Privacy Amendment (Enhancing Privacy Protection) Act 2012

No. 197, 2012

An Act to amend the law relating to privacy, and for other purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Privacy Amendment (Enhancing Privacy Protection) Act 2012

No. 197, 2012

An Act to amend the law relating to privacy, and for other purposes

[*Assented to 12 December 2012*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Privacy Amendment(Enhancing Privacy Protection) Act 2012*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 December 2012
2. Schedules 1 to 4	The day after the end of the period of 15 months beginning on the day this Act receives the Royal Assent.	
3. Schedule 5, items 1 to 155	The day after the end of the period of 15 months beginning on the day this Act receives the Royal Assent.	
10. Schedule 5, item 156	The day this Act receives the Royal Assent.	12 December 2012
11. Schedule 5, items 157 to 161	The day after the end of the period of 15 months beginning on the day this Act receives the Royal Assent.	
12. Schedule 5, item 162	The day this Act receives the Royal Assent.	12 December 2012
13. Schedule 5, items 163 to 180	The day after the end of the period of 15 months beginning on the day this Act receives the Royal Assent.	
16. Schedule 6, Part 1	The day this Act receives the Royal Assent.	12 December 2012
17. Schedule 6, Parts 2 and 3	The day after the end of the period of 15 months beginning on the day this Act receives the Royal Assent.	
18. Schedule 6, Part 4	The day this Act receives the Royal Assent.	12 December 2012
19. Schedule 6,	The day after the end of the period of 15	

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
Parts 5 to 7	months beginning on the day this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

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

Schedule 1—Australian Privacy Principles

Privacy Act 1988

1 Section 3

Omit ", disclosure or transfer", substitute "or disclosure".

2 Section 3 (note)

Omit "National", substitute "Australian".

3 Section 5

Repeal the section.

4 Subsection 6(1) (paragraph (i) of the definition of *agency*)

Repeal the paragraph.

5 Subsection 6(1)

Insert:

> ***APP complaint*** means a complaint about an act or practice that, if established, would be an interference with the privacy of an individual because it breached an Australian Privacy Principle.

6 Subsection 6(1)

Insert:

> ***APP entity*** means an agency or organisation.

7 Subsection 6(1)

Insert:

> ***APP privacy policy*** has the meaning given by Australian Privacy Principle 1.3.

8 Subsection 6(1)

Insert:

> ***Australian law*** means:

(a) an Act of the Commonwealth or of a State or Territory; or
(b) regulations, or any other instrument, made under such an Act; or
(c) a Norfolk Island enactment; or
(d) a rule of common law or equity.

9 Subsection 6(1)

Insert:

Australian Privacy Principle has the meaning given by section 14.

10 Subsection 6(1)

Insert:

collects: an entity ***collects*** personal information only if the entity collects the personal information for inclusion in a record or generally available publication.

11 Subsection 6(1)

Insert:

Commonwealth record has the same meaning as in the *Archives Act 1983*.

12 Subsection 6(1)

Insert:

court/tribunal order means an order, direction or other instrument made by:

(a) a court; or
(b) a tribunal; or
(c) a judge (including a judge acting in a personal capacity) or a person acting as a judge; or
(d) a magistrate (including a magistrate acting in a personal capacity) or a person acting as a magistrate; or
(e) a member or an officer of a tribunal;

and includes an order, direction or other instrument that is of an interim or interlocutory nature.

13 Subsection 6(1)

Insert:

de facto partnerof an individual has the meaning given by the *Acts Interpretation Act 1901*.

14 Subsection 6(1)

Insert:

de-identified: personal information is ***de-identified*** if the information is no longer about an identifiable individual or an individual who is reasonably identifiable.

15 Subsection 6(1) (definition of *eligible case manager*)

Repeal the definition.

16 Subsection 6(1) (after paragraph (b) of the definition of *enforcement body*)

Insert:

(ba) the CrimTrac Agency; or

17 Subsection 6(1) (after paragraph (c) of the definition of *enforcement body*)

Insert:

(ca) the Immigration Department; or

18 Subsection 6(1) (after paragraph (e) of the definition of *enforcement body*)

Insert:

(ea) the Office of the Director of Public Prosecutions, or a similar body established under a law of a State or Territory; or

19 Subsection 6(1) (after paragraph (l) of the definition of *enforcement body*)

Insert:

(la) the Corruption and Crime Commission of Western Australia; or

20 Subsection 6(1)

Insert:

enforcement related activity means:

(a) the prevention, detection, investigation, prosecution or punishment of:

(i) criminal offences; or

(ii) breaches of a law imposing a penalty or sanction; or

(b) the conduct of surveillance activities, intelligence gathering activities or monitoring activities; or

(c) the conduct of protective or custodial activities; or

(d) the enforcement of laws relating to the confiscation of the proceeds of crime; or

(e) the protection of the public revenue; or

(f) the prevention, detection, investigation or remedying of misconduct of a serious nature, or other conduct prescribed by the regulations; or

(g) the preparation for, or conduct of, proceedings before any court or tribunal, or the implementation of court/tribunal orders.

21 Subsection 6(1)

Insert:

entity means:

(a) an agency; or

(b) an organisation; or

(c) a small business operator.

22 Subsection 6(1) (definition of *generally available publication*)

Repeal the definition, substitute:

generally available publication means a magazine, book, article, newspaper or other publication that is, or will be, generally available to members of the public:

(a) whether or not it is published in print, electronically or in any other form; and

(b) whether or not it is available on the payment of a fee.

23 Subsection 6(1)

Insert:

government related identifier of an individual means an identifier of the individual that has been assigned by:

(a) an agency; or

(b) a State or Territory authority; or

(c) an agent of an agency, or a State or Territory authority, acting in its capacity as agent; or

(d) a contracted service provider for a Commonwealth contract, or a State contract, acting in its capacity as contracted service provider for that contract.

24 Subsection 6(1)

Insert:

holds: an entity ***holds*** personal information if the entity has possession or control of a record that contains the personal information.

Note: See section 10 for when an agency is taken to hold a record.

25 Subsection 6(1)

Insert:

identifier of an individual means a number, letter or symbol, or a combination of any or all of those things, that is used to identify the individual or to verify the identity of the individual, but does not include:

(a) the individual's name; or

(b) the individual's ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*); or

(c) anything else prescribed by the regulations.

