

Public Interest Determination No. 3A

as amended

made under section 72 of the

Privacy Act 1988

**Compilation start date:** 12 March 2014

**Includes amendments up to:** Privacy Public Interest (Enhancing Privacy Protection) Amendment and Repeal Determination 2014 (F2014L00240)

**About this compilation**

**This compilation**

This is a compilation of the *Public Interest Determination No. 3A* as in force on 12 March 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 12 March 2014.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of each amended provision.

**Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

**Application, saving and transitional provisions for provisions and amendments**

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

**Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

**Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

Application No : 2

Applicant : Director of Public Prosecutions

Nature of the
Applicant : to permit disclosure of personal information to relevant statutory disciplinary or regulatory bodies.

**DETERMINATION**

Under section 72 of the Privacy Act 1988 I give notice of my determination as follows:

A waiver is granted from compliance with Australian Privacy Principle 6.1 in relation to the following practice.

**Act or Practice Permitted**

The Director of Public Prosecutions may disclose to a relevant authority information in its possession about an individual where that information indicates serious misconduct directly relevant to the performance of a regulated occupation or profession; or of a public service position.

**1. Meaning of Terms**

(a) A "relevant authority" refers to:

(i) any person or body responsible for investigating or disposing of complaints under a scheme of occupational or professional regulation established or expressly recognised by statute; or

(ii) any person or body responsible for investigating or disposing of complaints relating to the conduct of the holder of a public service position in the government of the Commonwealth; any State; the Australian Capital Territory or the Northern Territory.

(b) A "regulated occupation or profession" refers to any occupation or profession subject to a scheme of occupational or professional regulation established or expressly recognised by statute.

(c) A "public service position" refers to a position in the public services of the governments of the Commonwealth; any State or the Australian Capital Territory or Northern Territory.

**2. Conditions**

Disclosure shall be made subject to the following procedural safeguards:

(1) Unless there are circumstances of urgency or other compelling public interest which justify earlier disclosure, the Director of Public Prosecutions shall only disclose personal information after his office has fulfilled its responsibilities in relation to dealing with that information.

(2) Information contained in any of the following categories of records held by the Director of Public Prosecutions and in so far as the material relates to the individual, may be disclosed:

* witness statements;
* summary statements of facts;
* criminal history records which can reasonably be regarded as relevant and timely and provided they are not protected by spent convictions law;
* transcripts of any relevant proceedings;
* exhibits prepared for or tendered in proceedings.

(3) Unless there is a real likelihood that notification would interfere with the effective conduct of a pending prosecution or any disciplinary procedures, the Director of Public Prosecutions shall advise the individual of his intention to disclose the information and give the individual a reasonable opportunity to comment, in particular as to the scope of the material to be communicated. If practicable, similar action should be taken in relation to any information provided by witnesses or other third parties that is proposed to be forwarded.

(4)The Director of Public Prosecutions shall include with any information supplied to the recipient agency any material of which he has become aware in the course of managing the case, including any ruling, which disputes the accuracy or value of that information.

(5)Disclosure must be authorised by any officer of the agency occupying a position at Senior Executive Service level. Disclosures should take into account any advice given by the agency's Privacy Contact Officer; and be notified to the Privacy Contact Officer.

(6)Any disclosure shall be conditional on a written undertaking from the recipient agency that the information will be handled in a manner consistent with the Australian Privacy Principles, and in particular that Australian Privacy Principle 6.1 (use or disclosure of personal information) will be observed. The recipient agency should be advised of the Australian Information Commissioner's role in monitoring these disclosures.

(7)The disclosure must be made to the principal executive officer of a recipient agency.

(8)The Privacy Contact Officer shall keep a record of all disclosures made by the agency and provide that record to the Office of the Australian Information Commissioner. The record kept shall include the following:

‑ recipient agency;

‑ type of information disclosed;

‑ whether the disclosure was on the agency's initiative or instigated by the recipient agency;

‑ whether the individual or any third party was notified prior to disclosure and the date of that notification.

‑ response from the individual or third party, if any.

**3. Monitoring**

The Australian Information Commissioner shall monitor the operation of this determination and notes that if his office considers that the determination is not being observed, he may make a further determination revoking or varying this determination.

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnote 5—Uncommenced amendments

Endnote 6—Modifications

Endnote 7—Misdescribed amendments

Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

**Abbreviation key—Endnote 2**

The abbreviation key in this endnote 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 the compiled law. The information includes commencement information for amending laws and details of 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 level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

**Uncommenced amendments—Endnote 5**

The effect of uncommenced amendments is not reflected in the text of the compiled law, but the text of the amendments is included in endnote 5.

**Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

**Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

**Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | pres = present |
| am = amended | prev = previous |
| c = clause(s) | (prev) = previously |
| Ch = Chapter(s) | Pt = Part(s) |
| def = definition(s) | r = regulation(s)/rule(s) |
| Dict = Dictionary | Reg = Regulation/Regulations |
| disallowed = disallowed by Parliament | reloc = relocated |
| Div = Division(s) | renum = renumbered |
| exp = expired or ceased to have effect | rep = repealed |
| hdg = heading(s) | rs = repealed and substituted |
| LI = legislative instrument | s = section(s) |
| LIA = *Legislative Instruments Act 2003* | Sch = Schedule(s) |
| mod = modified/modification | Sdiv = Subdivision(s) |
| No = Number(s) | SLI = Select Legislative Instrument |
| o = order(s) | SR = Statutory Rules |
| Ord = Ordinance | Sub-Ch = Sub-Chapter(s) |
| orig = original | SubPt = Subpart(s) |
| par = paragraph(s)/subparagraph(s) /sub-subparagraph(s) |  |

Endnote 3—Legislation history

| Name | FRLI registration or gazettal | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Public Interest Determination No. 3A | 14 Dec 1991 (*see* F2008B00567 | 14 Dec 1991 |  |
| Privacy Public Interest (Enhancing Privacy Protection) Amendment and Repeal Determination 2014 | 11 Mar 2014 (*see* F2014L00240) | 12 Mar 2014 | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| par before par hdg “Act or Practice Permitted” | am F2014L00240 |
| s 2  | am F2014L00240 |
| s 3  | am F2014L00240 |

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]