given by subsection 26U(1).

collects: an entity ***collects*** personal information only if the entity collects the personal information for inclusion in a record or generally available publication.

commercial credit means credit (other than consumer credit) that is applied for by, or provided to, a person.

commercial credit related purpose of a credit provider in relation to a person means the purpose of:

(a) assessing an application for commercial credit made by the person to the provider; or

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(b) collecting payments that are overdue in relation to commercial credit provided by the provider to the person.

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* (as in force immediately before its repeal); or

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

committee of management of an unincorporated association means a body (however described) that governs, manages or conducts the affairs of the association.

Commonwealth contract means a contract, to which the Commonwealth 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 law means the following:

(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 or of an external Territory;

(c) a law continued in force by section 16 or 16A of the *Norfolk Island Act 1979*;

(d) an instrument (including rules, regulations or by-laws) made under:

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(i) an Act to which paragraph (a) applies; or
(ii) an Ordinance to which paragraph (b) applies; or
(iii) a law to which paragraph (c) applies;

(e) any other legislation that applies as a law of the Commonwealth, other than legislation in so far as it is applied:
(i) by an Act referred to in subparagraph (a)(i) or (ii); or
(ii) 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.

Commonwealth record has the same meaning as in the *Archives Act 1983*.

communication device means an item of customer equipment (within the meaning of the *Telecommunications Act 1997*).

consent means express consent or implied consent.

consumer credit means credit:

(a) for which an application has been made by an individual to a credit provider, or that has been provided to an individual by a credit provider, in the course of the provider carrying on a business or undertaking as a credit provider; and
(b) that is intended to be used wholly or primarily:

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(i) for personal, family or household purposes; or
(ii) to acquire, maintain, renovate or improve residential property for investment purposes; or
(iii) to refinance consumer credit that has been provided wholly or primarily to acquire, maintain, renovate or improve residential property for investment purposes.

consumer credit liability information: if a credit provider provides consumer credit to an individual, the following information about the consumer credit is ***consumer credit liability information*** about the individual:

(a) the name of the provider;
(b) whether the provider is a licensee;
(c) the type of consumer credit;
(d) the day on which the consumer credit is entered into;
(e) the terms or conditions of the consumer credit:
(i) that relate to the repayment of the amount of credit; and
(ii) that are prescribed by the regulations;
(f) the maximum amount of credit available under the consumer credit;
(g) the day on which the consumer credit is terminated or otherwise ceases to be in force.

consumer credit related purpose of a credit provider in relation to an individual means the purpose of:

(a) assessing an application for consumer credit made by the individual to the provider; or
(b) collecting payments that are overdue in relation to consumer credit provided by the provider to the individual.

consumer data rules has the same meaning as in the *Competition and Consumer Act 2010*.

contact tracing has the meaning given by subsection 94D(6).

contracted service provider, for a government contract, means:

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(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.

court proceedings information about an individual means information about a judgement of an Australian court:

(a) that is made, or given, against the individual in proceedings (other than criminal proceedings); and

(b) that relates to any credit that has been provided to, or applied for by, the individual.

court/tribunal order means an order, direction or other instrument made by:

(a) a court; or

(b) a tribunal; or

(c) a judge (including a judge acting in a personal capacity) or a person acting as a judge; or

(d) a magistrate (including a magistrate acting in a personal capacity) or a person acting as a magistrate; or

(e) a member or an officer of a tribunal;

and includes an order, direction or other instrument that is of an interim or interlocutory nature.

COVID app data has the meaning given by subsection 94D(5).

COVIDSafe means an app that is made available or has been made available (including before the commencement of this Part), by or on behalf of the Commonwealth, for the purpose of facilitating contact tracing.

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COVIDSafe user, in relation to a communication device, means the person whose registration data was uploaded from the device when the user was registered through COVIDSafe.

CP derived information about an individual means any personal information (other than sensitive information) about the individual:

(a) that is derived from credit reporting information about the individual that was disclosed to a credit provider by a credit reporting body under Division 2 of Part IIIA; and

(b) that has any bearing on the individual's credit worthiness; and

(c) that is used, has been used or could be used in establishing the individual's eligibility for consumer credit.

CRB derived information about an individual means any personal information (other than sensitive information) about the individual:

(a) that is derived by a credit reporting body from credit information about the individual that is held by the body; and

(b) that has any bearing on the individual's credit worthiness; and

(c) that is used, has been used or could be used in establishing the individual's eligibility for consumer credit.

CR code has the meaning given by section 26N.

CR code developer means:

(a) an entity that is subject to Part IIIA; or

(b) a group of entities that are subject to Part IIIA; or

(c) a body or association representing one or more entities that are subject to Part IIIA.

credit has the meaning given by subsections 6M(1) and (3).

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 credit, and includes any article of a kind commonly issued by persons carrying on business to customers or prospective customers of those persons

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for use in obtaining goods or services from those persons by means of credit.

credit eligibility information about an individual means:

(a) credit reporting information about the individual that was disclosed to a credit provider by a credit reporting body under Division 2 of Part IIIA; or

(b) CP derived information about the individual.

credit enhancement, in relation to credit, means:

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

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

credit guarantee purpose of a credit provider in relation to an individual means the purpose of assessing whether to accept the individual as a guarantor in relation to:

(a) credit provided by the provider to a person other than the individual; or

(b) credit for which an application has been made to the provider by a person other than the individual.

credit information has the meaning given by section 6N.

credit provider has the meaning given by sections 6G to 6K, and, for the purposes of sections 7 and 8 and Parts III, IIIB, IV and V, is taken to include a mortgage insurer and a trade insurer.

credit reporting body means:

(a) an organisation; or

(b) an agency prescribed by the regulations;

that carries on a credit reporting business.

credit reporting business has the meaning given by section 6P.

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

(a) it breached the registered CR code; or

(b) it breached a provision of Part IIIA.

credit reporting information about an individual means credit information, or CRB derived information, about the individual.

credit worthiness of an individual means the individual's:

(a) eligibility to be provided with consumer credit; or

(b) history in relation to consumer credit; or

(c) capacity to repay an amount of credit that relates to consumer credit.

data store administrator means:

(a) for the purposes of a provision of Part VIIIA specified in a determination under section 94Z—the agency specified in that determination (but not to the extent of any limitation in that determination); or

(b) otherwise—the Health Department.

de facto partner of an individual has the meaning given by the *Acts Interpretation Act 1901*.

default information has the meaning given by section 6Q.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

Defence Force includes the Australian Defence Force Cadets.

de-identified: personal information is ***de-identified*** if the information is no longer about an identifiable individual or an individual who is reasonably identifiable.

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

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eligible data breach has the meaning given by Division 2 of Part IIIC.

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) or (h) 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.

enforcement body means:

(a) the Australian Federal Police; or

(aa) the Integrity Commissioner; or

(b) the ACC; or

(c) Sport Integrity Australia; or

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(ca) the Immigration Department; or
(d) the Australian Prudential Regulation Authority; or
(e) the Australian Securities and Investments Commission; or
(ea) the Office of the Director of Public Prosecutions, or a similar body established under a law of a State or Territory; 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 Law Enforcement Conduct Commission of New South Wales; or
(ka) the Independent Broad-based Anti-corruption Commission of Victoria; or
(l) the Crime and Corruption Commission of Queensland; or
(la) the Corruption and Crime Commission of Western Australia; or
(lb) the Independent Commissioner Against Corruption of South Australia; 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.

enforcement related activity means:

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(a) the prevention, detection, investigation, prosecution or punishment of:
  (i) criminal offences; or
  (ii) breaches of a law imposing a penalty or sanction; or
(b) the conduct of surveillance activities, intelligence gathering activities or monitoring activities; or
(c) the conduct of protective or custodial activities; or
(d) the enforcement of laws relating to the confiscation of the proceeds of crime; or
(e) the protection of the public revenue; or
(f) the prevention, detection, investigation or remedying of misconduct of a serious nature, or other conduct prescribed by the regulations; or
(g) the preparation for, or conduct of, proceedings before any court or tribunal, or the implementation of court/tribunal orders.

entity means:
(a) an agency; or
(b) an organisation; or
(c) a small business operator.

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 an individual:
(a) because it breached a rule 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.

financial hardship arrangement has the meaning given by subsection 6QA(1).

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financial hardship information has the meaning given by subsection 6QA(4).

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

former COVIDSafe user has the meaning given by subsection 94N(2).

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

generally available publication means a magazine, book, article, newspaper or other publication that is, or will be, generally available to members of the public:

(a) whether or not it is published in print, electronically or in any other form; and

(b) whether or not it is available on the payment of a fee.

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.

government related identifier of an individual means an identifier of the individual that has been assigned by:

(a) an agency; or

(b) a State or Territory authority; or

(c) an agent of an agency, or a State or Territory authority, acting in its capacity as agent; or

(d) a contracted service provider for a Commonwealth contract, or a State contract, acting in its capacity as contracted service provider for that contract.

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guarantee includes an indemnity given against the default of a person in making a payment in relation to credit that has been applied for by, or provided to, the person.

guidance related functions has the meaning given by subsection 28(1).

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 Department means the Department administered by the Health Minister.

health information has the meaning given by section 6FA.

Health Minister means the Minister administering the *National Health Act 1953*.

health service has the meaning given by section 6FB.

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

holds: an entity ***holds*** personal information if the entity has possession or control of a record that contains the personal information.

Note: See section 10 for when an agency is taken to hold a record.

identification information about an individual means:

(a) the individual's full name; or

(b) an alias or previous name of the individual; or

(c) the individual's date of birth; or

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(d) the individual's sex; or
(e) the individual's current or last known address, and 2 previous addresses (if any); or
(f) the name of the individual's current or last known employer; or
(g) if the individual holds a driver's licence—the individual's driver's licence number.

identifier of an individual means a number, letter or symbol, or a combination of any or all of those things, that is used to identify the individual or to verify the identity of the individual, but does not include:
(a) the individual's name; or
(b) the individual's ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*); or
(c) anything else prescribed by the regulations.

Immigration Department means the Department administered by the Minister administering the *Migration Act 1958*.

in contact: a person has been ***in contact*** with another person if the operation of COVIDSafe in relation to the person indicates that the person may have been in the proximity of the other person.

individual means a natural person.

information request has the meaning given by section 6R.

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
(ba) the Australian Signals Directorate; or
(c) the Office of National Intelligence.

interested party has the meaning given by subsections 20T(3) and 21V(3).

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interference with the privacy of an individual has the meaning given by sections 13 to 13F.

licensee has the meaning given by the *National Consumer Credit Protection Act 2009*.

managing credit does not include the act of collecting overdue payments in relation to credit.

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.

misconduct includes fraud, negligence, default, breach of trust, breach of duty, breach of discipline or any other misconduct in the course of duty.

monitoring related functions has the meaning given by subsections 28A(1) and (2).

mortgage credit means consumer credit:

(a) that is provided in connection with the acquisition, maintenance, renovation or improvement of real property; and

(b) in relation to which the real property is security.

mortgage insurance purpose of a mortgage insurer in relation to an individual is the purpose of assessing:

(a) whether to provide insurance to, or the risk of providing insurance to, a credit provider in relation to mortgage credit:

(i) provided by the provider to the individual; or

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(ii) for which an application to the provider has been made by the individual; or

(b) the risk of the individual defaulting on mortgage credit in relation to which the insurer has provided insurance to a credit provider; or

(c) the risk of the individual being unable to meet a liability that might arise under a guarantee provided, or proposed to be provided, in relation to mortgage credit provided by a credit provider to another person.

mortgage insurer means an organisation, or small business operator, that carries on a business or undertaking that involves providing insurance to credit providers in relation to mortgage credit provided by providers to other persons.

National COVIDSafe Data Store means the database administered by or on behalf of the Commonwealth for the purpose of contact tracing.

National Credit Code has the same meaning as in the *National Consumer Credit Protection Act 2009*.

national emergency declaration has the same meaning as in the *National Emergency Declaration Act 2020.*

National Personal Insolvency Index has the meaning given by the Bankruptcy Act.

new arrangement information has the meaning given by section 6S.

non-participating credit provider means a credit provider to which all of the following apply:

(a) the credit provider has not disclosed credit reporting information or credit eligibility information about an individual to a credit reporting body or another credit provider;

(b) the credit provider is not likely to disclose credit reporting information or credit eligibility information about an

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individual to a credit reporting body or another credit provider;

(c) the credit provider has not collected credit reporting information or credit eligibility information about an individual from a credit reporting body or another credit provider.

non-profit organisation means an organisation:

(a) that is a non-profit organisation; and

(b) that engages in activities for cultural, recreational, political, religious, philosophical, professional, trade or trade union purposes.

offence against this Act includes an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence against this Act.

Ombudsman means the Commonwealth Ombudsman.

organisation has the meaning given by section 6C.

overseas recipient, in relation to personal information, has the meaning given by Australian Privacy Principle 8.1.

payment information has the meaning given by section 6T.

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

pending correction request in relation to credit information or CRB derived information means:

(a) a request made under subsection 20T(1) in relation to the information if a notice has not been given under subsection 20U(2) or (3) in relation to the request; or

(b) a request made under subsection 21V(1) in relation to the information if:

(i) the credit reporting body referred to in subsection 20V(3) has been consulted about the request under subsection 21V(3); and

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(ii) a notice has not been given under subsection 21W(2) or (3) in relation to the request.

pending dispute in relation to credit information or CRB derived information means:

(a) a complaint made under section 23A that relates to the information if a decision about the complaint has not been made under subsection 23B(4); or

(b) a matter that relates to the information and that is still being dealt with by a recognised external dispute resolution scheme; or

(c) a complaint made to the Commissioner under Part V that relates to the information and that is still being dealt with.

permitted CP disclosure has the meaning given by sections 21J to 21N.

permitted CP use has the meaning given by section 21H.

permitted CRB disclosure has the meaning given by section 20F.

permitted general situation has the meaning given by section 16A.

permitted health situation has the meaning given by section 16B.

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.

Note: Section 187LA of the *Telecommunications (Interception and Access) Act 1979* extends the meaning of personal information to cover information kept under Part 5-1A of that Act.

personal insolvency information has the meaning given by section 6U.

pre-screening assessment means an assessment made under paragraph 20G(2)(d).

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

purchase, in relation to credit, includes the purchase of rights to receive payments relating to the credit.

recognised external dispute resolution scheme means an external dispute resolution scheme recognised under section 35A.

record includes:

(a) a document; or

(b) an electronic or other device;

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 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.

Note: For ***document***, see section 2B of the *Acts Interpretation Act 1901*.

registered APP code has the meaning given by section 26B.

registered CR code has the meaning given by section 26M.

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

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registration data, of a person, means the information about the person that was uploaded from a communication device when the person was registered through COVIDSafe.

regulated information of an affected information recipient means:

(a) if the recipient is a mortgage insurer or trade insurer—personal information disclosed to the recipient under Division 2 or 3 of Part IIIA; or

(b) if the recipient is a body corporate referred to in paragraph 21G(3)(b)—credit eligibility information disclosed to the recipient under that paragraph; or

(c) if the recipient is a person referred to in paragraph 21G(3)(c)—credit eligibility information disclosed to the recipient under that paragraph; or

(d) if the recipient is an entity or adviser referred to in paragraph 21N(2)(a)—credit eligibility information disclosed to the recipient under subsection 21N(2).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

repayment history information has the meaning given by subsection 6V(1).

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.

residential property has the meaning given by section 204 of the National Credit Code.

respondent for a complaint made under section 23A means the credit reporting body or credit provider to which the complaint is made.

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responsible person has the meaning given by section 6AA.

retention period has the meaning given by sections 20W and 20X.

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) credit that has been, or is to be, provided by a credit provider; or
  (ii) the purchase of credit 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 credit.

securitisation related purpose of a credit provider in relation to an individual is the purpose of:

(a) assessing the risk in purchasing, by means of a securitisation arrangement, credit that has been provided to, or applied for by:
  (i) the individual; or
  (ii) a person for whom the individual is, or is proposing to be, a guarantor; or

(b) assessing the risk in undertaking credit enhancement in relation to credit:
  (i) that is, or is proposed to be, purchased or funded by means of a securitisation arrangement; and
  (ii) that has been provided to, or applied for by, the individual or a person for whom the individual is, or is proposing to be, a guarantor.

sensitive information means:

(a) information or an opinion about an individual's:
  (i) racial or ethnic origin; or
  (ii) political opinions; or

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(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
(viii) sexual orientation 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; or
(d) biometric information that is to be used for the purpose of automated biometric verification or biometric identification; or
(e) biometric templates.

serious credit infringement means:

(a) an act done by an individual that involves fraudulently obtaining consumer credit, or attempting fraudulently to obtain consumer credit; or
(b) an act done by an individual that involves fraudulently evading the individual's obligations in relation to consumer credit, or attempting fraudulently to evade those obligations; or
(c) an act done by an individual if:
(i) a reasonable person would consider that the act indicates an intention, on the part of the individual, to no longer comply with the individual's obligations in relation to consumer credit provided by a credit provider; and
(ii) the provider has, after taking such steps as are reasonable in the circumstances, been unable to contact the individual about the act; and
(iii) at least 6 months have passed since the provider last had contact with the individual.

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small business has the meaning given by section 6D.

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

solicits: an entity ***solicits*** personal information if the entity requests another entity to provide the personal information, or to provide a kind of information in which that personal 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.

State or Territory health authority means the State or Territory authority responsible for the administration of health services in a State or Territory.

State or Territory privacy authority means a State or Territory authority that has functions to protect the privacy of individuals (whether or not the authority has other functions).

subcontractor, for a government contract, means an organisation:

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

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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, 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 insurance purpose of a trade insurer in relation to an individual is the purpose of assessing:

(a) whether to provide insurance to, or the risk of providing insurance to, a credit provider in relation to commercial credit provided by the provider to the individual or another person; or

(b) the risk of a person defaulting on commercial credit in relation to which the insurer has provided insurance to a credit provider.

trade insurer means an organisation, or small business operator, that carries on a business or undertaking that involves providing insurance to credit providers in relation to commercial credit provided by providers to other persons.

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

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

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

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(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 law, or a law of a State or Territory that applies in an external Territory, for the purposes of an agency;

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

(e) an office of a member of a tribunal:

(i) that is established by or under a Commonwealth law, or a law of a State or Territory that applies in an external Territory; and

(ii) that is prescribed by the regulations for the purposes of this subparagraph.

(5A) The Minister may, by legislative instrument, exempt a body, office or appointment for the purposes of paragraph (ca) or (ea) of the definition of ***agency*** in subsection (1).

(6) For the purposes of this Act, the Defence Department 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 APP 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

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

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(f) being both an APP complaint and a credit reporting complaint; or

(g) being both an APP complaint and a code 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 ***consumer credit*** in subsection 6(1), and in sections 6D and 16, in relation to any individual is taken to include the following (without limitation):

(a) a de facto partner of the individual;

(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*.

6AA Meaning of *responsible person*

(1) A ***responsible person*** for an individual is:

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(a) a parent of the individual; or
(b) a child or sibling of the individual if the child or sibling is at least 18 years old; or
(c) a spouse or de facto partner of the individual; or
(d) a relative of the individual if the relative is:
(i) at least 18 years old; and
(ii) a member of the individual's household; or
(e) a guardian of the individual; or
(f) a person 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) In this section:

child: without limiting who is a child of an individual for the purposes of subsection (1), each of the following is a ***child*** of an individual:
(a) an adopted child, stepchild, exnuptial child or foster child of the individual;
(b) someone who is a child of the individual within the meaning of the *Family Law Act 1975*.

parent: without limiting who is a parent of an individual for the purposes of subsection (1), someone is a ***parent*** of an individual if the individual is his or her child because of the definition of ***child*** in this subsection.

relative of an individual (the ***first individual***) means a grandparent, grandchild, uncle, aunt, nephew or niece of the first individual and for this purpose, relationships to the first individual may also be traced to or through another individual who is:
(a) a de facto partner of the first individual; or

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(b) the child of the first individual because of the definition of ***child*** in this subsection.

sibling of an individual includes:

(a) a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster-brother and foster-sister of the individual; and

(b) another individual if a relationship referred to in paragraph (a) can be traced through a parent of either or both of the individuals.

stepchild: without limiting who is a stepchild of an individual, someone is a ***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.

6A Breach of an Australian Privacy Principle

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

No breach—contracted service provider

(2) An act or practice does not ***breach*** an Australian 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.

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No breach—disclosure to the National Archives of Australia

(3) An act or practice does not ***breach*** an Australian 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 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 Australian 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 a registered APP code

Breach if contrary to, or inconsistent with, code

(1) For the purposes of this Act, an act or practice ***breaches*** a registered APP 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*** a registered APP 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

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(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*** a registered APP 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*** a registered APP 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).

6BA Breach of the registered CR code

For the purposes of this Act, an act or practice breaches the registered CR code if, and only if, it is contrary to, or inconsistent with, the code.

6C Organisations

*What is an **organisation**?*

(1) In this Act:

organisation means:
(a) an individual; or
(b) a body corporate; or

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(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 1: Under section 187LA of the *Telecommunications (Interception and Access) Act 1979*, service providers are, in relation to their activities relating to retained data, treated as organisations for the purposes of this Act.

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

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(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
(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
(v) a State or Territory Minister; or

(g) a State or Territory court.

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

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

(iii) whether the law of the State or Territory regulates the collection, holding, use, correction and disclosure 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.

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

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(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); or

(f) is a credit reporting body.

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.

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

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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:
  (a) the proceeds of sales of goods and/or services;

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(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*.

Small business operator that is accredited for the consumer data right regime

(1D) If a small business operator holds an accreditation under subsection 56CA(1) of the *Competition and Consumer Act 2010*, this Act applies, with the prescribed modifications (if any), in relation to information that:

(a) is personal information; but

(b) is not CDR data (within the meaning of that Act);

as if the small business operator were an organisation.

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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 *Legislation 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 *Legislation 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*.

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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 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.

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(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 *Legislation Act 2003*.

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 and disclosure of personal information by the authority or instrumentality.

6FA Meaning of *health information*

The following information is ***health information***:

(a) information or an opinion about:

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(i) the health, including an illness, disability or injury, (at any time) of an individual; or

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

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

that is also personal information;

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

(c) other personal information collected in connection with the donation, or intended donation, by an individual of his or her body parts, organs or body substances;

(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.

6FB Meaning of *health service*

(1) An activity performed in relation to an individual is a ***health service*** if the activity is intended or claimed (expressly or otherwise) by the individual or the person performing it:

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

(b) where the individual's health cannot be maintained or improved—to manage the individual's health; or

(c) to diagnose the individual's illness, disability or injury; or

(d) to treat the individual's illness, disability or injury or suspected illness, disability or injury; or

(e) to record the individual's health for the purposes of assessing, maintaining, improving or managing the individual's health.

(2) The dispensing on prescription of a drug or medicinal preparation by a pharmacist is a ***health service***.

(3) To avoid doubt:

(a) a reference in this section to an individual's health includes the individual's physical or psychological health; and

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(b) an activity mentioned in subsection (1) or (2) that takes place in the course of providing aged care, palliative care or care for a person with a disability is a ***health service***.

(4) The regulations may prescribe an activity that, despite subsections (1) and (2) is not to be treated as a ***health service*** for the purposes of this Act.

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Division 2—Key definitions relating to credit reporting

Subdivision A—Credit provider

6G Meaning of *credit provider*

General

(1) Each of the following is a ***credit provider***:
  (a) a bank;
  (b) an organisation or small business operator if:
    (i) the organisation or operator carries on a business or undertaking; and
    (ii) a substantial part of the business or undertaking is the provision of credit;
  (c) an organisation or small business operator:
    (i) that carries on a retail business; and
    (ii) that, in the course of the business, issues credit cards to individuals in connection with the sale of goods, or the supply of services, by the organisation or operator (as the case may be);
  (d) an agency, organisation or small business operator:
    (i) that carries on a business or undertaking that involves providing credit; and
    (ii) that is prescribed by the regulations.

Other credit providers

(2) If:
  (a) an organisation or small business operator (the ***supplier***) carries on a business or undertaking in the course of which the supplier provides credit in connection with the sale of goods, or the supply of services, by the supplier; and
  (b) the repayment, in full or in part, of the amount of credit is deferred for at least 7 days; and

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(c) the supplier is not a credit provider under subsection (1);

then the supplier is a ***credit provider*** but only in relation to the credit.

(3) If:

(a) an organisation or small business operator (the ***lessor***) carries on a business or undertaking in the course of which the lessor provides credit in connection with the hiring, leasing or renting of goods; and

(b) the credit is in force for at least 7 days; and

(c) no amount, or an amount less than the value of the goods, is paid as a deposit for the return of the goods; and

(d) the lessor is not a credit provider under subsection (1);

then the lessor is a ***credit provider*** but only in relation to the credit.

(4) An organisation or small business operator is a ***credit provider*** if subsection 6H(1), 6J(1) or 6K(1) provides that the organisation or operator is a credit provider.

Exclusions

(5) Despite subsections (1) to (4) of this section, an organisation or small business operator acting in the capacity of:

(a) a real estate agent; or

(b) a general insurer (within the meaning of the *Insurance Act 1973*); or

(c) an employer of an individual;

is not a ***credit provider*** while acting in that capacity.

(6) Despite subsections (1) to (4) of this section, an organisation or small business operator is not a ***credit provider*** if it is included in a class of organisations or operators prescribed by the regulations.

6H Agents of credit providers

(1) If an organisation or small business operator (the ***agent***) is acting as an agent of a credit provider (the ***principal***) in performing, on behalf of the principal, a task that is reasonably necessary:

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(a) in processing an application for credit made to the principal; or

(b) in managing credit provided by the principal;

then, while the agent is so acting, the agent is a ***credit provider***.

(2) Subsection (1) does not apply if the principal is an organisation or small business operator that is a credit provider because of a previous application of that subsection.

(3) If subsection (1) applies in relation to credit that has been provided by the principal, the credit is taken, for the purposes of this Act, to have been provided by both the principal and the agent.

(4) If subsection (1) applies in relation to credit for which an application has been made to the principal, the application is taken, for the purposes of this Act, to have been made to both the principal and the agent.

6J Securitisation arrangements etc.

(1) If:

(a) an organisation or small business operator (the ***securitisation entity***) carries on a business that is involved in either or both of the following:

(i) a securitisation arrangement;

(ii) managing credit that is the subject of a securitisation arrangement; and

(b) the securitisation entity performs a task that is reasonably necessary for:

(i) purchasing, funding or managing, or processing an application for, credit by means of a securitisation arrangement; or

(ii) undertaking credit enhancement in relation to credit; and

(c) the credit has been provided by, or is credit for which an application has been made to, a credit provider (the ***original credit provider***);

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then, while the securitisation entity performs such a task, the securitisation entity is a ***credit provider***.

(2) Subsection (1) does not apply if the original credit provider is an organisation or small business operator that is a credit provider because of a previous application of that subsection.

(3) If subsection (1) applies in relation to credit that has been provided by the original credit provider, the credit is taken, for the purposes of this Act, to have been provided by both the original credit provider and the securitisation entity.

(4) If subsection (1) applies in relation to credit for which an application has been made to the original credit provider, the application is taken, for the purposes of this Act, to have been made to both the original credit provider and the securitisation entity.

6K Acquisition of the rights of a credit provider

(1) If:

(a) an organisation or small business operator (the ***acquirer***) acquires, whether by assignment, subrogation or any other means, the rights of a credit provider (the ***original credit provider***) in relation to the repayment of an amount of credit; and

(b) the acquirer is not a credit provider under subsection 6G(1);

then the acquirer is a ***credit provider*** but only in relation to the credit.

(2) If subsection (1) of this section applies in relation to credit that has been provided by the original credit provider, the credit is taken, for the purposes of this Act, to have been provided by the acquirer.

(3) If subsection (1) of this section applies in relation to credit for which an application has been made to the original credit provider, the application is taken, for the purposes of this Act, to have been made to the acquirer.

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Subdivision B—Other definitions

6L Meaning of *access seeker*

(1) An ***access seeker*** in relation to credit reporting information, or credit eligibility information, about an individual is:
  (a) the individual; or
  (b) a person:
    (i) who is assisting the individual to deal with a credit reporting body or credit provider; and
    (ii) who is authorised, in writing, by the individual to make a request in relation to the information under subsection 20R(1) or 21T(1).

(2) An individual must not authorise a person under subparagraph (1)(b)(ii) if the person is:
  (a) a credit provider; or
  (b) a mortgage insurer; or
  (c) a trade insurer; or
  (d) a person who is prevented from being a credit provider by subsection 6G(5) or (6).

(3) Subparagraph (1)(b)(ii) does not apply to a person who provides the National Relay Service or a person prescribed by the regulations.

6M Meaning of *credit* and *amount of credit*

(1) ***Credit*** is a contract, arrangement or understanding under which:
  (a) payment of a debt owed by one person to another person is deferred; or
  (b) one person incurs a debt to another person and defers the payment of the debt.

(2) The ***amount of credit*** is the amount of the debt that is actually deferred, or that may be deferred, but does not include any fees or charges payable in connection with the deferral of the debt.

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(3) Without limiting subsection (1), ***credit*** includes:

(a) a hire-purchase agreement; and

(b) a contract, arrangement or understanding of a kind referred to in that subsection that is for the hire, lease or rental of goods, or for the supply of 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 goods—an amount greater than, or equal to, the value of the goods is paid as a deposit for the return of the goods.

6N Meaning of *credit information*

Credit information about an individual is personal information (other than sensitive information) that is:

(a) identification information about the individual; or

(b) consumer credit liability information about the individual; or

(c) repayment history information about the individual; or

(ca) financial hardship information about the individual; or

(d) a statement that an information request has been made in relation to the individual by a credit provider, mortgage insurer or trade insurer; or

(e) the type of consumer credit or commercial credit, and the amount of credit, sought in an application:

(i) that has been made by the individual to a credit provider; and

(ii) in connection with which the provider has made an information request in relation to the individual; or

(f) default information about the individual; or

(g) payment information about the individual; or

(h) new arrangement information about the individual; or

(i) court proceedings information about the individual; or

(j) personal insolvency information about the individual; or

(k) publicly available information about the individual:

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(i) that relates to the individual's activities in Australia or the external Territories and the individual's credit worthiness; and

(ii) that is not court proceedings information about the individual or information about the individual that is entered or recorded on the National Personal Insolvency Index; or

(l) the opinion of a credit provider that the individual has committed, in circumstances specified by the provider, a serious credit infringement in relation to consumer credit provided by the provider to the individual.

6P Meaning of *credit reporting business*

(1) A ***credit reporting business*** is a business or undertaking that involves collecting, holding, using or disclosing personal information about individuals for the purpose of, or for purposes including the purpose of, providing an entity with information about the credit worthiness of an individual.

(2) Subsection (1) applies whether or not the information about the credit worthiness of an individual is:

(a) provided for profit or reward; or

(b) provided, or intended to be provided, for the purposes of assessing an application for consumer credit.

(3) In determining whether a business or undertaking carried on by a credit provider is a credit reporting business, disregard the provision of information about the credit worthiness of an individual to a related body corporate by the provider.

(4) Despite subsection (1), a business or undertaking is not a ***credit reporting business*** if the business or undertaking is included in a class of businesses or undertakings prescribed by the regulations.

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6Q Meaning of *default information*

Consumer credit defaults

(1) ***Default information*** about an individual is information about a payment (including a payment that is wholly or partly a payment of interest) that the individual is overdue in making in relation to consumer credit that has been provided by a credit provider to the individual if:

(a) the individual is at least 60 days overdue in making the payment; and

(b) the provider has given a written notice to the individual informing the individual of the overdue payment and requesting that the individual pay the amount of the overdue payment; and

(c) the provider is not prevented by a statute of limitations from recovering the amount of the overdue payment; and

(d) the amount of the overdue payment is equal to or more than:

(i) $150; or

(ii) such higher amount as is prescribed by the regulations.

Guarantor defaults

(2) ***Default information*** about an individual is information about a payment that the individual is overdue in making as a guarantor under a guarantee given against any default by a person (the ***borrower***) in repaying all or any of the debt deferred under consumer credit provided by a credit provider to the borrower if:

(a) the provider has given the individual written notice of the borrower's default that gave rise to the individual's obligation to make the overdue payment; and

(b) the notice requests that the individual pay the amount of the overdue payment; and

(c) at least 60 days have passed since the day on which the notice was given; and

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(d) in addition to giving the notice, the provider has taken other steps to recover the amount of the overdue payment from the individual; and

(e) the provider is not prevented by a statute of limitations from recovering the amount of the overdue payment.

6QA Meanings of *financial hardship arrangement* and *financial hardship information*

Financial hardship arrangement

(1) If:

(a) a credit provider provides consumer credit to an individual; and

(b) the National Credit Code applies to the provision of the credit; and

(c) the individual is or will be unable to meet the individual's obligations in relation to the consumer credit; and

(d) as a result of the inability, an arrangement covered by subsection (3) affecting the monthly payment obligations of the individual is made between the credit provider and the individual which is either:

(i) a permanent variation to the terms of the consumer credit; or

(ii) a temporary relief from or deferral of the individual's obligations in relation to the consumer credit;

then the arrangement is a ***financial hardship arrangement***.

Note: Financial hardship arrangements affect repayment history information: see subsection 6V(1A).

(2) For the purposes of this section, it does not matter whether the arrangement was initiated by the credit provider or the individual.

(3) This subsection covers any kind of agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

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Examples: An arrangement might involve a credit provider agreeing to:

(a) defer or reduce required monthly payments for a temporary period; or

(b) accept interest-only payments for a temporary period; or

(c) extend the term of a loan to reduce monthly payments.

Financial hardship information

(4) If subsection 6V(1A) (about financial hardship arrangements) applies in determining repayment history information about an individual, then the following information is ***financial hardship information*** about the individual:

(a) for an arrangement referred to in subparagraph (1)(d)(i) (about permanent variations)—information, relating only to the first monthly payment affected by the arrangement, that indicates that the monthly payment is the first monthly payment affected by a financial hardship arrangement of that kind;

(b) for an arrangement referred to in subparagraph (1)(d)(ii) (about temporary relief or deferral of obligations)—information, relating to each monthly payment affected by the arrangement, that indicates that the monthly payment was affected by a financial hardship arrangement of that kind.

Note: Paragraph (b) may apply even if, under the arrangement, the individual is not required to make a payment for a month: see subsection 6V(1B).

(5) Paragraph (4)(b) does not apply in relation to a monthly payment under a financial hardship arrangement if:

(a) the individual met the obligation to make the monthly payment, as affected by the arrangement; and

(b) the amount paid was equal to, or greater than, the amount the individual would have been obliged to pay apart from the arrangement.

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6R Meaning of *information request*

Credit provider

(1) A credit provider has made an ***information request*** in relation to an individual if the provider has sought information about the individual from a credit reporting body:

(a) in connection with an application for consumer credit made by the individual to the provider; or

(b) in connection with an application for commercial credit made by a person to the provider; or

(c) for a credit guarantee purpose of the provider in relation to the individual; or

(d) for a securitisation related purpose of the provider in relation to the individual.

Mortgage insurer

(2) A mortgage insurer has made an ***information request*** in relation to an individual if:

(a) the insurer has sought information about the individual from a credit reporting body; and

(b) the information was sought in connection with the provision of insurance to a credit provider in relation to mortgage credit provided by the provider to:

(i) the individual; or

(ii) a person for whom the individual is, or is proposing to be, a guarantor.

Trade insurer

(3) A trade insurer has made an ***information request*** in relation to an individual if:

(a) the insurer has sought information about the individual from a credit reporting body; and

(b) the information was sought in connection with the provision of insurance to a credit provider in relation to commercial

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credit provided by the provider to the individual or another person.

6S Meaning of *new arrangement information*

Consumer credit defaults

(1) If:

(a) a credit provider has disclosed default information about an individual to a credit reporting body; and

(b) the default information relates to a payment that the individual is overdue in making in relation to consumer credit (the ***original consumer credit***) that has been provided by the provider to the individual; and

(c) because of the individual being so overdue:

(i) the terms or conditions of the original consumer credit that relate to the repayment of the amount of credit are varied; or

(ii) the individual is provided with other consumer credit (the ***new consumer credit***) by a credit provider that relates, wholly or in part, to that amount of credit;

then ***new arrangement information*** about the individual is a statement that those terms or conditions of the original consumer credit have been varied, or that the individual has been provided with the new consumer credit.

Serious credit infringements

(2) If:

(a) a credit provider is of the opinion that an individual has committed a serious credit infringement in relation to consumer credit (the ***original consumer credit***) provided by the provider to the individual; and

(b) the provider has disclosed the opinion to a credit reporting body; and

(c) because of the provider having that opinion:

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(i) the terms or conditions of the original consumer credit that relate to the repayment of the amount of credit are varied; or

(ii) the individual is provided with other consumer credit (the ***new consumer credit***) by a credit provider that relates, wholly or in part, to that amount of credit;

then ***new arrangement information*** about the individual is a statement that those terms or conditions of the original consumer credit have been varied, or that the individual has been provided with the new consumer credit.