26 Subsection 6(1)

Insert:

Immigration Department means the Department administered by the Minister administering the *Migration Act 1958*.

27 Subsection 6(1) (definition of *Information Privacy Principle*)

Repeal the definition.

28 Subsection 6(1) (definition of *IPP complaint*)

Repeal the definition.

29 Subsection 6(1)

Insert:

> ***misconduct*** includes fraud, negligence, default, breach of trust, breach of duty, breach of discipline or any other misconduct in the course of duty.

30 Subsection 6(1) (definition of *National Privacy Principle*)

Repeal the definition.

31 Subsection 6(1)

Insert:

> ***non-profit organisation*** means an organisation:
>
> (a) that is a non-profit organisation; and
>
> (b) that engages in activities for cultural, recreational, political, religious, philosophical, professional, trade or trade union purposes.

32 Subsection 6(1) (definition of *NPP complaint*)

Repeal the definition.

33 Subsection 6(1)

Insert:

> ***overseas recipient***, in relation to personal information, has the meaning given by Australian Privacy Principle 8.1.

34 Subsection 6(1)

Insert:

> ***permitted general situation*** has the meaning given by section 16A.

35 Subsection 6(1)

Insert:

> ***permitted health situation*** has the meaning given by section 16B.

36 Subsection 6(1) (definition of *personal information*)

Repeal the definition, substitute:

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.

37 Subsection 6(1) (definition of *record*)

Omit "means", substitute "includes".

38 Subsection 6(1) (paragraphs (b) and (c) of the definition of *record*)

Repeal the paragraphs, substitute:

(b) an electronic or other device;

39 Subsection 6(1) (at the end of the definition of *record*)

Add:

Note: For ***document***, see section 2B of the *Acts Interpretation Act 1901*.

40 Subsection 6(1)

Insert:

responsible person has the meaning given by section 6AA.

41 Subsection 6(1) (subparagraph (a)(viii) of the definition of *sensitive information*)

Omit "preferences", substitute "orientation".

42 Subsection 6(1) (at the end of the definition of *sensitive information*)

Add:

; or (d) biometric information that is to be used for the purpose of automated biometric verification or biometric identification; or

(e) biometric templates.

43 Subsection 6(1) (definition of *solicit*)

Repeal the definition.

44 Subsection 6(1)

Insert:

> ***solicits***: an entity ***solicits*** personal information if the entity requests another entity to provide the personal information, or to provide a kind of information in which that personal information is included.

45 Subsection 6(1) (definition of *use*)

Repeal the definition.

46 Subsection 6(2)

Repeal the subsection.

47 Paragraph 6(7)(a)

Omit "IPP", substitute "APP".

48 Paragraph 6(7)(d)

Repeal the paragraph.

49 Paragraph 6(7)(f)

Omit "NPP", substitute "APP".

50 Subsection 6(10)

Omit "and 16E", substitute "and 16".

51 Paragraph 6(10)(a)

Omit "(within the meaning of the *Acts Interpretation Act 1901*)".

52 After section 6

Insert:

6AA Meaning of *responsible person*

(1) A ***responsible person*** for an individual is:

(a) a parent of the individual; or

(b) a child or sibling of the individual if the child or sibling is at least 18 years old; or

(c) a spouse or de facto partner of the individual; or

(d) a relative of the individual if the relative is:

(i) at least 18 years old; and

(ii) a member of the individual's household; or

(e) a guardian of the individual; or

(f) a person exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or

(g) a person who has an intimate personal relationship with the individual; or

(h) a person nominated by the individual to be contacted in case of emergency.

(2) In this section:

child: without limiting who is a child of an individual for the purposes of subsection (1), each of the following is a ***child*** of an individual:

(a) an adopted child, stepchild, exnuptial child or foster child of the individual;

(b) someone who is a child of the individual within the meaning of the *Family Law Act 1975*.

parent: without limiting who is a parent of an individual for the purposes of subsection (1), someone is a ***parent*** of an individual if the individual is his or her child because of the definition of ***child*** in this subsection.

relative of an individual (the ***first individual***) means a grandparent, grandchild, uncle, aunt, nephew or niece of the first individual and for this purpose, relationships to the first individual may also be traced to or through another individual who is:

(a) a de facto partner of the first individual; or

(b) the child of the first individual because of the definition of ***child*** in this subsection.

sibling of an individual includes:

(a) a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster-brother and foster-sister of the individual; and

(b) another individual if a relationship referred to in paragraph (a) can be traced through a parent of either or both of the individuals.

stepchild: without limiting who is a stepchild of an individual, someone is a ***stepchild*** of an individual if he or she would be the individual's stepchild except that the individual is not legally married to the individual's de facto partner.

53 Section 6A (heading)

Repeal the heading, substitute:

6A Breach of an Australian Privacy Principle

54 Subsection 6A(1) (heading)

Repeal the heading.

55 Subsection 6A(1)

Omit "a National", substitute "an Australian".

56 Subsection 6A(1)

Omit "that National Privacy Principle", substitute "that principle".

57 Subsection 6A(2)

Omit "a National", substitute "an Australian".

58 Paragraph 6A(2)(b)

Omit "the Principle", substitute "the principle".

59 Subsections 6A(3) and (4)

Omit "a National", substitute "an Australian".

60 Subparagraphs 6C(4)(b)(ii) and (iii)

Omit ", disclosure and transfer", substitute "and disclosure".

61 Subsection 6EA(1)

Omit "(except section 16D)".

62 Paragraph 6F(3)(b)

Omit ", disclosure and transfer", substitute "and disclosure".

63 Paragraph 7(1)(a)

Omit "an eligible case manager or".

64 Paragraph 7(1)(cb)

Repeal the paragraph.

65 Paragraphs 7(1)(d) and (e)

Omit ", an eligible hearing service provider or an eligible case manager", substitute "or an eligible hearing service provider".

66 Paragraphs 7(1)(ea) and (eb)

Repeal the paragraphs.

67 Subsection 7(2)

Omit "Information Privacy Principles, the National", substitute "Australian".

68 Subsection 7B(1) (note)

Omit "section 16E", substitute "section 16".

69 Subsections 7B(1) and (2) (notes)

Omit "National", substitute "Australian".

70 Paragraph 8(2)(b)

Omit "is not the record-keeper in relation to", substitute "does not hold".

