

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister to the Attorney-General, Parliamentary Secretary to the Attorney-General

Privacy Amendment (Office of the National Rail Safety Regulator) Regulations 2021

Introduction

The instrument allows the Australian Privacy Principles (APPs) to be applied to the Office of the National Rail Safety Regulator and is consequential to the passage of the Rail Safety National Law.

The *Privacy Act 1988* (the Privacy Act) contains 13 APPs that regulate the handling of individuals' personal information. These principles apply to Australian and Norfolk Island government agencies and to private sector organisations with an annual turnover of \$3 million or more, and certain smaller organisations.

Subsection 100(1) of the Privacy Act provides that the Governor-General may make regulations, not inconsistent with the Privacy Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Privacy Act.

Section 6F of the Privacy Act allows State and Territory Governments to request the Commonwealth to make regulations prescribing a State or Territory Government authority or instrumentality as an organisation for the purposes of the Privacy Act. It also allows for a prescription to modify the application of the Privacy Act to a State or Territory authority or instrumentality.

The *Privacy Regulation 2013* (the Principal Regulation) contains State and Territory authorities and instrumentalities that have been prescribed as organisations under subsection 6F(1) as well as other matters prescribed under the Privacy Act.

Purpose and Operation of the Instrument

The purpose of the *Privacy Amendment (Office of the National Rail Safety Regulator) Regulations 2021* (the new Regulations) is to amend the Principal Regulation to prescribe the Office of the National Rail Safety Regulator (ONRSR) (an authority of South Australia) as an organisation under subsection 6F(1) of the Privacy Act.

The new Regulations provide that, for the purposes of subsection 6F(1) of the Privacy Act, ONRSR (an authority of South Australia) is prescribed as an organisation under the Privacy Act.

The ONRSR is established under Part 2 of Schedule—Rail Safety National Law to the *Rail Safety National Law (South Australia) Act 2012* as the body corporate administering the Rail Safety National Law with functions, responsibilities and powers under that law. The ONRSR has regulatory oversight of rail safety across Australia and enforcement powers including audits, reviews and investigations. Each state and territory has now passed the Rail Safety National Law in their own jurisdiction. Under each jurisdiction's Rail Safety National

Law legislation certain state and territory laws are disapplied in favour of applying the laws of South Australia as the host jurisdiction.

The South Australian Government has requested that the ONRSR be prescribed as an organisation under section 6F of the Privacy Act on behalf of all jurisdictions across Australia. This is because South Australia is one of two Australian jurisdictions (along with Western Australia) without its own privacy legislation that would otherwise apply to the ONRSR as an authority of South Australia. Prescription of the ONRSR as an organisation under the Privacy Act provides a mechanism for the Office of the Australian Information Commissioner to investigate privacy incidents and will provide affected individuals with legally enforceable complaint rights.

Consultation

The Privacy Act provides under subsection 6F(3) that before the Governor-General can prescribe a State or Territory authority as an organisation under the Privacy Act, the Minister must be satisfied that the relevant State or Territory has requested the prescription and must consult the Australian Information Commissioner about the desirability regulating under the Privacy Act the collection, holding, use, correction and disclosure of personal information by the authority. These requirements have been satisfied and the Australian Information Commissioner has agreed to the Regulations as drafted.

Consistent with the requirements in section 17 of the *Legislation Act 2003*, the Office of the Australian Information Commissioner and the ONRSR were consulted on the text of the new Regulations.

The Office of Parliamentary Counsel has consulted the Australasian Parliamentary Counsel's Committee in relation to the effect of the new regulation on the National Law Scheme in each state and territory. No adverse feedback was received from the states and territories during this process.

The Office of Best Practice Regulation (OBPR) was consulted and advised that a Regulation Impact Statement is not required.

Other Details

Details of the new Regulations are at **Attachment A**.

A Statement of Compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is at **Attachment B**.

The new Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Privacy Amendment (Office of the National Rail Safety Regulator) Regulations 2021*

Section 1 – Name

This section provides that the title of the new Regulations is the *Privacy Amendment (Office of the National Rail Safety Regulator) Regulations 2021*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the *Privacy Amendment (Office of the National Rail Safety Regulator) Regulations 2021* are made under the *Privacy Act 1988* (Cth).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item [1] – Subsection 8(1)

Section 8 of the Principal Regulation lists New South Wales and South Australian authorities currently prescribed for the purposes of subsection 6F(1) of the Privacy Act. This new item updates the chapeau for subsection 8(1) to reflect current best practice for legislative drafting.

Item [2] – At the end of section 8

This new item inserts a new subsection (4) under the South Australia heading in section 8. New subsection 8(4) specifies that for the purposes of subsection 6F(1) of the Privacy Act, the Office of the National Rail Safety Regulator is prescribed.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Privacy Amendment (Office of the National Rail Safety Regulator) Regulations 2021

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The Disallowable Legislative Instrument amends the *Privacy Regulation 2013* to prescribe the Office of the National Rail Safety Regulator (ONRSR), an authority of South Australia, as an organisation under subsection 6F(1) of the *Privacy Act 1988* (the Privacy Act).

The ONRSR is established under Part 2 of Schedule—Rail Safety National Law of the *Rail Safety National Law (South Australia) Act 2012* as the body corporate administering the Rail Safety National Law. Each state and territory has now passed the Rail Safety National Law in their own jurisdiction. In the Rail Safety National Law legislation of each jurisdiction, certain state and territory laws are disapplied in favour of applying the laws of South Australia as the host jurisdiction.

South Australia does not have its own privacy legislation. To ensure clear oversight coverage of privacy protections the new Regulations provide a mechanism for the Office of the Australian Information Commissioner to investigate any privacy incidents involving personal information.

Human rights implications

The new Regulations engage Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation, and that everyone has the right to the protection of the law against such interference or attacks.

The new Regulations protect against arbitrary interference with privacy by prescribing the ONRSR as an organisation for the purposes of the Privacy Act to provide affected individuals with legally enforceable complaint rights.

Conclusion

This Legislative Instrument engages the protection against arbitrary interference with privacy. It is compatible with human rights because it is consistent with the right to privacy.