6T Meaning of *payment information*

If:

(a) a credit provider has disclosed default information about an individual to a credit reporting body; and

(b) on a day after the default information was disclosed, the amount of the overdue payment to which the information relates is paid;

then ***payment information*** about the individual is a statement that the amount of the overdue payment has been paid on that day.

6U Meaning of *personal insolvency information*

(1) ***Personal insolvency information*** about an individual is information:

(a) that is entered or recorded in the National Personal Insolvency Index; and

(b) that relates to:

(i) a bankruptcy of the individual; or

(ii) a debt agreement proposal given by the individual; or

(iii) a debt agreement made by the individual; or

(iv) a personal insolvency agreement executed by the individual; or

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(v) a direction given, or an order made, under section 50 of the Bankruptcy Act that relates to the property of the individual; or

(vi) an authority signed under section 188 of that Act that relates to the property of the individual.

(2) Despite subparagraph (1)(b)(i), personal insolvency information about an individual must not relate to:

(a) the presentation of a creditor's petition against the individual; or

(b) an administration under Part XI of the Bankruptcy Act of the individual's estate.

(3) An expression used in paragraph (1)(b) or (2)(a) that is also used in the Bankruptcy Act has the same meaning in that paragraph as it has in that Act.

6V Meaning of *repayment history information*

(1) If a credit provider provides consumer credit to an individual, the following information about the consumer credit is ***repayment history information*** about the individual:

(a) whether or not the individual has met an obligation to make a monthly payment that is due and payable in relation to the consumer credit;

(b) the day on which the monthly payment is due and payable;

(c) if the individual makes the monthly payment after the day on which the payment is due and payable—the day on which the individual makes that payment.

(1A) If an obligation of the individual to make a monthly payment is, or is taken by subsection (1B) to be, affected by a financial hardship arrangement, then repayment history information is to be determined by reference to that obligation as so affected.

Note: In this case, there may be financial hardship information: see subsections 6QA(4) and (5).

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(1B) If, under a financial hardship arrangement, an individual is not required to make a monthly payment for a month, then, for the purposes of subsections (1) and (1A) and section 6QA:

(a) a monthly payment is taken to have been due and payable on the day on which it would have been due and payable apart from the arrangement; and

(b) the individual is taken to have met the obligation to make the monthly payment; and

(c) the obligation to make the monthly payment is taken to be affected by the arrangement.

(2) The regulations may make provision in relation to:

(a) whether or not an individual has met an obligation to make a monthly payment that is due and payable in relation to consumer credit; and

(b) whether or not a payment is a monthly payment.

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Division 3—Other matters

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 hearing service provider), a file number recipient, a credit reporting body 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

(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

(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,

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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 Defence Department 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

(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 an eligible hearing service provider), 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 an eligible hearing service provider); 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 or the Australian Geospatial-Intelligence Organisation; 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 Australian Signals Directorate.

(1B) 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 by an agency with an intelligence role or function (within the meaning of the *Office of National Intelligence Act 2018*) so far as it involves the disclosure of personal information to the Office of National Intelligence.

(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 Australian Privacy Principles, a registered APP code and the performance of the Commissioner's functions in relation to the principles and such a code, 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;

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(b) the Defence Intelligence Organisation or the Australian Geospatial-Intelligence Organisation; 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.

(4) For the purposes of section 28, of paragraphs 28A(2)(a) to (e), 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.

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

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 16 which provides that the Australian 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 Australian Privacy Principles, or a registered APP code that binds the organisation, in relation to those activities.

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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.

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.

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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.

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.

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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;

(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:

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(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 body 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 body or credit provider;

(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 law, or a law of a State or Territory that applies in an external Territory, 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

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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 does not hold that record;

that act or practice shall be treated as the act or the practice of the agency that holds 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.

(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.

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10 Agencies that are taken to hold a 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, to be the agency that holds that record.

(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, to be the agency that holds 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

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(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 law, or a law of a State or Territory that applies in an external Territory, 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.

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.

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12B Severability—additional effect of this Act

(1) Without limiting its effect apart from this section, this Act has effect in relation to the following (the ***regulated entities***) as provided by this section:

(a) an agency;

(b) an organisation;

(c) a small business operator;

(d) a body politic.

Note: Subsection 27(4) applies in relation to an investigation of an act or practice referred to in subsection 29(1) of the *Healthcare Identifiers Act 2010*.

(2) This Act also has the effect it would have if its operation in relation to regulated entities were expressly confined to an operation to give effect to the following:

(a) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23), and in particular Articles 17 and 24(1) of the Covenant;

(b) Article 16 of the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4).

Note: In 2012, the text of the Covenant and Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

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

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

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

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(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.

(5A) This Act also has the effect it would have if its operation in relation to regulated entities were expressly confined to acts or practices engaged in by regulated entities in the course of:
(a) banking (other than State banking not extending beyond the limits of the State concerned); or
(b) insurance (other than State insurance not extending beyond the limits of the State concerned).

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

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

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Part III—Information privacy

Division 1—Interferences with privacy

13 Interferences with privacy

APP entities

(1) An act or practice of an APP entity is an ***interference with the privacy of an individual*** if:

(a) the act or practice breaches an Australian Privacy Principle in relation to personal information about the individual; or

(b) the act or practice breaches a registered APP code that binds the entity in relation to personal information about the individual.

Credit reporting

(2) An act or practice of an entity is an ***interference with the privacy of an individual*** if:

(a) the act or practice breaches a provision of Part IIIA in relation to personal information about the individual; or

(b) the act or practice breaches the registered CR code in relation to personal information about the individual and the code binds the entity.

Contracted service providers

(3) An act or practice of an organisation is an ***interference with the privacy of an individual*** if:

(a) the act or practice relates to personal information about the individual; and

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

(c) the act or practice does not breach:

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(i) an Australian Privacy Principle; or

(ii) a registered APP code that binds the organisation;

in relation to the personal information because of a provision of the contract that is inconsistent with the principle or code; and

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

Note: See subsections 6A(2) and 6B(2) for when an act or practice does not breach an Australian Privacy Principle or a registered APP code.

Tax file numbers

(4) An act or practice is an ***interference with the privacy of an individual*** if:

(a) it is an act or practice of a file number recipient and the act or practice breaches a rule issued under section 17 in relation to tax file number information that relates to the individual; or

(b) the act or practice involves an unauthorised requirement or request for disclosure of the tax file number of the individual.

Notification of eligible data breaches etc.

(4A) If an entity (within the meaning of Part IIIC) contravenes subsection 26WH(2), 26WK(2), 26WL(3) or 26WR(10), the contravention is taken to be an act that is an ***interference with the privacy of an individual***.

Other interferences with privacy

(5) An act or practice is an ***interference with the privacy of an individual*** if the act or practice:

(a) constitutes a breach of Part 2 of the *Data-matching Program (Assistance and Tax) Act 1990* or the rules issued under section 12 of that Act; or

(b) constitutes a breach of the rules issued under section 135AA of the *National Health Act 1953*.

Note: Other Acts may provide that an act or practice is an interference with the privacy of an individual. For example, see the *Healthcare*

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Identifiers Act 2010, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and the *Personal Property Securities Act 2009*.

13B Related bodies corporate

Acts or practices that are not interferences with privacy

(1) Despite subsection 13(1), 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 Australian Privacy Principles and a registered APP code that binds them. 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 Australian Privacy Principle 6 (noting that the collecting body's primary purpose of collection will be taken to be the same as that of the related body).

(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

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

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Note: The effect of subsection (1A) is that a body corporate's failure to comply with the Australian Privacy Principles, or a registered APP code that binds the body, 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 subsection 13(3)

(2) Subsection (1) does not prevent an act or practice of an organisation from being an ***interference with the privacy of an individual*** under subsection 13(3).

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 Australian Privacy Principles and a registered APP code that binds them. For example, the new partnership's use of personal information collected from the old partnership may constitute an interference with privacy if it breaches Australian Privacy Principle 6.

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Effect of subsection (1)

(2) Subsection (1) has effect despite subsections 13(1) and (3).

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 of subsection (1)

(2) Subsection (1) has effect despite subsections 13(1) and (3).

13E Effect 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 subsection 13(2), (4) or (5).

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

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

13G Serious and repeated interferences with privacy

An entity contravenes this subsection if:

(a) the entity does an act, or engages in a practice, that is a serious interference with the privacy of an individual; or

(b) the entity repeatedly does an act, or engages in a practice, that is an interference with the privacy of one or more individuals.

Civil penalty: 2,000 penalty units.

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Division 2—Australian Privacy Principles

14 *Australian Privacy Principles*

(1) The ***Australian Privacy Principles*** are set out in the clauses of Schedule 1.

(2) A reference in any Act to an Australian Privacy Principle by a number is a reference to the Australian Privacy Principle with that number.

15 APP entities must comply with Australian Privacy Principles

An APP entity must not do an act, or engage in a practice, that breaches an Australian Privacy Principle.

16 Personal, family or household affairs

Nothing in the Australian Privacy Principles applies to:

(a) the collection, holding, use or disclosure 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.

16A Permitted general situations in relation to the collection, use or disclosure of personal information

(1) A ***permitted general situation*** exists in relation to the collection, use or disclosure by an APP entity of personal information about an individual, or of a government related identifier of an individual, if:

(a) the entity is an entity of a kind specified in an item in column 1 of the table; and

(b) the item in column 2 of the table applies to the information or identifier; and

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(c) such conditions as are specified in the item in column 3 of the table are satisfied.

Permitted general situations

Item	Column 1 Kind of entity	Column 2 Item applies to	Column 3 Condition(s)
1	APP entity	(a) personal information; or (b) a government related identifier.	(a) it is unreasonable or impracticable to obtain the individual's consent to the collection, use or disclosure; and (b) the entity reasonably believes that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.
2	APP entity	(a) personal information; or (b) a government related identifier.	(a) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in; and (b) the entity reasonably believes that the collection, use or disclosure is necessary in order for the entity to take appropriate action in relation to the matter.
3	APP entity	Personal information	(a) the entity reasonably believes that the collection, use or disclosure is reasonably necessary to assist any APP entity, body or person to locate a person who has been reported as missing; and (b) the collection, use or disclosure complies with the rules made under subsection (2).

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Permitted general situations			
Item	**Column 1** **Kind of entity**	**Column 2** **Item applies to**	**Column 3** **Condition(s)**
4	APP entity	Personal information	The collection, use or disclosure is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim.
5	APP entity	Personal information	The collection, use or disclosure is reasonably necessary for the purposes of a confidential alternative dispute resolution process.
6	Agency	Personal information	The entity reasonably believes that the collection, use or disclosure is necessary for the entity's diplomatic or consular functions or activities.
7	Defence Force	Personal information	The entity reasonably believes that the collection, use or disclosure is necessary for any of the following occurring outside Australia and the external Territories: (a) war or warlike operations; (b) peacekeeping or peace enforcement; (c) civil aid, humanitarian assistance, medical or civil emergency or disaster relief.

(2) The Commissioner may, by legislative instrument, make rules relating to the collection, use or disclosure of personal information that apply for the purposes of item 3 of the table in subsection (1).

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16B Permitted health situations in relation to the collection, use or disclosure of health information

Collection—provision of a health service

(1) A ***permitted health situation*** exists in relation to the collection by an organisation of health information about an individual if:

(a) the information is necessary to provide a health service to the individual; and

(b) either:

(i) the collection is required or authorised by or under an Australian law (other than this Act); or

(ii) the information is collected in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

(1A) A ***permitted health situation*** exists in relation to the collection by an organisation of health information about an individual (the ***third party***) if:

(a) it is necessary for the organisation to collect the family, social or medical history of an individual (the ***patient***) to provide a health service to the patient; and

(b) the health information about the third party is part of the family, social or medical history necessary for the organisation to provide the health service to the patient; and

(c) the health information is collected by the organisation from the patient or, if the patient is physically or legally incapable of giving the information, a responsible person for the patient.

Collection—research etc.

(2) A ***permitted health situation*** exists in relation to the collection by an organisation of 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;

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(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 about the individual that is de-identified information; and

(c) it is impracticable for the organisation to obtain the individual's consent to the collection; and

(d) any of the following apply:

(i) the collection is required by or under an Australian law (other than this Act);

(ii) the information is collected in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation;

(iii) the information is collected in accordance with guidelines approved under section 95A for the purposes of this subparagraph.

Use or disclosure—research etc.

(3) A ***permitted health situation*** exists in relation to the use or disclosure by an organisation of health information about an individual if:

(a) the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety; and

(b) it is impracticable for the organisation to obtain the individual's consent to the use or disclosure; and

(c) the use or disclosure is conducted in accordance with guidelines approved under section 95A for the purposes of this paragraph; and

(d) in the case of disclosure—the organisation reasonably believes that the recipient of the information will not disclose the information, or personal information derived from that information.

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Use or disclosure—genetic information

(4) A ***permitted health situation*** exists in relation to the use or disclosure by an organisation of genetic information about an individual (the ***first individual***) if:

(a) the organisation has obtained the information in the course of providing a health service to the first individual; and

(b) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of another individual who is a genetic relative of the first individual; and

(c) the use or disclosure is conducted in accordance with guidelines approved under section 95AA; and

(d) in the case of disclosure—the recipient of the information is a genetic relative of the first individual.

Disclosure—responsible person for an individual

(5) A ***permitted health situation*** exists in relation to the disclosure by an organisation of health information about an individual if:

(a) the organisation provides a health service to the individual; and

(b) the recipient of the information is a responsible person for the individual; and

(c) the individual:

(i) is physically or legally incapable of giving consent to the disclosure; or

(ii) physically cannot communicate consent to the disclosure; and

(d) another individual (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

(e) the disclosure is not contrary to any wish:

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(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

(f) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (d).

16C Acts and practices of overseas recipients of personal information

(1) This section applies if:

(a) an APP entity discloses personal information about an individual to an overseas recipient; and

(b) Australian Privacy Principle 8.1 applies to the disclosure of the information; and

(c) the Australian Privacy Principles do not apply, under this Act, to an act done, or a practice engaged in, by the overseas recipient in relation to the information; and

(d) the overseas recipient does an act, or engages in a practice, in relation to the information that would be a breach of the Australian Privacy Principles (other than Australian Privacy Principle 1) if those Australian Privacy Principles so applied to that act or practice.

(2) The act done, or the practice engaged in, by the overseas recipient is taken, for the purposes of this Act:

(a) to have been done, or engaged in, by the APP entity; and

(b) to be a breach of those Australian Privacy Principles by the APP entity.

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Division 4—Tax file number information

17 Rules relating to tax file number information

The Commissioner must, by legislative instrument, issue rules concerning the collection, storage, use and security of tax file number information.

18 File number recipients to comply with rules

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

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Part IIIA—Credit reporting

Division 1—Introduction

19 Guide to this Part

In general, this Part deals with the privacy of information relating to credit reporting.

Divisions 2 and 3 contain rules that apply to credit reporting bodies and credit providers in relation to their handling of information relating to credit reporting.

Division 4 contains rules that apply to affected information recipients in relation to their handling of their regulated information.

Division 5 deals with complaints to credit reporting bodies or credit providers about acts or practices that may be a breach of certain provisions of this Part or the registered CR code.

Division 6 deals with entities that obtain credit reporting information or credit eligibility information by false pretence, or when they are not authorised to do so under this Part.

Division 7 provides for compensation orders, and other orders, to be made by the Federal Court or Federal Circuit and Family Court of Australia (Division 2).

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Division 2—Credit reporting bodies

Subdivision A—Introduction and application of this Division etc.

20 Guide to this Division

This Division sets out rules that apply to credit reporting bodies in relation to their handling of the following:

(a) credit reporting information;

(b) CP derived information;

(c) credit reporting information that is de-identified;

(d) a pre-screening assessment.

The rules apply in relation to that kind of information or assessment instead of the Australian Privacy Principles.

20A Application of this Division and the Australian Privacy Principles to credit reporting bodies

(1) This Division applies to a credit reporting body in relation to the following:
  (a) credit reporting information;
  (b) CP derived information;
  (c) credit reporting information that is de-identified;
  (d) a pre-screening assessment.

(2) The Australian Privacy Principles do not apply to a credit reporting body in relation to personal information that is:
  (a) credit reporting information; or
  (b) CP derived information; or

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(c) a pre-screening assessment.

Note: The Australian Privacy Principles apply to the credit reporting body in relation to other kinds of personal information.

Subdivision B—Consideration of information privacy

20B Open and transparent management of credit reporting information

(1) The object of this section is to ensure that credit reporting bodies manage credit reporting information in an open and transparent way.

Compliance with this Division etc.

(2) A credit reporting body must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the credit reporting business of the body that:
(a) will ensure that the body complies with this Division and the registered CR code; and
(b) will enable the body to deal with inquiries or complaints from individuals about the body's compliance with this Division or the registered CR code.

Policy about the management of credit reporting information

(3) A credit reporting body must have a clearly expressed and up-to-date policy about the management of credit reporting information by the body.

(4) Without limiting subsection (3), the policy of the credit reporting body must contain the following information:
(a) the kinds of credit information that the body collects and how the body collects that information;
(b) the kinds of credit reporting information that the body holds and how the body holds that information;
(c) the kinds of personal information that the body usually derives from credit information that the body holds;

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(d) the purposes for which the body collects, holds, uses and discloses credit reporting information;
(e) information about the effect of section 20G (which deals with direct marketing) and how the individual may make a request under subsection (5) of that section;
(f) how an individual may access credit reporting information about the individual that is held by the body and seek the correction of such information;
(g) information about the effect of section 20T (which deals with individuals requesting the correction of credit information etc.);
(h) how an individual may complain about a failure of the body to comply with this Division or the registered CR code and how the body will deal with such a complaint.

Availability of policy etc.

(5) A credit reporting body must take such steps as are reasonable in the circumstances to make the policy available:
(a) free of charge; and
(b) in such form as is appropriate.

Note: A credit reporting body will usually make the policy available on the body's website.

(6) If a person or body requests a copy, in a particular form, of the policy of a credit reporting body, the credit reporting body must take such steps as are reasonable in the circumstances to give the person or body a copy in that form.

Subdivision C—Collection of credit information

20C Collection of solicited credit information

Prohibition on collection

(1) A credit reporting body must not collect credit information about an individual.

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Civil penalty: 2,000 penalty units.

Exceptions

(2) Subsection (1) does not apply if the collection of the credit information is required or authorised by or under an Australian law or a court/tribunal order.

(3) Subsection (1) does not apply if:
  (a) the credit reporting body collects the credit information about the individual from a credit provider who is permitted under section 21D to disclose the information to the body; and
  (b) the body collects the information in the course of carrying on a credit reporting business; and
  (c) if the information is identification information about the individual—the body also collects from the provider, or already holds, credit information of another kind about the individual.

(4) Subsection (1) does not apply if:
  (a) the credit reporting body:
    (i) collects the credit information about the individual from an entity (other than a credit provider) in the course of carrying on a credit reporting business; and
    (ii) knows, or believes on reasonable grounds, that the individual is at least 18 years old; and
  (b) the information does not relate to an act, omission, matter or thing that occurred or existed before the individual turned 18; and
  (c) if the information relates to consumer credit or commercial credit—the credit is or has been provided, or applied for, in Australia; and
  (d) if the information is identification information about the individual—the body also collects from the entity, or already holds, credit information of another kind about the individual; and

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(e) if the information is repayment history information or financial hardship information about the individual—the body collects the information from another credit reporting body that has an Australian link.

(5) Paragraph (4)(b) does not apply to identification information about the individual.

(6) Despite paragraph (4)(b), consumer credit liability information about the individual may relate to consumer credit that was entered into on a day before the individual turned 18, so long as the consumer credit was not terminated, or did not otherwise cease to be in force, on a day before the individual turned 18.

Means of collection

(7) A credit reporting body must collect credit information only by lawful and fair means.

Solicited credit information

(8) This section applies to the collection of credit information that is solicited by a credit reporting body.

20D Dealing with unsolicited credit information

(1) If:

(a) a credit reporting body receives credit information about an individual; and

(b) the body did not solicit the information;

the body must, within a reasonable period after receiving the information, determine whether or not the body could have collected the information under section 20C if the body had solicited the information.

(2) The credit reporting body may use or disclose the credit information for the purposes of making the determination under subsection (1).

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(3) If the credit reporting body determines that it could have collected the credit information, sections 20E to 20ZA apply in relation to the information as if the body had collected the information under section 20C.

(4) If the credit reporting body determines that it could not have collected the credit information, the body must, as soon as practicable, destroy the information.

Civil penalty: 1,000 penalty units.

(5) Subsection (4) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, to retain the credit information.

Subdivision D—Dealing with credit reporting information etc.

20E Use or disclosure of credit reporting information

Prohibition on use or disclosure

(1) If a credit reporting body holds credit reporting information about an individual, the body must not use or disclose the information.

Civil penalty: 2,000 penalty units.

Permitted uses

(2) Subsection (1) does not apply to the use of credit reporting information about the individual if:

(a) the credit reporting body uses the information in the course of carrying on the body's credit reporting business; or

(b) the use is required or authorised by or under an Australian law (other than the consumer data rules) or a court/tribunal order; or

(c) the use is a use prescribed by the regulations.

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Permitted disclosures

(3) Subsection (1) does not apply to the disclosure of credit reporting information about the individual if:

(a) the disclosure is a permitted CRB disclosure in relation to the individual; or

(b) the disclosure is to another credit reporting body that has an Australian link; or

(c) both of the following apply:

(i) the disclosure is for the purposes of a recognised external dispute resolution scheme;

(ii) a credit reporting body or credit provider is a member of or subject to the scheme; or

(d) both of the following apply:

(i) the disclosure is to an enforcement body;

(ii) the credit reporting body is satisfied that the body, or another enforcement body, believes on reasonable grounds that the individual has committed a serious credit infringement; or

(e) the disclosure is required or authorised by or under an Australian law (other than the consumer data rules) or a court/tribunal order; or

(f) the disclosure is a disclosure prescribed by the regulations.

(4) However, if the credit reporting information is, or was derived from, repayment history information or financial hardship information about the individual, the credit reporting body must not disclose the information under paragraph (3)(a) or (f) unless the recipient of the information is:

(a) a credit provider who is a licensee or is prescribed by the regulations; or

(b) a mortgage insurer.

Civil penalty: 2,000 penalty units.

(4A) Despite subsection (3), if the credit reporting information is, or was derived from, financial hardship information about the individual,

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the credit reporting body must not disclose the information under paragraph (3)(a) or (f) to a credit provider or mortgage insurer if the provider or insurer requested the information for the purpose of:

(a) in the case of a credit provider:

(i) collecting payments that are overdue in relation to consumer credit provided by the provider to the individual; or

(ii) collecting payments that are overdue in relation to commercial credit provided by the provider to a person; or

(iii) assessing whether to accept the individual as a guarantor in relation to credit for which an application has been made to the provider by a person other than the individual; or

(b) in the case of a mortgage insurer—assessing the risk of the individual defaulting on mortgage credit in relation to which the insurer has provided insurance to a credit provider.

Civil penalty: 2,000 penalty units.

(5) If a credit reporting body discloses credit reporting information under this section, the body must make a written note of that disclosure.

Civil penalty: 500 penalty units.

Note: Other Acts may provide that the note must not be made (see for example the *Australian Crime Commission Act 2002* and the *Law Enforcement Integrity Commissioner Act 2006*).

No use or disclosure for the purposes of direct marketing

(6) This section does not apply to the use or disclosure of credit reporting information for the purposes of direct marketing.

Note: Section 20G deals with the use or disclosure of credit reporting information for the purposes of direct marketing.

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No disclosure of financial hardship information as part of credit score

(7) Subsection (3) does not apply to the disclosure of CRB derived information which contains or takes the form of a credit score where the credit information from which the credit score is derived includes financial hardship information.

20F Permitted CRB disclosures in relation to individuals

(1) A disclosure by a credit reporting body of credit reporting information about an individual is a ***permitted CRB disclosure*** in relation to the individual if:

(a) the disclosure is to an entity that is specified in an item of the table and that has an Australian link; and

(b) such conditions as are specified for the item are satisfied.

Permitted CRB disclosures

Item	If the disclosure is to ...	the condition or conditions are ...
1	a credit provider	the provider requests the information for a consumer credit related purpose of the provider in relation to the individual.
2	a credit provider	(a) the provider requests the information for a commercial credit related purpose of the provider in relation to a person; and (b) the individual expressly consents to the disclosure of the information to the provider for that purpose.
3	a credit provider	(a) the provider requests the information for a credit guarantee purpose of the provider in relation to the individual; and (b) the individual expressly consents, in writing, to the disclosure of the information to the provider for that purpose.
4	a credit provider	the credit reporting body is satisfied that the provider, or another credit provider, believes on reasonable grounds that the individual has

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Permitted CRB disclosures		
Item	**If the disclosure is to ...**	**the condition or conditions are ...**
		committed a serious credit infringement.
5	a credit provider	(a) the credit reporting body holds consumer credit liability information that relates to consumer credit provided by the provider to the individual; and (b) the consumer credit has not been terminated, or has not otherwise ceased to be in force.
6	a credit provider under subsection 6J(1)	the provider requests the information for a securitisation related purpose of the provider in relation to the individual.
7	a mortgage insurer	the insurer requests the information for a mortgage insurance purpose of the insurer in relation to the individual.
8	a trade insurer	(a) the insurer requests the information for a trade insurance purpose of the insurer in relation to the individual; and (b) the individual expressly consents, in writing, to the disclosure of the information to the insurer for that purpose.

(2) The consent of the individual under paragraph (b) of item 2 of the table in subsection (1) must be given in writing unless:

(a) the credit provider referred to in that item requests the information for the purpose of assessing an application for commercial credit made by a person to the provider; and

(b) the application has not been made in writing.

20G Use or disclosure of credit reporting information for the purposes of direct marketing

Prohibition on direct marketing

(1) If a credit reporting body holds credit reporting information about an individual, the body must not use or disclose the information for the purposes of direct marketing.

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Civil penalty: 2,000 penalty units.

Permitted use for pre-screening

(2) Subsection (1) does not apply to the use by the credit reporting body of credit information about the individual for the purposes of direct marketing by, or on behalf of, a credit provider if:

(a) the provider has an Australian link and is a licensee; and

(b) the direct marketing is about consumer credit that the provider provides in Australia; and

(c) the information is not consumer credit liability information, repayment history information, or financial hardship information about the individual; and

(d) the body uses the information to assess whether or not the individual is eligible to receive the direct marketing communications of the credit provider; and

(e) the individual has not made a request under subsection (5); and

(f) the body complies with any requirements that are set out in the registered CR code.

(3) In assessing under paragraph (2)(d) whether or not the individual is eligible to receive the direct marketing communications of the credit provider, the credit reporting body must have regard to the eligibility requirements nominated by the provider.

(4) An assessment under paragraph (2)(d) is not credit reporting information about the individual.

Request not to use information for pre-screening

(5) An individual may request a credit reporting body that holds credit information about the individual not to use the information under subsection (2).

(6) If the individual makes a request under subsection (5), the credit reporting body must not charge the individual for the making of the request or to give effect to the request.

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Written note of use

(7) If a credit reporting body uses credit information under subsection (2), the body must make a written note of that use.

Civil penalty: 500 penalty units.

20H Use or disclosure of pre-screening assessments

Use or disclosure by credit reporting bodies

(1) If a credit reporting body makes a pre-screening assessment in relation to direct marketing by, or on behalf of, a credit provider, the body must not use or disclose the assessment.

Civil penalty: 2,000 penalty units.

(2) Subsection (1) does not apply if:
   (a) the credit reporting body discloses the pre-screening assessment for the purposes of the direct marketing by, or on behalf of, the credit provider; and
   (b) the recipient of the assessment is an entity (other than the provider) that has an Australian link.

(3) If the credit reporting body discloses the pre-screening assessment under subsection (2), the body must make a written note of that disclosure.

Civil penalty: 500 penalty units.

Use or disclosure by recipients

(4) If the credit reporting body discloses the pre-screening assessment under subsection (2), the recipient must not use or disclose the assessment.

Civil penalty: 1,000 penalty units.

(5) Subsection (4) does not apply if the recipient uses the pre-screening assessment for the purposes of the direct marketing by, or on behalf of, the credit provider.

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(6) If the recipient uses the pre-screening assessment under subsection (5), the recipient must make a written note of that use.

Civil penalty: 500 penalty units.

Interaction with the Australian Privacy Principles

(7) If the recipient is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the recipient in relation to a pre-screening assessment.

20J Destruction of pre-screening assessment

(1) If an entity has possession or control of a pre-screening assessment, the entity must destroy the assessment if:
   (a) the entity no longer needs the assessment for any purpose for which it may be used or disclosed under section 20H; and
   (b) the entity is not required by or under an Australian law, or a court/tribunal order, to retain the assessment.

Civil penalty: 1,000 penalty units.

(2) If the entity is an APP entity but not a credit reporting body, Australian Privacy Principle 11.2 does not apply to the entity in relation to the pre-screening assessment.

20K No use or disclosure of credit reporting information during a ban period

(1) If:
   (a) a credit reporting body holds credit reporting information about an individual; and
   (b) the individual believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud (including identity fraud); and
   (c) the individual requests the body not to use or disclose the information under this Division;

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then, despite any other provision of this Division, the body must not use or disclose the information during the ban period for the information.

Civil penalty: 2,000 penalty units.

(2) Subsection (1) does not apply if:

(a) the individual expressly consents, in writing, to the use or disclosure of the credit reporting information under this Division; or

(b) the use or disclosure of the credit reporting information is required by or under an Australian law or a court/tribunal order.

Ban period

(3) The ***ban period*** for credit reporting information about an individual is the period that:

(a) starts when the individual makes a request under paragraph (1)(c); and

(b) ends:

(i) 21 days after the day on which the request is made; or

(ii) if the period is extended under subsection (4)—on the day after the extended period ends.

(4) If:

(a) there is a ban period for credit reporting information about an individual that is held by a credit reporting body; and

(b) before the ban period ends, the individual requests the body to extend that period; and

(c) the body believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud (including identity fraud);

the body must:

(d) extend the ban period by such period as the body considers is reasonable in the circumstances; and

(e) give the individual written notification of the extension.

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Civil penalty: 1,000 penalty units.

(5) A ban period for credit reporting information may be extended more than once under subsection (4).

No charge for request etc.

(6) If an individual makes a request under paragraph (1)(c) or (4)(b), a credit reporting body must not charge the individual for the making of the request or to give effect to the request.

20L Adoption of government related identifiers

(1) If:

(a) a credit reporting body holds credit reporting information about an individual; and

(b) the information is a government related identifier of the individual;

the body must not adopt the government related identifier as its own identifier of the individual.

Civil penalty: 2,000 penalty units.

(2) Subsection (1) does not apply if the adoption of the government related identifier is required or authorised by or under an Australian law or a court/tribunal order.

20M Use or disclosure of credit reporting information that is de-identified

Use or disclosure

(1) If:

(a) a credit reporting body holds credit reporting information; and

(b) the information (the ***de-identified information***) is de-identified;

the body must not use or disclose the de-identified information.

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(2) Subsection (1) does not apply to the use or disclosure of the de-identified information if:

(a) the use or disclosure is for the purposes of conducting research in relation to credit; and

(b) the credit reporting body complies with the rules made under subsection (3).

Commissioner may make rules

(3) The Commissioner may, by legislative instrument, make rules relating to the use or disclosure by a credit reporting body of de-identified information for the purposes of conducting research in relation to credit.

(4) Without limiting subsection (3), the rules may relate to the following matters:

(a) the kinds of de-identified information that may or may not be used or disclosed for the purposes of conducting the research;

(b) whether or not the research is research in relation to credit;

(c) the purposes of conducting the research;

(d) consultation about the research;

(e) how the research is conducted.

Subdivision E—Integrity of credit reporting information

20N Quality of credit reporting information

(1) A credit reporting body must take such steps as are reasonable in the circumstances to ensure that the credit information the body collects is accurate, up-to-date and complete.

(2) A credit reporting body must take such steps as are reasonable in the circumstances to ensure that the credit reporting information the body uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

(3) Without limiting subsections (1) and (2), a credit reporting body must:

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(a) enter into agreements with credit providers that require the providers to ensure that credit information that they disclose to the body under section 21D is accurate, up-to-date and complete; and
(b) ensure that regular audits are conducted by an independent person to determine whether those agreements are being complied with; and
(c) identify and deal with suspected breaches of those agreements.

20P False or misleading credit reporting information

Offence

(1) A credit reporting body commits an offence if:
(a) the body uses or discloses credit reporting information under this Division (other than subsections 20D(2) and 20T(4)); and
(b) the information is false or misleading in a material particular.

Penalty: 200 penalty units.

Civil penalty

(2) A credit reporting body must not use or disclose credit reporting information under this Division (other than subsections 20D(2) and 20T(4)) if the information is false or misleading in a material particular.

Civil penalty: 2,000 penalty units.

20Q Security of credit reporting information

(1) If a credit reporting body holds credit reporting information, the body must take such steps as are reasonable in the circumstances to protect the information:
(a) from misuse, interference and loss; and
(b) from unauthorised access, modification or disclosure.

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(2) Without limiting subsection (1), a credit reporting body must:
  (a) enter into agreements with credit providers that require the providers to protect credit reporting information that is disclosed to them under this Division:
    (i) from misuse, interference and loss; and
    (ii) from unauthorised access, modification or disclosure; and
  (b) ensure that regular audits are conducted by an independent person to determine whether those agreements are being complied with; and
  (c) identify and deal with suspected breaches of those agreements.

(3) Without limiting subsection (1), if a credit reporting body holds credit reporting information, the body must store the information:
  (a) either:
    (i) in Australia or an external Territory; or
    (ii) in accordance with any security requirements prescribed by the regulations for storing the information outside of Australia and the external Territories; and
  (b) in accordance with any security requirements prescribed by the regulations.

Note: Requirements prescribed for paragraph (b) apply wherever the information is stored.

Subdivision F—Access to, and correction of, information

20R Access to credit reporting information

Access

(1) If a credit reporting body holds credit reporting information about an individual, the body must, on request by an access seeker in relation to the information, give the access seeker access to:
  (a) the information; and
  (b) if the body is a corporation to which paragraph 51(xx) of the Constitution applies, and the credit reporting business of the

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body involves deriving CRB derived information about individuals in the form of a rating (a ***credit rating***) of the individuals on a credit score scale or range—the information referred to in subsection (1A).

(1A) The information is:

(a) the credit rating of the individual, as derived by the body after the request is made; and

(b) information that identifies the particular credit information that is held by the body and from which the credit rating was derived; and

(c) information about the relative weighting of the credit information described in paragraph (b) in deriving the credit rating; and

(d) information about what the other ratings on the scale or range are, and how the individual's credit rating relates to those other ratings.

Exceptions to access

(2) Despite subsection (1), the credit reporting body is not required to give the access seeker access to the credit reporting information to the extent that:

(a) giving access would be unlawful; or

(b) denying access is required or authorised by or under an Australian law or a court/tribunal order; or

(c) giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body; or

(d) for information referred to in subsection (1A)—the credit information about the individual that is held by the body is insufficient for the body to be able to derive the credit rating of the individual in the ordinary course of its credit reporting business within the period referred to in subsection (3).

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Dealing with requests for access

(3) The credit reporting body must respond to the request within a reasonable period, but not longer than 10 days, after the request is made.

Means of access

(4) If the credit reporting body gives access to the credit reporting information, the access must be given in the manner set out in the registered CR code.

Access charges

(5) If a request under subsection (1) in relation to the individual has not been made to the credit reporting body in the previous 3 months, the body must not charge the access seeker for the making of the request or for giving access to the information.

(6) If subsection (5) does not apply, any charge by the credit reporting body for giving access to the information must not be excessive and must not apply to the making of the request.

Refusal to give access

(7) If the credit reporting body refuses to give access to the information because of subsection (2), the body must give the access seeker a written notice that:

(a) sets out the reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and

(b) states that, if the access seeker is not satisfied with the response to the request, the access seeker may:

(i) access a recognised external dispute resolution scheme of which the body is a member; or

(ii) make a complaint to the Commissioner under Part V.

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20S Correction of credit reporting information

(1) If:

(a) a credit reporting body holds credit reporting information about an individual; and

(b) the body is satisfied that, having regard to a purpose for which the information is held by the body, the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

the body must take such steps (if any) as are reasonable in the circumstances to correct the information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete, relevant and not misleading.

(2) If:

(a) the credit reporting body corrects credit reporting information under subsection (1); and

(b) the body has previously disclosed the information under this Division (other than subsections 20D(2) and 20T(4));

the body must, within a reasonable period, give each recipient of the information written notice of the correction.

(3) Subsection (2) does not apply if:

(a) it is impracticable for the credit reporting body to give the notice under that subsection; or

(b) the credit reporting body is required by or under an Australian law, or a court/tribunal order, not to give the notice under that subsection.

20T Individual may request the correction of credit information etc.