71 Subsection 8(2)

Omit "of the record-keeper in relation to", substitute "of the agency that holds".

72 Section 9

Repeal the section.

73 Section 10 (heading)

Repeal the heading, substitute:

10 Agencies that are taken to hold a record

74 Subsections 10(1) to (3)

Repeal the subsections.

75 Subsections 10(4) and (5)

Omit "as the record-keeper in relation to", substitute "to be the agency that holds".

76 Section 12

Repeal the section.

77 Subsection 13B(1) (note)

Omit "National" (wherever occurring), substitute "Australian".

78 Subsection 13B(1) (note)

Omit "Principle 2", substitute "Principle 6".

79 Subsection 13B(1A) (note)

Omit "National", substitute "Australian".

80 Subsection 13C(1) (note)

Omit "National" (wherever occurring), substitute "Australian".

81 Subsection 13C(1) (note)

Omit "Principle 2", substitute "Principle 6".

82 Divisions 2 and 3 of Part III

Repeal the Divisions, substitute:

Division 2—Australian Privacy Principles

14*Australian Privacy Principles*

(1) The ***Australian Privacy Principles*** are set out in the clauses of Schedule 1.

(2) A reference in any Act to an Australian Privacy Principle by a number is a reference to the Australian Privacy Principle with that number.

15 APP entities must comply with Australian Privacy Principles

An APP entity must not do an act, or engage in a practice, that breaches an Australian Privacy Principle.

16 Personal, family or household affairs

Nothing in the Australian Privacy Principles applies to:

(a) the collection, holding, use or disclosure of personal information by an individual; or

(b) personal information held by an individual;

only for the purposes of, or in connection with, his or her personal, family or household affairs.

16A Permitted general situations in relation to the collection, use or disclosure of personal information

(1) A ***permitted general situation*** exists in relation to the collection, use or disclosure by an APP entity of personal information about an individual, or of a government related identifier of an individual, if:

(a) the entity is an entity of a kind specified in an item in column 1 of the table; and

(b) the item in column 2 of the table applies to the information or identifier; and

(c) such conditions as are specified in the item in column 3 of the table are satisfied.

Permitted general situations

Item	Column 1 Kind of entity	Column 2 Item applies to	Column 3 Condition(s)
1	APP entity	(a) personal information; or (b) a government	(a) it is unreasonable or impracticable to obtain the individual's consent to the collection, use or disclosure; and (b) the entity reasonably believes that

Permitted general situations			
Item	**Column 1** **Kind of entity**	**Column 2** **Item applies to**	**Column 3** **Condition(s)**
		related identifier.	the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.
2	APP entity	(a) personal information; or (b) a government related identifier.	(a) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in; and (b) the entity reasonably believes that the collection, use or disclosure is necessary in order for the entity to take appropriate action in relation to the matter.
3	APP entity	Personal information	(a) the entity reasonably believes that the collection, use or disclosure is reasonably necessary to assist any APP entity, body or person to locate a person who has been reported as missing; and (b) the collection, use or disclosure complies with the rules made under subsection (2).
4	APP entity	Personal information	The collection, use or disclosure is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim.
5	APP entity	Personal information	The collection, use or disclosure is reasonably necessary for the purposes of a confidential alternative dispute resolution process.
6	Agency	Personal information	The entity reasonably believes that the collection, use or disclosure is necessary for the entity's diplomatic or consular functions or activities.
7	Defence Force	Personal information	The entity reasonably believes that the collection, use or disclosure is

Permitted general situations			
Item	**Column 1** **Kind of entity**	**Column 2** **Item applies to**	**Column 3** **Condition(s)**
			necessary for any of the following occurring outside Australia and the external Territories: (a) war or warlike operations; (b) peacekeeping or peace enforcement; (c) civil aid, humanitarian assistance, medical or civil emergency or disaster relief.

(2) The Commissioner may, by legislative instrument, make rules relating to the collection, use or disclosure of personal information that apply for the purposes of item 3 of the table in subsection (1).

16B Permitted health situations in relation to the collection, use or disclosure of health information

Collection—provision of a health service

(1) A ***permitted health situation*** exists in relation to the collection by an organisation of health information about an individual if:

(a) the information is necessary to provide a health service to the individual; and

(b) either:

(i) the collection is required or authorised by or under an Australian law (other than this Act); or

(ii) the information is collected in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

Collection—research etc.

(2) A ***permitted health situation*** exists in relation to the collection by an organisation of health information about an individual if:

(a) the collection is necessary for any of the following purposes:

(i) research relevant to public health or public safety;
(ii) the compilation or analysis of statistics relevant to public health or public safety;
(iii) the management, funding or monitoring of a health service; and

(b) that purpose cannot be served by the collection of information about the individual that is de-identified information; and

(c) it is impracticable for the organisation to obtain the individual's consent to the collection; and

(d) any of the following apply:
(i) the collection is required by or under an Australian law (other than this Act);
(ii) the information is collected in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation;
(iii) the information is collected in accordance with guidelines approved under section 95A for the purposes of this subparagraph.

Use or disclosure—research etc.

(3) A ***permitted health situation*** exists in relation to the use or disclosure by an organisation of health information about an individual if:

(a) the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety; and

(b) it is impracticable for the organisation to obtain the individual's consent to the use or disclosure; and

(c) the use or disclosure is conducted in accordance with guidelines approved under section 95A for the purposes of this paragraph; and

(d) in the case of disclosure—the organisation reasonably believes that the recipient of the information will not disclose the information, or personal information derived from that information.

Use or disclosure—genetic information

(4) A ***permitted health situation*** exists in relation to the use or disclosure by an organisation of genetic information about an individual (the ***first individual***) if:

(a) the organisation has obtained the information in the course of providing a health service to the first individual; and

(b) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of another individual who is a genetic relative of the first individual; and

(c) the use or disclosure is conducted in accordance with guidelines approved under section 95AA; and

(d) in the case of disclosure—the recipient of the information is a genetic relative of the first individual.

