

Explanatory Statement

Issued by the authority of the Privacy Commissioner

Privacy (Tax File Number) Rule 2015

This explanatory statement relates to the Privacy (*Tax File Number*) Rule 2015 (TFN Rule) made under section 17 of the *Privacy Act 1988* (Privacy Act). The TFN Rule replaces the previous *Tax File Number Guidelines 2011* (TFN Guidelines).

This explanatory statement fulfils the Privacy Commissioner's obligations under s 26(1) of the *Legislative Instruments Act 2003* in relation to the lodgement for registration on the Federal Register of Legislative Instruments of the TFN Rule.

Authority for making the Rule

The authority to issue the TFN Rule is contained in section 17 of the Privacy Act.

Section 17 of the Privacy Act states:

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

Section 12 of the *Australian Information Commissioner Act 2010* (AIC Act) provides that the Privacy Commissioner has the 'privacy functions' (which are defined in section 9(1) of the AIC Act). However, section 12(4)(d)(i) of the AIC Act relevantly provides that the Australian Privacy Commissioner may only undertake the issuing, variation or revocation of rules for the purposes of section 17 of the Privacy Act with the approval of the Australian Information Commissioner.

The Privacy Commissioner has issued the TFN Rule. For the purposes of section 12(4)(d)(i) of the AIC Act, the Australian Information Commissioner has approved the Privacy Commissioner issuing the TFN Rule.

Purpose and operation of the TFN Rule

The primary purpose of the TFN Rule is to regulate the collection, storage, use, disclosure, security and disposal of individuals' Tax File Number (TFN) information. A breach of the TFN Rule is an interference with privacy under the Privacy Act. Individuals who consider that their TFN information has been mishandled may make a complaint to the Privacy Commissioner.

The TFN Rule replaces the previous TFN Guidelines and contains two differences.

First, the title of the instrument uses the word ‘rule’ rather than ‘guideline’. On 12 March 2014, the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* introduced significant amendments to the Privacy Act. These amendments included an amendment to section 17, which now refers to the Commissioner issuing rules relating to tax file number information, whereas previously it referred to the Commissioner issuing guidelines relating to tax file number information. The title of the instrument has therefore been updated to reflect this change.

Second, the TFN Rule explicitly authorises the use and disclosure of TFN information by a TFN recipient for the purpose of giving an individual any TFN information that the TFN recipient holds about an individual. This ensures that the TFN Rule does not prevent an individual being given access to their information under Australian Privacy Principle 12 of the Privacy Act, or another Act that provides for access by persons to documents. It was not the intention that the TFN Guidelines would prevent this.

Consultation

The Office of the Australian Information Commissioner (OAIC) conducted extensive consultation with industry stakeholders, peak industry bodies, advocacy groups and Australian Government agencies during the development of the TFN Guidelines.

The changes introduced by the TFN Rule are minor and do not substantially alter existing arrangements. Therefore, in accordance with s 18 of the *Legislative Instruments Act 2003*, the Australian Privacy Commissioner considered that consultation was unnecessary.

Some minor consultation has been conducted with the Department of Human Services who notified the OAIC that the TFN Guidelines may prevent TFN recipients from releasing TFN information to an individual upon their request.

Statement of compatibility with human rights

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

TFN Rule

The Privacy (*Tax File Number*) Rule 2015 (TFN Rule) 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*.

Operation

The TFN Rule is a legally binding rule which regulates the collection, storage, use and security of individuals' Tax File Number (TFN) information and is issued under s 17 of the *Privacy Act 1988* (Privacy Act). The TFN Rule replaces the previous *Tax File Number Guidelines 2011* (TFN Guidelines).

Human rights implications

The TFN Rule engages Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR). Article 17 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 TFN Rule protects against the arbitrary interference with privacy, and advances an individual's right to that protection by:

- regulating the collection, storage, use and security of individuals' TFN information
- including a privacy enhancing provision that ensures individuals are not prevented from being given access to their TFN information.

Conclusion

The TFN Rule advances the protection of human rights.