Request

(1) An individual may request a credit reporting body to correct personal information about the individual if:

(a) the personal information is:

(i) credit information about the individual; or

(ii) CRB derived information about the individual; or

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(iii) CP derived information about the individual; and

(b) the body holds at least one kind of the personal information referred to in paragraph (a).

Correction

(2) If the credit reporting body is satisfied that the personal information is inaccurate, out-of-date, incomplete, irrelevant or misleading, the body must take such steps (if any) as are reasonable in the circumstances to correct the information within:

(a) the period of 30 days that starts on the day on which the request is made; or

(b) such longer period as the individual has agreed to in writing.

Consultation

(3) If the credit reporting body considers that the body cannot be satisfied of the matter referred to in subsection (2) in relation to the personal information without consulting either or both of the following (the ***interested party***):

(a) another credit reporting body that holds or held the information and that has an Australian link;

(b) a credit provider that holds or held the information and that has an Australian link;

the body must consult that interested party, or those interested parties, about the individual's request.

(4) The use or disclosure of personal information about the individual for the purposes of the consultation is taken, for the purposes of this Act, to be a use or disclosure that is authorised by this subsection.

No charge

(5) The credit reporting body must not charge the individual for the making of the request or for correcting the information.

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20U Notice of correction etc. must be given

(1) This section applies if an individual requests a credit reporting body to correct personal information under subsection 20T(1).

Notice of correction etc.

(2) If the credit reporting body corrects the personal information under subsection 20T(2), the body must, within a reasonable period:
  (a) give the individual written notice of the correction; and
  (b) if the body consulted an interested party under subsection 20T(3) about the individual's request—give the party written notice of the correction; and
  (c) if the correction relates to information that the body has previously disclosed under this Division (other than subsections 20D(2) and 20T(4))—give each recipient of the information written notice of the correction.

(3) If the credit reporting body does not correct the personal information under subsection 20T(2), the body must, within a reasonable period, give the individual written notice that:
  (a) states that the correction has not been made; and
  (b) sets out the body's reasons for not correcting the information (including evidence substantiating the correctness of the information); and
  (c) states that, if the individual is not satisfied with the response to the request, the individual may:
    (i) access a recognised external dispute resolution scheme of which the body is a member; or
    (ii) make a complaint to the Commissioner under Part V.

Exceptions

(4) Paragraph (2)(c) does not apply if it is impracticable for the credit reporting body to give the notice under that paragraph.

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(5) Subsection (2) or (3) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, not to give the notice under that subsection.

Subdivision G—Dealing with credit reporting information after the retention period ends etc.

20V Destruction etc. of credit reporting information after the retention period ends

(1) This section applies if:

(a) a credit reporting body holds credit information about an individual; and

(b) the retention period for the information ends.

Note: There is no retention period for identification information or credit information of a kind referred to in paragraph 6N(k).

Destruction etc. of credit information

(2) The credit reporting body must destroy the credit information, or ensure that the information is de-identified, within 1 month after the retention period for the information ends.

Civil penalty: 1,000 penalty units.

(3) Despite subsection (2), the credit reporting body must neither destroy the credit information nor ensure that the information is de-identified, if immediately before the retention period ends:

(a) there is a pending correction request in relation to the information; or

(b) there is a pending dispute in relation to the information.

Civil penalty: 500 penalty units.

(4) Subsection (2) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, to retain the credit information.

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Destruction etc. of CRB derived information

(5) The credit reporting body must destroy any CRB derived information about the individual that was derived from the credit information, or ensure that the CRB derived information is de-identified:

(a) if:

(i) the CRB derived information was derived from 2 or more kinds of credit information; and

(ii) the body is required to do a thing referred to in subsection (2) to one of those kinds of credit information;

at the same time that the body does that thing to that credit information; or

(b) otherwise—at the same time that the body is required to do a thing referred to in subsection (2) to the credit information from which the CRB derived information was derived.

Civil penalty: 1,000 penalty units.

(6) Despite subsection (5), the credit reporting body must neither destroy the CRB derived information nor ensure that the information is de-identified, if immediately before the retention period ends:

(a) there is a pending correction request in relation to the information; or

(b) there is a pending dispute in relation to the information.

Civil penalty: 500 penalty units.

(7) Subsection (5) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, to retain the CRB derived information.

20W Retention period for credit information—general

The following table sets out the ***retention period*** for credit information:

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(a) that is information of a kind referred to in an item of the table; and
(b) that is held by a credit reporting body.

Retention period

Item	If the credit information is ...	the *retention period* for the information is ...
1	consumer credit liability information	the period of 2 years that starts on the day on which the consumer credit to which the information relates is terminated or otherwise ceases to be in force.
2	repayment history information	the period of 2 years that starts on the day on which the monthly payment to which the information relates is due and payable.
2A	financial hardship information	the period of 1 year that starts on the day on which the monthly payment to which the information relates is due and payable.
3	information of a kind referred to in paragraph 6N(d) or (e)	the period of 5 years that starts on the day on which the information request to which the information relates is made.
4	default information	the period of 5 years that starts on the day on which the credit reporting body collects the information.
5	payment information	the period of 5 years that starts on the day on which the credit reporting body collects the default information to which the payment information relates.
6	new arrangement information within the meaning of subsection 6S(1)	the period of 2 years that starts on the day on which the credit reporting body collects the default information referred to in that subsection.
7	new arrangement information within the meaning of	the period of 2 years that starts on the day on which the credit reporting body

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Retention period		
Item	**If the credit information is ...**	**the *retention period* for the information is ...**
	subsection 6S(2)	collects the information about the opinion referred to in that subsection.
8	court proceedings information	the period of 5 years that starts on the day on which the judgement to which the information relates is made or given.
9	information of a kind referred to in paragraph 6N(l)	the period of 7 years that starts on the day on which the credit reporting body collects the information.

20X Retention period for credit information—personal insolvency information

(1) The following table has effect:

Item	If personal insolvency information relates to ...	the *retention period* for the information is whichever of the following periods ends later ...
1	a bankruptcy of an individual	(a) the period of 5 years that starts on the day on which the individual becomes a bankrupt; (b) the period of 2 years that starts on the day the bankruptcy ends.
2	a personal insolvency agreement to which item 3 of this table does not apply	(a) the period of 5 years that starts on the day on which the agreement is executed; (b) the period of 2 years that starts on the day the agreement is terminated or set aside under the Bankruptcy Act.
3	a personal insolvency agreement in relation to which a certificate has been signed under section 232 of the Bankruptcy Act	(a) the period of 5 years that starts on the day on which the agreement is executed; (b) the period that ends on the day on which the certificate is signed.

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Item	If personal insolvency information relates to ...	the *retention period* for the information is whichever of the following periods ends later ...
4	a debt agreement to which item 5 of this table does not apply	(a) the period of 5 years that starts on the day on which the agreement is made; (b) the period of 2 years that starts on the day: (i) the agreement is terminated under the Bankruptcy Act; or (ii) an order declaring that all the agreement is void is made under that Act.
5	a debt agreement that ends under section 185N of the Bankruptcy Act	(a) the period of 5 years that starts on the day on which the agreement is made; (b) the period that ends on the day on which the agreement ends.

Debt agreement proposals

(2) If personal insolvency information relates to a debt agreement proposal, the ***retention period*** for the information is the period that ends on the day on which:

(a) the proposal is withdrawn; or

(b) the proposal is not accepted under section 185EC of the Bankruptcy Act; or

(c) the acceptance of the proposal for processing is cancelled under section 185ED of that Act; or

(d) the proposal lapses under section 185G of that Act.

Control of property

(3) If personal insolvency information relates to a direction given, or an order made, under section 50 of the Bankruptcy Act, the ***retention period*** for the information is the period that ends on the day on which the control of the property to which the direction or order relates ends.

Note: See subsection 50(1B) of the Bankruptcy Act for when the control of the property ends.

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(4) If the personal insolvency information relates to an authority signed under section 188 of the Bankruptcy Act, the ***retention period*** for the information is the period that ends on the day on which the property to which the authority relates is no longer subject to control under Division 2 of Part X of that Act.

Interpretation

(5) An expression used in this section that is also used in the Bankruptcy Act has the same meaning in this section as it has in that Act.

20Y Destruction of credit reporting information in cases of fraud

(1) This section applies if:
  (a) a credit reporting body holds credit reporting information about an individual; and
  (b) the information relates to consumer credit that has been provided by a credit provider to the individual, or a person purporting to be the individual; and
  (c) the body is satisfied that:
    (i) the individual has been a victim of fraud (including identity fraud); and
    (ii) the consumer credit was provided as a result of that fraud.

Destruction of credit reporting information

(2) The credit reporting body must:
  (a) destroy the credit reporting information; and
  (b) within a reasonable period after the information is destroyed:
    (i) give the individual a written notice that states that the information has been destroyed and sets out the effect of subsection (4); and
    (ii) give the credit provider a written notice that states that the information has been destroyed.

Civil penalty: 1,000 penalty units.

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(3) Subsection (2) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, to retain the credit reporting information.

Notification of destruction to third parties

(4) If:
  (a) a credit reporting body destroys credit reporting information about an individual under subsection (2); and
  (b) the body has previously disclosed the information to one or more recipients under Subdivision D of this Division;

the body must, within a reasonable period after the destruction, notify those recipients of the destruction and the matters referred to in paragraph (1)(c).

Civil penalty: 500 penalty units.

(5) Subsection (4) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, not to give the notification.

20Z Dealing with information if there is a pending correction request etc.

(1) This section applies if a credit reporting body holds credit reporting information about an individual and either:
  (a) subsection 20V(3) applies in relation to the information; or
  (b) subsection 20V(6) applies in relation to the information.

Notification of Commissioner

(2) The credit reporting body must, as soon as practicable, notify in writing the Commissioner of the matter referred to in paragraph (1)(a) or (b) of this section.

Civil penalty: 1,000 penalty units.

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Use or disclosure

(3) The credit reporting body must not use or disclose the information under Subdivision D of this Division.

Civil penalty: 2,000 penalty units.

(4) However, the credit reporting body may use or disclose the information under this subsection if:
  (a) the use or disclosure is for the purposes of the pending correction request, or pending dispute, in relation to the information; or
  (b) the use or disclosure of the information is required by or under an Australian law or a court/tribunal order.

(5) If the credit reporting body uses or discloses the information under subsection (4), the body must make a written note of the use or disclosure.

Civil penalty: 500 penalty units.

Direction to destroy information etc.

(6) The Commissioner may, by legislative instrument, direct the credit reporting body to destroy the information, or ensure that the information is de-identified, by a specified day.

(7) If the Commissioner gives a direction under subsection (6) to the credit reporting body, the body must comply with the direction.

Civil penalty: 1,000 penalty units.

(8) To avoid doubt, section 20M applies in relation to credit reporting information that is de-identified as a result of the credit reporting body complying with the direction.

20ZA Dealing with information if an Australian law etc. requires it to be retained

(1) This section applies if a credit reporting body is not required:

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(a) to do a thing referred to in subsection 20V(2) to credit information because of subsection 20V(4); or
(b) to do a thing referred to in subsection 20V(5) to CRB derived information because of subsection 20V(7); or
(c) to destroy credit reporting information under subsection 20Y(2) because of subsection 20Y(3).

Use or disclosure

(2) The credit reporting body must not use or disclose the information under Subdivision D of this Division.

Civil penalty: 2,000 penalty units.

(3) However, the credit reporting body may use or disclose the information under this subsection if the use or disclosure of the information is required by or under an Australian law or a court/tribunal order.

(4) If the credit reporting body uses or discloses the information under subsection (3), the body must make a written note of the use or disclosure.

Civil penalty: 500 penalty units.

Other requirements

(5) Subdivision E of this Division (other than section 20Q) does not apply in relation to the use or disclosure of the information.

Note: Section 20Q deals with the security of credit reporting information.

(6) Subdivision F of this Division does not apply in relation to the information.

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Division 3—Credit providers

Subdivision A—Introduction and application of this Division

21 Guide to this Division

This Division sets out rules that apply to credit providers in relation to their handling of the following:

(a) credit information;

(b) credit eligibility information;

(c) CRB derived information.

If a credit provider is an APP entity, the rules apply in relation to that information in addition to, or instead of, any relevant Australian Privacy Principles.

21A Application of this Division to credit providers

(1) This Division applies to a credit provider in relation to the following:
  (a) credit information;
  (b) credit eligibility information;
  (c) CRB derived information.

(2) If the credit provider is an APP entity, this Division may apply to the provider in relation to information referred to in subsection (1) in addition to, or instead of, the Australian Privacy Principles.

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Subdivision B—Consideration of information privacy

21B Open and transparent management of credit information etc.

(1) The object of this section is to ensure that credit providers manage credit information and credit eligibility information in an open and transparent way.

Compliance with this Division etc.

(2) A credit provider must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the provider's functions or activities as a credit provider that:

(a) will ensure that the provider complies with this Division and the registered CR code if it binds the provider; and

(b) will enable the provider to deal with inquiries or complaints from individuals about the provider's compliance with this Division or the registered CR code if it binds the provider.

Policy about the management of credit information etc.

(3) A credit provider must have a clearly expressed and up-to-date policy about the management of credit information and credit eligibility information by the provider.

(4) Without limiting subsection (3), the policy of the credit provider must contain the following information:

(a) the kinds of credit information that the provider collects and holds, and how the provider collects and holds that information;

(b) the kinds of credit eligibility information that the provider holds and how the provider holds that information;

(c) the kinds of CP derived information that the provider usually derives from credit reporting information disclosed to the provider by a credit reporting body under Division 2 of this Part;

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(d) the purposes for which the provider collects, holds, uses and discloses credit information and credit eligibility information;
(e) how an individual may access credit eligibility information about the individual that is held by the provider;
(f) how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by the provider;
(g) how an individual may complain about a failure of the provider to comply with this Division or the registered CR code if it binds the provider;
(h) how the provider will deal with such a complaint;
(i) whether the provider is likely to disclose credit information or credit eligibility information to entities that do not have an Australian link;
(j) if the provider is likely to disclose credit information or credit eligibility information to such entities—the countries in which those entities are likely to be located if it is practicable to specify those countries in the policy.

Availability of policy etc.

(5) A credit provider must take such steps as are reasonable in the circumstances to make the policy available:
(a) free of charge; and
(b) in such form as is appropriate.

Note: A credit provider will usually make the policy available on the provider's website.

(6) If a person or body requests a copy, in a particular form, of the policy of a credit provider, the provider must take such steps as are reasonable in the circumstances to give the person or body a copy in that form.

Interaction with the Australian Privacy Principles

(7) If a credit provider is an APP entity, Australian Privacy Principles 1.3 and 1.4 do not apply to the provider in relation to credit information or credit eligibility information.

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Exemption for certain non-participating credit providers

(8) This section does not apply to a non-participating credit provider.

Subdivision C—Dealing with credit information

21C Additional notification requirements for the collection of personal information etc.

(1) At or before the time a credit provider collects personal information about an individual that the provider is likely to disclose to a credit reporting body, the provider must:

(a) notify the individual of the following matters:

(i) the name and contact details of the body;

(ii) any other matter specified in the registered CR code; or

(b) otherwise ensure that the individual is aware of those matters.

(2) If a credit provider is an APP entity, subsection (1) applies to the provider in relation to personal information in addition to Australian Privacy Principle 5.

(3) If a credit provider is an APP entity, then the matters for the purposes of Australian Privacy Principle 5.1 include the following matters to the extent that the personal information referred to in that principle is credit information or credit eligibility information:

(a) that the policy (the ***credit reporting policy***) of the provider that is referred to in subsection 21B(3) contains information about how an individual may access the credit eligibility information about the individual that is held by the provider;

(b) that the credit reporting policy of the provider contains information about how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by the provider;

(c) that the credit reporting policy of the provider contains information about how an individual may complain about a failure of the provider to comply with this Division or the registered CR code if it binds the provider;

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(d) that the credit reporting policy of the provider contains information about how the provider will deal with such a complaint;

(e) whether the provider is likely to disclose credit information or credit eligibility information to entities that do not have an Australian link;

(f) if the provider is likely to disclose credit information or credit eligibility information to such entities—the countries in which those entities are likely to be located if it is practicable to specify those countries in the credit reporting policy.

21D Disclosure of credit information to a credit reporting body

Prohibition on disclosure

(1) A credit provider must not disclose credit information about an individual to a credit reporting body (whether or not the body's credit reporting business is carried on in Australia).

Civil penalty: 2,000 penalty units.

Permitted disclosure

(2) Subsection (1) does not apply to the disclosure of credit information about the individual if:

(a) the credit provider:

(i) is a member of or subject to a recognised external dispute resolution scheme or is prescribed by the regulations; and

(ii) knows, or believes on reasonable grounds, that the individual is at least 18 years old; and

(b) the credit reporting body is:

(i) an agency; or

(ii) an organisation that has an Australian link; and

(c) the information meets the requirements of subsection (3).

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Note: Section 21F limits the disclosure of credit information if there is a ban period for the information.

(3) Credit information about an individual meets the requirements of this subsection if:

(a) the information does not relate to an act, omission, matter or thing that occurred or existed before the individual turned 18; and

(b) if the information relates to consumer credit or commercial credit—the credit is or has been provided, or applied for, in Australia; and

(c) if the information is repayment history information or financial hardship information about the individual:

(i) the credit provider is a licensee or is prescribed by the regulations; and

(ii) the consumer credit to which the information relates is consumer credit in relation to which the provider also discloses, or a credit provider has previously disclosed, consumer credit liability information about the individual to the credit reporting body; and

(iii) the provider complies with any requirements relating to the disclosure of the information that are prescribed by the regulations; and

(d) if the information is default information about the individual:

(i) the credit provider has given the individual a notice in writing stating that the provider intends to disclose the information to the credit reporting body; and

(ii) at least 14 days have passed since the giving of the notice.

(4) Paragraph (3)(a) does not apply to identification information about the individual.

(5) Despite paragraph (3)(a), consumer credit liability information about the individual may relate to consumer credit that was entered into on a day before the individual turned 18, so long as the consumer credit was not terminated, or did not otherwise cease to be in force, on a day before the individual turned 18.

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Written note of disclosure

(6) If a credit provider discloses credit information under this section, the provider must make a written note of that disclosure.

Civil penalty: 500 penalty units.

Interaction with the Australian Privacy Principles

(7) If a credit provider is an APP entity, Australian Privacy Principles 6 and 8 do not apply to the disclosure by the provider of credit information to a credit reporting body.

21E Payment information must be disclosed to a credit reporting body

If:

(a) a credit provider has disclosed default information about an individual to a credit reporting body under section 21D; and

(b) after the default information was disclosed, the amount of the overdue payment to which the information relates is paid;

the provider must, within a reasonable period after the amount is paid, disclose payment information about the amount to the body under that section.

Civil penalty: 500 penalty units.

21EA Financial hardship information must be disclosed

If:

(a) a credit provider discloses to a credit reporting body repayment history information about an individual in relation to a monthly payment under section 21D; and

(b) financial hardship information about that individual exists in relation to that monthly payment;

the credit provider must, at the same time, disclose the financial hardship information to the credit reporting body.

Civil penalty: 500 penalty units.

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21F Limitation on the disclosure of credit information during a ban period

(1) This section applies if:

(a) a credit reporting body holds credit reporting information about an individual; and

(b) a credit provider requests the body to disclose the information to the provider for the purpose of assessing an application for consumer credit made to the provider by the individual, or a person purporting to be the individual; and

(c) the body is not permitted to disclose the information because there is a ban period for the information; and

(d) during the ban period, the provider provides the consumer credit to which the application relates to the individual, or the person purporting to be the individual.

(2) If the credit provider holds credit information about the individual that relates to the consumer credit, the provider must not, despite sections 21D and 21E, disclose the information to a credit reporting body.

Civil penalty: 2,000 penalty units.

(3) Subsection (2) does not apply if the credit provider has taken such steps as are reasonable in the circumstances to verify the identity of the individual.

Subdivision D—Dealing with credit eligibility information etc.

21G Use or disclosure of credit eligibility information

Prohibition on use or disclosure

(1) If a credit provider holds credit eligibility information about an individual, the provider must not use or disclose the information.

Civil penalty: 2,000 penalty units.

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Permitted uses

(2) Subsection (1) does not apply to the use of credit eligibility information about the individual if:

(a) the use is for a consumer credit related purpose of the credit provider in relation to the individual; or

(b) the use is a permitted CP use in relation to the individual; or

(c) both of the following apply:

(i) the credit provider believes on reasonable grounds that the individual has committed a serious credit infringement;

(ii) the provider uses the information in connection with the infringement; or

(d) the use is required or authorised by or under an Australian law (other than the consumer data rules) or a court/tribunal order; or

(e) the use is a use prescribed by the regulations.

Permitted disclosures

(3) Subsection (1) does not apply to the disclosure of credit eligibility information about the individual if:

(a) the disclosure is a permitted CP disclosure in relation to the individual; or

(b) the disclosure is to a related body corporate of the credit provider; or

(c) the disclosure is to:

(i) a person for the purpose of processing an application for credit made to the credit provider; or

(ii) a person who manages credit provided by the credit provider for use in managing that credit; or

(d) both of the following apply:

(i) the credit provider believes on reasonable grounds that the individual has committed a serious credit infringement;

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(ii) the provider discloses the information to another credit provider that has an Australian link, or to an enforcement body; or

(e) both of the following apply:

(i) the disclosure is for the purposes of a recognised external dispute resolution scheme;

(ii) a credit provider or credit reporting body is a member of or subject to the scheme; or

(f) the disclosure is required or authorised by or under an Australian law (other than the consumer data rules) or a court/tribunal order; or

(g) the disclosure is a disclosure prescribed by the regulations.

Note: See section 21NA for additional rules about the disclosure of credit eligibility information under paragraph (3)(b) or (c).

(4) However, if the credit eligibility information about the individual is, or was derived from, repayment history information or financial hardship information about the individual, the credit provider must not disclose the information under subsection (3).

Civil penalty: 2,000 penalty units.

(5) Subsection (4) does not apply if:

(a) the recipient of the credit eligibility information is another credit provider who is a licensee; or

(b) the disclosure is a permitted CP disclosure within the meaning of section 21L; or

(c) the credit provider discloses the credit eligibility information under paragraph (3)(b), (c), (e) or (f); or

(d) the credit provider discloses the credit eligibility information under paragraph (3)(d) to an enforcement body.

Written note of use or disclosure

(6) If a credit provider uses or discloses credit eligibility information under this section, the provider must make a written note of that use or disclosure.

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Civil penalty: 500 penalty units.

Interaction with the Australian Privacy Principles

(7) If a credit provider is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the provider in relation to credit eligibility information.

(8) If:
(a) a credit provider is an APP entity; and
(b) the credit eligibility information is a government related identifier of the individual;
Australian Privacy Principle 9.2 does not apply to the provider in relation to the information.

21H Permitted CP uses in relation to individuals

A use by a credit provider of credit eligibility information about an individual is a ***permitted CP use*** in relation to the individual if:
(a) the relevant credit reporting information was disclosed to the provider under a provision specified in column 1 of the table for the purpose (if any) specified in that column; and
(b) the provider uses the credit eligibility information for the purpose specified in column 2 of the table.

Permitted CP uses

	Column 1	Column 2
Item	**The relevant credit reporting information was disclosed to the credit provider under ...**	**The credit provider uses the credit eligibility information for ...**
1	item 1 of the table in subsection 20F(1) for the purpose of assessing an application for consumer credit made by the individual to the provider.	(a) a securitisation related purpose of the provider in relation to the individual; or (b) the internal management purposes of the provider that are directly related to the provision or management of consumer credit by

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Permitted CP uses		
	Column 1	**Column 2**
Item	**The relevant credit reporting information was disclosed to the credit provider under ...**	**The credit provider uses the credit eligibility information for ...**
		the provider.
2	item 2 of the table in subsection 20F(1) for a particular commercial credit related purpose of the provider in relation to the individual.	that particular commercial credit related purpose.
3	item 2 of the table in subsection 20F(1) for the purpose of assessing an application for commercial credit made by a person to the provider.	the internal management purposes of the provider that are directly related to the provision or management of commercial credit by the provider.
4	item 3 of the table in subsection 20F(1) for a credit guarantee purpose of the provider in relation to the individual.	(a) the credit guarantee purpose; or (b) the internal management purposes of the provider that are directly related to the provision or management of any credit by the provider.
5	item 5 of the table in subsection 20F(1).	the purpose of assisting the individual to avoid defaulting on his or her obligations in relation to consumer credit provided by the provider to the individual.
6	item 6 of the table in subsection 20F(1) for a particular securitisation related purpose of the provider in relation to the individual.	that particular securitisation related purpose.

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21J Permitted CP disclosures between credit providers

Consent

(1) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to another credit provider (the ***recipient***) for a particular purpose; and

(b) the recipient has an Australian link; and

(c) the individual expressly consents to the disclosure of the information to the recipient for that purpose.

(2) The consent of the individual under paragraph (1)(c):

(a) must be given in writing unless:

(i) the disclosure of the information to the recipient is for the purpose of assessing an application for consumer credit or commercial credit made to the recipient; and

(ii) the application has not been made in writing; and

(b) must be given to the credit provider or recipient.

Agents of credit providers

(3) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the provider is acting as an agent of another credit provider that has an Australian link; and

(b) while the provider is so acting, the provider is a credit provider under subsection 6H(1); and

(c) the provider discloses the information to the other credit provider in the provider's capacity as such an agent.

Securitisation arrangements etc.

(4) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

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(a) the provider is a credit provider under subsection 6J(1) in relation to credit; and

(b) the credit has been provided by, or is credit for which an application has been made to, another credit provider (the ***original credit provider***) that has an Australian link; and

(c) the original credit provider is not a credit provider under that subsection; and

(d) the information is disclosed to:

(i) the original credit provider; or

(ii) another credit provider that is a credit provider under that subsection in relation to the credit and that has an Australian link; and

(e) the disclosure of the information is reasonably necessary for:

(i) purchasing, funding or managing, or processing an application for, the credit by means of a securitisation arrangement; or

(ii) undertaking credit enhancement in relation to the credit.

Mortgage credit secured by the same real property

(5) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to another credit provider that has an Australian link; and

(b) both credit providers have provided mortgage credit to the individual in relation to which the same real property forms all or part of the security; and

(c) the individual is at least 60 days overdue in making a payment in relation to the mortgage credit provided by either provider; and

(d) the information is disclosed for the purpose of either provider deciding what action to take in relation to the overdue payment.

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21K Permitted CP disclosures relating to guarantees etc.

Offer to act as a guarantor etc.

(1) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) either:

(i) the provider has provided credit to the individual; or

(ii) the individual has applied to the provider for credit; and

(b) the disclosure is to a person for the purpose of that person considering whether:

(i) to offer to act as a guarantor in relation to the credit; or

(ii) to offer property as security for the credit; and

(c) the person has an Australian link; and

(d) the individual expressly consents to the disclosure of the information to the person for that purpose.

(2) The consent of the individual under paragraph (1)(d) must be given in writing unless:

(a) if subparagraph (1)(a)(i) applies—the application for the credit was not made in writing; or

(b) if subparagraph (1)(a)(ii) applies—the application for the credit has not been made in writing.

Guarantors etc.

(3) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to a person who:

(i) is a guarantor in relation to credit provided by the provider to the individual; or

(ii) has provided property as security for such credit; and

(b) the person has an Australian link; and

(c) either:

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(i) the individual expressly consents to the disclosure of the information to the person; or

(ii) if subparagraph (a)(i) applies—the information is disclosed to the person for a purpose related to the enforcement, or proposed enforcement, of the guarantee.

(4) The consent of the individual under subparagraph (3)(c)(i) must be given in writing unless the application for the credit was not made in writing.

21L Permitted CP disclosures to mortgage insurers

A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if the disclosure is to a mortgage insurer that has an Australian link for:

(a) a mortgage insurance purpose of the insurer in relation to the individual; or

(b) any purpose arising under a contract for mortgage insurance that has been entered into between the provider and the insurer.

21M Permitted CP disclosures to debt collectors

(1) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to a person or body that carries on a business or undertaking that involves the collection of debts on behalf of others; and

(c) the information is disclosed to the person or body for the primary purpose of the person or body collecting payments that are overdue in relation to:

(i) consumer credit provided by the provider to the individual; or

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(ii) commercial credit provided by the provider to a person; and

(d) the information is information of a kind referred to in subsection (2).

Note: See section 21NA for additional rules about the disclosure of credit eligibility information under this subsection.

(2) The information for the purposes of paragraph (1)(d) is:

(a) identification information about the individual; or

(b) court proceedings information about the individual; or

(c) personal insolvency information about the individual; or

(d) if subparagraph (1)(c)(i) applies—default information about the individual if:

(i) the information relates to a payment that the individual is overdue in making in relation to consumer credit that has been provided by the credit provider to the individual; and

(ii) the provider does not hold, or has not held, payment information about the individual that relates to that overdue payment.

21N Permitted CP disclosures to other recipients

Mortgage credit assistance schemes

(1) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to a State or Territory authority; and

(b) the functions or responsibilities of the authority include:

(i) giving assistance (directly or indirectly) that facilitates the provision of mortgage credit to individuals; or

(ii) the management or supervision of schemes or arrangements under which such assistance is given; and

(c) the information is disclosed for the purpose of enabling the authority:

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(i) to determine the extent of the assistance (if any) to give in relation to the provision of mortgage credit to the individual; or

(ii) to manage or supervise such a scheme or arrangement.

Assignment of debts owed to credit providers etc.

(2) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to one or more of the following (the ***recipient***):

(i) an entity;

(ii) a professional legal adviser of the entity;

(iii) a professional financial adviser of the entity; and

(b) the recipient has an Australian link; and

(c) subsection (3) applies to the information.

(3) This subsection applies to the credit eligibility information if the recipient proposes to use the information:

(a) in the process of the entity considering whether to:

(i) accept an assignment of a debt owed to the credit provider; or

(ii) accept a debt owed to the provider as security for credit provided to the provider; or

(iii) purchase an interest in the provider or a related body corporate of the provider; or

(b) in connection with exercising rights arising from the acceptance of such an assignment or debt, or the purchase of such an interest.

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21NA Disclosures to certain persons and bodies that do not have an Australian link

Related bodies corporate and credit managers etc.

(1) Before a credit provider discloses credit eligibility information under paragraph 21G(3)(b) or (c) to a related body corporate, or person, that does not have an Australian link, the provider must take such steps as are reasonable in the circumstances to ensure that the body or person does not breach the following provisions (the ***relevant provisions***) in relation to the information:

(a) for a disclosure under paragraph 21G(3)(b)—section 22D;

(b) for a disclosure under paragraph 21G(3)(c)—section 22E;

(c) in both cases—the Australian Privacy Principles (other than Australian Privacy Principles 1, 6, 7, 8 and 9.2).

(2) If:

(a) a credit provider discloses credit eligibility information under paragraph 21G(3)(b) or (c) to a related body corporate, or person, that does not have an Australian link; and

(b) the relevant provisions do not apply, under this Act, to an act done, or a practice engaged in, by the body or person in relation to the information; and

(c) the body or person does an act, or engages in a practice, in relation to the information that would be a breach of the relevant provisions if those provisions applied to the act or practice;

the act done, or the practice engaged in, by the body or person is taken, for the purposes of this Act, to have been done, or engaged in, by the provider and to be a breach of those provisions by the provider.

Debt collectors

(3) Before a credit provider discloses credit eligibility information under subsection 21M(1) to a person or body that does not have an Australian link, the provider must take such steps as are reasonable in the circumstances to ensure that the person or body does not

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breach the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information.

(4) If:

(a) a credit provider discloses credit eligibility information under subsection 21M(1) to a person or body that does not have an Australian link; and

(b) the Australian Privacy Principles do not apply, under this Act, to an act done, or a practice engaged in, by the person or body in relation to the information; and

(c) the person or body does an act, or engages in a practice, in relation to the information that would be a breach of the Australian Privacy Principles (other than Australian Privacy Principle 1) if those Australian Privacy Principles applied to the act or practice;

the act done, or the practice engaged in, by the person or body is taken, for the purposes of this Act, to have been done, or engaged in, by the provider and to be a breach of those Australian Privacy Principles by the provider.

21P Notification of a refusal of an application for consumer credit

(1) This section applies if:

(a) a credit provider refuses an application for consumer credit made in Australia:

(i) by an individual; or

(ii) jointly by an individual and one or more other persons (the ***other applicants***); and

(b) the refusal is based wholly or partly on credit eligibility information about one or more of the following:

(i) the individual;

(ii) a person who is proposing to act as a guarantor in relation to the consumer credit;

(iii) if the application is an application of a kind referred to in subparagraph (a)(ii)—one of the other applicants; and

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(c) a credit reporting body disclosed the relevant credit reporting information to the provider for the purposes of assessing the application.

(2) The credit provider must, within a reasonable period after refusing the application, give the individual a written notice that:

(a) states that the application has been refused; and

(b) states that the refusal is based wholly or partly on credit eligibility information about one or more of the persons referred to in paragraph (1)(b); and

(c) if that information is about the individual—sets out:

(i) the name and contact details of the credit reporting body that disclosed the relevant credit reporting information to the provider; and

(ii) any other matter specified in the registered CR code.

Subdivision E—Integrity of credit information and credit eligibility information

21Q Quality of credit eligibility information

(1) A credit provider must take such steps (if any) as are reasonable in the circumstances to ensure that the credit eligibility information the provider collects is accurate, up-to-date and complete.

(2) A credit provider must take such steps (if any) as are reasonable in the circumstances to ensure that the credit eligibility information the provider uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

(3) If a credit provider is an APP entity, Australian Privacy Principle 10 does not apply to the provider in relation to credit eligibility information.

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21R False or misleading credit information or credit eligibility information

Offences

(1) A credit provider commits an offence if:
  (a) the provider discloses credit information under section 21D; and
  (b) the information is false or misleading in a material particular.

Penalty: 200 penalty units.

(2) A credit provider commits an offence if:
  (a) the provider uses or discloses credit eligibility information under this Division; and
  (b) the information is false or misleading in a material particular.

Penalty: 200 penalty units.

Civil penalties

(3) A credit provider must not disclose credit information under section 21D if the information is false or misleading in a material particular.

Civil penalty: 2,000 penalty units.

(4) A credit provider must not use or disclose credit eligibility information under this Division if the information is false or misleading in a material particular.

Civil penalty: 2,000 penalty units.

21S Security of credit eligibility information

(1) If a credit provider holds credit eligibility information, the provider must take such steps as are reasonable in the circumstances to protect the information:
  (a) from misuse, interference and loss; and

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(b) from unauthorised access, modification or disclosure.

(2) If:

(a) a credit provider holds credit eligibility information about an individual; and

(b) the provider no longer needs the information for any purpose for which the information may be used or disclosed by the provider under this Division; and

(c) the provider is not required by or under an Australian law, or a court/tribunal order, to retain the information;

the provider must take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de-identified.

Civil penalty: 1,000 penalty units.

(3) If a credit provider is an APP entity, Australian Privacy Principle 11 does not apply to the provider in relation to credit eligibility information.

Subdivision F—Access to, and correction of, information

21T Access to credit eligibility information

Access

(1) If a credit provider holds credit eligibility information about an individual, the provider must, on request by an access seeker in relation to the information, give the access seeker access to the information.

Exceptions to access

(2) Despite subsection (1), the credit provider is not required to give the access seeker access to the credit eligibility information to the extent that:

(a) giving access would be unlawful; or

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(b) denying access is required or authorised by or under an Australian law or a court/tribunal order; or

(c) giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body.

Dealing with requests for access

(3) The credit provider must respond to the request within a reasonable period after the request is made.

Means of access

(4) If the credit provider gives access to the credit eligibility information, the access must be given in the manner set out in the registered CR code.

Access charges

(5) If the credit provider is an agency, the provider must not charge the access seeker for the making of the request or for giving access to the information.

(6) If a credit provider is an organisation or small business operator, any charge by the provider for giving access to the information must not be excessive and must not apply to the making of the request.

Refusal to give access

(7) If the provider refuses to give access to the information because of subsection (2), the provider must give the access seeker a written notice that:

(a) sets out the reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and

(b) states that, if the access seeker is not satisfied with the response to the request, the access seeker may:

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(i) access a recognised external dispute resolution scheme of which the provider is a member or to which it is subject; or
(ii) make a complaint to the Commissioner under Part V.

Interaction with the Australian Privacy Principles

(8) If a credit provider is an APP entity, Australian Privacy Principle 12 does not apply to the provider in relation to credit eligibility information.

21U Correction of credit information or credit eligibility information

(1) If:
(a) a credit provider holds credit information or credit eligibility information about an individual; and
(b) the provider is satisfied that, having regard to a purpose for which the information is held by the provider, the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

the provider must take such steps (if any) as are reasonable in the circumstances to correct the information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete, relevant and not misleading.

Notice of correction

(2) If:
(a) the credit provider corrects credit information or credit eligibility information under subsection (1); and
(b) the provider has previously disclosed the information under:
(i) this Division (other than subsection 21V(4)); or
(ii) the Australian Privacy Principles (other than Australian Privacy Principle 4.2);

the provider must, within a reasonable period, give each recipient of the information written notice of the correction.