Disclosure—responsible person for an individual

(5) A ***permitted health situation*** exists in relation to the disclosure by an organisation of health information about an individual if:

(a) the organisation provides a health service to the individual; and

(b) the recipient of the information is a responsible person for the individual; and

(c) the individual:

(i) is physically or legally incapable of giving consent to the disclosure; or

(ii) physically cannot communicate consent to the disclosure; and

(d) another individual (the ***carer***) providing the health service for the organisation is satisfied that either:

(i) the disclosure is necessary to provide appropriate care or treatment of the individual; or

(ii) the disclosure is made for compassionate reasons; and

(e) the disclosure is not contrary to any wish:

(i) expressed by the individual before the individual became unable to give or communicate consent; and

(ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and

(f) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (d).

16C Acts and practices of overseas recipients of personal information

(1) This section applies if:

(a) an APP entity discloses personal information about an individual to an overseas recipient; and

(b) Australian Privacy Principle 8.1 applies to the disclosure of the information; and

(c) the Australian Privacy Principles do not apply, under this Act, to an act done, or a practice engaged in, by the overseas recipient in relation to the information; and

(d) the overseas recipient does an act, or engages in a practice, in relation to the information that would be a breach of the Australian Privacy Principles (other than Australian Privacy Principle 1) if those Australian Privacy Principles so applied to that act or practice.

(2) The act done, or the practice engaged in, by the overseas recipient is taken, for the purposes of this Act:

(a) to have been done, or engaged in, by the APP entity; and

(b) to be a breach of those Australian Privacy Principles by the APP entity.

83 Section 37 (table items 6 and 7)

Repeal the items.

84 Subsections 54(2) and 57(2) (definition of *agency*)

Omit ", an eligible hearing service provider or an eligible case manager", substitute "or an eligible hearing service provider".

85 Paragraph 80H(2)(e)

Omit "people who are ***responsible*** (within the meaning of subclause 2.5 of Schedule 3)", substitute "responsible persons".

86 Subparagraph 80P(1)(c)(v)

Repeal the subparagraph, substitute:

(v) a responsible person for the individual; and

87 Paragraph 80Q(1)(c)

Omit "***responsible*** for the individual (within the meaning of subclause 2.5 of Schedule 3)", substitute "a responsible person for the individual".

88 Subsection 95(1)

After "privacy", insert "by agencies".

89 Subsections 95(2) and (4)

Omit "Information" (wherever occurring), substitute "Australian".

90 Section 95A (heading)

Repeal the heading, substitute:

95A Guidelines for Australian Privacy Principles about health information

91 Subsection 95A(1)

Omit "National Privacy Principles (the ***NPPs***)", substitute "Australian Privacy Principles".

92 Subsection 95A(2)

Omit "subparagraph 2.1(d)(ii) of the NPPs", substitute "paragraph 16B(3)(c)".

93 Subsection 95A(3)

Omit "NPPs (other than paragraph 2.1(d))", substitute "Australian Privacy Principles (disregarding subsection 16B(3))".

94 Subsection 95A(4)

Omit "subparagraph 10.3(d)(iii) of the NPPs", substitute "subparagraph 16B(2)(d)(iii)".

95 Subsection 95A(5)

Omit "NPPs (other than paragraph 10.3(d))", substitute "Australian Privacy Principles (disregarding subsection 16B(2))".

96 Section 95AA (heading)

Repeal the heading, substitute:

95AA Guidelines for Australian Privacy Principles about genetic information

97 Subsection 95AA(1)

Omit "National Privacy Principles (the ***NPPs***)", substitute "Australian Privacy Principles".

98 Subsection 95AA(2)

Omit "subparagraph 2.1(ea)(ii) of the NPPs", substitute "paragraph 16B(4)(c)".

99 Subsection 95AA(2)

Omit "(whether or not the threat is imminent)".

100 Subsection 95B(1)

Omit "Information", substitute "Australian".

101 Section 95C

Omit "a National", substitute "an Australian".

102 Subsections 100(2) to (4)

Repeal the subsections, substitute:

(2) Before the Governor-General makes regulations for the purposes of Australian Privacy Principle 9.3 prescribing a government related identifier, an organisation or a class of organisations, and circumstances, the Minister must be satisfied that:

(a) the relevant agency or State or Territory authority or, if the relevant agency or State or Territory authority has a principal executive, the principal executive:

(i) has agreed that the adoption, use or disclosure of the identifier by the organisation, or the class of organisations, in the circumstances is appropriate; and

(ii) has consulted the Commissioner about that adoption, use or disclosure; and

(b) the adoption, use or disclosure of the identifier by the organisation, or the class of organisations, in the circumstances can only be for the benefit of the individual to whom the identifier relates.

(3) Subsection (2) does not apply to the making of regulations for the purposes of Australian Privacy Principle 9.3 that relate to the use or disclosure of a government related identifier by an organisation, or a class of organisations, in particular circumstances if:

(a) the identifier is a kind commonly used in the processing of pay, or deductions from pay, of Commonwealth officers, or a class of Commonwealth officers; and

(b) the circumstances of the use or disclosure of the identifier relate to the provision by:

(i) the organisation; or

(ii) the class of organisations;

of superannuation services (including the management, processing, allocation and transfer of superannuation contributions) for the benefit of Commonwealth officers or the class of Commonwealth officers; and

(c) before the regulations are made, the Minister consults the Commissioner about the proposed regulations.

103 Part X

Repeal the Part.

104 Schedules 1 and 3

Repeal the Schedules, substitute:

Schedule 1—Australian Privacy Principles

Note: See section 14.

Overview of the Australian Privacy Principles

Overview

This Schedule sets out the Australian Privacy Principles.

Part 1 sets out principles that require APP entities to consider the privacy of personal information, including ensuring that APP entities manage personal information in an open and transparent way.

Part 2 sets out principles that deal with the collection of personal information including unsolicited personal information.

Part 3 sets out principles about how APP entities deal with personal information and government related identifiers. The Part includes principles about the use and disclosure of personal information and those identifiers.

Part 4 sets out principles about the integrity of personal information. The Part includes principles about the quality and security of personal information.

Part 5 sets out principles that deal with requests for access to, and the correction of, personal information.

