



Australian Government

Office of the Australian Information Commissioner

Explanatory Statement

Privacy Commissioner's Public Interest Determination No. 11B

December 2010

Explanatory Statement

1. PURPOSE AND AUTHORITY

1.1 Public Interest Determination No. 11B

This explanatory statement fulfils the Privacy Commissioner's obligations under s26(1) of the *Legislative Instruments Act 2003* (Cth).

This explanatory statement refers to Public Interest Determination No. 11B (PID 11B), issued under s72(2) of the *Privacy Act 1988* (Cth) (the Privacy Act).

1.2 Purpose

The purpose of PID 11B is to amend certain typographical errors in the Statements of Reasons for the following determinations made on 16 November 2010:

- *Public Interest Determination No. 11 - Collection and use of contact details of genetic relatives to enable use or disclosure of genetic information* (PID 11), and
- *Public Interest Determination No. 11A - Collection and use of contact details of genetic relatives to enable use or disclosure of genetic information* (PID 11A).

1.3 Provisions for Public Interest Determinations

The Privacy Act provides a mechanism in Part VI for dealing with matters where the public interest in an organisation doing an act or a practice that may breach a National Privacy Principle (NPP) substantially outweighs the public interest in adhering to that Principle.

That mechanism is given effect through the power of the Privacy Commissioner (the Commissioner) to make a public interest determination. The Privacy Commissioner may make a public interest determination by declaring that a specific act or practice of the organisation will not be a breach of the NPPs, where he or she is satisfied that the public interest in doing so substantially outweighs the public interest in adhering to the NPPs in question.

1.4 Authority for making Public Interest Determination No. 11B

The authority for the Commissioner to make PID 11B rests in s72(2) of the Privacy Act. Subsection 72(2) states that the Privacy Commissioner may make a written determination about an organisation's acts and practices in certain circumstances.

A public interest determination made under s72(2) of the Privacy Act is a '*legislative instrument*': see s5 of the *Legislative Instruments Act 2003* (Cth).

Section 33(3) of the *Acts Interpretation Act 1901* (Cth) relevantly provides that where an Act confers a power to make any instrument, unless the contrary attention appears, that power is to be construed as including a power to '*amend or vary any such instrument*'. The power to amend or vary an instrument is to be exercised in a similar manner and subject to similar conditions as the power to make the instrument.

2. REASONS FOR MAKING THE DETERMINATIONS

In making PID 11B, the Privacy Commissioner took account of the possibility of confusion arising from the typographical errors in the Statements of Reasons for PID 11 and PID 11A.

3. CONSULTATION PROCESS

Consultation was conducted in connection with the making of PID 11 and PID 11A. Details of that consultation are included in the Explanatory Statement for those determinations.

No consultation was conducted in connection with the making of PID 11B, as the correction of the typographical errors in the Statements of Reasons for PID 11 and 11A does not alter the operation or effect of those determinations.