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(3) Subsection (2) does not apply if:

(a) it is impracticable for the credit provider to give the notice under that subsection; or

(b) the credit provider is required by or under an Australian law, or a court/tribunal order, not to give the notice under that subsection.

Interaction with the Australian Privacy Principles

(4) If a credit provider is an APP entity, Australian Privacy Principle 13:

(a) applies to the provider in relation to credit information or credit eligibility information that is identification information; but

(b) does not apply to the provider in relation to any other kind of credit information or credit eligibility information.

Note: Identification information may be corrected under this section or Australian Privacy Principle 13.

Exemption for certain non-participating credit providers

(5) This section does not apply to a non-participating credit provider.

21V Individual may request the correction of credit information etc.

Request

(1) An individual may request a credit provider to correct personal information about the individual if:

(a) the personal information is:

(i) credit information about the individual; or

(ii) CRB derived information about the individual; or

(iii) CP derived information about the individual; and

(b) the provider holds at least one kind of the personal information referred to in paragraph (a).

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Correction

(2) If the credit provider is satisfied that the personal information is inaccurate, out-of-date, incomplete, irrelevant or misleading, the provider must take such steps (if any) as are reasonable in the circumstances to correct the information within:
   (a) the period of 30 days that starts on the day on which the request is made; or
   (b) such longer period as the individual has agreed to in writing.

Consultation

(3) If the credit provider considers that the provider cannot be satisfied of the matter referred to in subsection (2) in relation to the personal information without consulting either or both of the following (the ***interested party***):
   (a) a credit reporting body that holds or held the information and that has an Australian link;
   (b) another credit provider that holds or held the information and that has an Australian link;

   the provider must consult that interested party, or those interested parties, about the individual's request.

(4) The use or disclosure of personal information about the individual for the purposes of the consultation is taken, for the purposes of this Act, to be a use or disclosure that is authorised by this subsection.

No charge

(5) The credit provider must not charge the individual for the making of the request or for correcting the information.

Interaction with the Australian Privacy Principles

(6) If a credit provider is an APP entity, Australian Privacy Principle 13:

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(a) applies to the provider in relation to personal information referred to in paragraph (1)(a) that is identification information; but

(b) does not apply to the provider in relation to any other kind of personal information referred to in that paragraph.

Note: Identification information may be corrected under this section or Australian Privacy Principle 13.

Exemption for certain non-participating credit providers

(7) This section does not apply to a non-participating credit provider.

21W Notice of correction etc. must be given

(1) This section applies if an individual requests a credit provider to correct personal information under subsection 21V(1).

Notice of correction etc.

(2) If the credit provider corrects personal information about the individual under subsection 21V(2), the provider must, within a reasonable period:

(a) give the individual written notice of the correction; and

(b) if the provider consulted an interested party under subsection 21V(3) about the individual's request—give the party written notice of the correction; and

(c) if the correction relates to information that the provider has previously disclosed under:

(i) this Division (other than subsection 21V(4)); or

(ii) the Australian Privacy Principles (other than Australian Privacy Principle 4.2);

give each recipient of the information written notice of the correction.

(3) If the credit provider does not correct the personal information under subsection 21V(2), the provider must, within a reasonable period, give the individual written notice that:

(a) states that the correction has not been made; and

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(b) sets out the provider's reasons for not correcting the information (including evidence substantiating the correctness of the information); and

(c) states that, if the individual is not satisfied with the response to the request, the individual may:

(i) access a recognised external dispute resolution scheme of which the provider is a member or to which it is subject; or

(ii) make a complaint to the Commissioner under Part V.

Exceptions

(4) Paragraph (2)(c) does not apply if it is impracticable for the credit provider to give the notice under that paragraph.

(5) Subsection (2) or (3) does not apply if the credit provider is required by or under an Australian law, or a court/tribunal order, not to give the notice under that subsection.

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Division 4—Affected information recipients

22 Guide to this Division

This Division sets out rules that apply to affected information recipients in relation to their handling of their regulated information.

If an affected information recipient is an APP entity, the rules apply in relation to the regulated information of the recipient in addition to, or instead of, any relevant Australian Privacy Principles.

Subdivision A—Consideration of information privacy

22A Open and transparent management of regulated information

(1) The object of this section is to ensure that an affected information recipient manages the regulated information of the recipient in an open and transparent way.

Compliance with this Division etc.

(2) An affected information recipient must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the recipient's functions or activities that:

(a) will ensure that the recipient complies with this Division and the registered CR code if it binds the recipient; and

(b) will enable the recipient to deal with inquiries or complaints from individuals about the recipient's compliance with this Division or the registered CR code if it binds the recipient.

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Policy about the management of regulated information

(3) An affected information recipient must have a clearly expressed and up-to-date policy about the recipient's management of the regulated information of the recipient.

(4) Without limiting subsection (3), the policy of the affected information recipient must contain the following information:

(a) the kinds of regulated information that the recipient collects and holds, and how the recipient collects and holds that information;

(b) the purposes for which the recipient collects, holds, uses and discloses regulated information;

(c) how an individual may access regulated information about the individual that is held by the recipient and seek the correction of such information;

(d) how an individual may complain about a failure of the recipient to comply with this Division or the registered CR code if it binds the recipient;

(e) how the recipient will deal with such a complaint.

Availability of policy etc.

(5) An affected information recipient must take such steps as are reasonable in the circumstances to make the policy available:

(a) free of charge; and

(b) in such form as is appropriate.

Note: An affected information recipient will usually make the policy available on the recipient's website.

(6) If a person or body requests a copy, in a particular form, of the policy of an affected information recipient, the recipient must take such steps as are reasonable in the circumstances to give the person or body a copy in that form.

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Interaction with the Australian Privacy Principles

(7) If an affected information recipient is an APP entity, Australian Privacy Principles 1.3 and 1.4 do not apply to the recipient in relation to the regulated information of the recipient.

Subdivision B—Dealing with regulated information

22B Additional notification requirements for affected information recipients

If an affected information recipient is an APP entity, then the matters for the purposes of Australian Privacy Principle 5.1 include the following matters to the extent that the personal information referred to in that principle is regulated information of the recipient:

(a) that the policy (the ***credit reporting policy***) of the recipient that is referred to in subsection 22A(3) contains information about how an individual may access the regulated information about the individual that is held by the recipient, and seek the correction of such information;

(b) that the credit reporting policy of the recipient contains information about how an individual may complain about a failure of the recipient to comply with this Division or the registered CR code if it binds the recipient; and

(c) that the credit reporting policy of the recipient contains information about how the recipient will deal with such a complaint.

22C Use or disclosure of information by mortgage insurers or trade insurers

Prohibition on use or disclosure

(1) If:

(a) a mortgage insurer or trade insurer holds or held personal information about an individual; and

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(b) the information was disclosed to the insurer by a credit reporting body or credit provider under Division 2 or 3 of this Part;

the insurer must not use or disclose the information, or any personal information about the individual derived from that information.

Civil penalty: 2,000 penalty units.

Permitted uses

(2) Subsection (1) does not apply to the use of the information if:

(a) for a mortgage insurer—the use is for:

(i) a mortgage insurance purpose of the insurer in relation to the individual; or

(ii) any purpose arising under a contract for mortgage insurance that has been entered into between the credit provider and the insurer; or

(b) for a trade insurer—the use is for a trade insurance purpose of the insurer in relation to the individual; or

(c) the use is required or authorised by or under an Australian law or a court/tribunal order.

Permitted disclosure

(3) Subsection (1) does not apply to the disclosure of the information if the disclosure is required or authorised by or under an Australian law or a court/tribunal order.

Interaction with the Australian Privacy Principles

(4) If the mortgage insurer or trade insurer is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the insurer in relation to the information.

(5) If:

(a) the mortgage insurer or trade insurer is an APP entity; and

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(b) the information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the insurer in relation to the information.

22D Use or disclosure of information by a related body corporate

Prohibition on use or disclosure

(1) If:

(a) a body corporate holds or held credit eligibility information about an individual; and

(b) the information was disclosed to the body by a credit provider under paragraph 21G(3)(b);

the body must not use or disclose the information, or any personal information about the individual derived from that information.

Civil penalty: 1,000 penalty units.

Permitted use or disclosure

(2) Subsection (1) does not apply to the use or disclosure of the information by the body corporate if the body would be permitted to use or disclose the information under section 21G if the body were the credit provider.

(3) In determining whether the body corporate would be permitted to use or disclose the information under section 21G, assume that the body is whichever of the following is applicable:

(a) the credit provider that has provided the relevant credit to the individual;

(b) the credit provider to which the relevant application for credit was made by the individual.

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Interaction with the Australian Privacy Principles

(4) If the body corporate is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the body in relation to the information.

(5) If:
   (a) the body corporate is an APP entity; and
   (b) the information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the body in relation to the information.

22E Use or disclosure of information by credit managers etc.

Prohibition on use or disclosure

(1) If:
   (a) a person holds or held credit eligibility information about an individual; and
   (b) the information was disclosed to the person by a credit provider under paragraph 21G(3)(c);

the person must not use or disclose the information, or any personal information about the individual derived from that information.

Civil penalty: 1,000 penalty units.

Permitted uses

(2) Subsection (1) does not apply to the use of the information if:
   (a) the person uses the information for the purpose for which it was disclosed to the person under paragraph 21G(3)(c); or
   (b) the use is required or authorised by or under an Australian law (other than the consumer data rules) or a court/tribunal order.

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Permitted disclosure

(3) Subsection (1) does not apply to the disclosure of the information if:

(a) the disclosure is to the credit provider; or

(b) the disclosure is required or authorised by or under an Australian law (other than the consumer data rules) or a court/tribunal order.

Interaction with the Australian Privacy Principles

(4) If the person is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the person in relation to the information.

(5) If:

(a) the person is an APP entity; and

(b) the information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the person in relation to the information.

22F Use or disclosure of information by advisers etc.

Prohibition on use or disclosure

(1) If:

(a) any of the following (the ***recipient***) holds or held credit eligibility information about an individual:

(i) an entity;

(ii) a professional legal adviser of the entity;

(iii) a professional financial adviser of the entity; and

(b) the information was disclosed to the recipient by a credit provider under subsection 21N(2);

the recipient must not use or disclose the information, or any personal information about the individual derived from that information.

Civil penalty: 1,000 penalty units.

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Permitted uses

(2) Subsection (1) does not apply to the use of the information if:
  (a) for a recipient that is the entity—the information is used for a matter referred to in subsection 21N(3); or
  (b) for a recipient that is the professional legal adviser, or professional financial adviser, of the entity—the information is used:
    (i) in the adviser's capacity as an adviser of the entity; and
    (ii) in connection with advising the entity about a matter referred to in subsection 21N(3); or
  (c) the use is required or authorised by or under an Australian law or a court/tribunal order.

Permitted disclosure

(3) Subsection (1) does not apply to the disclosure of the information if the disclosure is required or authorised by or under an Australian law or a court/tribunal order.

Interaction with the Australian Privacy Principles

(4) If the recipient is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the recipient in relation to the information.

(5) If:
  (a) the recipient is an APP entity; and
  (b) the information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the recipient in relation to the information.

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Division 5—Complaints

23 Guide to this Division

This Division deals with complaints about credit reporting bodies or credit providers.

Individuals may complain to credit reporting bodies or credit providers about acts or practices that may be a breach of certain provisions of this Part or the registered CR code.

If a complaint is made, the respondent for the complaint must investigate the complaint and make a decision about the complaint.

23A Individual may complain about a breach of a provision of this Part etc.

Complaint

(1) An individual may complain to a credit reporting body about an act or practice engaged in by the body that may be a breach of either of the following provisions in relation to the individual:

(a) a provision of this Part (other than section 20R or 20T);

(b) a provision of the registered CR code (other than a provision that relates to that section).

Note: A complaint about a breach of section 20R or 20T, or a provision of the registered CR code that relates to that section, may be made to the Commissioner under Part V.

(2) An individual may complain to a credit provider about an act or practice engaged in by the provider that may be a breach of either of the following provisions in relation to the individual:

(a) a provision of this Part (other than section 21T or 21V);

(b) a provision of the registered CR code (other than a provision that relates to that section) if it binds the credit provider.

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Note: A complaint about a breach of section 21T or 21V, or a provision of the registered CR code that relates to that section, may be made to the Commissioner under Part V.

Nature of complaint

(3) If an individual makes a complaint, the individual must specify the nature of the complaint.

(4) The complaint may relate to personal information that has been destroyed or de-identified.

No charge

(5) The credit reporting body or credit provider must not charge the individual for the making of the complaint or for dealing with the complaint.

23B Dealing with complaints

(1) If an individual makes a complaint under section 23A, the respondent for the complaint:

(a) must, within 7 days after the complaint is made, give the individual a written notice that:

(i) acknowledges the making of the complaint; and

(ii) sets out how the respondent will deal with the complaint; and

(b) must investigate the complaint.

Consultation about the complaint

(2) If the respondent for the complaint considers that it is necessary to consult a credit reporting body or credit provider about the complaint, the respondent must consult the body or provider.

(3) The use or disclosure of personal information about the individual for the purposes of the consultation is taken, for the purposes of this Act, to be a use or disclosure that is authorised by this subsection.

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Decision about the complaint

(4) After investigating the complaint, the respondent must, within the period referred to in subsection (5), make a decision about the complaint and give the individual a written notice that:
  (a) sets out the decision; and
  (b) states that, if the individual is not satisfied with the decision, the individual may:
    (i) access a recognised external dispute resolution scheme of which the respondent is a member or to which it is subject; or
    (ii) make a complaint to the Commissioner under Part V.

(5) The period for the purposes of subsection (4) is:
  (a) the period of 30 days that starts on the day on which the complaint is made; or
  (b) such longer period as the individual has agreed to in writing.

23C Notification requirements relating to correction complaints

(1) This section applies if an individual makes a complaint under section 23A about an act or practice that may breach section 20S or 21U (which deal with the correction of personal information by credit reporting bodies and credit providers).

Notification of complaint etc.

(2) If:
  (a) the respondent for the complaint is a credit reporting body; and
  (b) the complaint relates to credit information or credit eligibility information that a credit provider holds;

the respondent must, in writing:
  (c) notify the provider of the making of the complaint as soon as practicable after it is made; and

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(d) notify the provider of the making of a decision about the complaint under subsection 23B(4) as soon as practicable after it is made.

(3) If:

(a) the respondent for the complaint is a credit provider; and

(b) the complaint relates to:

(i) credit reporting information that a credit reporting body holds; or

(ii) credit information or credit eligibility information that another credit provider holds;

the respondent must, in writing:

(c) notify the body or other provider (as the case may be) of the making of the complaint as soon as practicable after it is made; and

(d) notify the body or other provider (as the case may be) of the making of a decision about the complaint under subsection 23B(4) as soon as practicable after it is made.

Notification of recipients of disclosed information

(4) If:

(a) a credit reporting body discloses credit reporting information to which the complaint relates under Division 2 of this Part; and

(b) at the time of the disclosure, a decision about the complaint under subsection 23B(4) has not been made;

the body must, at that time, notify in writing the recipient of the information of the complaint.

(5) If:

(a) a credit provider discloses personal information to which the complaint relates under Division 3 of this Part or under the Australian Privacy Principles; and

(b) at the time of the disclosure, a decision about the complaint under subsection 23B(4) has not been made;

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the provider must, at that time, notify in writing the recipient of the information of the complaint.

Exceptions

(6) Subsection (2), (3), (4) or (5) does not apply if:

(a) it is impracticable for the credit reporting body or credit provider to give the notification under that subsection; or

(b) the credit reporting body or credit provider is required by or under an Australian law, or a court/tribunal order, not to give the notification under that subsection.

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Division 6—Unauthorised obtaining of credit reporting information etc.

24 Obtaining credit reporting information from a credit reporting body

Offences

(1) An entity commits an offence if:
  (a) the entity obtains credit reporting information; and
  (b) the information is obtained from a credit reporting body; and
  (c) the entity is not:
    (i) an entity to which the body is permitted to disclose the information under Division 2 of this Part; or
    (ii) an access seeker for the information.

Penalty: 200 penalty units.

(2) An entity commits an offence if:
  (a) the entity obtains credit reporting information; and
  (b) the information is obtained from a credit reporting body; and
  (c) the information is obtained by false pretence.

Penalty: 200 penalty units.

Civil penalties

(3) An entity must not obtain credit reporting information from a credit reporting body if the entity is not:
  (a) an entity to which the body is permitted to disclose the information under Division 2 of this Part; or
  (b) an access seeker for the information.

Civil penalty: 2,000 penalty units.

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(4) An entity must not obtain, by false pretence, credit reporting information from a credit reporting body.

Civil penalty: 2,000 penalty units.

24A Obtaining credit eligibility information from a credit provider

Offences

(1) An entity commits an offence if:
  (a) the entity obtains credit eligibility information; and
  (b) the information is obtained from a credit provider; and
  (c) the entity is not:
    (i) an entity to which the provider is permitted to disclose the information under Division 3 of this Part; or
    (ii) an access seeker for the information.

Penalty: 200 penalty units.

(2) An entity commits an offence if:
  (a) the entity obtains credit eligibility information; and
  (b) the information is obtained from a credit provider; and
  (c) the information is obtained by false pretence.

Penalty: 200 penalty units.

Civil penalties

(3) An entity must not obtain credit eligibility information from a credit provider if the entity is not:
  (a) an entity to which the provider is permitted to disclose the information under Division 3 of this Part; or
  (b) an access seeker for the information.

Civil penalty: 2,000 penalty units.

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(4) An entity must not obtain, by false pretence, credit eligibility information from a credit provider.

Civil penalty: 2,000 penalty units.

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Division 7—Court orders

25 Compensation orders

(1) The Federal Court or the Federal Circuit and Family Court of Australia (Division 2) may order an entity to compensate a person for loss or damage (including injury to the person's feelings or humiliation) suffered by the person if:

(a) either:

(i) a civil penalty order has been made under subsection 82(3) of the Regulatory Powers Act against the entity for a contravention of a civil penalty provision of this Act (other than section 13G); or

(ii) the entity is found guilty of an offence against this Part; and

(b) that loss or damage resulted from the contravention or commission of the offence.

The order must specify the amount of compensation.

(2) The court may make the order only if:

(a) the person applies for an order under this section; and

(b) the application is made within 6 years of the day the cause of action that relates to the contravention or commission of the offence accrued.

(3) If the court makes the order, the amount of compensation specified in the order that is to be paid to the person may be recovered as a debt due to the person.

25A Other orders to compensate loss or damage

(1) This section applies if:

(a) either:

(i) a civil penalty order has been made under subsection 82(3) of the Regulatory Powers Act against

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the entity for a contravention of a civil penalty provision of this Act (other than section 13G); or

(ii) an entity is found guilty of an offence against this Part; and

(b) a person has suffered, or is likely to suffer, loss or damage (including injury to the person's feelings or humiliation) as a result of the contravention or commission of the offence.

(2) The Federal Court or the Federal Circuit and Family Court of Australia (Division 2) may make such order as the Court considers appropriate against the entity to:

(a) compensate the person, in whole or in part, for that loss or damage; or

(b) prevent or reduce that loss or damage suffered, or likely to be suffered, by the person.

(3) Without limiting subsection (2), examples of orders the court may make include:

(a) an order directing the entity to perform any reasonable act, or carry out any reasonable course of conduct, to redress the loss or damage suffered by the person; and

(b) an order directing the entity to pay the person a specified amount to reimburse the person for expenses reasonably incurred by the person in connection with the contravention or commission of the offence; and

(c) an order directing the defendant to pay to the person the amount of loss or damage the plaintiff suffered.

(4) The court may make the order only if:

(a) the person applies for an order under this section; and

(b) the application is made within 6 years of the day the cause of action that relates to the contravention or commission of the offence accrued.

(5) If the court makes an order that the entity pay an amount to the person, the person may recover the amount as a debt due to the person.

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Division 8—Review

25B Review of operation of this Part

(1) The Minister must cause an independent review to be conducted of the operation of this Part.

(2) The persons who conduct the review must complete it, and give the Minister a written report of the review, before 1 October 2024.

(3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

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Part IIIB—Privacy codes

Division 1—Introduction

26 Guide to this Part

This Part deals with privacy codes.

Division 2 deals with codes of practice about information privacy, called APP codes. APP code developers or the Commissioner may develop APP codes, which:

(a) must set out how one or more of the Australian Privacy Principles are to be applied or complied with; and

(b) may impose additional requirements to those imposed by the Australian Privacy Principles; and

(c) may deal with other specified matters.

If the Commissioner includes an APP code on the Codes Register, an APP entity bound by the code must not breach it. A breach of a registered APP code is an interference with the privacy of an individual.

Division 3 deals with a code of practice about credit reporting, called a CR code. CR code developers or the Commissioner may develop a CR code, which:

(a) must set out how one or more of the provisions of Part IIIA are to be applied or complied with; and

(b) must deal with matters required or permitted by Part IIIA to be provided for by the registered CR code; and

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(c) may deal with other specified matters.

If the Commissioner includes a CR code on the Codes Register, an entity bound by the code must not breach it. A breach of the registered CR code is an interference with the privacy of an individual.

Division 4 deals with the Codes Register, guidelines relating to codes and the review of the operation of registered codes.

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Division 2—Registered APP codes

Subdivision A—Compliance with registered APP codes etc.

26A APP entities to comply with binding registered APP codes

An APP entity must not do an act, or engage in a practice, that breaches a registered APP code that binds the entity.

26B What is a *registered APP code*

(1) A ***registered APP code*** is an APP code:
  (a) that is included on the Codes Register; and
  (b) that is in force.

(2) A registered APP code is a legislative instrument.

(3) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to a registered APP code.

Note: An APP code cannot come into force before it is included on the Codes Register: see paragraph 26C(2)(c).

26C What is an *APP code*

(1) An ***APP code*** is a written code of practice about information privacy.

(2) An APP code must:
  (a) set out how one or more of the Australian Privacy Principles are to be applied or complied with; and
  (b) specify the APP entities that are bound by the code, or a way of determining the APP entities that are bound by the code; and
  (c) set out the period during which the code is in force (which must not start before the day the code is registered under section 26H).

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(3) An APP code may do one or more of the following:

(a) impose additional requirements to those imposed by one or more of the Australian Privacy Principles, so long as the additional requirements are not contrary to, or inconsistent with, those principles;

(b) cover an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3);

(c) deal with the internal handling of complaints;

(d) provide for the reporting to the Commissioner about complaints;

(e) deal with any other relevant matters.

(4) An APP code may be expressed to apply to any one or more of the following:

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

(b) a specified activity, or a specified class of activities, of an APP entity;

(c) a specified industry sector or profession, or a specified class of industry sectors or professions;

(d) APP entities that use technology of a specified kind.

(5) An APP code is not a legislative instrument.

26D Extension of Act to exempt acts or practices covered by registered APP codes

If a registered APP code covers an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3), this Act applies in relation to the code as if that act or practice were not exempt.

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Subdivision B—Development and registration of APP codes

26E Development of APP codes by APP code developers

Own initiative

(1) An APP code developer may develop an APP code.

At the Commissioner's request

(2) The Commissioner may, in writing, request an APP code developer to develop an APP code, and apply to the Commissioner for the code to be registered, if the Commissioner is satisfied it is in the public interest for the code to be developed.

(3) The request must:
  (a) specify the period within which the request must be complied with; and
  (b) set out the effect of section 26A.

(4) The period:
  (a) must run for at least 120 days from the date the request is made; and
  (b) may be extended by the Commissioner.

(5) The request may:
  (a) specify one or more matters that the APP code must deal with; and
  (b) specify the APP entities, or a class of APP entities, that should be bound by the code.

(6) Despite paragraph (5)(a), the Commissioner must not require an APP code to cover an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3). However, the APP code that is developed by the APP code developer may cover such an act or practice.

(7) The Commissioner must make a copy of the request publicly available as soon as practicable after the request is made.

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26F Application for registration of APP codes

(1) If an APP code developer develops an APP code, the developer may apply to the Commissioner for registration of the code.

(2) Before making the application, the APP code developer must:
  (a) make a draft of the APP code publicly available; and
  (b) invite the public to make submissions to the developer about the draft within a specified period (which must run for at least 28 days); and
  (c) give consideration to any submissions made within the specified period.

(3) The application must:
  (a) be made in the form and manner specified by the Commissioner; and
  (b) be accompanied by such information as is specified by the Commissioner.

(4) The APP code developer may vary the APP code at any time before the Commissioner registers the code, but only with the consent of the Commissioner.

26G Development of APP codes by the Commissioner

(1) This section applies if the Commissioner made a request under subsection 26E(2) and either:
  (a) the request has not been complied with; or
  (b) the request has been complied with but the Commissioner has decided not to register, under section 26H, the APP code that was developed as requested.

(2) The Commissioner may develop an APP code if the Commissioner is satisfied that it is in public interest to develop the code. However, despite subsection 26C(3)(b), the APP code must not cover an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3).

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(3) Before registering the APP code under section 26H, the Commissioner must:
  (a) make a draft of the code publicly available; and
  (b) invite the public to make submissions to the Commissioner about the draft within a specified period (which must run for at least 28 days); and
  (c) give consideration to any submissions made within the specified period.

26H Commissioner may register APP codes

(1) If:
  (a) an application for registration of an APP code is made under section 26F; or
  (b) the Commissioner develops an APP code under section 26G;

the Commissioner may register the code by including it on the Codes Register.

(2) In deciding whether to register the APP code, the Commissioner may:
  (a) consult any person the Commissioner considers appropriate; and
  (b) consider the matters specified in any relevant guidelines made under section 26V.

(3) If the Commissioner decides not to register an APP code developed by an APP code developer, the Commissioner must give written notice of the decision to the developer, including reasons for the decision.

Subdivision C—Variation and removal of registered APP codes

26J Variation of registered APP codes

(1) The Commissioner may, in writing, approve a variation of a registered APP code:
  (a) on his or her own initiative; or

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(b) on application by an APP entity that is bound by the code; or

(c) on application by a body or association representing one or more APP entities that are bound by the code.

(2) An application under paragraph (1)(b) or (c) must:

(a) be made in the form and manner specified by the Commissioner; and

(b) be accompanied by such information as is specified by the Commissioner.

(3) If the Commissioner varies a registered APP code on his or her own initiative, then, despite subsection 26C(3)(b), the variation must not deal with an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3).

(4) Before deciding whether to approve a variation, the Commissioner must:

(a) make a draft of the variation publicly available; and

(b) consult any person the Commissioner considers appropriate about the variation; and

(c) consider the extent to which members of the public have been given an opportunity to comment on the variation.

(5) In deciding whether to approve a variation, the Commissioner may consider the matters specified in any relevant guidelines made under section 26V.

(6) If the Commissioner approves a variation of a registered APP code (the ***original code***), the Commissioner must:

(a) remove the original code from the Codes Register; and

(b) register the APP code, as varied, by including it on the Register.

(7) If the Commissioner approves a variation, the variation comes into effect on the day specified in the approval, which must not be before the day on which the APP code, as varied, is included on the Codes Register.

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(8) An approval is not a legislative instrument.

Note: The APP code, as varied, is a legislative instrument once it is included on the Codes Register: see section 26B.

26K Removal of registered APP codes

(1) The Commissioner may remove a registered APP code from the Codes Register:
  (a) on his or her own initiative; or
  (b) on application by an APP entity that is bound by the code; or
  (c) on application by a body or association representing one or more APP entities that are bound by the code.

(2) An application under paragraph (1)(b) or (c) must:
  (a) be made in the form and manner specified by the Commissioner; and
  (b) be accompanied by such information as is specified by the Commissioner.

(3) Before deciding whether to remove the registered APP code, the Commissioner must:
  (a) consult any person the Commissioner considers appropriate about the proposed removal; and
  (b) consider the extent to which members of the public have been given an opportunity to comment on the proposed removal.

(4) In deciding whether to remove the registered APP code, the Commissioner may consider the matters specified in any relevant guidelines made under section 26V.

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Division 3—Registered CR code

Subdivision A—Compliance with the registered CR code

26L Entities to comply with the registered CR code if bound by the code

If an entity is bound by the registered CR code, the entity must not do an act, or engage in a practice, that breaches the code.

Note: There must always be one, and only one, registered CR code at all times after this Part commences: see subsection 26S(4).

26M What is the *registered CR code*

(1) The ***registered CR code*** is the CR code that is included on the Codes Register.

(2) The registered CR code is a legislative instrument.

(3) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the registered CR code.

26N What is a *CR code*

(1) A ***CR code*** is a written code of practice about credit reporting.

(2) A CR code must:

(a) set out how one or more of the provisions of Part IIIA are to be applied or complied with; and

(b) make provision for, or in relation to, matters required or permitted by Part IIIA to be provided for by the registered CR code; and

(c) bind all credit reporting bodies; and

(d) specify the credit providers that are bound by the code, or a way of determining which credit providers are bound; and

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(e) specify any other entities subject to Part IIIA that are bound by the code, or a way of determining which of those entities are bound.

(3) A CR code may do one or more of the following:

(a) impose additional requirements to those imposed by Part IIIA, so long as the additional requirements are not contrary to, or inconsistent with, that Part;

(b) deal with the internal handling of complaints;

(c) provide for the reporting to the Commissioner about complaints;

(d) deal with any other relevant matters.

(4) A CR code may be expressed to apply differently in relation to:

(a) classes of entities that are subject to Part IIIA; and

(b) specified classes of credit information, credit reporting information or credit eligibility information; and

(c) specified classes of activities of entities that are subject to Part IIIA.

(5) A CR code is not a legislative instrument.

Subdivision B—Development and registration of CR code

26P Development of CR code by CR code developers

(1) The Commissioner may, in writing, request a CR code developer to develop a CR code and apply to the Commissioner for the code to be registered.

(2) The request must:

(a) specify the period within which the request must be complied with; and

(b) set out the effect of section 26L.

(3) The period:

(a) must run for at least 120 days from the date the request is made; and

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(b) may be extended by the Commissioner.

(4) The request may:
(a) specify one or more matters that the CR code must deal with; and
(b) specify the credit providers, or a class of credit providers, that should be bound by the code; and
(c) specify the other entities, or a class of other entities, subject to Part IIIA that should be bound by the code.

(5) The Commissioner must make a copy of the request publicly available as soon as practicable after the request is made.

26Q Application for registration of CR code

(1) If a CR code developer develops a CR code, the developer may apply to the Commissioner for registration of the code.

(2) Before making the application, the CR code developer must:
(a) make a draft of the CR code publicly available; and
(b) invite the public to make submissions to the developer about the draft within a specified period (which must run for at least 28 days); and
(c) give consideration to any submissions made within the specified period.

(3) The application must:
(a) be made in the form and manner specified by the Commissioner; and
(b) be accompanied by such information as is specified by the Commissioner.

(4) The CR code developer may vary the CR code at any time before the Commissioner registers the code, but only with the consent of the Commissioner.

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26R Development of CR code by the Commissioner

(1) The Commissioner may develop a CR code if the Commissioner made a request under section 26P and either:

(a) the request has not been complied with; or

(b) the request has been complied with but the Commissioner has decided not to register, under section 26S, the CR code that was developed as requested.

(2) Before registering the CR code under section 26S, the Commissioner must:

(a) make a draft of the code publicly available; and

(b) invite the public to make submissions to the Commissioner about the draft within a specified period (which must run for at least 28 days); and

(c) give consideration to any submissions made within the specified period.

26S Commissioner may register CR code

(1) If:

(a) an application for registration of a CR code is made under section 26Q; or

(b) the Commissioner develops a CR code under section 26R;

the Commissioner may register the code by including it on the Codes Register.

(2) In deciding whether to register the CR code, the Commissioner may:

(a) consult any person the Commissioner considers appropriate; and

(b) consider the matters specified in any guidelines made under section 26V.

(3) If the Commissioner decides not to register a CR code developed by a CR code developer, the Commissioner must give written notice of the decision to the developer, including reasons for the decision.

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(4) The Commissioner must ensure that there is one, and only one, registered CR code at all times after this Part commences.

Subdivision C—Variation of the registered CR code

26T Variation of the registered CR code

(1) The Commissioner may, in writing, approve a variation of the registered CR code:
  (a) on his or her own initiative; or
  (b) on application by an entity that is bound by the code; or
  (c) on application by a body or association representing one or more of the entities that are bound by the code.

(2) An application under paragraph (1)(b) or (c) must:
  (a) be made in the form and manner specified by the Commissioner; and
  (b) be accompanied by such information as is specified by the Commissioner.

(3) Before deciding whether to approve a variation, the Commissioner must:
  (a) make a draft of the variation publicly available; and
  (b) consult any person the Commissioner considers appropriate about the variation; and
  (c) consider the extent to which members of the public have been given an opportunity to comment on the variation.

(4) In deciding whether to approve a variation, the Commissioner may consider the matters specified in any relevant guidelines made under section 26V.

(5) If the Commissioner approves a variation of the registered CR code (the ***original code***), the Commissioner must:
  (a) remove the original code from the Codes Register; and
  (b) register the CR code, as varied, by including it on the Register.

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(6) If the Commissioner approves a variation, the variation comes into effect on the day specified in the approval, which must not be before the day on which the CR code, as varied, is included on the Codes Register.

(7) An approval is not a legislative instrument.

Note: The CR code, as varied, is a legislative instrument once it is included on the Codes Register: see section 26M.

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Division 4—General matters

26U Codes Register

(1) The Commissioner must keep a register (the ***Codes Register***) which includes:
  (a) the APP codes the Commissioner has decided to register under section 26H; and
  (b) the APP codes the Commissioner must register under section 26J; and
  (c) the CR code the Commissioner has decided to register under section 26S; and
  (d) the CR code the Commissioner must register under section 26T.

(2) Despite subsection (1), the Commissioner is not required to include on the Codes Register:
  (a) an APP code removed from the Register under section 26J or 26K; or
  (b) the CR code removed from the Register under section 26T.

(3) The Commissioner must make the Codes Register available on the Commissioner's website.

(4) The Commissioner may charge fees for providing copies of, or extracts from, the Codes Register.

26V Guidelines relating to codes

(1) The Commissioner may make written guidelines:
  (a) to assist APP code developers to develop APP codes; or
  (b) to assist APP entities bound by registered APP codes to apply or comply with the codes; or
  (c) to assist CR code developers to develop a CR code; or
  (d) to assist entities bound by the registered CR code to apply or comply with the code.

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(2) The Commissioner may make written guidelines about matters the Commissioner may consider in deciding whether:
  (a) to register an APP code or a CR code; or
  (b) to approve a variation of a registered APP code or the registered CR code; or
  (c) to remove a registered APP code from the Codes Register.

(3) The Commissioner may publish any such guidelines on the Commissioner's website.

(4) Guidelines are not a legislative instrument.

26W Review of operation of registered codes

(1) The Commissioner may review the operation of a registered APP code.

Note: The review may inform a decision by the Commissioner to approve a variation of a registered APP code or to remove a registered APP code from the Codes Register.

(2) The Commissioner may review the operation of the registered CR code.

Note: The review may inform a decision by the Commissioner to approve a variation of the registered CR code.

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Part IIIC—Notification of eligible data breaches

Division 1—Introduction

26WA Simplified outline of this Part

- This Part sets up a scheme for notification of eligible data breaches.
- An eligible data breach happens if:
  (a) there is unauthorised access to, unauthorised disclosure of, or loss of, personal information held by an entity; and
  (b) the access, disclosure or loss is likely to result in serious harm to any of the individuals to whom the information relates.
- An entity must give a notification if:
  (a) it has reasonable grounds to believe that an eligible data breach has happened; or
  (b) it is directed to do so by the Commissioner.

26WB Entity

For the purposes of this Part, ***entity*** includes a person who is a file number recipient.

26WC Deemed holding of information

Overseas recipients

(1) If:
  (a) an APP entity has disclosed personal information about one or more individuals to an overseas recipient; and

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(b) Australian Privacy Principle 8.1 applied to the disclosure of the personal information; and

(c) the overseas recipient holds the personal information;

this Part has effect as if:

(d) the personal information were held by the APP entity; and

(e) the APP entity were required under section 15 not to do an act, or engage in a practice, that breaches Australian Privacy Principle 11.1 in relation to the personal information.

Bodies or persons with no Australian link

(2) If:

(a) either:

(i) a credit provider has disclosed, under paragraph 21G(3)(b) or (c), credit eligibility information about one or more individuals to a related body corporate, or person, that does not have an Australian link; or

(ii) a credit provider has disclosed, under subsection 21M(1), credit eligibility information about one or more individuals to a body or person that does not have an Australian link; and

(b) the related body corporate, body or person holds the credit eligibility information;

this Part has effect as if:

(c) the credit eligibility information were held by the credit provider; and

(d) the credit provider were required to comply with subsection 21S(1) in relation to the credit eligibility information.

Note: See section 21NA.

26WD Exception—notification under the *My Health Records Act 2012*

If:

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(a) an unauthorised access to information; or

(b) an unauthorised disclosure of information; or

(c) a loss of information;

has been, or is required to be, notified under section 75 of the *My Health Records Act 2012*, this Part does not apply in relation to the access, disclosure or loss.