Australian Privacy Principles

The Australian Privacy Principles are:

Australian Privacy Principle 1—open and transparent management of personal information

Australian Privacy Principle 2—anonymity and pseudonymity

Australian Privacy Principle 3—collection of solicited personal information

Australian Privacy Principle 4—dealing with unsolicited personal information

Australian Privacy Principle 5—notification of the collection of personal information

Australian Privacy Principle 6—use or disclosure of personal information

Australian Privacy Principle 7—direct marketing

Australian Privacy Principle 8—cross-border disclosure of personal information

Australian Privacy Principle 9—adoption, use or disclosure of government related identifiers

Australian Privacy Principle 10—quality of personal information

Australian Privacy Principle 11—security of personal information

Australian Privacy Principle 12—access to personal information

Australian Privacy Principle 13—correction of personal information

Part 1—Consideration of personal information privacy

1 Australian Privacy Principle 1—open and transparent management of personal information

1.1 The object of this principle is to ensure that APP entities manage personal information in an open and transparent way.

Compliance with the Australian Privacy Principles etc.

1.2 An APP entity must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the entity's functions or activities that:

(a) will ensure that the entity complies with the Australian Privacy Principles and a registered APP code (if any) that binds the entity; and

(b) will enable the entity to deal with inquiries or complaints from individuals about the entity's compliance with the Australian Privacy Principles or such a code.

APP Privacy policy

1.3 An APP entity must have a clearly expressed and up-to-date policy (the ***APP privacy policy***) about the management of personal information by the entity.

1.4 Without limiting subclause 1.3, the APP privacy policy of the APP entity must contain the following information:

(a) the kinds of personal information that the entity collects and holds;

(b) how the entity collects and holds personal information;

(c) the purposes for which the entity collects, holds, uses and discloses personal information;

(d) how an individual may access personal information about the individual that is held by the entity and seek the correction of such information;

(e) how an individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the entity, and how the entity will deal with such a complaint;

(f) whether the entity is likely to disclose personal information to overseas recipients;

(g) if the entity is likely to disclose personal information to overseas recipients—the countries in which such recipients are likely to be located if it is practicable to specify those countries in the policy.

Availability of APP privacy policy etc.

1.5 An APP entity must take such steps as are reasonable in the circumstances to make its APP privacy policy available:

(a) free of charge; and

(b) in such form as is appropriate.

Note: An APP entity will usually make its APP privacy policy available on the entity's website.

1.6 If a person or body requests a copy of the APP privacy policy of an APP entity in a particular form, the entity must take such steps as are reasonable in the circumstances to give the person or body a copy in that form.

2 Australian Privacy Principle 2—anonymity and pseudonymity

2.1 Individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with an APP entity in relation to a particular matter.

2.2 Subclause 2.1 does not apply if, in relation to that matter:

(a) the APP entity is required or authorised by or under an Australian law, or a court/tribunal order, to deal with individuals who have identified themselves; or

(b) it is impracticable for the APP entity to deal with individuals who have not identified themselvesor who have used a pseudonym.

Part 2—Collection of personal information

3 Australian Privacy Principle 3—collection of solicited personal information

Personal information other than sensitive information

3.1 If an APP entity is an agency, the entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities.

3.2 If an APP entity is an organisation, the entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for one or more of the entity's functions or activities.

Sensitive information

3.3 An APP entity must not collect sensitive information about an individual unless:

(a) the individual consents to the collection of the information and:

(i) if the entity is an agency—the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities; or

(ii) if the entity is an organisation—the information is reasonably necessary for one or more of the entity's functions or activities; or

(b) subclause 3.4 applies in relation to the information.

3.4 This subclause applies in relation to sensitive information about an individual if:

(a) the collection of the information is required or authorised by or under an Australian law or a court/tribunal order; or

(b) a permitted general situation exists in relation to the collection of the information by the APP entity; or

(c) the APP entity is an organisation and a permitted health situation exists in relation to the collection of the information by the entity; or

(d) the APP entity is an enforcement body and the entity reasonably believes that:

(i) if the entity is the Immigration Department—the collection of the information is reasonably necessary for, or directly related to, one or more enforcement related activities conducted by, or on behalf of, the entity; or

(ii) otherwise—the collection of the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities; or

(e) the APP entity is a non-profit organisation and both of the following apply:

(i) the information relates to the activities of the organisation;

(ii) the information relates solely to the members of the organisation, or to individuals who have regular contact with the organisation in connection with its activities.

Note: For ***permitted general situation***, see section 16A. For ***permitted health situation***, see section 16B.

Means of collection

3.5 An APP entity must collect personal information only by lawful and fair means.

3.6 An APP entity must collect personal information about an individual only from the individual unless:

(a) if the entity is an agency:

(i) the individual consents to the collection of the information from someone other than the individual; or

(ii) the entity is required or authorised by or under an Australian law, or a court/tribunal order, to collect the information from someone other than the individual; or

(b) it is unreasonable or impracticable to do so.

Solicited personal information

3.7 This principle applies to the collection of personal information that is solicited by an APP entity.

4 Australian Privacy Principle 4—dealing with unsolicited personal information

4.1 If:

(a) an APP entity receives personal information; and

(b) the entity did not solicit the information;

the entity must, within a reasonable period after receiving the information, determine whether or not the entity could have collected the information under AustralianPrivacy Principle 3 if the entity had solicited the information.

4.2 The APP entity may use or disclose the personal information for the purposes of making the determination under subclause 4.1.

4.3 If:

(a) the APP entity determines that the entity could not have collected the personal information; and

(b) the information is not contained in a Commonwealth record;

the entity must, as soon as practicable but only if it is lawful and reasonable to do so, destroy the information or ensure that the information is de-identified.

4.4 If subclause 4.3 does not apply in relation to the personal information, Australian Privacy Principles 5 to 13 apply in relation to the information as if the entity had collected the information under AustralianPrivacy Principle 3.

5 Australian Privacy Principle 5—notification of the collection of personal information

5.1 At or before the time or, if that is not practicable, as soon as practicable after, an APP entity collects personal information about an individual, the entity must take such steps (if any) as are reasonable in the circumstances:

(a) to notify the individual of such matters referred to in subclause 5.2 as are reasonable in the circumstances; or

(b) to otherwise ensure that the individual is aware of any such matters.

