**EXPLANATORY STATEMENT**

**Select Legislative Instrument No. , 2017**

Issued by the authority of the Attorney-General

*Privacy Act 1988*

*Privacy Amendment (Permitted Disclosures—Energy and Water Utilities) Regulations 2017*

The *Privacy Act 1988* (Cth) (the Privacy Act) establishes, among other things, the Australian Privacy Principles (APPs), which regulate the collection, use, disclosure and storage of personal information by APP entities.

Subsection 100(1) of the Privacy Act provides that the Governor-General may make Regulations prescribing matters required or permitted by the Privacy Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Privacy Act.

The *Privacy Amendment (Permitted Disclosures—Energy and Water Utilities) Regulations 2017* (the Regulations) permit energy and water utilities (utilities) in the Australian Capital Territory (ACT) to disclose credit information until 1 January 2019. This will allow those utilities to continue to access the credit reporting system without the requirement to be a member of an external dispute resolution (EDR) scheme recognised by the Australian Information Commissioner (Commissioner).

*External dispute resolution membership obligation for credit providers*

Pursuant to subparagraph 21D(2)(a)(i) of the Privacy Act, credit providers are required to be members of an EDR scheme recognised by the Commissioner, or as prescribed in the regulations, in order to disclose credit information about an individual to a credit reporting body and thereby participate in the credit reporting system. The purpose of this requirement is to ensure that consumers have access to a convenient, speedy and independent avenue of redress for complaints or other issues that might arise between the individual and the organisation on credit reporting matters. Utilities (water, gas and electricity providers) are considered credit providers under the Privacy Act.

*Permission for utilities to disclose credit information*

The Regulations permit utilities in the ACT to disclose credit information (and thereby continue to access the credit reporting system) until 1 January 2019 without the requirement to be a member of an EDR scheme recognised by the Commissioner.

All Australian jurisdictions require utilities in that jurisdiction to participate in EDR arrangements. To minimise the regulatory burden, the simplest solution for utilities in the ACT is for the existing EDR scheme to be recognised as an EDR scheme by the Commissioner for credit reporting purposes. In the ACT this scheme is the ACT Civil & Administrative Tribunal. However, the Privacy Act does not currently accommodate tribunals in the credit reporting EDR requirement. Therefore, the permission provided in the Regulations allows utilities in the ACT to access the credit reporting system until 1 January 2019. During this time, legislative amendments to the Privacy Act will be progressed to enable EDR schemes to be accessed through tribunals for the purposes of the Privacy Act.

Details of the Regulations are set out in Attachment A.

A Statement of Compatibility with Human Rights is set out in Attachment B prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny Act) 2011*.

Consistent with the requirements of the *Legislation Act 2003,* consultation on the Regulations was undertaken with the Department of Treasury and the Office of the Australian Information Commissioner. The ACT Justice and Community Safety Directorate was also consulted and was supportive of the Regulations.

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

The Privacy Act specifies no conditions that need to be satisfied before the power to make the Regulations is exercised.

The Regulations commenced on 1 January 2018.

**ATTACHMENT A**

***Privacy Amendment (Permitted Disclosures—Energy and Water Utilities) Regulations 2017***

**Preliminary**

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Privacy Amendment (Permitted Disclosures—Energy and Water Utilities) Regulations 2017.*

Section 2 – Commencement

The section provides that the Regulations commence on 1 January 2018.

Section 3 – Authority

This section provides that the Regulations are made under the *Privacy Act 1988*.

Section 4 – Schedule(s)

This section provides that amendments or repeals have effect according to the terms set out in the Schedule(s).

Schedule 1 – Amendments

**Section 14B – Permitted disclosure of credit information by ACT energy and water utilities**

Subsection 14B(1) provides that subparagraph 21D(2)(a)(i) of the *Privacy Act 1988* does not apply in relation to a disclosure of credit information by a credit provider that is an energy or water utility operating in the Australian Capital Territory.

Subsection 14B(2) provides that section 14B is repealed at the end of 1 January 2019.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

**Privacy Regulation 2013**

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 Legislative Instrument**

The *Privacy Amendment (Permitted Disclosures—Energy and Water Utilities) Regulations 2017* (the Regulations) amend the *Privacy Regulation 2013* to permit energy and water utilities (utilities) in the Australian Capital Territory (ACT) to disclose credit information until 1 January 2019. This will allow utilities in the ACT to continue to access the credit reporting system without the requirement to be a member of an external dispute resolution (EDR) scheme recognised by the Australian Information Commissioner.

**Human rights implications**

This Legislative Instrument engages the right to the protection against arbitrary interference with privacy, protected in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). The right to privacy in Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person’s privacy, family, home and correspondence. In order for an interference with a right not to be ‘arbitrary’, the interference must be for a reason consistent with the relevant Convention and reasonable in the particular circumstances.

The Regulations engage with the use and disclosure of credit information, which is personal information. The Regulations ensure that consumers are not disadvantaged simply because of their jurisdiction of residence by time limiting, to 1 January 2019, the permitted disclosure of credit information by utilities without being subject to the EDR membership obligation, and by limiting the permission to disclose credit information to only those utilities operating in the ACT. The measures are time limited, reasonable, necessary and proportionate as they ensure that a discrete subset of personal data is used for the purpose of providing essential services to Australians. These are legitimate objectives consistent with the Privacy Act.

**Conclusion**

This Legislative Instrument engages with the right to privacy, through the use and disclosure of personal data, and does so in a reasonable and proportionate way.