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Division 2—Eligible data breach

26WE Eligible data breach

Scope

(1) This section applies if:

(a) both:

(i) an APP entity holds personal information relating to one or more individuals; and

(ii) the APP entity is required under section 15 not to do an act, or engage in a practice, that breaches Australian Privacy Principle 11.1 in relation to the personal information; or

(b) both:

(i) a credit reporting body holds credit reporting information relating to one or more individuals; and

(ii) the credit reporting body is required to comply with section 20Q in relation to the credit reporting information; or

(c) both:

(i) a credit provider holds credit eligibility information relating to one or more individuals; and

(ii) the credit provider is required to comply with subsection 21S(1) in relation to the credit eligibility information; or

(d) both:

(i) a file number recipient holds tax file number information relating to one or more individuals; and

(ii) the file number recipient is required under section 18 not to do an act, or engage in a practice, that breaches a section 17 rule that relates to the tax file number information.

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Eligible data breach

(2) For the purposes of this Act, if:

(a) both of the following conditions are satisfied:

(i) there is unauthorised access to, or unauthorised disclosure of, the information;

(ii) a reasonable person would conclude that the access or disclosure would be likely to result in serious harm to any of the individuals to whom the information relates; or

(b) the information is lost in circumstances where:

(i) unauthorised access to, or unauthorised disclosure of, the information is likely to occur; and

(ii) assuming that unauthorised access to, or unauthorised disclosure of, the information were to occur, a reasonable person would conclude that the access or disclosure would be likely to result in serious harm to any of the individuals to whom the information relates;

then:

(c) the access or disclosure covered by paragraph (a), or the loss covered by paragraph (b), is an ***eligible data breach*** of the APP entity, credit reporting body, credit provider or file number recipient, as the case may be; and

(d) an individual covered by subparagraph (a)(ii) or (b)(ii) is ***at risk*** from the eligible data breach.

(3) Subsection (2) has effect subject to section 26WF.

26WF Exception—remedial action

Access to, or disclosure of, information

(1) If:

(a) an access to, or disclosure of, information is covered by paragraph 26WE(2)(a); and

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(b) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, takes action in relation to the access or disclosure; and

(c) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, does so before the access or disclosure results in serious harm to any of the individuals to whom the information relates; and

(d) as a result of the action, a reasonable person would conclude that the access or disclosure would not be likely to result in serious harm to any of those individuals;

the access or disclosure is not, and is taken never to have been:

(e) an ***eligible data breach*** of the APP entity, credit reporting body, credit provider or file number recipient, as the case may be; or

(f) an ***eligible data breach*** of any other entity.

(2) If:

(a) an access to, or disclosure of, information is covered by paragraph 26WE(2)(a); and

(b) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, takes action in relation to the access or disclosure; and

(c) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, does so before the access or disclosure results in serious harm to a particular individual to whom the information relates; and

(d) as a result of the action, a reasonable person would conclude that the access or disclosure would not be likely to result in serious harm to the individual;

this Part does not require:

(e) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be; or

(f) any other entity;

to take steps to notify the individual of the contents of a statement that relates to the access or disclosure.

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Loss of information

(3) If:

(a) a loss of information is covered by paragraph 26WE(2)(b); and

(b) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, takes action in relation to the loss; and

(c) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, does so before there is unauthorised access to, or unauthorised disclosure of, the information; and

(d) as a result of the action, there is no unauthorised access to, or unauthorised disclosure of, the information;

the loss is not, and is taken never to have been:

(e) an ***eligible data breach*** of the APP entity, credit reporting body, credit provider or file number recipient, as the case may be; or

(f) an ***eligible data breach*** of any other entity.

(4) If:

(a) a loss of information is covered by paragraph 26WE(2)(b); and

(b) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, takes action in relation to the loss; and

(c) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, does so:

(i) after there is unauthorised access to, or unauthorised disclosure of, the information; and

(ii) before the access or disclosure results in serious harm to any of the individuals to whom the information relates; and

(d) as a result of the action, a reasonable person would conclude that the access or disclosure would not be likely to result in serious harm to any of those individuals;

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the loss is not, and is taken never to have been:

(e) an ***eligible data breach*** of the APP entity, credit reporting body, credit provider or file number recipient, as the case may be; or

(f) an ***eligible data breach*** of any other entity.

(5) If:

(a) a loss of information is covered by paragraph 26WE(2)(b); and

(b) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, takes action in relation to the loss; and

(c) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be, does so:

(i) after there is unauthorised access to, or unauthorised disclosure of, the information; and

(ii) before the access or disclosure results in serious harm to a particular individual to whom the information relates; and

(d) as a result of the action, a reasonable person would conclude that the access or disclosure would not be likely to result in serious harm to the individual;

this Part does not require:

(e) the APP entity, credit reporting body, credit provider or file number recipient, as the case may be; or

(f) any other entity;

to take steps to notify the individual of the contents of a statement that relates to the loss.

26WG Whether access or disclosure would be likely, or would not be likely, to result in serious harm—relevant matters

For the purposes of this Division, in determining whether a reasonable person would conclude that an access to, or a disclosure of, information:

(a) would be likely; or

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(b) would not be likely;

to result in serious harm to any of the individuals to whom the information relates, have regard to the following:

(c) the kind or kinds of information;

(d) the sensitivity of the information;

(e) whether the information is protected by one or more security measures;

(f) if the information is protected by one or more security measures—the likelihood that any of those security measures could be overcome;

(g) the persons, or the kinds of persons, who have obtained, or who could obtain, the information;

(h) if a security technology or methodology:

(i) was used in relation to the information; and

(ii) was designed to make the information unintelligible or meaningless to persons who are not authorised to obtain the information;

the likelihood that the persons, or the kinds of persons, who:

(iii) have obtained, or who could obtain, the information; and

(iv) have, or are likely to have, the intention of causing harm to any of the individuals to whom the information relates;

have obtained, or could obtain, information or knowledge required to circumvent the security technology or methodology;

(i) the nature of the harm;

(j) any other relevant matters.

Note: If the security technology or methodology mentioned in paragraph (h) is encryption, an encryption key is an example of information required to circumvent the security technology or methodology.

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Division 3—Notification of eligible data breaches

Subdivision A—Suspected eligible data breaches

26WH Assessment of suspected eligible data breach

Scope

(1) This section applies if:

(a) an entity is aware that there are reasonable grounds to suspect that there may have been an eligible data breach of the entity; and

(b) the entity is not aware that there are reasonable grounds to believe that the relevant circumstances amount to an eligible data breach of the entity.

Assessment

(2) The entity must:

(a) carry out a reasonable and expeditious assessment of whether there are reasonable grounds to believe that the relevant circumstances amount to an eligible data breach of the entity; and

(b) take all reasonable steps to ensure that the assessment is completed within 30 days after the entity becomes aware as mentioned in paragraph (1)(a).

Note: Section 26WK applies if an entity is aware that there are reasonable grounds to believe that there has been an eligible data breach of the entity.

26WJ Exception—eligible data breaches of other entities

If:

(a) an entity complies with section 26WH in relation to an eligible data breach of the entity; and

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(b) the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities;

that section does not apply in relation to those eligible data breaches of those other entities.

Subdivision B—General notification obligations

26WK Statement about eligible data breach

Scope

(1) This section applies if an entity is aware that there are reasonable grounds to believe that there has been an eligible data breach of the entity.

Statement

(2) The entity must:
  (a) both:
    (i) prepare a statement that complies with subsection (3); and
    (ii) give a copy of the statement to the Commissioner; and
  (b) do so as soon as practicable after the entity becomes so aware.

(3) The statement referred to in subparagraph (2)(a)(i) must set out:
  (a) the identity and contact details of the entity; and
  (b) a description of the eligible data breach that the entity has reasonable grounds to believe has happened; and
  (c) the kind or kinds of information concerned; and
  (d) recommendations about the steps that individuals should take in response to the eligible data breach that the entity has reasonable grounds to believe has happened.

(4) If the entity has reasonable grounds to believe that the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities, the

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statement referred to in subparagraph (2)(a)(i) may also set out the identity and contact details of those other entities.

26WL Entity must notify eligible data breach

Scope

(1) This section applies if:

(a) an entity is aware that there are reasonable grounds to believe that there has been an eligible data breach of the entity; and

(b) the entity has prepared a statement that:

(i) complies with subsection 26WK(3); and

(ii) relates to the eligible data breach that the entity has reasonable grounds to believe has happened.

Notification

(2) The entity must:

(a) if it is practicable for the entity to notify the contents of the statement to each of the individuals to whom the relevant information relates—take such steps as are reasonable in the circumstances to notify the contents of the statement to each of the individuals to whom the relevant information relates; or

(b) if it is practicable for the entity to notify the contents of the statement to each of the individuals who are at risk from the eligible data breach—take such steps as are reasonable in the circumstances to notify the contents of the statement to each of the individuals who are at risk from the eligible data breach; or

(c) if neither paragraph (a) nor (b) applies:

(i) publish a copy of the statement on the entity's website (if any); and

(ii) take reasonable steps to publicise the contents of the statement.

Note: See also subsections 26WF(2) and (5), which deal with remedial action.

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(3) The entity must comply with subsection (2) as soon as practicable after the completion of the preparation of the statement.

Method of providing a statement to an individual

(4) If the entity normally communicates with a particular individual using a particular method, the notification to the individual under paragraph (2)(a) or (b) may use that method. This subsection does not limit paragraph (2)(a) or (b).

26WM Exception—eligible data breaches of other entities

If:

(a) an entity complies with sections 26WK and 26WL in relation to an eligible data breach of the entity; and

(b) the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities;

those sections do not apply in relation to those eligible data breaches of those other entities.

26WN Exception—enforcement related activities

If:

(a) an entity is an enforcement body; and

(b) the chief executive officer of the enforcement body believes on reasonable grounds that there has been an eligible data breach of the entity; and

(c) the chief executive officer of the enforcement body believes on reasonable grounds that compliance with section 26WL in relation to the eligible data breach would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, the enforcement body;

paragraph 26WK(3)(d) and section 26WL do not apply in relation to:

(d) the eligible data breach of the entity; and

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(e) if the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities—such an eligible data breach of those other entities.

26WP Exception—inconsistency with secrecy provisions

Secrecy provisions

(1) For the purposes of this section, ***secrecy provision*** means a provision that:
   (a) is a provision of a law of the Commonwealth (other than this Act); and
   (b) prohibits or regulates the use or disclosure of information.

(2) If compliance by an entity with subparagraph 26WK(2)(a)(ii) in relation to a statement would, to any extent, be inconsistent with a secrecy provision (other than a prescribed secrecy provision), subsection 26WK(2) does not apply to the entity, in relation to the statement, to the extent of the inconsistency.

(3) If compliance by an entity with section 26WL in relation to a statement would, to any extent, be inconsistent with a secrecy provision (other than a prescribed secrecy provision), section 26WL does not apply to the entity, in relation to the statement, to the extent of the inconsistency.

Prescribed secrecy provisions

(4) For the purposes of this section, ***prescribed secrecy provision*** means a secrecy provision that is specified in the regulations.

(5) For the purposes of a prescribed secrecy provision:
   (a) subparagraph 26WK(2)(a)(ii); and
   (b) section 26WL;

are taken not to be provisions that require or authorise the use or disclosure of information.

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(6) If compliance by an entity with subparagraph 26WK(2)(a)(ii) in relation to a statement would, to any extent, be inconsistent with a prescribed secrecy provision, subsection 26WK(2) does not apply to the entity in relation to the statement.

(7) If compliance by an entity with section 26WL in relation to a statement would, to any extent, be inconsistent with a prescribed secrecy provision, section 26WL does not apply to the entity in relation to the statement.

26WQ Exception—declaration by Commissioner

(1) If the Commissioner:

(a) is aware that there are reasonable grounds to believe that there has been an eligible data breach of an entity; or

(b) is informed by an entity that the entity is aware that there are reasonable grounds to believe that there has been an eligible data breach of the entity;

the Commissioner may, by written notice given to the entity:

(c) declare that sections 26WK and 26WL do not apply in relation to:

(i) the eligible data breach of the entity; and

(ii) if the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities—such an eligible data breach of those other entities; or

(d) declare that subsection 26WL(3) has effect in relation to:

(i) the eligible data breach of the entity; and

(ii) if the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities—such an eligible data breach of those other entities;

as if that subsection required compliance with subsection 26WL(2) before the end of a period specified in the declaration.

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(2) The Commissioner's power in paragraph (1)(d) may only be used to extend the time for compliance with subsection 26WL(2) to the end of a period that the Commissioner is satisfied is reasonable in the circumstances.

(3) The Commissioner must not make a declaration under subsection (1) unless the Commissioner is satisfied that it is reasonable in the circumstances to do so, having regard to the following:

(a) the public interest;

(b) any relevant advice given to the Commissioner by:

(i) an enforcement body; or

(ii) the Australian Signals Directorate;

(c) such other matters (if any) as the Commissioner considers relevant.

(4) Paragraph (3)(b) does not limit the advice to which the Commissioner may have regard.

(5) The Commissioner may give a notice of a declaration to an entity under subsection (1):

(a) on the Commissioner's own initiative; or

(b) on application made to the Commissioner by the entity.

Applications

(6) An application by an entity under paragraph (5)(b) may be expressed to be:

(a) an application for a paragraph (1)(c) declaration; or

(b) an application for a paragraph (1)(d) declaration; or

(c) an application for:

(i) a paragraph (1)(c) declaration; or

(ii) in the event that the Commissioner is not disposed to make such a declaration—a paragraph (1)(d) declaration.

(7) If an entity applies to the Commissioner under paragraph (5)(b):

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(a) the Commissioner may refuse the application; and
(b) if the Commissioner does so—the Commissioner must give written notice of the refusal to the entity.

(8) If:
(a) an application for a paragraph (1)(d) declaration nominates a period to be specified in the declaration; and
(b) the Commissioner makes the declaration, but specifies a different period in the declaration;

the Commissioner is taken not to have refused the application.

(9) If an entity applies to the Commissioner under paragraph (5)(b) for a declaration that, to any extent, relates to an eligible data breach of the entity, sections 26WK and 26WL do not apply in relation to:
(a) the eligible data breach; or
(b) if the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities—such an eligible data breach of those other entities;

until the Commissioner makes a decision in response to the application for the declaration.

(10) An entity is not entitled to make an application under paragraph (5)(b) in relation to an eligible data breach of the entity if:
(a) the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities; and
(b) one of those other entities has already made an application under paragraph (5)(b) in relation to the eligible data breach of the other entity.

Extension of specified period

(11) If notice of a paragraph (1)(d) declaration has been given to an entity, the Commissioner may, by written notice given to the entity, extend the period specified in the declaration.

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Subdivision C—Commissioner may direct entity to notify eligible data breach

26WR Commissioner may direct entity to notify eligible data breach

(1) If the Commissioner is aware that there are reasonable grounds to believe that there has been an eligible data breach of an entity, the Commissioner may, by written notice given to the entity, direct the entity to:

(a) prepare a statement that complies with subsection (4); and

(b) give a copy of the statement to the Commissioner.

(2) The direction must also require the entity to:

(a) if it is practicable for the entity to notify the contents of the statement to each of the individuals to whom the relevant information relates—take such steps as are reasonable in the circumstances to notify the contents of the statement to each of the individuals to whom the relevant information relates; or

(b) if it is practicable for the entity to notify the contents of the statement to each of the individuals who are at risk from the eligible data breach—take such steps as are reasonable in the circumstances to notify the contents of the statement to each of the individuals who are at risk from the eligible data breach; or

(c) if neither paragraph (a) nor (b) applies:

(i) publish a copy of the statement on the entity's website (if any); and

(ii) take reasonable steps to publicise the contents of the statement.

Note: See also subsections 26WF(2) and (5), which deal with remedial action.

(3) Before giving a direction to an entity under subsection (1), the Commissioner must invite the entity to make a submission to the Commissioner in relation to the direction within the period specified in the invitation.

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(4) The statement referred to in paragraph (1)(a) must set out:
  (a) the identity and contact details of the entity; and
  (b) a description of the eligible data breach that the Commissioner has reasonable grounds to believe has happened; and
  (c) the kind or kinds of information concerned; and
  (d) recommendations about the steps that individuals should take in response to the eligible data breach that the Commissioner has reasonable grounds to believe has happened.

(5) A direction under subsection (1) may also require the statement referred to in paragraph (1)(a) to set out specified information that relates to the eligible data breach that the Commissioner has reasonable grounds to believe has happened.

(6) In deciding whether to give a direction to an entity under subsection (1), the Commissioner must have regard to the following:
  (a) any relevant advice given to the Commissioner by:
    (i) an enforcement body; or
    (ii) the Australian Signals Directorate;
  (b) any relevant submission that was made by the entity:
    (i) in response to an invitation under subsection (3); and
    (ii) within the period specified in the invitation;
  (c) such other matters (if any) as the Commissioner considers relevant.

(7) Paragraph (6)(a) does not limit the advice to which the Commissioner may have regard.

(8) If the Commissioner is aware that there are reasonable grounds to believe that the access, disclosure or loss that constituted the eligible data breach of the entity is an eligible data breach of one or more other entities, a direction under subsection (1) may also require the statement referred to in paragraph (1)(a) to set out the identity and contact details of those other entities.

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Method of providing a statement to an individual

(9) If an entity normally communicates with a particular individual using a particular method, the notification to the individual mentioned in paragraph (2)(a) or (b) may use that method. This subsection does not limit paragraph (2)(a) or (b).

Compliance with direction

(10) An entity must comply with a direction under subsection (1) as soon as practicable after the direction is given.

26WS Exception—enforcement related activities

An entity is not required to comply with a direction under subsection 26WR(1) if:

(a) the entity is an enforcement body; and

(b) the chief executive officer of the enforcement body believes on reasonable grounds that compliance with the direction would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, the enforcement body.

26WT Exception—inconsistency with secrecy provisions

Secrecy provisions

(1) For the purposes of this section, ***secrecy provision*** means a provision that:

(a) is a provision of a law of the Commonwealth (other than this Act); and

(b) prohibits or regulates the use or disclosure of information.

(2) If compliance by an entity with paragraph 26WR(1)(b) or subsection 26WR(2) in relation to a statement would, to any extent, be inconsistent with a secrecy provision (other than a prescribed secrecy provision), paragraph 26WR(1)(b) or subsection 26WR(2), as the case may be, does not apply to the entity, in relation to the statement, to the extent of the inconsistency.

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Prescribed secrecy provisions

(3) For the purposes of this section, ***prescribed secrecy provision*** means a secrecy provision that is specified in the regulations.

(4) For the purposes of a prescribed secrecy provision:

(a) paragraph 26WR(1)(b); and

(b) subsection 26WR(2);

are taken not to be provisions that require or authorise the use or disclosure of information.

(5) If compliance by an entity with paragraph 26WR(1)(b) or subsection 26WR(2) in relation to a statement would, to any extent, be inconsistent with a prescribed secrecy provision, paragraph 26WR(1)(b) or subsection 26WR(2), as the case may be, does not apply to the entity in relation to the statement.

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Part IV—Functions of the Information Commissioner

Division 2—Functions of Commissioner

27 Functions of the Commissioner

(1) The Commissioner has the following functions:

(a) the functions that are conferred on the Commissioner by or under:

(i) this Act; or

(ii) any other law of the Commonwealth;

(b) the guidance related functions;

(c) the monitoring related functions;

(d) the advice related functions;

(e) to do anything incidental or conducive to the performance of any of the above functions.

(2) The Commissioner has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Commissioner's functions.

(3) Without limiting subsection (2), the Commissioner may establish a panel of persons with expertise in relation to a particular matter to assist the Commissioner in performing any of the Commissioner's functions.

(4) Section 38 of the *Healthcare Identifiers Act 2010*, rather than section 12B of this Act, applies in relation to an investigation of an act or practice referred to in subsection 29(1) of that Act in the same way as it applies to Parts 3 and 4 of that Act.

Note: Section 38 of the *Healthcare Identifiers Act 2010* deals with the additional effect of Parts 3 and 4 of that Act.

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28 *Guidance related functions* of the Commissioner

(1) The following are the ***guidance related functions*** of the Commissioner:

(a) making guidelines for the avoidance of acts or practices that may or might be interferences with the privacy of individuals, or which may otherwise have any adverse effects on the privacy of individuals;

(b) making, by legislative instrument, guidelines for the purposes of paragraph (d) of Australian Privacy Principle 6.3;

(c) promoting an understanding and acceptance of:

(i) the Australian Privacy Principles and the objects of those principles; and

(ii) a registered APP code; and

(iii) the provisions of Part IIIA and the objects of those provisions; and

(iv) the registered CR code;

(d) undertaking educational programs for the purposes of promoting the protection of individual privacy.

(2) The Commissioner may publish the guidelines referred to in paragraphs (1)(a) and (b) in such manner as the Commissioner considers appropriate.

(3) The educational programs referred to in paragraph (1)(d) may be undertaken by:

(a) the Commissioner; or

(b) a person or authority acting on behalf of the Commissioner.

(4) Guidelines made under paragraph (1)(a) are not a legislative instrument.

28A *Monitoring related functions* of the Commissioner

Credit reporting and tax file number information

(1) The following are the ***monitoring related functions*** of the Commissioner:

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(a) monitoring the security and accuracy of information held by an entity that is information to which Part IIIA applies;
(b) examining the records of entities to ensure that the entities:
(i) are not using information to which Part IIIA applies for unauthorised purposes; and
(ii) are taking adequate measures to prevent the unlawful disclosure of such information;
(c) examining the records of the Commissioner of Taxation to ensure that the Commissioner:
(i) is not using tax file number information for purposes beyond his or her powers; and
(ii) is taking adequate measures to prevent the unlawful disclosure of the tax file number information that he or she holds;
(d) evaluating compliance with the rules issued under section 17;
(e) monitoring the security and accuracy of tax file number information kept by file number recipients.

Other matters

(2) The following are also the ***monitoring related functions*** of the Commissioner:
(a) examining a proposed Commonwealth law that would require or authorise acts or practices of an entity that might otherwise be interferences with the privacy of individuals, or which may otherwise have any adverse effects on the privacy of individuals;
(b) examining a proposal for data matching or linkage that may involve an interference with the privacy of individuals, or which may otherwise have any adverse effects on the privacy of individuals;
(c) ensuring that any adverse effects of the proposed law or the proposal on the privacy of individuals are minimised;
(d) undertaking research into, and monitoring developments in, data processing and technology (including data matching and

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linkage) to ensure that any adverse effects of such developments on the privacy of individuals are minimised;

(e) reporting to the Minister the results of that research and monitoring;

(f) monitoring and reporting on the adequacy of equipment and user safeguards.

(3) The functions referred to in paragraphs (2)(a) and (b) may be performed by the Commissioner:

(a) on request by a Minister; or

(b) on the Commissioner's own initiative.

(4) If the reporting referred to in paragraph (2)(e) or (f) is done in writing, the instrument is not a legislative instrument.

28B *Advice related functions* of the Commissioner

(1) The following are the ***advice related functions*** of the Commissioner:

(a) providing advice to a Minister or entity about any matter relevant to the operation of this Act;

(b) informing the Minister of action that needs to be taken by an agency in order to comply with the Australian Privacy Principles;

(c) providing reports and recommendations to the Minister in relation to any matter concerning the need for, or the desirability of, legislative or administrative action in the interests of the privacy of individuals;

(d) providing advice to file number recipients about:

(i) their obligations under the *Taxation Administration Act 1953* in relation to the confidentiality of tax file number information; or

(ii) any matter relevant to the operation of this Act.

(2) The functions referred to in paragraphs (1)(a), (c) and (d) may be performed by the Commissioner on request or on the Commissioner's own initiative.

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(3) The Commissioner may perform the function referred to in paragraph (1)(b) whenever the Commissioners think it is necessary to do so.

(4) If the Minister is informed under paragraph (1)(b) in writing, or the report referred to in paragraph (1)(c) is provided in writing, the instrument is not a legislative instrument.

29 Commissioner must have due regard to the objects of the Act

The Commissioner must have due regard to the objects of this Act in performing the Commissioner's functions, and exercising the Commissioner's powers, conferred by this Act.

Note: The objects of this Act are set out in section 2A.

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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) does not consider that it is reasonably possible that the matter that gave rise to the investigation can be conciliated successfully or has attempted to conciliate the matter without success.

(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 of an act or practice of an agency, file number recipient, credit reporting body or credit provider that is an interference with the privacy of an individual under subsection 13(1), (2) or (4), 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:

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(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;

(d) shall serve a copy of the report on the agency, file number recipient, credit reporting body or credit provider concerned and the Minister (if any) responsible for the agency, recipient, credit reporting body 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 body 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 body 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) responsible for the agency, recipient, credit reporting body or credit provider.

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(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.

31 Report following examination of proposed law

(1) Where the Commissioner has examined a proposed Commonwealth law under paragraph 28A(2)(a), subsections (2) and (3) of this section have effect.

(2) If the Commissioner thinks that the proposed law would require or authorise acts or practices of an entity that would be interferences with the privacy of individuals, the Commissioner shall:

(a) report to the Minister about the proposed law; and

(b) include in the report any recommendations he or she wishes to make for amendment of the proposed law 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 law, 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 law 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 Commissioner may report to the Minister if the Commissioner has monitored certain activities etc.

(1) If the Commissioner has:

(a) monitored an activity in the performance of a function under paragraph 28(1)(d), 28A(1)(a), (b), (d) or (e) or (2)(b), (c) or (d) or 28B(1)(b) or (c); or

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(b) conducted an assessment under section 33C;

the Commissioner may report to the Minister about the activity or assessment, and must 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 or assessment 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.

(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;

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(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 Commonwealth law;
(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.

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Division 3A—Assessments by, or at the direction of, the Commissioner

33C Commissioner may conduct an assessment relating to the Australian Privacy Principles etc.

(1) The Commissioner may conduct an assessment of the following matters:

(a) whether personal information held by an APP entity is being maintained and handled in accordance with the following:

(i) the Australian Privacy Principles;

(ii) a registered APP code that binds the entity;

(b) whether information held by an entity is being maintained and handled in accordance with the following to the extent that they apply to the information:

(i) the provisions of Part IIIA;

(ii) the registered CR code if it binds the entity;

(c) whether tax file number information held by a file number recipient is being maintained and handled in accordance with any relevant rules issued under section 17;

(d) whether the data matching program (within the meaning of the *Data-matching Program (Assistance and Tax) Act 1990*) of an agency complies with Part 2 of that Act and the rules issued under section 12 of that Act;

(e) whether information to which section 135AA of the *National Health Act 1953* applies is being maintained and handled in accordance with the rules issued under that section;

(f) whether the matching of information under Part VIIIA of the *National Health Act 1953*, and the handling of information relating to that matching, is in accordance with that Part, including:

(i) any terms and conditions relating to the matching of the information determined by the Chief Executive Medicare under paragraph 132B(3)(a) of that Act; and

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(ii) the principles made by the Minister under subsection 132F(1) of that Act.

(2) The Commissioner may conduct the assessment in such manner as the Commissioner considers fit.

33D Commissioner may direct an agency to give a privacy impact assessment

(1) If:

(a) an agency proposes to engage in an activity or function involving the handling of personal information about individuals; and

(b) the Commissioner considers that the activity or function might have a significant impact on the privacy of individuals;

the Commissioner may, in writing, direct the agency to give the Commissioner, within a specified period, a privacy impact assessment about the activity or function.

(2) A direction under subsection (1) is not a legislative instrument.

Privacy impact assessment

(3) A ***privacy impact assessment*** is a written assessment of an activity or function that:

(a) identifies the impact that the activity or function might have on the privacy of individuals; and

(b) sets out recommendations for managing, minimising or eliminating that impact.

(4) Subsection (3) does not limit the matters that the privacy impact assessment may deal with.

(5) A privacy impact assessment is not a legislative instrument.

Failure to comply with a direction

(6) If an agency does not comply with a direction under subsection (1), the Commissioner must advise both of the following of the failure:

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(a) the Minister;
(b) if another Minister is responsible for the agency—that other Minister.

Review

(7) Before the fifth anniversary of the commencement of this section, the Minister must cause a review to be undertaken of whether this section should apply in relation to organisations.

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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 Commissioner's functions, 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:

(a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1) of the *Freedom of Information Act 1982*; or

(b) an exempt document to the extent referred to in subsection 45A(2) or (3) of that Act.

(2) The Commissioner shall not, in connection with the performance of the Commissioner's functions, 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, 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.

(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;

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(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;

(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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35A Commissioner may recognise external dispute resolution schemes

(1) The Commissioner may, by written notice, recognise an external dispute resolution scheme:
  (a) for an entity or a class of entities; or
  (b) for a specified purpose.

(2) In considering whether to recognise an external dispute resolution scheme, the Commissioner must take the following matters into account:
  (a) the accessibility of the scheme;
  (b) the independence of the scheme;
  (c) the fairness of the scheme;
  (d) the accountability of the scheme;
  (e) the efficiency of the scheme;
  (f) the effectiveness of the scheme;
  (g) any other matter the Commissioner considers relevant.

(3) The Commissioner may:
  (a) specify a period for which the recognition of an external dispute resolution scheme is in force; and
  (b) make the recognition of an external dispute resolution scheme subject to specified conditions, including conditions relating to the conduct of an independent review of the operation of the scheme; and
  (c) vary or revoke:
    (i) the recognition of an external dispute resolution scheme; or
    (ii) the period for which the recognition is in force; or
    (iii) a condition to which the recognition is subject.

(4) A notice under subsection (1) is not a legislative instrument.

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Part V—Investigations etc.

Division 1A—Introduction

36A Guide to this Part

In general, this Part deals with complaints and investigations about acts or practices that may be an interference with the privacy of an individual.

An individual may complain to the Commissioner about an act or practice that may be an interference with the privacy of the individual. If a complaint is made, the Commissioner is required to investigate the act or practice except in certain circumstances.

The Commissioner may also, on his or her own initiative, investigate an act or practice that may be an interference with the privacy of an individual or a breach of Australian Privacy Principle 1.

The Commissioner has a range powers relating to the conduct of investigations including powers:

(a) to conciliate complaints; and

(b) to make preliminary inquiries of any person; and

(c) to require a person to give information or documents, or to attend a compulsory conference; and

(d) to transfer matters to an alternative complaint body in certain circumstances.

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Section 36A

After an investigation, the Commissioner may make a determination in relation to the investigation. An entity to which a determination relates must comply with certain declarations included in the determination. Court proceedings may be commenced to enforce a determination.

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Division 1—Investigation of complaints and investigations on the Commissioner's initiative

36 Complaints

(1) An individual may complain to the Commissioner about an act or practice that may be an interference with the privacy of the individual.

(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.

(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.

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Note: Sections 98A to 98C contain 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 subsection 13(2), (4) or (5), other than an act or practice of an agency or organisation, is the person or entity who engaged in the act or practice.

36B Complaints relating to the data sharing scheme

(1) If a complaint relates to the data sharing scheme within the meaning of the *Data Availability and Transparency Act 2022*, the Commissioner may share information and documents about the complaint with the National Data Commissioner (the ***NDC***), for the purposes of the NDC exercising powers, or performing functions or duties, under that Act.

(2) The Commissioner may share only information and documents under subsection (1) that were acquired by the Commissioner in the course of exercising powers, or performing functions or duties, under this Act.

(3) To avoid doubt, the Commissioner may share information or documents with the NDC under this section whether or not the Commissioner is transferring the complaint or part of the complaint to the NDC.

Note: The Commissioner may transfer the complaint to the NDC under section 50, if the Commissioner is of the opinion that the complaint could have been made to the NDC.

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:

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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
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 principal registrar of the court or the person occupying an equivalent office
5	The Australian Federal Police	The Commissioner of Police
5A	A body or tribunal referred to in paragraph (ca) of the definition of ***agency*** in subsection 6(1)	The person responsible for the day-to-day management of the agency
5D	A court of Norfolk Island	The registrar or principal registrar of the court or the person occupying an equivalent office
9	An eligible hearing service provider that is an individual	The individual
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 only if:

(a) the class members have complaints against the same person or entity; and

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(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 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.

(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;

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(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:

(a) if the complaint was lodged without the consent of the member—at any time; or

(b) otherwise—at any time before the Commissioner begins to hold an inquiry into the complaint.

Note: If a class member withdraws from a representative complaint that relates to a matter, the former member may make a complaint under section 36 that relates to the matter.

(3) The Commissioner may at any stage direct that notice of any matter be given to a class member or class members.

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

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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) Subsection (1A) does not apply if the complaint is about an act or practice that may breach:

(a) section 20R, 20T, 21T or 21V (which are about access to, and correction of, credit reporting information etc.); or

(b) a provision of the registered CR code that relates to that section.

(2) The Commissioner may, on the Commissioner's own initiative, investigate an act or practice if:

(a) the act or practice may be an interference with the privacy of an individual or a breach of Australian Privacy Principle 1; and

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(b) the Commissioner thinks it is desirable that the act or practice be investigated.

(3) This section has effect subject to section 41.

40A Conciliation of complaints

(1) If:

(a) a complaint about an act or practice is made under section 36; and

(b) the Commissioner considers it is reasonably possible that the complaint may be conciliated successfully;

the Commissioner must make a reasonable attempt to conciliate the complaint.

(2) Subsection (1) does not apply if the Commissioner has decided under section 41 or 50 not to investigate, or not to investigate further, the act or practice.

(3) If the Commissioner is satisfied that there is no reasonable likelihood that the complaint will be resolved by conciliation, the Commissioner must, in writing, notify the complainant and respondent of that matter.

(4) If a notification is given under subsection (3), the Commissioner may decide not to investigate, or not to investigate further, the act or practice.

(5) Evidence of anything said or done in the course of the conciliation is not admissible in any hearing before the Commissioner, or in any legal proceedings, relating to complaint or the act or practice unless:

(a) the complainant and respondent otherwise agree; or

(b) the thing was said or done in furtherance of the commission of a fraud or an offence, or the commission of an act that renders a person liable to a civil penalty.

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41 Commissioner may or must decide not to investigate etc. in certain circumstances

(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 if the Commissioner is satisfied that:

(a) the act or practice is not an interference with the privacy of an individual; or

(c) the complaint was made more than 12 months after the complainant became aware of the act or practice; or

(d) the complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith; or

(da) an investigation, or further investigation, of the act or practice is not warranted having regard to all the circumstances; or

(db) the complainant has not responded, within the period specified by the Commissioner, to a request for information in relation to the complaint; or

(dc) the act or practice is being dealt with by a recognised external dispute resolution scheme; or

(dd) the act or practice would be more effectively or appropriately dealt with by a recognised external dispute resolution scheme; or

(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.

(1A) The Commissioner must not investigate, or investigate further, an act or practice about which a complaint has been made under section 36 if the Commissioner is satisfied that the complainant has withdrawn the complaint.

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(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 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 if:

(a) an application has been made by the respondent for a determination under section 72 in relation to the act or practice; and

(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

(1) Where a complaint has been made to the Commissioner, 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 or any other person.

(2) The Commissioner may make inquiries of any person for the purpose of determining whether to investigate an act or practice under subsection 40(2).

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Section 43

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.

(1AA) Before commencing an investigation of an act or practice of a person or entity under subsection 40(2), the Commissioner must inform the person or entity that the act or practice 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 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) The Commissioner may make a determination under section 52 in relation to an investigation under this Division without holding a hearing, if:

(a) it appears to the Commissioner that the matter to which the investigation relates can be adequately determined in the absence of:

(i) in the case of an investigation under subsection 40(1)—the complainant and respondent; or

(ii) otherwise—the person or entity that engaged in the act or practice that is being investigated; and

(b) the Commissioner is satisfied that there are no unusual circumstances that would warrant the Commissioner holding a hearing; and

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(c) an application for a hearing has not been made under section 43A.

(7) Where, in connection with an investigation of a matter under this Division, the Commissioner proposes to hold a hearing, 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) 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 concerned with the matter.

(8A) Subsection (8) does not allow the Commissioner to discuss a matter relevant to an investigation of a breach of the Australian Privacy Principles or a registered APP code with a 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

(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.

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43A Interested party may request a hearing

(1) An interested party in relation to an investigation under this Division may, in writing, request that the Commissioner hold a hearing before the Commissioner makes a determination under section 52 in relation to the investigation.

(2) If an interested party makes request under subsection (1), the Commissioner must:
  (a) notify any other interested party of the request; and
  (b) give all interested parties a reasonable opportunity to make a submission about the request; and
  (c) decide whether or not to hold a hearing.

(3) In this section:

interested party in relation to an investigation means:
  (a) in the case of an investigation under subsection 40(1)—the complainant or respondent; or
  (b) otherwise—the person or entity that engaged in the act or practice that is being investigated.

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

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(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.

(4) This section is subject to section 70 but it has effect regardless of any other Commonwealth law.

(5) A person is not liable to a penalty under the provisions of any other Commonwealth law 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.