5.2 The matters for the purposes of subclause 5.1 are as follows:

(a) the identity and contact details of the APP entity;

(b) if:

(i) the APP entity collects the personal information from someone other than the individual; or

(ii) the individual may not be aware that the APP entity has collected the personal information;

the fact that the entity so collects, or has collected, the information and the circumstances of that collection;

(c) if the collection of the personal information is required or authorised by or under an Australian law or a court/tribunal order—the fact that the collection is so required or authorised (including the name of the Australian law, or details of the court/tribunal order, that requires or authorises the collection);

(d) the purposes for which the APP entity collects the personal information;

(e) the main consequences (if any) for the individual if all or some of the personal information is not collected by the APP entity;

(f) any other APP entity, body or person, or the types of any other APP entities, bodies or persons, to which the APP entity usually discloses personal information of the kind collected by the entity;

(g) that the APP privacy policy of the APP entity contains information about how the individual may access the personal information about the individual that is held by the entity and seek the correction of such information;

(h) that the APP privacy policy of the APP entity contains information about how the individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the entity, and how the entity will deal with such a complaint;

(i) whether the APP entity is likely to disclose the personal information to overseas recipients;

(j) if the APP entity is likely to disclose the personal information to overseas recipients—the countries in which such recipients

are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them.

Part 3—Dealing with personal information

6 Australian Privacy Principle 6—use or disclosure of personal information

Use or disclosure

6.1 If an APP entity holds personal information about an individual that was collected for a particular purpose (the ***primary purpose***), the entity must not use or disclose the information for another purpose (the ***secondary purpose***) unless:

(a) the individual has consented to the use or disclosure of the information; or

(b) subclause 6.2 or 6.3 applies in relation to the use or disclosure of the information.

Note: Australian Privacy Principle 8 sets out requirements for the disclosure of personal information to a person who is not in Australia or an external Territory.

6.2 This subclause applies in relation to the use or disclosure of personal information about an individual if:

(a) the individual would reasonably expect the APP entity to use or disclose the information for the secondary purpose and the secondary purpose is:

(i) if the information is sensitive information—directly related to the primary purpose; or

(ii) if the information is not sensitive information—related to the primary purpose; or

(b) the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or

(c) a permitted general situation exists in relation to the use or disclosure of the information by the APP entity; or

(d) the APP entity is an organisation and a permitted health situation exists in relation to the use or disclosure of the information by the entity; or

(e) the APP entity reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body.

Note: For ***permitted general situation***, see section 16A. For ***permitted health situation***, see section 16B.

6.3 This subclause applies in relation to the disclosure of personal information about an individual by an APP entity that is an agency if:

(a) the agency is not an enforcement body; and

(b) the information is biometric information or biometric templates; and

(c) the recipient of the information is an enforcement body; and

(d) the disclosure is conducted in accordance with the guidelines made by the Commissioner for the purposes of this paragraph.

6.4 If:

(a) the APP entity is an organisation; and

(b) subsection 16B(2) applied in relation to the collection of the personal information by the entity;

the entity must take such steps as are reasonable in the circumstances to ensure that the information is de-identified before the entity discloses it in accordance with subclause 6.1 or 6.2.

Written note of use or disclosure

6.5 If an APP entity uses or discloses personal information in accordance with paragraph 6.2(e), the entity must make a written note of the use or disclosure.

Related bodies corporate

6.6 If:

(a) an APP entity is a body corporate; and

(b) the entity collects personal information from a related body corporate;

this principle applies as if the entity's primary purpose for the collection of the information were the primary purpose for which the related body corporate collected the information.

Exceptions

6.7 This principle does not apply to the use or disclosure by an organisation of:

(a) personal information for the purpose of direct marketing; or

(b) government related identifiers.

7 Australian Privacy Principle 7—direct marketing

Direct marketing

7.1 If an organisation holds personal information about an individual, the organisation must not use or disclose the information for the purpose of direct marketing.

Note: An act or practice of an agency may be treated as an act or practice of an organisation, see section 7A.

Exceptions—personal information other than sensitive information

7.2 Despite subclause 7.1, an organisation may use or disclose personal information (other than sensitive information) about an individual for the purpose of direct marketing if:

(a) the organisation collected the information from the individual; and

(b) the individual would reasonably expect the organisation to use or disclose the information for that purpose; and

(c) the organisation provides a simple means by which the individual may easily request not to receive direct marketing communications from the organisation; and

(d) the individual has not made such a request to the organisation.

7.3 Despite subclause 7.1, an organisation may use or disclose personal information (other than sensitive information) about an individual for the purpose of direct marketing if:

(a) the organisation collected the information from:

(i) the individual and the individual would not reasonably expect the organisation to use or disclose the information for that purpose; or

(ii) someone other than the individual; and

(b) either:

(i) the individual has consented to the use or disclosure of the information for that purpose; or

(ii) it is impracticable to obtain that consent; and

(c) the organisation provides a simple means by which the individual may easily request not to receive direct marketing communications from the organisation; and

(d) in each direct marketing communication with the individual:

(i) the organisation includes a prominent statement that the individual may make such a request; or

(ii) the organisation otherwise draws the individual's attention to the fact that the individual may make such a request; and

(e) the individual has not made such a request to the organisation.

Exception—sensitive information

7.4 Despite subclause 7.1, an organisation may use or disclose sensitive information about an individual for the purpose of direct marketing if the individual has consented to the use or disclosure of the information for that purpose.

Exception—contracted service providers

7.5 Despite subclause 7.1, an organisation may use or disclose personal information for the purpose of direct marketing if:

(a) the organisation is a contracted service provider for a Commonwealth contract; and

(b) the organisation collected the information for the purpose of meeting (directly or indirectly) an obligation under the contract; and

(c) the use or disclosure is necessary to meet (directly or indirectly) such an obligation.

Individual may request not to receive direct marketing communications etc.

7.6 If an organisation (the ***first organisation***) uses or discloses personal information about an individual:

(a) for the purpose of direct marketing by the first organisation; or

(b) for the purpose of facilitating direct marketing by other organisations;

the individual may:

(c) if paragraph (a) applies—request not to receive direct marketing communications from the first organisation; and

(d) if paragraph (b) applies—request the organisation not to use or disclose the information for the purpose referred to in that paragraph; and

(e) request the first organisation to provide its source of the information.

7.7 If an individual makes a request under subclause 7.6, the first organisation must not charge the individual for the making of, or to give effect to, the request and:

(a) if the request is of a kind referred to in paragraph 7.6(c) or (d)—the first organisation must give effect to the request within a reasonable period after the request is made; and

(b) if the request is of a kind referred to in paragraph 7.6(e)—the organisation must, within a reasonable period after the request is made, notify the individual of its source unless it is impracticable or unreasonable to do so.