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(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, 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;

commits an offence punishable on conviction:

(c) in the case of an individual—by imprisonment for a period not exceeding 6 months or a fine not exceeding 10 penalty units, or both; or

(d) in the case of a body corporate—by a fine not exceeding 50 penalty units.

(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*).

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(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.

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

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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.

(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

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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 20P(1), 21R(1) or (2), 24(1) or (2) or 24A(1) or (2); 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

(c) discontinue the investigation except to the extent that it concerns matters unconnected with the contravention that the Commissioner believes may have taken place.

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(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).

49B Transfer of complaints from the Inspector-General of Intelligence and Security

An individual is taken to have complained to the Information Commissioner under subsection 36(1) in respect of action taken by ACC or the Australian Federal Police if the Inspector-General of Intelligence and Security transfers all or part of the complaint to the Information Commissioner under section 32AD of the *Inspector-General of Intelligence and Security Act 1986*.

50 Reference of matters to other authorities

(1) In this section:

alternative complaint body means:

(a) the Australian Human Rights Commission; or

(aa) the National Data Commissioner; or

(b) the Ombudsman; or

(c) the Postal Industry Ombudsman; or

(d) the Overseas Students Ombudsman; or

(e) the Australian Public Service Commissioner; or

(f) the Inspector-General of Intelligence and Security; or

(g) a recognised external dispute resolution scheme.

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Australian Human Rights Commission includes a person performing functions of that Commission.

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

(ia) to the National Data Commissioner under Part 5.3 of the *Data Availability and Transparency Act 2022*; or

(ii) to the Ombudsman under the *Ombudsman Act 1976*; or

(iia) to the Ombudsman under a law in force in an external Territory other than the *Ombudsman Act 1976*; or

(iii) to the Postal Industry Ombudsman under the *Ombudsman Act 1976*; or

(iv) to the Overseas Students Ombudsman under the *Ombudsman Act 1976*; or

(iva) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or

(v) to a recognised external dispute resolution scheme; or

(b) an application with respect to that matter has been, or could have been, made by the complainant to the Australian Public Service Commissioner under the *Public Service Act 1999*;

and that that matter could be more conveniently or effectively dealt with by the alternative complaint body, 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 alternative complaint body; and

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(d) give notice in writing to the complainant stating that the complaint has been so transferred; and

(e) give to the alternative complaint body 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

(ia) to the National Data Commissioner under Part 5.3 of the *Data Availability and Transparency Act 2022*; or

(ii) to the Ombudsman under the *Ombudsman Act 1976*; or

(iia) to the Ombudsman under the law mentioned in subparagraph 50(2)(a)(iia); or

(iii) to the Postal Industry Ombudsman under the *Ombudsman Act 1976*; or

(iv) to the Overseas Students Ombudsman under the *Ombudsman Act 1976*; or

(iva) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or

(v) to the recognised external dispute resolution scheme; or

(b) an application made to the Australian Public Service Commissioner under the *Public Service Act 1999*;

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

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(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: The Commissioner may determine under section 53B that the determination applies in relation to an agency if the organisation has not complied with the determination.

(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.

(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 must 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 must not repeat or continue such conduct;

(ia) a declaration that the respondent must take specified steps within a specified period to ensure that such conduct is not repeated or continued;

(ii) a declaration that the respondent must 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) After investigating an act or practice of a person or entity under subsection 40(2), the Commissioner may make a determination that includes one or more of the following:

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(a) a declaration that:
(i) the act or practice is an interference with the privacy of one or more individuals; and
(ii) the person or entity must not repeat or continue the act or practice;
(b) a declaration that the person or entity must take specified steps within a specified period to ensure that the act or practice is not repeated or continued;
(c) a declaration that the person or entity must perform any reasonable act or course of conduct to redress any loss or damage suffered by one or more of those individuals;
(d) a declaration that one or more of those individuals are entitled to a specified amount by way of compensation for any loss or damage suffered by reason of the act or practice;
(e) a declaration that it would be inappropriate for any further action to be taken in the matter.

(1AA) The steps specified by the Commissioner under subparagraph (1)(b)(ia) or paragraph (1A)(b) must be reasonable and appropriate.

(1AB) The loss or damage referred to in paragraph (1)(b) or subsection (1A) includes:
(a) injury to the feelings of the complainant or individual; and
(b) humiliation suffered by the complainant or individual.

(1B) A determination of the Commissioner under subsection (1) or (1A) 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.

(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

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with the making of the complaint and the investigation of the complaint.

(3A) A determination under paragraph (1)(b) or subsection (1A) may include any order that the Commissioner considers necessary or appropriate.

(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:

(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.

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53A Notice to be given to outsourcing agency

(1) If the Commissioner makes a determination that applies in relation to a contracted service provider for a Commonwealth contract, 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.

53B Substituting an agency for a contracted service provider

(1) This section applies if:

(a) a determination under section 52 applies in relation to 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

(ia) a declaration under paragraph 52(1A)(d) that one or more individuals are entitled to a specified amount by way of the compensation; or

(ii) a declaration under subsection 52(3) that the complainant is entitled to a specified amount by way of reimbursement; and

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(c) at a particular time after the determination was made, the provider:

(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 or individuals had not been paid the whole or part of an amount referred to in paragraph (b).

(2) The Commissioner may determine in writing that the determination under section 52 instead applies in relation to a specified agency to which services were or were to be provided under the contract. 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 or individuals.

(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 determination applies in relation to an agency or the principal executive of an agency.

(2) In this section:

agency does not include an eligible hearing service provider.

55 Obligations of organisations and small business operators

If the determination applies in relation to an organisation or small business operator, the organisation or operator:

(a) must not repeat or continue conduct that is covered by a declaration included in the determination under sub-subparagraph 52(1)(b)(i)(B) or paragraph 52(1A)(a); and

(b) must take the steps that are specified in a declaration included in the determination under subparagraph 52(1)(b)(ia) or paragraph 52(1A)(b) within the specified period; and

(c) must perform the act or course of conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(ii) or paragraph 52(1A)(c).

55A Proceedings in the Federal Court or Federal Circuit and Family Court of Australia (Division 2) to enforce a determination

(1) The following persons may commence proceedings in the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) for an order to enforce a determination:

(a) if the determination was made under subsection 52(1)—the complainant;

(b) the Commissioner.

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(2) If the court is satisfied that the person or entity in relation to which the determination applies has engaged in conduct that constitutes an interference with the privacy of an individual, 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 person or entity in relation to which the determination applies has engaged in conduct that constitutes an interference with the privacy of an individual.

(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;

(c) a copy of a record (including any tape recording) of any hearing before the Commissioner (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 objects of this Act.

(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:

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(a) a specified APP entity had breached an Australian Privacy Principle; or

(b) a specified APP entity had breached a registered APP code that binds the entity.

(3) In any proceedings under section 55A, a certificate under subsection (1) of this section is prima facie evidence of the facts found by the Commissioner and set out in the certificate. However, the certificate is not prima facie evidence of a finding that:

(a) a specified APP entity had breached an Australian Privacy Principle; or

(b) a specified APP entity had breached a registered APP code that binds the entity.

(4) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be a certificate and to have been properly given.

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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 that applies in relation to an agency or the principal executive of an agency.

(2) In this section:

agency does not include an eligible hearing service provider.

58 Obligations of agencies

If this Division applies to a determination and the determination applies in relation to an agency, the agency:

(a) must not repeat or continue conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(i) or paragraph 52(1A)(a); and

(b) must take the steps that are specified in a declaration included in the determination under subparagraph 52(1)(b)(ia) or paragraph 52(1A)(b) within the specified period; and

(c) must perform the act or course of conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(ii) or paragraph 52(1A)(c).

59 Obligations of principal executive of agency

If this Division applies to a determination and the determination applies in relation to the principal executive of an agency, 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

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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) or paragraph 52(1A)(a); and

(ba) that the steps specified in a declaration included in the determination under subparagraph 52(1)(b)(ia) or paragraph 52(1A)(b) are taken within the specified period; and

(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) or paragraph 52(1A)(c).

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), paragraph 52(1A)(d) or subsection 52(3), the complainant or individual is entitled to be paid the amount specified in the declaration.

(2) If the determination applies in relation to 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 or individual. In any other case, the amount is recoverable as a debt due by the Commonwealth to the complainant or individual.

(3) In this section:

complainant, in relation to a representative complaint, means a class member.

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 Circuit and Family Court

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of Australia (Division 2) for an order directing the agency to comply.

(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 Circuit and Family Court of Australia (Division 2) for an order directing the principal executive to comply.

(3) The application may be made by:
  (a) if the determination was made under subsection 52(1)—the complainant; or
  (b) the Commissioner.

(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 agency or principal executive.

(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 96 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.

(6) In this section:

complainant, in relation to a representative complaint, means a class member.

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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 Circuit and Family Court of Australia (Division 2) 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 Circuit and Family Court of Australia (Division 2) 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 APP 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.

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(4) An authorisation under subsection (3) may be made subject to such conditions (if any) as the Attorney-General determines.

(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

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.

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: Imprisonment for 12 months or 20 penalty units, 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*).

(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 for a contravention of this subsection: Imprisonment for 12 months or 20 penalty units, 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—imprisonment for 12 months or 20 penalty units, or both; or

(b) in the case of a body corporate—100 penalty units.

(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.

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(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 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

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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:

(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

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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.

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;

(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 body 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).

(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

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the effective exercise of the authorised person's powers under subsection (1).

(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.

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(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.

(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.

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;

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(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.

(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.

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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;

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 APP entity's acts and practices

(2) Subject to this Division, if the Commissioner is satisfied that:

(a) an act or practice of an APP entity breaches, or may breach:

(i) an Australian Privacy Principle; or

(ii) a registered APP code that binds the entity; but

(b) the public interest in the entity doing the act, or engaging in the practice, substantially outweighs the public interest in adhering to that code or principle;

the Commissioner may, by legislative instrument, make a determination to that effect.

Effect of determination under subsection (2)

(3) The APP entity is taken not to contravene section 15 or 26A if the entity 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, by legislative instrument, make a determination that no APP entity is taken to contravene section 15

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or 26A if, while that determination is in force, an APP entity does an act, or engages in a practice, that is the subject of a determination under subsection (2) in relation to that entity or any other APP entity.

Effect of determination under subsection (4)

(5) A determination under subsection (4) has effect according to its terms.

73 Application by APP entity

(1) An APP entity may apply in accordance with the regulations for a determination under section 72 about an act or practice of the entity.

(1A) If:

(a) an application is made under subsection (1); and

(b) the Commissioner is satisfied that the application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;

the Commissioner may, in writing, dismiss the application.

(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.

(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.

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74 Publication of application etc.

(1) Subject to subsection (2), the Commissioner shall publish, in such manner as he or she thinks fit, notice of:

(a) the receipt by the Commissioner of an application; and

(b) if the Commissioner dismisses an application under subsection 73(1A)—the dismissal of the 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 unless the Commissioner dismisses the application under subsection 73(1A).

(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:

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(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;
(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.

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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 APP entity that is the subject of an application under section 73 for a determination under section 72 breaches, or may breach:
    (i) an Australian Privacy Principle; or
    (ii) a registered APP code that binds the entity; and
  (b) the public interest in the entity 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, by legislative instrument, make a 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 APP entity; or
  (b) on the Commissioner's own initiative.

(3) The Commissioner must specify in the determination a period of up to 12 months during which the determination is in force (subject to subsection 80D(2)).

80B Effect of temporary public interest determination

APP entity covered by a determination

(1) If an act or practice of an APP entity is the subject of a temporary public interest determination, the entity is taken not to breach section 15 or 26A if the entity does the act, or engages in the practice, while the determination is in force.

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Giving a temporary public interest determination general effect

(3) The Commissioner may, by legislative instrument, make a determination that no APP entity is taken to contravene section 15 or 26A if, while that determination is in force, an APP entity does an act, or engages in a practice, that is the subject of a temporary public interest determination in relation to that entity or another APP entity.

Effect of determination under subsection (3)

(4) A determination under subsection (3) has effect according to its terms.

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(2) 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 Commonwealth law (including a provision of this Act) 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 responsible persons 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

(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; 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 subsection 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.

(2) The Prime Minister or the Minister may also make a declaration under this section if:

(a) a national emergency declaration is in force; and

(b) the Prime Minister or the Minister (as the case may be) is satisfied that the emergency to which the national emergency declaration relates is of such a kind that it is appropriate in the circumstances for this Part to apply.

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

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(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.

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

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(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 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 responsible person for the individual; 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

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(iv) a person or entity specified by the Minister, by legislative instrument, for the purposes of this paragraph; and

(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 does not breach an Australian Privacy Principle, or a registered APP code that binds the entity, 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, 18A, 18B and 92 of the *Australian Security Intelligence Organisation Act 1979*;

(b) section 34 of the *Inspector-General of Intelligence and Security Act 1986*;

(c) sections 39, 39A, 40, 40B to 40H, 40L, 40M and 41 of the *Intelligence Services Act 2001*;

(ca) sections 42 to 44 of the *Office of National Intelligence Act 2018*;

(d) a provision of a Commonwealth law prescribed by the regulations for the purposes of this paragraph;

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(e) a provision of a Commonwealth law of a kind prescribed by the regulations for the purposes of this paragraph.

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 a responsible person for the individual.

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 APP entity—a disclosure permitted under an Australian Privacy Principle or a registered APP code that binds the person;

(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 Commonwealth law (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.

(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

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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 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 VIB—Enforcement

Division 1—Civil penalties

80U Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the Commissioner is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
(a) the Federal Court;
(b) the Federal Circuit and Family Court of Australia (Division 2).

Extension to external Territories

(4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

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Division 2—Enforceable undertakings

80V Enforceable undertakings

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
(a) the Federal Court;
(b) the Federal Circuit and Family Court of Australia (Division 2).

Enforceable undertaking may be published on the Commissioner's website

(4) The Commissioner may publish an undertaking given in relation to the provision on the Commissioner's website.

Extension to external Territories

(5) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

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Division 3—Injunctions

80W Injunctions

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection (1):

(a) the Commissioner;

(b) any other person.

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

(a) the Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2).

Extension to external Territories

(4) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

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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
  (aa) the Privacy Commissioner (within the meaning of the *Australian Information Commissioner Act 2010*); and
  (b) not more than 8 other members.

(3) A member other than the Commissioner and Privacy Commissioner (within the meaning of that Act):
  (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.

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(7) Of the appointed members:

(a) at least one must be a person who has had at least 5 years' experience at a high level in industry or commerce; and

(aa) at least one must be a person who has had at least 5 years' experience at a high level in public administration, or the service of a government or an authority of a government; and

(ab) at least one must be a person who has had extensive experience in health privacy; and

(b) at least one must be a person who has had at least 5 years' experience in the trade union movement; and

(c) at least one must be a person who has had extensive experience in information and communication technologies; and

(d) at least one must be appointed to represent general community interests, including interests relating to social welfare; and

(e) at least one must 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 rules or guidelines to be issued by the Commissioner pursuant to his or her functions; and

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(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.

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

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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.

(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 law in force in an external Territory.

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

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(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.

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 VIIIA—Public health contact information

Division 1—Preliminary

94A Simplified outline of this Part

There are several serious offences relating to COVID app data and COVIDSafe. They deal with:

- non-permitted collection, use or disclosure relating to COVID app data; and
- uploading COVID app data without consent; and
- retaining or disclosing uploaded data outside Australia; and
- decrypting encrypted COVID app data; and
- requiring participation in relation to COVIDSafe.

Other specific obligations relate to deletion of data and what is to happen after the COVIDSafe data period has ended (as determined by the Health Minister).

The general privacy law provided by this Act is applied to the requirements of this Part, in particular by:

- ensuring that COVID app data is taken to be personal information and breaches of this Part are interferences with privacy; and
- enhancing the Commissioner's role in dealing with eligible data breaches, making assessments and conducting investigations in relation to this Part; and

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- enabling the Commissioner to refer matters to, and share information or documents with, State or Territory privacy authorities; and
- providing for this Act to apply to State or Territory health authorities in relation to COVID app data.

This Part imposes on State or Territory health authorities the Act's rules and privacy protections, and Commonwealth oversight, in relation to COVID app data, as Commonwealth property that those authorities receive.

This Part also cancels the effect of Australian laws that are inconsistent with the prohibitions in this Part.

94B Object of this Part

The object of this Part is to assist in preventing and controlling the entry, emergence, establishment or spread of the coronavirus known as COVID-19 into Australia or any part of Australia by providing stronger privacy protections for COVID app data and COVIDSafe users in order to:

(a) encourage public acceptance and uptake of COVIDSafe; and
(b) enable faster and more effective contact tracing.

94C Constitutional basis of this Part

Principal constitutional basis

(1) This Part relies on the Commonwealth's legislative powers with respect to matters that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation.

Additional operation of this Part

(2) In addition to subsection (1), this Part also has effect as provided by subsections (3) to (5).

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(3) This Part also has effect as if a reference in this Part to COVID app data were expressly confined to a reference to COVID app data that was collected or generated for the purposes of quarantine (within the meaning of paragraph 51(ix) of the Constitution).

(4) This Part also has effect as if a reference in this Part to COVID app data were expressly confined to a reference to COVID app data that was collected or generated using a service of a kind to which paragraph 51(v) of the Constitution applies (postal, telegraphic, telephonic and other like services).

(5) This Part also has effect as if it were expressly confined to giving effect to Australia's obligations under the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23), and in particular Article 17 of the Covenant, in relation to COVID app data.

Note: The Covenant is set out in Australian Treaty Series 1980 No. 23 ([1980] ATS 23) and could in 2020 be viewed in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

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Division 2—Offences relating to COVID app data and COVIDSafe

94D Collection, use or disclosure of COVID app data

(1) A person commits an offence if:

(a) the person collects, uses or discloses data; and

(b) the data is COVID app data; and

(c) the collection, use or disclosure is not permitted under this section.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) The collection, use or disclosure is permitted if:

(a) the person is employed by, or in the service of, a State or Territory health authority, and the collection, use or disclosure is for the purpose of, and only to the extent required for the purpose of, undertaking contact tracing; or

(b) the person is:

(i) an officer or employee of the data store administrator; or

(ii) a contracted service provider for a government contract with the data store administrator;

and the collection, use or disclosure is for the purpose of, and only to the extent required for the purpose of:

(iii) enabling contact tracing by persons employed by, or in the service of, State or Territory health authorities; or

(iv) ensuring the proper functioning, integrity or security of COVIDSafe or of the National COVIDSafe Data Store; or

(c) in the case of a collection or disclosure of COVID app data—the collection or disclosure is for the purpose of, and only to the extent required for the purpose of:

(i) transferring encrypted data between communication devices through COVIDSafe; or

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(ii) transferring encrypted data, through COVIDSafe, from a communication device to the National COVIDSafe Data Store; or

(d) the collection, use or disclosure is for the purpose of, and only to the extent required for the purpose of, the Commissioner performing the functions or exercising the powers of the Commissioner under or in relation to this Part; or

(e) the collection, use or disclosure is for the purpose of, and only to the extent required for the purpose of:

(i) investigating whether this Part has been contravened; or

(ii) prosecuting a person for an offence against this Part; or

(f) in the case of a use of COVID app data by the data store administrator—the use is for the purpose of, and only to the extent required for the purpose of, producing de-identified statistical information about the total number of registrations through COVIDSafe; or

(g) in the case of a use of COVID app data that the data store administrator is required by section 94L to delete—the use consists of access by the data store administrator for the purpose of, and only to the extent required for the purpose of, confirming that the correct data is being deleted.

(3) Subsection (1) does not apply to the collection of COVID app data if:

(a) the collection of the COVID app data:

(i) occurs as part of the collection, at the same time, of data that is not COVID app data (***non-COVID app data***); and

(ii) is incidental to the collection of the non-COVID app data; and

(b) the collection of the non-COVID app data is permitted under an Australian law; and

(c) the COVID app data:

(i) is deleted as soon as practicable after the person becomes aware that it had been collected; and

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(ii) is not otherwise accessed, used or disclosed by the person after it was collected.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

(4) The admissibility of the non-COVID app data as evidence in any proceedings is not affected by the incidental collection of the COVID app data, or by the subsequent deletion of the COVID app data as required by subparagraph (3)(c)(i).

(5) ***COVID app data*** is data relating to a person that:

(a) has been collected or generated (including before the commencement of this Part) through the operation of COVIDSafe; and

(b) either:

(i) is registration data; or

(ii) is stored, or has been stored (including before the commencement of this Part), on a communication device.

However, it does not include:

(c) information obtained, from a source other than directly from the National COVIDSafe Data Store, in the course of undertaking contact tracing by a person employed by, or in the service of, a State or Territory health authority; or

(d) de-identified statistical information about the total number of registrations through COVIDSafe that is produced by:

(i) an officer or employee of the data store administrator; or

(ii) a contracted service provider for a government contract with the data store administrator.

(6) ***Contact tracing*** is the process of identifying persons who have been in contact with a person who has tested positive for the coronavirus known as COVID-19, and includes:

(a) notifying a person that the person has been in contact with a person who has tested positive for the coronavirus known as COVID-19; and

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(b) notifying a person who is a parent, guardian or carer of another person that the other person has been in contact with a person who has tested positive for the coronavirus known as COVID-19; and

(c) providing information and advice to a person who:

(i) has tested positive for the coronavirus known as COVID-19; or

(ii) is a parent, guardian or carer of another person who has tested positive for the coronavirus known as COVID-19; or

(iii) has been in contact with a person who has tested positive for the coronavirus known as COVID-19; or

(iv) is a parent, guardian or carer of another person who has been in contact with a person who has tested positive for the coronavirus known as COVID-19.

94E COVID app data on communication devices

A person commits an offence if:

(a) the person uploads, or causes to be uploaded, data from a communication device to the National COVIDSafe Data Store; and

(b) the data is COVID app data; and

(c) consent to the upload has not been given by:

(i) the COVIDSafe user in relation to that device; or

(ii) if the COVIDSafe user is unable to give consent—a parent, guardian or carer of the COVIDSafe user; or

(iii) if the COVIDSafe user has requested a parent, guardian or carer of the COVIDSafe user to act on the COVIDSafe user's behalf—that parent, guardian or carer.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

94F COVID app data in the National COVIDSafe Data Store

(1) A person commits an offence if:

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(a) the person retains data on a database outside Australia; and
(b) the data is COVID app data that has been uploaded from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) A person commits an offence if:
(a) the person discloses data to another person who is outside Australia; and
(b) the data is COVID app data that has been uploaded from a communication device to the National COVIDSafe Data Store; and
(c) the person is not a person who:
(i) is employed by, or in the service of, a State or Territory health authority; and
(ii) discloses the data for the purpose of, and only to the extent required for the purpose of, undertaking contact tracing.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

94G Decrypting COVID app data

A person commits an offence if:
(a) the person decrypts encrypted data; and
(b) the data is COVID app data that is stored on a communication device.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

94H Requiring the use of COVIDSafe

(1) A person commits an offence if the person requires another person to:
(a) download COVIDSafe to a communication device; or
(b) have COVIDSafe in operation on a communication device; or

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(c) consent to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) A person commits an offence if the person:

(a) refuses to enter into, or continue, a contract or arrangement with another person (including a contract of employment); or

(b) takes adverse action (within the meaning of the *Fair Work Act 2009*) against another person; or

(c) refuses to allow another person to enter:

(i) premises that are otherwise accessible to the public; or

(ii) premises that the other person has a right to enter; or

(d) refuses to allow another person to participate in an activity; or

(e) refuses to receive goods or services from another person, or insists on providing less monetary consideration for the goods or services; or

(f) refuses to provide goods or services to another person, or insists on receiving more monetary consideration for the goods or services;

on the ground that, or on grounds that include the ground that, the other person:

(g) has not downloaded COVIDSafe to a communication device; or

(h) does not have COVIDSafe in operation on a communication device; or

(i) has not consented to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(3) To avoid doubt:

(a) subsection (2) is a workplace law for the purposes of the *Fair Work Act 2009*; and

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(b) the benefit that the other person derives because of an obligation of the person under subsection (2) is a workplace right within the meaning of Part 3-1 of that Act.

94J Extended geographical jurisdiction for offences

Section 15.1 (extended geographical jurisdiction—category A) of the *Criminal Code* applies to all offences against this Division.

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Division 3—Other obligations relating to COVID app data and COVIDSafe

94K COVID app data not to be retained

The data store administrator must take all reasonable steps to ensure that COVID app data is not retained on a communication device:

(a) for more than 21 days; or

(b) in any case in which it is not possible to comply with paragraph (a) within 21 days—for longer than the shortest practicable period.

94L Deletion of registration data on request

(1) If the COVIDSafe user or former COVIDSafe user in relation to a communication device, or a parent, guardian or carer of that person, requests the data store administrator to delete any registration data of the person that has been uploaded from the device to the National COVIDSafe Data Store, the data store administrator:

(a) must take all reasonable steps to delete the data from the National COVIDSafe Data Store as soon as practicable; and

(b) if it is not practicable to delete the data immediately—must not use or disclose the data for any purpose.

(2) A request under subsection (1) may only be made by a parent, guardian or carer of the COVIDSafe user if:

(a) the COVIDSafe user is unable to make a request under subsection (1); or

(b) the COVIDSafe user has requested that parent, guardian or carer to act on the COVIDSafe user's behalf.

(3) Subsection (1) does not:

(a) prevent the data store administrator from accessing data for the purpose of, and only to the extent required for the

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purpose of, confirming that the correct data is being deleted; or

(b) require the data store administrator to delete from the National COVIDSafe Data Store data relating to the person that:

(i) was uploaded from another communication device in relation to which another person is a COVIDSafe user; and

(ii) was collected through the other device interacting with the device mentioned in subsection (1).

(4) This section does not apply to data that is de-identified.

94M Deletion of data received in error

A person who receives COVID app data in error must, as soon as practicable:

(a) delete the data; and

(b) notify the data store administrator that the person received the data.

94N Effect of deletion of COVIDSafe from a communication device

(1) The data store administrator must not collect from a person, through a particular communication device, COVID app data relating to the person if the person is a former COVIDSafe user in relation to that device.

(2) A person is a ***former COVIDSafe user***, in relation to a communication device, at a particular time if:

(a) COVIDSafe has been deleted from the device in relation to which the person was the COVIDSafe user; and

(b) after COVIDSafe was last deleted from that device—COVIDSafe has not been downloaded to that device.

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94P Obligations after the end of the COVIDSafe data period

(1) After the end of the day determined under subsection 94Y(1), the data store administrator must not:
  (a) collect any COVID app data; or
  (b) make COVIDSafe available to be downloaded.

(2) As soon as reasonably practicable after the end of the day determined under subsection 94Y(1), the data store administrator must delete all COVID app data from the National COVIDSafe Data Store.

(3) As soon as reasonably practicable after the deletion, the data store administrator must:
  (a) inform the Health Minister and the Commissioner that all COVID app data has been deleted from the National COVIDSafe Data Store; and
  (b) take all reasonable steps to inform all COVIDSafe users (other than former COVIDSafe users) in relation to communication devices that:
    (i) all COVID app data has been deleted from the National COVIDSafe Data Store; and
    (ii) COVID app data can no longer be collected; and
    (iii) they should delete COVIDSafe from their communication devices.

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Division 4—Application of general privacy measures

94Q COVID app data is taken to be personal information

COVID app data relating to an individual is taken, for the purposes of this Act, to be personal information about the individual.

94R Breach of requirement is an interference with privacy

(1) An act or practice in breach of a requirement of this Part in relation to an individual constitutes an act or practice involving an interference with the privacy of the individual for the purposes of section 13.

Note: The act or practice may be the subject of a complaint under section 36.

(2) Subsections 7(1A) and (1B) do not limit what is taken to be an act or practice for the purposes of subsection (1) of this section, or for the purposes of the application of this Act in relation to an interference with the privacy of an individual involving a breach of a requirement of this Part.

94S Breach of requirement may be treated as an eligible data breach

(1) For the purposes of this Act, if:

(a) the data store administrator; or

(b) an officer or employee of the data store administrator; or

(c) a contracted service provider for a government contract with the data store administrator;

breaches a requirement of this Part in relation to COVID app data:

(d) the breach is taken to be an eligible data breach by the data store administrator; and

(e) an individual to whom the data relates is taken to be at risk from the eligible data breach.

(2) For the purposes of this Act, if:

(a) a State or Territory health authority; or

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(b) person employed by, or in the service of, the State or Territory health authority;

breaches a requirement of this Part in relation to COVID app data:

(c) the breach is taken to be an eligible data breach by the State or Territory health authority; and

(d) an individual to whom the data relates is taken to be at risk from the eligible data breach.

(3) Part IIIC applies in relation to such a breach as if:

(a) subsection 26WE(3) and sections 26WF, 26WH and 26WJ did not apply in relation to the breach; and

(b) Subdivision B of Division 3 of that Part:

(i) required the data store administrator, or State or Territory health authority, to notify the Commissioner that there were reasonable grounds to believe that there had been an eligible data breach; and

(ii) only required compliance with sections 26WK and 26WL in relation to the breach if the Commissioner required the administrator or authority so to comply; and

(c) sections 26WN, 26WP, 26WQ, 26WS and 26WT did not apply in relation to the breach.

(4) Without limiting the circumstances in which the Commissioner may, under subparagraph (3)(b)(ii), require the administrator or authority so to comply, the Commissioner must so require if:

(a) the Commissioner is satisfied that the breach may be likely to result in serious harm to any of the individuals to whom the information relates; and

(b) subsection (5) does not apply.

(5) The Commissioner may decide not to require compliance, or to allow an extended period for compliance, if the Commissioner is satisfied on reasonable grounds that requiring compliance, or requiring compliance within the ordinary period for compliance, would not be reasonable in the circumstances, having regard to the following:

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(a) the public interest;
(b) any relevant advice given to the Commissioner by:
(i) an enforcement body; or
(ii) the Australian Signals Directorate;
(c) such other matters (if any) as the Commissioner considers relevant.

(6) Paragraph (5)(b) does not limit the advice to which the Commissioner may have regard.

94T Commissioner may conduct an assessment relating to COVID app data

(1) The Commissioner's power under section 33C to conduct an assessment includes the power to conduct an assessment of whether the acts or practices of an entity or a State or Territory authority in relation to COVID app data comply with this Part.

(2) Without limiting subsection 33C(2), if:
(a) the Commissioner is conducting under that subsection an assessment of a matter of a kind mentioned in subsection (1) of this section; and
(b) the Commissioner has reason to believe that an entity or a State or Territory authority being assessed has information or a document relevant to the assessment;

the Commissioner may, by written notice, require the entity or authority to give the information or produce the document within the period specified in the notice, which must not be less than 14 days after the notice is given to the entity or authority.

Note: For a failure to give information etc., see section 66.

94U Investigation under section 40 to cease if COVID data offence may have been committed

(1) This section applies if, in the course of an investigation under section 40, the Commissioner forms the opinion that:
(a) an offence against Division 2 of this Part; or

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(b) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.2, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to an offence against that Division;

may have been committed.

(2) The Commissioner must:

(a) inform the Commissioner of Police or the Director of Public Prosecutions of that opinion; and

(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 (5) of this section, discontinue the investigation except to the extent that it concerns matters unconnected with the offence that the Commissioner believes may have been committed.

(3) If the Commissioner of Police or the Director of Public Prosecutions:

(a) has been informed of the Commissioner's opinion under paragraph (2)(a); and

(b) decides that the matter will not be, or will no longer be, the subject of proceedings for an offence;

the Commissioner of Police or the Director of Public Prosecutions, as the case requires, must give a written notice to that effect to the Commissioner.

(4) If the Commissioner of Police or the Director of Public Prosecutions:

(a) has been informed of the Commissioner's opinion under paragraph (2)(a); and

(b) is satisfied that an investigation relating to the matter, or proceedings for an offence relating to the matter, will not be jeopardised, or otherwise affected, by continuation of the Commissioner's investigation;

the Commissioner of Police or the Director of Public Prosecutions, as the case requires, may give a written notice to that effect to the Commissioner.

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(5) Upon receiving notice under subsection (3) or (4) the Commissioner may continue the investigation discontinued under paragraph (2)(c).

94V Referring COVID data matters to State or Territory privacy authorities

(1) If:

(a) a complaint has been made under section 36 about an act or practice that may involve a breach of a requirement of this Part; and

(b) before the Commissioner commences, or after the Commissioner has commenced, to investigate the matter, the Commissioner forms the opinion that:

(i) the complainant has made, or could have made, a complaint relating to that matter to a State or Territory privacy authority; and

(ii) that matter could be more conveniently or effectively dealt with by that State or Territory authority;

the Commissioner may decide not to investigate the matter, or not to investigate the matter further.

(2) If the Commissioner so decides, the Commissioner must:

(a) transfer the complaint to that State or Territory authority; and

(b) give notice in writing to the complainant stating that the complaint has been so transferred; and

(c) give to that State or Territory authority 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) is taken, for the purposes of this Act, to have been made to that State or Territory authority.

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94W Commissioner may share information with State or Territory privacy authorities

(1) Subject to subsection (2), the Commissioner may share information or documents with a State or Territory privacy authority:

(a) for the purpose of the Commissioner exercising powers, or performing functions or duties under this Act in relation to the requirements of this Part; or

(b) for the purpose of the State or Territory privacy authority exercising its powers, or performing its functions or duties.

(2) The Commissioner may only share information or documents with a State or Territory privacy authority under this section if:

(a) the information or documents were acquired by the Commissioner in the course of exercising powers, or performing functions or duties, under this Act; and

(b) the Commissioner is satisfied on reasonable grounds that the State or Territory privacy authority has satisfactory arrangements in place for protecting the information or documents.

(3) To avoid doubt, the Commissioner may share information or documents with a State or Territory privacy authority under this section whether or not the Commissioner is transferring a complaint or part of a complaint to the authority.

94X Application to State or Territory health authorities

(1) This Act applies in relation to a State or Territory health authority, as if the authority were an organisation, to the extent that the authority deals with, or the activities of the authority relate to, COVID app data.

(2) However, subsection (1) does not, in relation to a State or Territory health authority:

(a) have the effect of applying Australian Privacy Principle 9 in relation to a government related identifier that has been

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assigned by that State or Territory or by a State or Territory authority of that State or Territory; or

(b) have the effect of applying this Act in relation to data or information that is not COVID app data.

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Division 5—Miscellaneous

94Y Determining the end of the COVIDSafe data period

(1) Subject to subsection (2), the Health Minister must, by notifiable instrument, determine a day if the Health Minister is satisfied that, by that day, use of COVIDSafe:

(a) is no longer required to prevent or control; or

(b) is no longer likely to be effective in preventing or controlling;

the entry, emergence, establishment or spread of the coronavirus known as COVID-19 into Australia or any part of Australia.

(2) The Health Minister must not make a determination under subsection (1) unless the Health Minister has consulted, or considered recommendations from, the Commonwealth Chief Medical Officer or the Australian Health Protection Principal Committee.

(3) The Commonwealth Chief Medical Officer or the Australian Health Protection Principal Committee may recommend to the Health Minister that the Health Minister make a determination under subsection (1).

94Z Agencies may be determined to be data store administrator

(1) The Secretary of the Health Department may, by notifiable instrument, determine that a particular agency is the data store administrator for the purposes of one or more provisions of this Part specified in the determination.

(2) The determination may limit the extent to which the agency is the data store administrator for those purposes.

(3) The Secretary of the Health Department must not determine under subsection (1) that any of the following is the data store administrator:

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(a) an enforcement body mentioned in paragraph (a) to (ea) of the definition of ***enforcement body*** in subsection 6(1);
(b) an intelligence agency;
(c) the Australian Geospatial-Intelligence Organisation;
(d) the Defence Intelligence Organisation.

94ZA Reports on operation and effectiveness of COVIDSafe and the National COVIDSafe Data Store

(1) The Health Minister must, as soon as practicable after:
(a) the end of the 6 month period starting on the commencement of this Part; and
(b) the end of each subsequent 6 month period (if any) starting on or before the day determined under subsection 94Y(1);

cause a report to be prepared on the operation and effectiveness of COVIDSafe and the National COVIDSafe Data Store during that 6 month period.

Note: Section 94D prevents the inclusion of COVID app data in the report. It would not be a permitted collection, use or disclosure under subsection 94D(2).

(2) If the day determined under subsection 94Y(1) occurs during the 6 month period starting on the commencement of this Part, the report under subsection (1) of this section relating to that period must be prepared within 3 months after that day.

(3) The Health Minister must cause copies of a report prepared under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

94ZB Reports by the Commissioner

(1) The Commissioner must, as soon as practicable after:
(a) the end of the 6 month period starting on the commencement of this Part; and

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(b) the end of each subsequent 6 month period (if any) starting on or before the day determined under subsection 94Y(1);

cause a report to be prepared on the performance of the Commissioner's functions, and the exercise of the Commissioner's powers, under or in relation to this Part during the period.

Note: Section 94D prevents the inclusion of COVID app data in the report. It would not be a permitted collection, use or disclosure under subsection 94D(2).

(2) If the day determined under subsection 94Y(1) occurs during the 6 month period starting on the commencement of this Part, the report under subsection (1) of this section relating to that period must be prepared within 3 months after that day.

(3) The Commissioner must publish a report prepared under subsection (1) on the Commissioner's website.

(4) This section does not affect the matters that section 30 of the *Australian Information Commissioner Act 2010* requires the Commissioner to include in an annual report.

94ZC COVID app data remains property of the Commonwealth

COVID app data is the property of the Commonwealth, and remains the property of the Commonwealth even after it is disclosed to, or used by:

(a) a State or Territory health authority; or

(b) any other person or body (other than the Commonwealth or an authority of the Commonwealth).

94ZD Operation of other laws

(1) This section cancels the effect of a provision of any Australian law (other than this Part) that, but for this section, would have the effect of permitting or requiring conduct, or an omission to act, that would otherwise be prohibited under this Part.

(2) However, the cancellation does not apply to a provision of an Act if the provision:

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(a) commences after this Part commences; and
(b) expressly permits or requires the conduct or omission despite the provisions of this Part.

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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 by agencies 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 Australian 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 Australian 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 Australian Privacy Principle.

95A Guidelines for Australian Privacy Principles about health information

Overview

(1) This section allows the Commissioner to approve for the purposes of the Australian Privacy Principles 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 paragraph 16B(3)(c), 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 Australian Privacy Principles (disregarding subsection 16B(3)).

Approving guidelines for collection

(4) For the purposes of subparagraph 16B(2)(d)(iii), 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 Australian Privacy Principles (disregarding subsection 16B(2)).

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

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satisfied of the matter that he or she had to be satisfied of to approve the guidelines.

95AA Guidelines for Australian Privacy Principles about genetic information

Overview

(1) This section allows the Commissioner to approve for the purposes of the Australian Privacy Principles guidelines that are issued by the National Health and Medical Research Council.

Approving guidelines for use and disclosure

(2) For the purposes of paragraph 16B(4)(c), 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 of an individual who is a genetic relative of the individual to whom the genetic information relates.

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 Australian 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.

(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.

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(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 a registered APP code binding a party to the contract or with an Australian Privacy Principle, the party requested must inform the person in writing of that content (if any).

96 Review by the Administrative Appeals Tribunal

(1) An application may be made to the Administrative Appeals Tribunal for review of the following decisions of the Commissioner:

(a) a decision under subsection 26H(1) not to register an APP code developed by an APP code developer;

(b) a decision under subsection 26S(1) not to register a CR code developed by a CR code developer;

(ba) a decision under subsection 26WQ(7) to refuse an application for a declaration;

(bb) a decision to make a declaration under paragraph 26WQ(1)(d);

(bc) a decision under subsection 26WR(1) to give a direction;

(c) a decision under subsection 52(1) or (1A) to make a determination;

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(d) a decision under subsection 73(1A) to dismiss an application;
(e) a decision under section 95 to refuse to approve the issue of guidelines;
(f) a decision under subsection 95A(2) or (4) or 95AA(2) to refuse to approve guidelines;
(g) a decision under subsection 95A(6) to revoke an approval of guidelines.

(2) An application under paragraph (1)(a) may only be made by the APP code developer that developed the APP code.

(2A) An application under paragraph (1)(ba) may only be made by:
(a) the entity that made the application for a declaration; or
(b) if another entity's compliance with subsection 26WL(2) is affected by the decision to refuse the application for a declaration—that other entity.

(2B) An application under paragraph (1)(bb) may only be made by:
(a) the entity to whom notice of the declaration was given; or
(b) if another entity's compliance with subsection 26WL(2) is affected by the declaration—that other entity.

(2C) An application under paragraph (1)(bc) may only be made by the entity to whom the direction was given.

(2D) For the purposes of subsections (2A), (2B) and (2C), ***entity*** has the same meaning as in Part IIIC.

(3) An application under paragraph (1)(b) may only be made by the CR code developer that developed the CR code.

98A Treatment of partnerships

(1) If, apart from this subsection, this Act would impose an obligation on a partnership, the obligation is imposed instead on each partner but may be discharged by any of the partners.

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(2) If, apart from this subsection, an offence against this Act would be committed by a partnership, the offence is taken to have been committed by each partner.

(3) If, apart from this subsection, a partnership would contravene a civil penalty provision, the contravention is taken to have been committed by each partner.

(4) A partner does not commit an offence against this Act because of subsection (2), or contravene a civil penalty provision because of subsection (3), if the partner:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

98B Treatment of unincorporated associations

(1) If, apart from this subsection, this Act would impose an obligation on an unincorporated association, the obligation is imposed instead on each member of the association's committee of management but may be discharged by any of the members.

(2) If, apart from this subsection, an offence against this Act would be committed by an unincorporated association, the offence is taken to have been committed by each member of the association's committee of management.

(3) If, apart from this subsection, an unincorporated association would contravene a civil penalty provision, the contravention is taken to have been committed by each member of the association's committee of management.

(4) A member of an unincorporated association's committee of management does not commit an offence against this Act because

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of subsection (2), or contravene a civil penalty provision because of subsection (3), if the member:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

98C Treatment of trusts

(1) If, apart from this subsection, this Act would impose an obligation on a trust, the obligation is imposed instead on each trustee of the trust but may be discharged by any of the trustees.

(2) If, apart from this subsection, an offence against this Act would be committed by a trust, the offence is taken to have been committed by each trustee of the trust.

(3) If, apart from this subsection, a trust would contravene a civil penalty provision, the contravention is taken to have been committed by each trustee of the trust.

(4) A trustee of a trust does not commit an offence against this Act because of subsection (2), or contravene a civil penalty provision because of subsection (3), if the trustee:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the trustee becomes aware of those circumstances.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

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99A Conduct of directors, employees and agents

(1) Where, in proceedings for an offence against this Act or for a civil penalty order under the Regulatory Powers Act (as it applies in relation to the civil penalty provisions of 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 or proceedings for a civil penalty order under the Regulatory Powers Act (as it applies in relation to the civil penalty provisions of 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 or for a civil penalty order under the Regulatory Powers Act (as it applies in relation to the civil penalty provisions of 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 or proceedings for a civil penalty order under the Regulatory Powers Act (as it applies in relation to the civil penalty provisions of this

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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.

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) Before the Governor-General makes regulations for the purposes of Australian Privacy Principle 9.3 prescribing a government related

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identifier, an organisation or a class of organisations, and circumstances, the Minister must be satisfied that:

(a) the relevant agency or State or Territory authority or, if the relevant agency or State or Territory authority has a principal executive, the principal executive:

(i) has agreed that the adoption, use or disclosure of the identifier by the organisation, or the class of organisations, in the circumstances is appropriate; and

(ii) has consulted the Commissioner about that adoption, use or disclosure; and

(b) the adoption, use or disclosure of the identifier by the organisation, or the class of organisations, in the circumstances can only be for the benefit of the individual to whom the identifier relates.

(3) Subsection (2) does not apply to the making of regulations for the purposes of Australian Privacy Principle 9.3 that relate to the use or disclosure of a government related identifier by an organisation, or a class of organisations, in particular circumstances if:

(a) the identifier is a kind commonly used in the processing of pay, or deductions from pay, of Commonwealth officers, or a class of Commonwealth officers; and

(b) the circumstances of the use or disclosure of the identifier relate to the provision by:

(i) the organisation; or

(ii) the class of organisations;

of superannuation services (including the management, processing, allocation and transfer of superannuation contributions) for the benefit of Commonwealth officers or the class of Commonwealth officers; and

(c) before the regulations are made, the Minister consults the Commissioner about the proposed regulations.

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Schedule 1—Australian Privacy Principles

Note: See section 14.

Overview of the Australian Privacy Principles

Overview

This Schedule sets out the Australian Privacy Principles.

Part 1 sets out principles that require APP entities to consider the privacy of personal information, including ensuring that APP entities manage personal information in an open and transparent way.

Part 2 sets out principles that deal with the collection of personal information including unsolicited personal information.

Part 3 sets out principles about how APP entities deal with personal information and government related identifiers. The Part includes principles about the use and disclosure of personal information and those identifiers.

Part 4 sets out principles about the integrity of personal information. The Part includes principles about the quality and security of personal information.

Part 5 sets out principles that deal with requests for access to, and the correction of, personal information.

Australian Privacy Principles

The Australian Privacy Principles are:

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

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Australian Privacy Principle 2—anonymity and pseudonymity

Australian Privacy Principle 3—collection of solicited personal information

Australian Privacy Principle 4—dealing with unsolicited personal information

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

Australian Privacy Principle 6—use or disclosure of personal information

Australian Privacy Principle 7—direct marketing

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

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

Australian Privacy Principle 10—quality of personal information

Australian Privacy Principle 11—security of personal information

Australian Privacy Principle 12—access to personal information

Australian Privacy Principle 13—correction of personal information

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Part 1—Consideration of personal information privacy

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

1.1 The object of this principle is to ensure that APP entities manage personal information in an open and transparent way.

Compliance with the Australian Privacy Principles etc.

1.2 An APP entity must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the entity's functions or activities that:

(a) will ensure that the entity complies with the Australian Privacy Principles and a registered APP code (if any) that binds the entity; and

(b) will enable the entity to deal with inquiries or complaints from individuals about the entity's compliance with the Australian Privacy Principles or such a code.

APP Privacy policy

1.3 An APP entity must have a clearly expressed and up-to-date policy (the ***APP privacy policy***) about the management of personal information by the entity.

1.4 Without limiting subclause 1.3, the APP privacy policy of the APP entity must contain the following information:

(a) the kinds of personal information that the entity collects and holds;

(b) how the entity collects and holds personal information;

(c) the purposes for which the entity collects, holds, uses and discloses personal information;

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(d) how an individual may access personal information about the individual that is held by the entity and seek the correction of such information;
(e) how an individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the entity, and how the entity will deal with such a complaint;
(f) whether the entity is likely to disclose personal information to overseas recipients;
(g) if the entity is likely to disclose personal information to overseas recipients—the countries in which such recipients are likely to be located if it is practicable to specify those countries in the policy.

Availability of APP privacy policy etc.

1.5 An APP entity must take such steps as are reasonable in the circumstances to make its APP privacy policy available:
(a) free of charge; and
(b) in such form as is appropriate.

Note: An APP entity will usually make its APP privacy policy available on the entity's website.

1.6 If a person or body requests a copy of the APP privacy policy of an APP entity in a particular form, the entity must take such steps as are reasonable in the circumstances to give the person or body a copy in that form.

2 Australian Privacy Principle 2—anonymity and pseudonymity

2.1 Individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with an APP entity in relation to a particular matter.

2.2 Subclause 2.1 does not apply if, in relation to that matter:
(a) the APP entity is required or authorised by or under an Australian law, or a court/tribunal order, to deal with individuals who have identified themselves; or

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(b) it is impracticable for the APP entity to deal with individuals who have not identified themselves or who have used a pseudonym.

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Part 2—Collection of personal information

3 Australian Privacy Principle 3—collection of solicited personal information

Personal information other than sensitive information

3.1 If an APP entity is an agency, the entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities.

3.2 If an APP entity is an organisation, the entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for one or more of the entity's functions or activities.

Sensitive information

3.3 An APP entity must not collect sensitive information about an individual unless:

(a) the individual consents to the collection of the information and:

(i) if the entity is an agency—the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities; or

(ii) if the entity is an organisation—the information is reasonably necessary for one or more of the entity's functions or activities; or

(b) subclause 3.4 applies in relation to the information.

3.4 This subclause applies in relation to sensitive information about an individual if:

(a) the collection of the information is required or authorised by or under an Australian law or a court/tribunal order; or

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(b) a permitted general situation exists in relation to the collection of the information by the APP entity; or

(c) the APP entity is an organisation and a permitted health situation exists in relation to the collection of the information by the entity; or

(d) the APP entity is an enforcement body and the entity reasonably believes that:

(i) if the entity is the Immigration Department—the collection of the information is reasonably necessary for, or directly related to, one or more enforcement related activities conducted by, or on behalf of, the entity; or

(ii) otherwise—the collection of the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities; or

(e) the APP entity is a non-profit organisation and both of the following apply:

(i) the information relates to the activities of the organisation;

(ii) the information relates solely to the members of the organisation, or to individuals who have regular contact with the organisation in connection with its activities.

Note: For ***permitted general situation***, see section 16A. For ***permitted health situation***, see section 16B.

Means of collection

3.5 An APP entity must collect personal information only by lawful and fair means.

3.6 An APP entity must collect personal information about an individual only from the individual unless:

(a) if the entity is an agency:

(i) the individual consents to the collection of the information from someone other than the individual; or

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(ii) the entity is required or authorised by or under an Australian law, or a court/tribunal order, to collect the information from someone other than the individual; or

(b) it is unreasonable or impracticable to do so.

Solicited personal information

3.7 This principle applies to the collection of personal information that is solicited by an APP entity.

4 Australian Privacy Principle 4—dealing with unsolicited personal information

4.1 If:

(a) an APP entity receives personal information; and

(b) the entity did not solicit the information;

the entity must, within a reasonable period after receiving the information, determine whether or not the entity could have collected the information under Australian Privacy Principle 3 if the entity had solicited the information.

4.2 The APP entity may use or disclose the personal information for the purposes of making the determination under subclause 4.1.

4.3 If:

(a) the APP entity determines that the entity could not have collected the personal information; and

(b) the information is not contained in a Commonwealth record;

the entity must, as soon as practicable but only if it is lawful and reasonable to do so, destroy the information or ensure that the information is de-identified.

4.4 If subclause 4.3 does not apply in relation to the personal information, Australian Privacy Principles 5 to 13 apply in relation to the information as if the entity had collected the information under Australian Privacy Principle 3.

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

5.1 At or before the time or, if that is not practicable, as soon as practicable after, an APP entity collects personal information about an individual, the entity must take such steps (if any) as are reasonable in the circumstances:

(a) to notify the individual of such matters referred to in subclause 5.2 as are reasonable in the circumstances; or

(b) to otherwise ensure that the individual is aware of any such matters.

5.2 The matters for the purposes of subclause 5.1 are as follows:

(a) the identity and contact details of the APP entity;

(b) if:

(i) the APP entity collects the personal information from someone other than the individual; or

(ii) the individual may not be aware that the APP entity has collected the personal information;

the fact that the entity so collects, or has collected, the information and the circumstances of that collection;

(c) if the collection of the personal information is required or authorised by or under an Australian law or a court/tribunal order—the fact that the collection is so required or authorised (including the name of the Australian law, or details of the court/tribunal order, that requires or authorises the collection);

(d) the purposes for which the APP entity collects the personal information;

(e) the main consequences (if any) for the individual if all or some of the personal information is not collected by the APP entity;

(f) any other APP entity, body or person, or the types of any other APP entities, bodies or persons, to which the APP entity usually discloses personal information of the kind collected by the entity;

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(g) that the APP privacy policy of the APP entity contains information about how the individual may access the personal information about the individual that is held by the entity and seek the correction of such information;

(h) that the APP privacy policy of the APP entity contains information about how the individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the entity, and how the entity will deal with such a complaint;

(i) whether the APP entity is likely to disclose the personal information to overseas recipients;

(j) if the APP entity is likely to disclose the personal information to overseas recipients—the countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them.

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Part 3—Dealing with personal information

6 Australian Privacy Principle 6—use or disclosure of personal information

Use or disclosure

6.1 If an APP entity holds personal information about an individual that was collected for a particular purpose (the ***primary purpose***), the entity must not use or disclose the information for another purpose (the ***secondary purpose***) unless:

(a) the individual has consented to the use or disclosure of the information; or

(b) subclause 6.2 or 6.3 applies in relation to the use or disclosure of the information.

Note: Australian Privacy Principle 8 sets out requirements for the disclosure of personal information to a person who is not in Australia or an external Territory.

6.2 This subclause applies in relation to the use or disclosure of personal information about an individual if:

(a) the individual would reasonably expect the APP entity to use or disclose the information for the secondary purpose and the secondary purpose is:

(i) if the information is sensitive information—directly related to the primary purpose; or

(ii) if the information is not sensitive information—related to the primary purpose; or

(b) the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or

(c) a permitted general situation exists in relation to the use or disclosure of the information by the APP entity; or

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(d) the APP entity is an organisation and a permitted health situation exists in relation to the use or disclosure of the information by the entity; or

(e) the APP entity reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body.

Note: For ***permitted general situation***, see section 16A. For ***permitted health situation***, see section 16B.

6.3 This subclause applies in relation to the disclosure of personal information about an individual by an APP entity that is an agency if:

(a) the agency is not an enforcement body; and

(b) the information is biometric information or biometric templates; and

(c) the recipient of the information is an enforcement body; and

(d) the disclosure is conducted in accordance with the guidelines made by the Commissioner for the purposes of this paragraph.

6.4 If:

(a) the APP entity is an organisation; and

(b) subsection 16B(2) applied in relation to the collection of the personal information by the entity;

the entity must take such steps as are reasonable in the circumstances to ensure that the information is de-identified before the entity discloses it in accordance with subclause 6.1 or 6.2.

Written note of use or disclosure

6.5 If an APP entity uses or discloses personal information in accordance with paragraph 6.2(e), the entity must make a written note of the use or disclosure.

Related bodies corporate

6.6 If:

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(a) an APP entity is a body corporate; and
(b) the entity collects personal information from a related body corporate;

this principle applies as if the entity's primary purpose for the collection of the information were the primary purpose for which the related body corporate collected the information.

Exceptions

6.7 This principle does not apply to the use or disclosure by an organisation of:
(a) personal information for the purpose of direct marketing; or
(b) government related identifiers.

7 Australian Privacy Principle 7—direct marketing

Direct marketing

7.1 If an organisation holds personal information about an individual, the organisation must not use or disclose the information for the purpose of direct marketing.

Note: An act or practice of an agency may be treated as an act or practice of an organisation, see section 7A.

Exceptions—personal information other than sensitive information

7.2 Despite subclause 7.1, an organisation may use or disclose personal information (other than sensitive information) about an individual for the purpose of direct marketing if:
(a) the organisation collected the information from the individual; and
(b) the individual would reasonably expect the organisation to use or disclose the information for that purpose; and
(c) the organisation provides a simple means by which the individual may easily request not to receive direct marketing communications from the organisation; and

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(d) the individual has not made such a request to the organisation.

7.3 Despite subclause 7.1, an organisation may use or disclose personal information (other than sensitive information) about an individual for the purpose of direct marketing if:

(a) the organisation collected the information from:

(i) the individual and the individual would not reasonably expect the organisation to use or disclose the information for that purpose; or

(ii) someone other than the individual; and

(b) either:

(i) the individual has consented to the use or disclosure of the information for that purpose; or

(ii) it is impracticable to obtain that consent; and

(c) the organisation provides a simple means by which the individual may easily request not to receive direct marketing communications from the organisation; and

(d) in each direct marketing communication with the individual:

(i) the organisation includes a prominent statement that the individual may make such a request; or

(ii) the organisation otherwise draws the individual's attention to the fact that the individual may make such a request; and

(e) the individual has not made such a request to the organisation.

Exception—sensitive information

7.4 Despite subclause 7.1, an organisation may use or disclose sensitive information about an individual for the purpose of direct marketing if the individual has consented to the use or disclosure of the information for that purpose.

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Exception—contracted service providers

7.5 Despite subclause 7.1, an organisation may use or disclose personal information for the purpose of direct marketing if:

(a) the organisation is a contracted service provider for a Commonwealth contract; and

(b) the organisation collected the information for the purpose of meeting (directly or indirectly) an obligation under the contract; and

(c) the use or disclosure is necessary to meet (directly or indirectly) such an obligation.

Individual may request not to receive direct marketing communications etc.

7.6 If an organisation (the ***first organisation***) uses or discloses personal information about an individual:

(a) for the purpose of direct marketing by the first organisation; or

(b) for the purpose of facilitating direct marketing by other organisations;

the individual may:

(c) if paragraph (a) applies—request not to receive direct marketing communications from the first organisation; and

(d) if paragraph (b) applies—request the organisation not to use or disclose the information for the purpose referred to in that paragraph; and

(e) request the first organisation to provide its source of the information.

7.7 If an individual makes a request under subclause 7.6, the first organisation must not charge the individual for the making of, or to give effect to, the request and:

(a) if the request is of a kind referred to in paragraph 7.6(c) or (d)—the first organisation must give effect to the request within a reasonable period after the request is made; and

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(b) if the request is of a kind referred to in paragraph 7.6(e)—the organisation must, within a reasonable period after the request is made, notify the individual of its source unless it is impracticable or unreasonable to do so.

Interaction with other legislation

7.8 This principle does not apply to the extent that any of the following apply:

(aa) Division 5 of Part 7B of the *Interactive Gambling Act 2001*;

(a) the *Do Not Call Register Act 2006*;

(b) the *Spam Act 2003*;

(c) any other Act of the Commonwealth, or a law in force in an external Territory, prescribed by the regulations.

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

8.1 Before an APP entity discloses personal information about an individual to a person (the ***overseas recipient***):

(a) who is not in Australia or an external Territory; and

(b) who is not the entity or the individual;

the entity must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information.

Note: In certain circumstances, an act done, or a practice engaged in, by the overseas recipient is taken, under section 16C, to have been done, or engaged in, by the APP entity and to be a breach of the Australian Privacy Principles.

8.2 Subclause 8.1 does not apply to the disclosure of personal information about an individual by an APP entity to the overseas recipient if:

(a) the entity reasonably believes that:

(i) the recipient of the information is subject to a law, or binding scheme, that has the effect of protecting the

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information in a way that, overall, is at least substantially similar to the way in which the Australian Privacy Principles protect the information; and

(ii) there are mechanisms that the individual can access to take action to enforce that protection of the law or binding scheme; or

(b) both of the following apply:

(i) the entity expressly informs the individual that if he or she consents to the disclosure of the information, subclause 8.1 will not apply to the disclosure;

(ii) after being so informed, the individual consents to the disclosure; or

(c) the disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or

(d) a permitted general situation (other than the situation referred to in item 4 or 5 of the table in subsection 16A(1)) exists in relation to the disclosure of the information by the APP entity; or

(e) the entity is an agency and the disclosure of the information is required or authorised by or under an international agreement relating to information sharing to which Australia is a party; or

(f) the entity is an agency and both of the following apply:

(i) the entity reasonably believes that the disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body;

(ii) the recipient is a body that performs functions, or exercises powers, that are similar to those performed or exercised by an enforcement body.

Note: For ***permitted general situation***, see section 16A.

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

Adoption of government related identifiers

9.1 An organisation must not adopt a government related identifier of an individual as its own identifier of the individual unless:

(a) the adoption of the government related identifier is required or authorised by or under an Australian law or a court/tribunal order; or

(b) subclause 9.3 applies in relation to the adoption.

Note: An act or practice of an agency may be treated as an act or practice of an organisation, see section 7A.

Use or disclosure of government related identifiers

9.2 An organisation must not use or disclose a government related identifier of an individual unless:

(a) the use or disclosure of the identifier is reasonably necessary for the organisation to verify the identity of the individual for the purposes of the organisation's activities or functions; or

(b) the use or disclosure of the identifier is reasonably necessary for the organisation to fulfil its obligations to an agency or a State or Territory authority; or

(c) the use or disclosure of the identifier is required or authorised by or under an Australian law or a court/tribunal order; or

(d) a permitted general situation (other than the situation referred to in item 4 or 5 of the table in subsection 16A(1)) exists in relation to the use or disclosure of the identifier; or

(e) the organisation reasonably believes that the use or disclosure of the identifier is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body; or

(f) subclause 9.3 applies in relation to the use or disclosure.

Note 1: An act or practice of an agency may be treated as an act or practice of an organisation, see section 7A.

Note 2: For ***permitted general situation***, see section 16A.

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Regulations about adoption, use or disclosure

9.3 This subclause applies in relation to the adoption, use or disclosure by an organisation of a government related identifier of an individual if:

(a) the identifier is prescribed by the regulations; and

(b) the organisation is prescribed by the regulations, or is included in a class of organisations prescribed by the regulations; and

(c) the adoption, use or disclosure occurs in the circumstances prescribed by the regulations.

Note: There are prerequisites that must be satisfied before the matters mentioned in this subclause are prescribed, see subsections 100(2) and (3).

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Part 4—Integrity of personal information

10 Australian Privacy Principle 10—quality of personal information

10.1 An APP entity must take such steps (if any) as are reasonable in the circumstances to ensure that the personal information that the entity collects is accurate, up-to-date and complete.

10.2 An APP entity must take such steps (if any) as are reasonable in the circumstances to ensure that the personal information that the entity uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

11 Australian Privacy Principle 11—security of personal information

11.1 If an APP entity holds personal information, the entity must take such steps as are reasonable in the circumstances to protect the information:

(a) from misuse, interference and loss; and

(b) from unauthorised access, modification or disclosure.

11.2 If:

(a) an APP entity holds personal information about an individual; and

(b) the entity no longer needs the information for any purpose for which the information may be used or disclosed by the entity under this Schedule; and

(c) the information is not contained in a Commonwealth record; and

(d) the entity is not required by or under an Australian law, or a court/tribunal order, to retain the information;

the entity must take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de-identified.

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Part 5—Access to, and correction of, personal information

12 Australian Privacy Principle 12—access to personal information

Access

12.1 If an APP entity holds personal information about an individual, the entity must, on request by the individual, give the individual access to the information.

Exception to access—agency

12.2 If:

(a) the APP entity is an agency; and

(b) the entity is required or authorised to refuse to give the individual access to the personal information by or under:

(i) the Freedom of Information Act; or

(ii) any other Act of the Commonwealth, or a law in force in an external Territory, that provides for access by persons to documents;

then, despite subclause 12.1, the entity is not required to give access to the extent that the entity is required or authorised to refuse to give access.

Exception to access—organisation

12.3 If the APP entity is an organisation then, despite subclause 12.1, the entity is not required to give the individual access to the personal information to the extent that:

(a) the entity reasonably believes that giving access would pose a serious threat to the life, health or safety of any individual, or to public health or public safety; or

(b) giving access would have an unreasonable impact on the privacy of other individuals; or

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(c) the request for access is frivolous or vexatious; or
(d) the information relates to existing or anticipated legal proceedings between the entity and the individual, and would not be accessible by the process of discovery in those proceedings; or
(e) giving access would reveal the intentions of the entity in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
(f) giving access would be unlawful; or
(g) denying access is required or authorised by or under an Australian law or a court/tribunal order; or
(h) both of the following apply:
(i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in;
(ii) giving access would be likely to prejudice the taking of appropriate action in relation to the matter; or
(i) giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body; or
(j) giving access would reveal evaluative information generated within the entity in connection with a commercially sensitive decision-making process.

Dealing with requests for access

12.4 The APP entity must:
(a) respond to the request for access to the personal information:
(i) if the entity is an agency—within 30 days after the request is made; or
(ii) if the entity is an organisation—within a reasonable period after the request is made; and
(b) give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so.

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Other means of access

12.5 If the APP entity refuses:

(a) to give access to the personal information because of subclause 12.2 or 12.3; or

(b) to give access in the manner requested by the individual;

the entity must take such steps (if any) as are reasonable in the circumstances to give access in a way that meets the needs of the entity and the individual.

12.6 Without limiting subclause 12.5, access may be given through the use of a mutually agreed intermediary.

Access charges

12.7 If the APP entity is an agency, the entity must not charge the individual for the making of the request or for giving access to the personal information.

12.8 If:

(a) the APP entity is an organisation; and

(b) the entity charges the individual for giving access to the personal information;

the charge must not be excessive and must not apply to the making of the request.

Refusal to give access

12.9 If the APP entity refuses to give access to the personal information because of subclause 12.2 or 12.3, or to give access in the manner requested by the individual, the entity must give the individual a written notice that sets out:

(a) the reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and

(b) the mechanisms available to complain about the refusal; and

(c) any other matter prescribed by the regulations.

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12.10 If the APP entity refuses to give access to the personal information because of paragraph 12.3(j), the reasons for the refusal may include an explanation for the commercially sensitive decision.

13 Australian Privacy Principle 13—correction of personal information

Correction

13.1 If:

(a) an APP entity holds personal information about an individual; and

(b) either:

(i) the entity is satisfied that, having regard to a purpose for which the information is held, the information is inaccurate, out-of-date, incomplete, irrelevant or misleading; or

(ii) the individual requests the entity to correct the information;

the entity must take such steps (if any) as are reasonable in the circumstances to correct that information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete, relevant and not misleading.

Notification of correction to third parties

13.2 If:

(a) the APP entity corrects personal information about an individual that the entity previously disclosed to another APP entity; and

(b) the individual requests the entity to notify the other APP entity of the correction;

the entity must take such steps (if any) as are reasonable in the circumstances to give that notification unless it is impracticable or unlawful to do so.

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Refusal to correct information

13.3 If the APP entity refuses to correct the personal information as requested by the individual, the entity must give the individual a written notice that sets out:

(a) the reasons for the refusal except to the extent that it would be unreasonable to do so; and

(b) the mechanisms available to complain about the refusal; and

(c) any other matter prescribed by the regulations.

Request to associate a statement

13.4 If:

(a) the APP entity refuses to correct the personal information as requested by the individual; and

(b) the individual requests the entity to associate with the information a statement that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

the entity must take such steps as are reasonable in the circumstances to associate the statement in such a way that will make the statement apparent to users of the information.

Dealing with requests

13.5 If a request is made under subclause 13.1 or 13.4, the APP entity:

(a) must respond to the request:

(i) if the entity is an agency—within 30 days after the request is made; or

(ii) if the entity is an organisation—within a reasonable period after the request is made; and

(b) must not charge the individual for the making of the request, for correcting the personal information or for associating the statement with the personal information (as the case may be).

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Privacy Act 1988	119, 1988	14 Dec 1988	1 Jan 1989 (s 2 and gaz 1988, No S399)	
Law and Justice Legislation Amendment Act 1989	11, 1990	17 Jan 1990	s 41–43: 14 Feb 1990 (s 2(1))	—
Defence Legislation Amendment Act 1990	75, 1990	22 Oct 1990	Sch 3: 22 Oct 1990 (s 2(1))	—
Privacy Amendment Act 1990	116, 1990	24 Dec 1990	24 Sept 1991 (s 2(2))	s 25
as amended by				
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	s 21: 24 Sept 1991 (s 2(3))	—
Law and Justice Legislation Amendment Act (No. 3) 1992	165, 1992	11 Dec 1992	Sch (Pt 1): 24 Sept 1991 (s 2(6))	—
Data-matching Program (Assistance and Tax) Act 1990	20, 1991	23 Jan 1991	s 17–20: 23 Jan 1991 (s 2)	—
Crimes Legislation Amendment Act 1991	28, 1991	4 Mar 1991	Sch 2 (Pt 1): 4 Mar 1991 (s 2(1))	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s 31(2) and Sch: 10 Dec 1991 (s 2(3) and gaz 1991, No S332)	s 31(2)
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	s 11–20: 24 Sept 1991 (s 2(2))	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Social Security Legislation Amendment Act (No. 4) 1991	194, 1991	13 Dec 1991	Sch 5 (Pt 2): 23 Jan 1991 (s 2(13))	—
Law and Justice Legislation Amendment Act (No. 4) 1992	143, 1992	7 Dec 1992	Sch: 7 Dec 1992 (s 2(1))	—
National Health Amendment Act 1993	28, 1993	9 June 1993	s 7 and 8: 9 June 1993 (s 2)	—
Law and Justice Legislation Amendment Act 1993	13, 1994	18 Jan 1994	s 7–16 and Note 1 of Notes about section headings: 18 Jan 1994 (s 2(1))	s 16
Law and Justice Legislation Amendment Act 1994	84, 1994	23 June 1994	s 71: 23 June 1994 (s 2(1))	—
Australian Capital Territory Government Service (Consequential Provisions) Act 1994	92, 1994	29 June 1994	s 23, Sch 2 and 3: 1 July 1994 (s 2(1) and gaz 1994, No S256)	—
Employment Services (Consequential Amendments) Act 1994	177, 1994	19 Dec 1994	s 19–26: 1 Jan 1995 (s 2(3))	s 19
Human Rights Legislation Amendment Act 1995	59, 1995	28 June 1995	s 4, 5 and Sch: 28 June 1995 (s 2(1))	s 4 and 5
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 4 (item 122): 25 Oct 1996 (s 2(1))	—
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Sch 13: 17 Apr 1997 (s 2(1))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Hearing Services and AGHS Reform Act 1997	82, 1997	18 June 1997	Sch 4 (items 1, 2, 4–12): 18 June 1997 (s 2(1)) Sch 4 (item 3): never commenced (s 2(3))	Sch 4 (item 12)
as amended by				
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 2 (item 20): 18 June 1997 (s 2(1) item 38)	—
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 2 (item 19): 18 June 1997 (s 2(1) item 34)	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (item 133): 1 July 1998 (s 2(2))	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 7 (items 126–128): 1 July 1999 (s 3(2)(e), (16))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 738–747): 5 Dec 1999 (s 2(1), (2))	—
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Sch 3 (items 1, 49): 10 Dec 1999 (s 2(2))	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Privacy Amendment (Office of the Privacy Commissioner) Act 2000	2, 2000	29 Feb 2000	Sch 1 (items 1–10, 15): 1 July 2000 (s 2(1) and gaz 2000, No S229)	Sch 1 (item 15)
as amended by				
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 3 (items 58, 59): 5 Aug 2009 (s 2(1) item 7)	—
Australian Federal Police Legislation Amendment Act 2000	9, 2000	7 Mar 2000	Sch 2 (items 42–46) and Sch 3 (items 20, 29, 34, 35): 2 July 2000 (s 2(1) and gaz 2000, No S328)	Sch 3 (items 20, 29, 34, 35)
Privacy Amendment (Private Sector) Act 2000	155, 2000	21 Dec 2000	Sch 1: 21 Dec 2001 (s 2(1)) Sch 3 (items 3, 4): 21 Dec 2000 (s 2(2))	Sch 1 (items 37, 53, 57, 76, 100, 124, 130) and Sch 3 (item 4)
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 40 (items 1–9, 11–13): 24 May 2001 (s 2(1)(a)) Sch 40 (item 10): 21 Dec 2001 (s 2(7))	s 4(1) and (2)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (item 437): 15 July 2001 (s 2(1), (3) and gaz 2001, No S285) Sch 3 (item 438): 21 Dec 2001 (s 2(8))	s 4–14
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2003	116, 2003	27 Nov 2003	Sch 4 (item 1): 15 July 2001 (s 2(1) item 5)	—
National Crime Authority Legislation Amendment Act 2001	135, 2001	1 Oct 2001	Sch 2: 12 Oct 2001 (s 2(2) and gaz 2001, No S428)	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	Sch 1 (items 82–84, 97): 29 Oct 2001 (s 2(1))	Sch 1 (item 97)
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 2 (items 99–106): 1 Jan 2003 (s 2(1) item 3)	—
Defence Legislation Amendment Act 2003	135, 2003	17 Dec 2003	Sch 2 (item 39): 17 June 2004 (s 2(1) item 11)	—
Privacy Amendment Act 2004	49, 2004	21 Apr 2004	21 Apr 2004 (s 2)	Sch 1 (items 3, 5)
as amended by				
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 2 (item 21): 21 Apr 2004 (s 2(1) item 36)	—
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Sch 1 (item 229): 16 May 2005 (s 2(1) item 6)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 1 (item 38): 6 July 2005 (s 2(1) item 21)	—
Intelligence Services Legislation Amendment Act 2005	128, 2005	4 Nov 2005	Sch 6: 2 Dec 2005 (s 2(1) item 2)	—
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 1 (item 21): 21 Dec 2001 (s 2(1) item 13)	—
Postal Industry Ombudsman Act 2006	25, 2006	6 Apr 2006	Sch 1 (items 17–19, 20(2)): 6 Oct 2006 (s 2(1) item 2)	Sch 1 (item 20(2))
as amended by				
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 2 (item 24): 6 Oct 2006 (s 2(1) item 59)	—
National Health and Medical Research Council Amendment Act 2006	50, 2006	9 June 2006	Sch 1 (item 115): 1 July 2006 (s 2(1) item 2)	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Sch 1 (items 48–53): 30 Dec 2006 (s 2(1) item 2)	—
Privacy Legislation Amendment Act 2006	99, 2006	14 Sept 2006	Sch 1 (item 2) and Sch 2: 14 Sept 2006 (s 2)	—
Privacy Legislation Amendment (Emergencies and Disasters) Act 2006	148, 2006	6 Dec 2006	Sch 1: 7 Dec 2006 (s 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006	170, 2006	12 Dec 2006	Sch 1 (item 152): 13 Dec 2006 (s 2(1) item 24)	—
Quarantine Amendment (Commission of Inquiry) Act 2007	158, 2007	24 Sept 2007	Sch 2 (items 9, 10): 24 Sept 2007 (s 2)	—
Archives Amendment Act 2008	113, 2008	31 Oct 2008	Sch 1 (items 79–82): 1 Nov 2008 (s 2)	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 13: 1 July 2009 (s 2(1) item 35)	—
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Sch 2 (item 46): 23 May 2009 (s 2)	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 16 (items 1–3): 1 July 2009 (s 2(1) item 39)	—
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 3 (items 47–57): 5 Aug 2009 (s 2(1) item 7)	—
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Act 2009	102, 2009	8 Oct 2009	Sch 1 (items 62M, 62N): 9 Oct 2009 (s 2(1) item 4)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Sch 5 (items 25–30): 30 Jan 2012 (s 2(1) item 9)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Sch 10 (item 23): 20 Feb 2010 (s 2(1) item 13)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (items 77, 78): 1 Mar 2010 (s 2(1) item 35)	—
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 3 (item 38), Sch 5 (items 52–58) and Sch 7: 1 Nov 2010 (s 2(1) items 6, 7)	Sch 7
Healthcare Identifiers (Consequential Amendments) Act 2010	73, 2010	28 June 2010	Sch 2 (items 1–7): 29 June 2010 (s 2(1) item 3) Sch 2 (items 8–11): 30 Jan 2012 (s 2(1) item 4)	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Sch 1 (item 76): 11 Dec 2010 (s 2(1) item 2) Sch 1 (items 244–297): 1 Jan 2011 (s 2(1) item 10)	Sch 1 (item 297)
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Sch 2 (items 62, 63): 17 Dec 2010 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011	3, 2011	2 Mar 2011	Sch 7 (item 4): 3 Mar 2011 (s 2(1) item 4)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 93–95): 22 Mar 2011 (s 2(1) item 2)	—
Education Services for Overseas Students Legislation Amendment Act 2011	11, 2011	8 Apr 2011	Sch 2 (items 5–7): 9 Apr 2011 (s 2(1) item 2)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 915–922) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 7, 12)	Sch 3 (items 10, 11)
Combating the Financing of People Smuggling and Other Measures Act 2011	60, 2011	28 June 2011	Sch 3 (items 11–20): 28 June 2011 (s 2(1) item 9)	—
Crimes Legislation Amendment (Powers and Offences) Act 2012	24, 2012	4 Apr 2012	Sch 4 (item 52): 5 Apr 2012 (s 2(1) item 7)	—
Telecommunications Interception and Other Legislation Amendment (State Bodies) Act 2012	74, 2012	27 June 2012	Sch 1 (items 2, 28): 10 Feb 2013 (s 2(1) item 2)	Sch 1 (item 28)
Freedom of Information Amendment (Parliamentary Budget Office) Act 2012	177, 2012	4 Dec 2012	Sch 1 (item 13): 4 Dec 2012 (s 2)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 1–4: 12 Mar 2014 (s 2(1) item 2) Sch 6 (items 1, 5): 12 Dec 2012 (s 2(1) items 16, 18) Sch 6 (items 2–4, 6–14, 16–19): 12 Mar 2014 (s 2(1) items 17, 19)	Sch 6 (items 1–14, 16–19)
as amended by				
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 2 (items 4, 5): 12 Mar 2014 (s 2(1) item 6)	—
Public Service Amendment Act 2013	2, 2013	14 Feb 2013	Sch 3 (items 14, 15): 1 July 2013 (s 2(1) item 2)	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 468, 469) and Sch 2 (item 1): 12 Apr 2013 (s 2(1) items 2, 3) Sch 3 (items 83–91): 12 Mar 2014 (s 2(1) item 16)	—
National Security Legislation Amendment Act (No. 1) 2014	108, 2014	2 Oct 2014	Sch 6 (items 26, 27): 30 Oct 2014 (s 2(1) item 2) Sch 7 (items 135–137, 144, 145): 3 Oct 2014 (s 2(1) item 5)	Sch 7 (items 144, 145)
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (item 35): 25 Mar 2015 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015	39, 2015	13 Apr 2015	Sch 1 (items 1H, 1J, 7): 13 Oct 2015 (s 2(1) item 2) Sch 1 (items 8–12): 13 Apr 2015 (s 2(1) items 1, 3)	Sch 1 (items 7–12)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 141, 142) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 5 (item 142) and Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (items 150–175) and Sch 2 (items 356–396): 18 June 2015 (s 2(1) items 2, 6) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3) Sch 2 (items 299–305): 1 July 2016 (s 2(1) item 5)	Sch 1 (items 184–203) and Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (item 53) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3: 16 June 2015 (s 2(1) item 3)	Sch 3 and 4
as amended by				
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (item 9): 20 Sept 2017 (s 2(1) item 4)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 479–482): 5 Mar 2016 (s 2(1) item 2)	—
Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015	153, 2015	26 Nov 2015	Sch 15 (items 11, 12): 27 Nov 2015 (s 2(1) item 3)	—
Health Legislation Amendment (eHealth) Act 2015	157, 2015	26 Nov 2015	Sch 1 (items 107–136): 27 Nov 2015 (s 2(1) item 2)	Sch 1 (items 111–136)
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 69, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 232): 10 Mar 2016 (s 2(1) item 6)	—
Courts Administration Legislation Amendment Act 2016	24, 2016	18 Mar 2016	Sch 5 (item 28): 1 July 2016 (s 2(1) item 7) Sch 6: 18 Mar 2016 (s 2(1) item 9)	Sch 6