Interaction with other legislation

7.8 This principle does not apply to the extent that any of the following apply:

(a) the *Do Not Call Register Act 2006*;

(b) the *Spam Act 2003*;

(c) any other Act of the Commonwealth, or a Norfolk Island enactment, prescribed by the regulations.

8 Australian Privacy Principle 8—cross-border disclosure of personal information

8.1 Before an APP entity discloses personal information about an individual to a person (the ***overseas recipient***):

(a) who is not in Australia or an external Territory; and

(b) who is not the entity or the individual;

the entity must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach

the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information.

Note: In certain circumstances, an act done, or a practice engaged in, by the overseas recipient is taken, under section 16C, to have been done, or engaged in, by the APP entity and to be a breach of the Australian Privacy Principles.

8.2 Subclause 8.1 does not apply to the disclosure of personal information about an individual by an APP entity to the overseas recipient if:

(a) the entity reasonably believes that:

(i) the recipient of the information is subject to a law, or binding scheme, that has the effect of protecting the information in a way that, overall, is at least substantially similar to the way in which the Australian Privacy Principles protect the information; and

(ii) there are mechanisms that the individual can access to take action to enforce that protection of the law or binding scheme; or

(b) both of the following apply:

(i) the entity expressly informs the individual that if he or she consents to the disclosure of the information, subclause 8.1 will not apply to the disclosure;

(ii) after being so informed, the individual consents to the disclosure; or

(c) the disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or

(d) a permitted general situation (other than the situation referred to in item 4 or 5 of the table in subsection 16A(1)) exists in relation to the disclosure of the information by the APP entity; or

(e) the entity is an agency and the disclosure of the information is required or authorised by or under an international agreement relating to information sharing to which Australia is a party; or

(f) the entity is an agency and both of the following apply:

(i) the entity reasonably believes that the disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body;

(ii) the recipient is a body that performs functions, or exercises powers, that are similar to those performed or exercised by an enforcement body.

Note: For ***permitted general situation***, see section 16A.

9 Australian Privacy Principle 9—adoption, use or disclosure of government related identifiers

Adoption of government related identifiers

9.1 An organisation must not adopt a government related identifier of an individual as its own identifier of the individual unless:

(a) the adoption of the government related identifier is required or authorised by or under an Australian law or a court/tribunal order; or

(b) subclause 9.3 applies in relation to the adoption.

Note: An act or practice of an agency may be treated as an act or practice of an organisation, see section 7A.

Use or disclosure of government related identifiers

9.2 An organisation must not use or disclose a government related identifier of an individual unless:

(a) the use or disclosure of the identifier is reasonably necessary for the organisation to verify the identity of the individual for the purposes of the organisation's activities or functions; or

(b) the use or disclosure of the identifier is reasonably necessary for the organisation to fulfil its obligations to an agency or a State or Territory authority; or

(c) the use or disclosure of the identifier is required or authorised by or under an Australian law or a court/tribunal order; or

(d) a permitted general situation (other than the situation referred to in item 4 or 5 of the table in subsection 16A(1)) exists in relation to the use or disclosure of the identifier; or

(e) the organisation reasonably believes that the use or disclosure of the identifier is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body; or

(f) subclause 9.3 applies in relation to the use or disclosure.

Note 1: An act or practice of an agency may be treated as an act or practice of an organisation, see section 7A.

Note 2: For ***permitted general situation***, see section 16A.

Regulations about adoption, use or disclosure

9.3 This subclause applies in relation to the adoption, use or disclosure by an organisation of a government related identifier of an individual if:

(a) the identifier is prescribed by the regulations; and

(b) the organisation is prescribed by the regulations, or is included in a class of organisations prescribed by the regulations; and

(c) the adoption, use or disclosure occurs in the circumstances prescribed by the regulations.

Note: There are prerequisites that must be satisfied before the matters mentioned in this subclause are prescribed, see subsections 100(2) and (3).

Part 4—Integrity of personal information

10 Australian Privacy Principle 10—quality of personal information

10.1 An APP entity must take such steps (if any) as are reasonable in the circumstances to ensure that the personal information that the entity collects is accurate, up-to-date and complete.

10.2 An APP entity must take such steps (if any) as are reasonable in the circumstances to ensure that the personal information that the entity uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

11 Australian Privacy Principle 11—security of personal information

11.1 If an APP entity holds personal information, the entity must take such steps as are reasonable in the circumstances to protect the information:

(a) from misuse, interference and loss; and

(b) from unauthorised access, modification or disclosure.

11.2 If:

(a) an APP entity holds personal information about an individual; and

(b) the entity no longer needs the information for any purpose for which the information may be used or disclosed by the entity under this Schedule; and

(c) the information is not contained in a Commonwealth record; and

(d) the entity is not required by or under an Australian law, or a court/tribunal order, to retain the information;

the entity must take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de-identified.

Part 5—Access to, and correction of, personal information

12 Australian Privacy Principle 12—access to personal information

Access

12.1 If an APP entity holds personal information about an individual, the entity must, on request by the individual, give the individual access to the information.

Exception to access—agency

12.2 If:

(a) the APP entity is an agency; and

(b) the entity is required or authorised to refuse to give the individual access to the personal information by or under:

(i) the Freedom of Information Act; or

(ii) any other Act of the Commonwealth, or a Norfolk Island enactment, that provides for access by persons to documents;

then, despite subclause 12.1, the entity is not required to give access to the extent that the entity is required or authorised to refuse to give access.

Exception to access—organisation

12.3 If the APP entity is an organisation then, despite subclause 12.1, the entity is not required to give the individual access to the personal information to the extent that:

(a) the entity reasonably believes that giving access would pose a serious threat to the life, health or safety of any individual, or to public health or public safety; or

(b) giving access would have an unreasonable impact on the privacy of other individuals; or

(c) the request for access is frivolous or vexatious; or

(d) the information relates to existing or anticipated legal proceedings between the entity and the individual, and would not be accessible by the process of discovery in those proceedings; or

(e) giving access would reveal the intentions of the entity in relation to negotiations with the individual in such a way as to prejudice those negotiations; or

(f) giving access would be unlawful; or

(g) denying access is required or authorised by or under an Australian law or a court/tribunal order; or

(h) both of the following apply:

(i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in;

(ii) giving access would be likely to prejudice the taking of appropriate action in relation to the matter; or

(i) giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body; or

(j) giving access would reveal evaluative information generated within the entity in connection with a commercially sensitive decision-making process.