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Crime Commission Amendment (National Policing Information) Act 2016	45, 2016	5 May 2016	Sch 2 (items 9–11): 1 July 2016 (s 2(1) item 1)	Sch 2 (items 10, 11)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 372–377): 21 Oct 2016 (s 2(1) item 1)	—
Law Enforcement Legislation Amendment (State Bodies and Other Measures) Act 2016	86, 2016	30 Nov 2016	Sch 1 (items 1, 56–58): 1 Dec 2016 (s 2(1) items 2, 4) Sch 1 (items 49, 50, 54, 55): 1 July 2017 (s 2(1) item 3)	Sch 1 (items 1, 50, 54–58)
Privacy Amendment (Notifiable Data Breaches) Act 2017	12, 2017	22 Feb 2017	Sch 1: 22 Feb 2018 (s 2(1) item 2)	Sch 1 (item 6)
Public Governance and Resources Legislation Amendment Act (No. 1) 2017	92, 2017	23 Aug 2017	Sch 3 (items 5–10) and Sch 4: 23 Aug 2017 (s 2(1) item 1)	Sch 4
Regulatory Powers (Standardisation Reform) Act 2017	124, 2017	6 Nov 2017	Sch 13: 6 Nov 2018 (s 2(1) item 3)	Sch 13 (items 10–12)
Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018	25, 2018	11 Apr 2018	Sch 1 (items 86–89, 100–110): 1 July 2018 (s 2(1) items 2, 3)	Sch 1 (items 100–108)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Office of National Intelligence (Consequential and Transitional Provisions) Act 2018	156, 2018	10 Dec 2018	Sch 2 (items 85–88) and Sch 4: 20 Dec 2018 (s 2(1) items 2, 4)	Sch 4
Treasury Laws Amendment (Consumer Data Right) Act 2019	63, 2019	12 Aug 2019	Sch 1 (items 78–82): 13 Aug 2019 (s 2(1) item 1)	—
Health Legislation Amendment (Data-matching and Other Matters) Act 2019	121, 2019	12 Dec 2019	Sch 1 (item 7): 13 Dec 2019 (s 2(1) item 1)	—
Interactive Gambling Amendment (National Self-exclusion Register) Act 2019	127, 2019	12 Dec 2019	Sch 1 (item 13): 13 Dec 2019 (s 2(1) item 1)	—
Australian Sports Anti-Doping Authority Amendment (Sport Integrity Australia) Act 2020	11, 2020	6 Mar 2020	Sch 2 (item 23) and Sch 4 (items 2–7): 1 July 2020 (s 2(1) items 2, 5)	Sch 4 (items 2–7)
Privacy Amendment (Public Health Contact Information) Act 2020	44, 2020	15 May 2020	Sch 1: 16 May 2020 (s 2(1) item 2) Sch 2 (items 2–4): awaiting commencement (s 2(1) item 4)	Sch 2 (item 4)
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (items 37–40): 16 Dec 2020 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Territories Legislation Amendment Act 2020	154, 2020	17 Dec 2020	Sch 3 (items 51–76): 17 June 2021 (s 2(1) item 9)	Sch 3 (item 76)
National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Act 2021	5, 2021	16 Feb 2021	Sch 1 (item 11) and Sch 2 (items 24–35): 17 Feb 2021 (s 2(1) items 2, 5) Sch 2 (items 1–14): 1 July 2022 (s 2(1) item 3)	Sch 2 (item 14) and Sch 2 (item 35)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 697–703): 1 Sept 2021 (s 2(1) item 5)	—
Surveillance Legislation Amendment (Identify and Disrupt) Act 2021	98, 2021	3 Sept 2021	Sch 2 (items 92–95): 4 Sept 2021 (s 2(1) item 3)	—
Data Availability and Transparency (Consequential Amendments) Act 2022	12, 2022	31 Mar 2022	Sch 1 (items 5A–8), Sch 2 and 3: 1 Apr 2022 (s 2(1) item 1)	Sch 2 and 3

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Endnote 4—Amendment history

Provision affected	How affected
Preamble	am No 70, 2009
Part I	
s 2A	ad No 197, 2012
s 3	am No 116, 1990; No 155, 2000; No 197, 2012
s 3A	ad No 24, 2001
s 4	am No 92, 1994; No 59, 2015
s 5	rep No 197, 2012
s 5A	ad No 116, 1990
s 5B	ad No 155, 2000
	am No 49, 2004; No 197, 2012
Part II	
Division 1	
Division 1 heading	ad No 197, 2012
s 6	am No 11, 1990; No 116, 1990; No 28, 1991; No 136, 1991; No 143, 1992; No 13, 1994; No 92, 1994; No 177, 1994; No 34, 1997; No 82, 1997; No 48, 1998; No 44, 1999; No 146, 1999; No 161, 1999; No 155, 2000; No 55, 2001; No 125, 2002; No 135, 2003; No 100, 2005; No 86, 2006; No 99, 2006; No 158, 2007; No 113, 2008; No 144, 2008; No 33, 2009; No 54, 2009; No 102, 2009; No 51, 2010; No 73, 2010; No 139, 2010; No 3, 2011; No 60, 2011; No 74, 2012; No 197, 2012; No 13, 2013; No 39, 2015; No 41, 2015; No 59, 2015; No 62, 2015; No 153, 2015; No 157, 2015; No 164, 2015; No 45, 2016; No 86, 2016; No 12, 2017; No 92, 2017; No 124, 2017; No 25, 2018; No 156, 2018; No 63, 2019; No 11, 2020; No 44, 2020 (Sch 2 item 2); No 129, 2020; No 154, 2020; No 5, 2021; No 13, 2021
s 6AA	ad No 197, 2012
s 6A	ad No 155, 2000
	am No 113, 2008; No 197, 2012
s 6B	ad No 155, 2000
	am No 113, 2008; No 197, 2012

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Endnote 4—Amendment history

Provision affected	How affected
s 6BA	ad No 197, 2012
s 6C	ad No 155, 2000
	am No 139, 2010; No 46, 2011; No 197, 2012; No 39, 2015; No 59, 2015; No 126, 2015
s 6D	ad No 155, 2000
	am No 197, 2012
s 6DA	ad No 155, 2000
s 6E	ad No 155, 2000
	am No 170, 2006; No 54, 2009; No 46, 2011; No 60, 2011; No 126, 2015; No 63, 2019
s 6EA	ad No 155, 2000
	am No 197, 2012
s 6F	ad No 155, 2000
	am No 46, 2011; No 197, 2012; No 126, 2015
s 6FA	ad No 157, 2015
s 6FB	ad No 157, 2015
Division 2	
Division 2	ad No 197, 2012
Subdivision A	
s 6G	ad No 197, 2012
s 6H	ad No 197, 2012
s 6J	ad No 197, 2012
s 6K	ad No 197, 2012
Subdivision B	
s 6L	ad No 197, 2012
s 6M	ad No 197, 2012
s 6N	ad No 197, 2012
	am No 5, 2021
s 6P	ad No 197, 2012
s 6Q	ad No 197, 2012
s 6QA	ad No 5, 2021

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Provision affected	How affected
s 6R	ad No 197, 2012
s 6S	ad No 197, 2012
s 6T	ad No 197, 2012
s 6U	ad No 197, 2012
s 6V	ad No 197, 2012
	am No 5, 2021
Division 3	
Division 3 heading	ad No 197, 2012
s 7	am No 75, 1990; No 116, 1990; No 13, 1994; No 84, 1994; No 92, 1994; No 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; No 197, 2012; No 108, 2014; No 59, 2015; No 25, 2018; No 156, 2018; No 154, 2020
s 7A	ad No 155, 2000
	am No 46, 2011
s 7B	ad No 155, 2000
	am No 197, 2012
s 7C	ad No 155, 2000
s 8	am No 116, 1990; No 28, 1991; No 155, 2000; No 139, 2010; No 197, 2012; No 154, 2020
s 9	am No 28, 1991; No 139, 2010
	rep No 197, 2012
s 10	am No 28, 1991; No 113, 2008; No 139, 2010; No 197, 2012
s 11	am No 28, 1991; No 139, 2010; No 154, 2020
s 11A	ad No 116, 1990
	rep No 197, 2012
s 11B	ad No 116, 1990
	am No 136, 1991; No 143, 1992; No 34, 1997; No 44, 1999
	rep No 197, 2012
s 12	rep No 197, 2012
s 12A	ad No 116, 1990
s 12B	ad No 155, 2000

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Endnote 4—Amendment history

Provision affected	How affected
	am No 8, 2010; No 197, 2012
Part III	
Division 1	
Division 1 heading	ad No 155, 2000
s 13	am No 116, 1990; Nos 20 and 194, 1991; No 28, 1993; No 155, 2000; No 131, 2009; No 73, 2010; No 60, 2011
	rs No 197, 2012
	am No 12, 2017
s 13A	ad No 155, 2000; No 60, 2011
	rep No 197, 2012
s 13B	ad No 155, 2000
	am No 197, 2012
s 13C	ad No 155, 2000
	am No 197, 2012
s 13D	ad No 155, 2000
	am No 197, 2012
s 13E	ad No 155, 2000
	rs No 197, 2012
s 13F	ad No 155, 2000
	rs No 197, 2012
s 13G	ad No 197, 2012
Division 2	
Division 2 heading	ad No 155, 2000
	rs No 197, 2012
Division 2	rs No 197, 2012
s 14	rs No 197, 2012
s 15	am No 139, 2010
	rs No 197, 2012
s 15B	ad No 139, 2010
	rep No 197, 2012
s 16	rs No 197, 2012

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Provision affected	How affected
s 16A	ad No 155, 2000
	rs No 197, 2012
s 16B	ad No 155, 2000
	rs No 197, 2012
	am No 157, 2015
s 16C	ad No 155, 2000
	rs No 197, 2012
Division 3	ad No 155, 2000
	rep No 197, 2012
s 16D–16F	ad No 155, 2000
	rep No 197, 2012
Division 4	
Division 4 heading	ad No 155, 2000
s 17	am No 116, 1990; No 145, 2010; No 5, 2011
	rs No 197, 2012
s 18	am No 197, 2012
Division 5 heading	ad No 155, 2000
	rep No 197, 2012
Division 5	rep No 197, 2012
s 18A	ad No 116, 1990
	am No 155, 2000
	rep No 197, 2012
s 18B	ad No 116, 1990
	rep No 197, 2012
Part IIIAA	ad No 155, 2000
	rep No 197, 2012
s 18BA	ad No 155, 2000
	rep No 197, 2012
s 18BAA	ad No 49, 2004
	rep No 197, 2012
s 18BB–18BI	ad No 155, 2000

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 197, 2012
Part IIIA	
Part IIIA	ad No 116, 1990
	rs No 197, 2012
Division 1	
s 18C, 18D	ad No 116, 1990
	am No 24, 2001
	rep No 197, 2012
s 18E	ad No 116, 1990
	am No 143, 1992; No 34, 1997
	rep No 197, 2012
s 18F	ad No 116, 1990
	am No 143, 1992; No 34, 1997
	rep No 197, 2012
s 18G	ad No 116, 1990
	rep No 197, 2012
s 18H	ad No 116, 1990
	am No 136, 1991
	rep No 197, 2012
s 18J	ad No 116, 1990
	rep No 197, 2012
s 18K	ad No 116, 1990
	am No 136, 1991; No 143, 1992; No 24, 2001; No 125, 2002; No 135, 2001; No 86, 2006; No 24, 2012
	rep No 197, 2012
s 18L	ad No 116, 1990
	am No 136, 1991; No 143, 1992; No 24, 2001
	rep No 197, 2012
s 18M	ad No 116, 1990
	rs No 136, 1991
	am No 143, 1992

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Provision affected	How affected
	rep No 197, 2012
s 18N	ad No 116, 1990
	am No 136, 1991; No 143, 1992; No 13, 1994; No 24, 2001
	rep No 197, 2012
s 18NA	ad No 34, 1997
	rep No 197, 2012
s 18P	ad No 116, 1990
	am No 136, 1991; No 143, 1992
	rep No 197, 2012
s 18Q	ad No 116, 1990
	am No 136, 1991; No 143, 1992; No 24, 2001
	rep No 197, 2012
s 18R	ad No 116, 1990
	am No 24, 2001
	rep No 197, 2012
s 18S	ad No 116, 1990
	am No 24, 2001
	rep No 197, 2012
s 18T	ad No 116, 1990
	rep No 197, 2012
s 18U	ad No 116, 1990
	rep No 197, 2012
s 18V	ad No 116, 1990
	am No 136, 1991
	rep No 197, 2012
s 19	ad No 2, 2000
	rep No 51, 2010
	ad No 197, 2012
	am No 13, 2013; No 13, 2021
s 19	am No 59, 1995
renum s 19A	No 2, 2000

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Endnote 4—Amendment history

Provision affected	How affected
s 19A	rep No 51, 2010
Division 2	
Subdivision A	
s 20	am No 159, 2001
	rep No 51, 2010
	ad No 197, 2012
s 20A	ad No 197, 2012
Subdivision B	
s 20B	ad No 197, 2012
Subdivision C	
s 20C	ad No 197, 2012
	am No 5, 2021
s 20D	ad No 197, 2012
Subdivision D	
s 20E	ad No 197, 2012
	am No 63, 2019; No 5, 2021
s 20F	ad No 197, 2012
s 20G	ad No 197, 2012
	am No 5, 2021
s 20H	ad No 197, 2012
s 20J	ad No 197, 2012
s 20K	ad No 197, 2012
s 20L	ad No 197, 2012
s 20M	ad No 197, 2012
Subdivision E	
s 20N	ad No 197, 2012
s 20P	ad No 197, 2012
s 20Q	ad No 197, 2012
	am No 5, 2021
Subdivision F	
s 20R	ad No 197, 2012

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Provision affected	How affected
	am No 5, 2021
s 20S	ad No 197, 2012
s 20T	ad No 197, 2012
s 20U	ad No 197, 2012
Subdivision G	
s 20V	ad No 197, 2012
s 20W	ad No 197, 2012
	am No 5, 2021
s 20X	ad No 197, 2012
s 20Y	ad No 197, 2012
s 20Z	ad No 197, 2012
s 20ZA	ad No 197, 2012
Division 3	
Subdivision A	
s 21	am No 59, 1995
	rep No 51, 2010
	ad No 197, 2012
s 21A	ad No 197, 2012
Subdivision B	
s 21B	ad No 197, 2012
	am No 5, 2021
Subdivision C	
s 21C	ad No 197, 2012
s 21D	ad No 197, 2012
	am No 5, 2021
s 21E	ad No 197, 2012
s 21EA	ad No 5, 2021
s 21F	ad No 197, 2012
Subdivision D	
s 21G	ad No 197, 2012
	am No 63, 2019; No 5, 2021

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Provision affected	How affected
s 21H	ad No 197, 2012
s 21J	ad No 197, 2012
s 21K	ad No 197, 2012
s 21L	ad No 197, 2012
s 21M	ad No 197, 2012
s 21N	ad No 197, 2012
s 21NA	ad No 197, 2012
s 21P	ad No 197, 2012
Subdivision E	
s 21Q	ad No 197, 2012
s 21R	ad No 197, 2012
s 21S	ad No 197, 2012
Subdivision F	
s 21T	ad No 197, 2012
	am No 5, 2021
s 21U	ad No 197, 2012
	am No 5, 2021
s 21V	ad No 197, 2012
	am No 5, 2021
s 21W	ad No 197, 2012
	am No 5, 2021
Division 4	
s 22	rs No 122, 1991
	am No 146, 1999
	rep No 51, 2010
	ad No 197, 2012
Subdivision A	
s 22A	ad No 197, 2012
Subdivision B	
s 22B	ad No 197, 2012
s 22C	ad No 197, 2012

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Provision affected	How affected
s 22D	ad No 197, 2012
s 22E	ad No 197, 2012
	am No 63, 2019
s 22F	ad No 197, 2012
Division 5	
s 23	rep No 51, 2010
	ad No 197, 2012
s 23A	ad No 197, 2012
s 23B	ad No 197, 2012
	am No 5, 2021
s 23C	ad No 197, 2012
Division 6	
s 24	rep No 51, 2010
	ad No 197, 2012
s 24A	ad No 197, 2012
Division 7	
s 25	am No 122, 1991
	rep No 51, 2010
	ad No 197, 2012
	am No 13, 2013; No 124, 2017; No 13, 2021
s 25A	ad No 197, 2012
	am No 13, 2013; No 124, 2017; No 13, 2021
Division 8	
Division 8	ad No 5, 2021
s 25B	ad No 5, 2021
Part IIIB	
Part IIIB	ad No 197, 2012
Division 1	
s 26	rep No 51, 2010
	ad No 197, 2012

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
Subdivision A	
s 26A	ad No 2, 2000
	am No 146, 1999
	rep No 51, 2010
	ad No 197, 2012
s 26B	ad No 197, 2012
	am No 126, 2015
s 26C	ad No 197, 2012
s 26D	ad No 197, 2012
Subdivision B	
s 26E	ad No 197, 2012
s 26F	ad No 197, 2012
s 26G	ad No 197, 2012
s 26H	ad No 197, 2012
Subdivision C	
s 26J	ad No 197, 2012
s 26K	ad No 197, 2012
Division 3	
Subdivision A	
s 26L	ad No 197, 2012
s 26M	ad No 197, 2012
	am No 126, 2015
s 26N	ad No 197, 2012
Subdivision B	
s 26P	ad No 197, 2012
s 26Q	ad No 197, 2012
s 26R	ad No 197, 2012
s 26S	ad No 197, 2012
Subdivision C	
s 26T	ad No 197, 2012

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Provision affected	How affected
Division 4	
s 26U	ad No 197, 2012
s 26V	ad No 197, 2012
s 26W	ad No 197, 2012
Part IIIC	
Part IIIC	ad No 12, 2017
Division 1	
s 26WA	ad No 12, 2017
s 26WB	ad No 12, 2017
s 26WC	ad No 12, 2017
s 26WD	ad No 12, 2017
Division 2	
s 26WE	ad No 12, 2017
s 26WF	ad No 12, 2017
s 26WG	ad No 12, 2017
Division 3	
Subdivision A	
s 26WH	ad No 12, 2017
s 26WJ	ad No 12, 2017
Subdivision B	
s 26WK	ad No 12, 2017
s 26WL	ad No 12, 2017
s 26WM	ad No 12, 2017
s 26WN	ad No 12, 2017
s 26WP	ad No 12, 2017
s 26WQ	ad No 12, 2017
	am No 25, 2018
Subdivision C	
s 26WR	ad No 12, 2017
	am No 25, 2018
s 26WS	ad No 12, 2017

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Provision affected	How affected
s 26WT	ad No 12, 2017
Part IV	
Part IV heading	rs No 2, 2000; No 51, 2010
Division heading	rs No 2, 2000
	rep No 51, 2010
Division 1	rep No 51, 2010
Division 2	
s 27	am No 20, 1991; No 28, 1993; No 155, 2000; No 49, 2004; No 139, 2010
	rs No 197, 2012
s 27A	ad No 73, 2010
	am No 73, 2010
	rep No 197, 2012
s 28	am No 116, 1990; No 131, 2009; No 73, 2010
	rs No 197, 2012
s 28A	ad No 116, 1990
	am No 131, 2009; No 73, 2010
	rs No 197, 2012
	am No 59, 2015; No 154, 2020
s 28B	ad No 131, 2009
	am No 73, 2010
	rs No 197, 2012
	am No 59, 2015
s 29	am No 116, 1990; No 155, 2000
	rs No 197, 2012
Division 3	
s 30	am No 116, 1990; No 155, 2000; No 139, 2010; No 197, 2012; No 59, 2015
s 31	am No 20, 1991; No 155, 2000; No 51, 2010; No 197, 2012; No 154, 2020
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; No 197, 2012

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Provision affected	How affected
s 33	am No 92, 1994; No 139, 2010; No 154, 2020
s 33B	ad No 139, 2010
	rep No 59, 2015
Division 3A	
Division 3A	ad No 197, 2012
s 33C	ad No 197, 2012
	am No 121, 2019
s 33D	ad No 197, 2012
Division 3B	ad No 197, 2012
	rep No 124, 2017
s 33E	ad No 197, 2012
	rep No 124, 2017
s 33F	ad No 197, 2012
	am No 13, 2013
	rep No 124, 2017
Division 4	
s 34	am Nos 51 and 139, 2010; No 177 and 197, 2012; No 59, 2015
s 35A	ad No 197, 2012
Part V	
Part V heading	rs No 197, 2012
Division 1A	
Division 1A	ad No 197, 2012
s 36A	ad No 197, 2012
Division 1	
s 36	am No 11, 1990; No 13, 1994; Nos 2 and 155, 2000; No 51, 2010; No 197, 2012
s 36B	ad No 12, 2022
s 37	am No 92, 1994; No 177, 1994; No 82, 1997; No 155, 2000; No 139, 2010; No 197, 2012; No 59, 2015; No 24, 2016; No 92, 2017; No 154, 2020
s 38	rs No 13, 1994

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Endnote 4—Amendment history

Provision affected	How affected
	am No 155, 2000; No 197, 2012
s 38A	ad No 13, 1994
s 38B	ad No 13, 1994
	am No 197, 2012
s 38C	ad No 13, 1994
s 39	rs No 13, 1994
s 40	am No 155, 2000; No 197, 2012
s 40A	ad No 155, 2000
	rs No 197, 2012
s 41	am No 155, 2000; No 49, 2004; No 197, 2012
s 42	am No 155, 2000; No 197, 2012
s 43	am No 155, 2000; No 139, 2010; No 197, 2012; No 59, 2015
s 43A	ad No 197, 2012
s 44	am No 34, 1997; No 197, 2012; No 154, 2020
s 46	am No 155, 2000; No 24, 2001; No 197, 2012; No 4, 2016; No 61, 2016
s 48	am No 155, 2000
s 49	am No 116, 1990; No 24, 2001; No 73, 2010; No 60, 2011; No 197, 2012
s 49A	ad No 131, 2009
s 49B	ad No 98, 2021
s 50	am No 146, 1999; No 25, 2006 (as am by No 73, 2008); No 70, 2009; No 139, 2010; No 11, 2011; No 197, 2012 (as am by No 5, 2015); No 2, 2013; No 5, 2015; No 59, 2015; No 154, 2020; No 98, 2021; No 12, 2022
s 50A	ad No 155, 2000
	am No 197, 2012
Division 2	
s 52	am No 116, 1990; No 13, 1994; No 155, 2000; No 197, 2012
s 53	rs No 13, 1994
s 53A	ad No 155, 2000
	am No 197, 2012

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Provision affected	How affected
s 53B	ad No 155, 2000
	am No 197, 2012
Division 3	
Division 3 heading	rs No 155, 2000
Division 3	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; No 9, 2006; No 197, 2012; No 92, 2017
s 55	rs No 13, 1994; No 59, 1995; No 155, 2000; No 197, 2012
s 55A	ad No 155, 2000
	am No 197, 2012; No 13, 2013; No 13, 2021
s 55B	ad No 155, 2000
	am No 197, 2012
s 56	rs No 13, 1994
	rep No 59, 1995
Division 4	
Division 4 heading	am No 116, 1990
	rs No 13, 1994
Division 4	rs No 13, 1994
s 57	rs No 13, 1994
	am No 177, 1994; No 82, 1997; No 197, 2012; No 92, 2017
s 58	rs No 13, 1994; No 197, 2012
s 59	rs No 13, 1994
	am No 197, 2012
s 60	am No 116, 1990
	rs No 13, 1994
	am No 139, 2010; No 197, 2012; No 154, 2020
s 61	rs No 13, 1994
	am No 38, 2005

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 197, 2012
s 62	rs No 13, 1994
	am No 155, 2000; No 197, 2012; No 13, 2013; No 13, 2021
Division 5	
s 63	rs No 13, 1994
	am No 59, 1995; No 155, 2000; No 197, 2012; No 13, 2013; No 13, 2021
s 64	am No 155, 2000; No 197, 2012
s 65	am No 24, 2001; No 61, 2016
s 66	am No 155, 2000; No 24, 2001; No 139, 2010; No 59, 2015; No 61, 2016
s 67	am No 155, 2000; No 197, 2012
s 68	am No 116, 1990; No 155, 2000; No 139, 2010; No 197, 2012; No 59, 2015
s 68A	ad No 155, 2000
s 69	am No 155, 2000
	rep No 197, 2012
s 70	am No 125, 2002; No 86, 2006; No 139, 2010; No 59, 2015
s 70A	ad No 155, 2000
	rep No 197, 2012
s 70B	ad No 155, 2000
Part VI	
Part VI heading	rs No 155, 2000
Division 1	
Division 1 heading	ad No 155, 2000
s 72	am No 155, 2000; No 197, 2012
s 73	am No 155, 2000; No 50, 2006; No 197, 2012
s 74	am No 197, 2012
s 75	am No 155, 2000; No 197, 2012
s 76	am No 155, 2000
s 77	am No 155, 2000

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Provision affected	How affected
s 79	am No 155, 2000; No 197, 2012
s 80	am No 5, 2011
	rep No 197, 2012
Division 2	
Division 2 heading	ad No 155, 2000
s 80A	ad No 155, 2000
	am No 197, 2012
s 80B	ad No 155, 2000
	am No 197, 2012
s 80C	ad No 155, 2000
	rep No 197, 2012
s 80D	ad No 155, 2000
	am No 197, 2012
Division 3	
Division 3 heading	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; No 154, 2020
s 80H	ad No 148, 2006
	am No 197, 2012
Division 2	
s 80J	ad No 148, 2006
	am No 129, 2020
s 80K	ad No 148, 2006
s 80L	ad No 148, 2006
	am No 8, 2010
ss 80M, 80N	ad No 148, 2006

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Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s 80P	ad No 148, 2006
	am No 197, 2012; No 108, 2014; No 156, 2018; No 154, 2020
Division 4	
s 80Q	ad No 148, 2006
	am No 197, 2012
s 80R	ad No 148, 2006
	am No 139, 2010; No 154, 2020
ss 80S, 80T	ad No 148, 2006
Part VIB	
Part VIB	ad No 197, 2012
	rs No 124, 2017
Division 1	
s 80U	ad No 197, 2012
	rs No 124, 2017
	am No 13, 2021
Division 2	
s 80V	ad No 197, 2012
	rs No 124, 2017
	am No 13, 2021
Division 3	
s 80W	ad No 197, 2012
	am No 13, 2013
	rs No 124, 2017
	am No 13, 2021
s 80X	ad No 197, 2012
	rep No 124, 2017
s 80Y	ad No 197, 2012
	rep No 124, 2017
s 80Z	ad No 197, 2012
	am No 13, 2013

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Provision affected	How affected
	rep No 124, 2017
s 80ZA	ad No 197, 2012
	am No 13, 2013
	rep No 124, 2017
s 80ZB	ad No 197, 2012
	am No 13, 2013
	rep No 124, 2017
s 80ZC	ad No 197, 2012
	rep No 124, 2017
s 80ZD	ad No 197, 2012
	am No 13, 2013
	rep No 124, 2017
s 80ZE	ad No 197, 2012
	rep No 124, 2017
s 80ZF	ad No 197, 2012
	rep No 124, 2017
s 80ZG	ad No 197, 2012
	rep No 124, 2017
Part VII	
s 82	am No 159, 2001; No 197, 2012
s 83	am No 2, 2000; No 197, 2012
Part VIII	
s 89	am No 139, 2010; No 154, 2020
Part VIIIA	
Part VIIIA	ad No 44, 2020
	rep No 44, 2020
Division 1	
s 94A	ad No 44, 2020
	rep No 44, 2020
s 94B	ad No 44, 2020
	rep No 44, 2020

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Endnote 4—Amendment history

Provision affected	How affected
s 94C	ad No 44, 2020
	rep No 44, 2020
Division 2	
s 94D	ad No 44, 2020
	rep No 44, 2020
s 94E	ad No 44, 2020
	rep No 44, 2020
s 94F	ad No 44, 2020
	rep No 44, 2020
s 94G	ad No 44, 2020
	rep No 44, 2020
s 94H	ad No 44, 2020
	rep No 44, 2020
s 94J	ad No 44, 2020
	rep No 44, 2020
Division 3	
s 94K	ad No 44, 2020
	rep No 44, 2020
s 94L	ad No 44, 2020
	rep No 44, 2020
s 94M	ad No 44, 2020
	rep No 44, 2020
s 94N	ad No 44, 2020
	rep No 44, 2020
s 94P	ad No 44, 2020
	rep No 44, 2020
Division 4	
s 94Q	ad No 44, 2020
	rep No 44, 2020
s 94R	ad No 44, 2020
	rep No 44, 2020

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Provision affected	How affected
s 94S	ad No 44, 2020
	rep No 44, 2020
s 94T	ad No 44, 2020
	rep No 44, 2020
s 94U	ad No 44, 2020
	rep No 44, 2020
s 94V	ad No 44, 2020
	rep No 44, 2020
s 94W	ad No 44, 2020
	rep No 44, 2020
s 94X	ad No 44, 2020
	rep No 44, 2020
Division 5	
s 94Y	ad No 44, 2020
	rep No 44, 2020
s 94Z	ad No 44, 2020
	rep No 44, 2020
s 94ZA	ad No 44, 2020
	rep No 44, 2020
s 94ZB	ad No 44, 2020
	rep No 44, 2020
s 94ZC	ad No 44, 2020
	rep No 44, 2020
s 94ZD	ad No 44, 2020
	rep No 44, 2020
Part IX	
s 95	am No 50, 2006; No 197, 2012
s 95A	ad No 155, 2000
	am No 50, 2006; No 197, 2012
s 95AA	ad No 99, 2006
	am No 197, 2012

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Endnote 4—Amendment history

Provision affected	How affected
s 95B	ad No 155, 2000
	am No 197, 2012
s 95C	ad No 155, 2000
	am No 197, 2012
s 96	am No 2, 2000
	rep No 51, 2010
	ad No 197, 2012
	am No 12, 2017
s 97	am No 155, 2000
	rep No 51, 2010
s 98	am No 155, 2000; No 13, 2013
	rep No 124, 2017
s 98A	ad No 197, 2012
s 98B	ad No 197, 2012
s 98C	ad No 197, 2012
s 99	am No 11, 1990; No 2, 2000
	rep No 51, 2010
s 99A	ad No 116, 1990
	am No 155, 2000; No 24, 2001; No 4, 2010; No 197, 2012; No 124, 2017
s 100	am No 155, 2000; No 49, 2004; No 197, 2012
Part X	rep No 197, 2012
s 101	rep No 197, 2012
Schedule 1	
Schedule 1	rs No 197, 2012
Part 1	
c 1	ad No 197, 2012
c 2	ad No 197, 2012
Part 2	
c 3	ad No 197, 2012
c 4	ad No 197, 2012

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Provision affected	How affected
c 5	ad No 197, 2012
Part 3	
c 6	ad No 197, 2012
c 7	ad No 197, 2012
	am No 127, 2019; No 154, 2020
c 8	ad No 197, 2012
c 9	ad No 197, 2012
Part 4	
c 10	ad No 197, 2012
c 11	ad No 197, 2012
Part 5	
c 12	ad No 197, 2012
	am No 154, 2020
c 13	ad No 197, 2012
Schedule 2	rep No 145, 2010
Introduction	am No 51, 2010
	rep No 145, 2010
c 1–5	rep No 145, 2010
c 6	am No 51, 2010
	rep No 145, 2010
c 7	rep No 145, 2010
Schedule 3	ad No 155, 2000
	rep No 197, 2012
c 1	ad No 155, 2000
	rep No 197, 2012
c 2	ad No 155, 2000
	am No 99, 2006; No 144, 2008
	rep No 197, 2012
c 3–6	ad No 155, 2000
	rep No 197, 2012
c 7	ad No 155, 2000

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Provision affected	How affected
	am No 49, 2004
	rep No 197, 2012
c 8, 9	ad No 155, 2000
	rep No 197, 2012
c 10	ad No 155, 2000
	am No 99, 2006
	rep No 197, 2012

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