Dealing with requests for access

12.4 The APP entity must:

(a) respond to the request for access to the personal information:

(i) if the entity is an agency—within 30 days after the request is made; or

(ii) if the entity is an organisation—within a reasonable period after the request is made; and

(b) give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so.

Other means of access

12.5 If the APP entity refuses:

(a) to give access to the personal information because of subclause 12.2 or 12.3; or

(b) to give access in the manner requested by the individual;

the entity must take such steps (if any) as are reasonable in the circumstances to give access in a way that meets the needs of the entity and the individual.

12.6 Without limiting subclause 12.5, access may be given through the use of a mutually agreed intermediary.

Access charges

12.7 If the APP entity is an agency, the entity must not charge the individual for the making of the request or for giving access to the personal information.

12.8 If:

(a) the APP entity is an organisation; and

(b) the entity charges the individual for giving access to the personal information;

the charge must not be excessive and must not apply to the making of the request.

Refusal to give access

12.9 If the APP entity refuses to give access to the personal information because of subclause 12.2 or 12.3, or to give access in the manner requested by the individual, the entity must give the individual a written notice that sets out:

(a) the reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and

(b) the mechanisms available to complain about the refusal; and

(c) any other matter prescribed by the regulations.

12.10 If the APP entity refuses to give access to the personal information because of paragraph 12.3(j), the reasons for the refusal may include an explanation for the commercially sensitive decision.

13 Australian Privacy Principle 13—correction of personal information

Correction

13.1 If:

(a) an APP entity holds personal information about an individual; and

(b) either:

(i) the entity is satisfiedthat, having regard to a purpose for which the information is held, the information is inaccurate, out-of-date, incomplete, irrelevant or misleading; or

(ii) the individual requests the entity to correct the information;

the entity must take such steps (if any) as are reasonable in the circumstances to correct that information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete, relevant and not misleading.

Notification of correction to third parties

13.2 If:

(a) the APP entity corrects personal information about an individual that the entity previously disclosed to another APP entity; and

(b) the individual requests the entity to notify the other APP entityof the correction;

the entity must take such steps (if any) as are reasonable in the circumstances to give that notification unless it is impracticable or unlawful to do so.

Refusal to correct information

13.3 If the APP entity refuses to correct the personal information as requested by the individual, the entity must give the individual a written notice that sets out:

(a) the reasons for the refusal except to the extent that it would be unreasonable to do so; and

(b) the mechanisms available to complain about the refusal; and

(c) any other matter prescribed by the regulations.

Request to associate a statement

13.4 If:

(a) the APP entity refuses to correct the personal information as requested by the individual; and

(b) the individual requests the entity to associate with the information a statement that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

the entity must take such steps as are reasonable in the circumstances to associate the statement in such a way that will make the statement apparent to users of the information.

Dealing with requests

13.5 If a request is made under subclause 13.1 or 13.4, the APP entity:

(a) must respond to the request:

(i) if the entity is an agency—within 30 days after the request is made; or

(ii) if the entity is an organisation—within a reasonable period after the request is made; and

(b) must not charge the individual for the making of the request, for correcting the personal information or for associating the statement with the personal information (as the case may be).

Schedule 2—Credit reporting

Privacy Act 1988

1 Before section 6

Insert:

Division 1—General definitions

2 Subsection 6(1)

Insert:

access seeker has the meaning given by subsection 6L(1).

3 Subsection 6(1)

Insert:

affected information recipient means:

(a) a mortgage insurer; or
(b) a trade insurer; or
(c) a body corporate referred to in paragraph 21G(3)(b); or
(d) a person referred to in paragraph 21G(3)(c); or
(e) an entity or adviser referred to in paragraph 21N(2)(a).

4 Subsection 6(1)

Insert:

amount of credit has the meaning given by subsection 6M(2).

5 Subsection 6(1)

Insert:

Bankruptcy Act means the *Bankruptcy Act 1966*.

6 Subsection 6(1)

Insert:

ban period has the meaning given by subsection 20K(3).

7 Subsection 6(1) (definition of *commercial credit*)

Repeal the definition, substitute:

commercial credit means credit (other than consumer credit) that is applied for by, or provided to, a person.

8 Subsection 6(1)

Insert:

commercial credit related purpose of a credit provider in relation to a person means the purpose of:

(a) assessing an application for commercial credit made by the person to the provider; or

(b) collecting payments that are overdue in relation to commercial credit provided by the provider to the person.

9 Subsection 6(1)

Insert:

consumer credit means credit:

(a) for which an application has been made by an individual to a credit provider, or that has been provided to an individual by a credit provider, in the course of the provider carrying on a business or undertaking as a credit provider; and

(b) that is intended to be used wholly or primarily:

(i) for personal, family or household purposes; or

(ii) to acquire, maintain, renovate or improve residential property for investment purposes; or

(iii) to refinance consumer credit that has been provided wholly or primarily to acquire, maintain, renovate or improve residential property for investment purposes.

10 Subsection 6(1)

Insert:

consumer credit liability information: if a credit provider provides consumer credit to an individual, the following information about the consumer credit is ***consumer credit liability information*** about the individual:

(a) the name of the provider;

(b) whether the provider is a licensee;
(c) the type of consumer credit;
(d) the day on which the consumer credit is entered into;
(e) the terms or conditions of the consumer credit:
(i) that relate to the repayment of the amount of credit; and
(ii) that are prescribed by the regulations;
(f) the maximum amount of credit available under the consumer credit;
(g) the day on which the consumer credit is terminated or otherwise ceases to be in force.

11 Subsection 6(1)

Insert:

consumer credit related purpose of a credit provider in relation to an individual means the purpose of:
(a) assessing an application for consumer credit made by the individual to the provider; or
(b) collecting payments that are overdue in relation to consumer credit provided by the provider to the individual.

12 Subsection 6(1)

Insert:

court proceedings information about an individual means information about a judgement of an Australian court:
(a) that is made, or given, against the individual in proceedings (other than criminal proceedings); and
(b) that relates to any credit that has been provided to, or applied for by, the individual.

13 Subsection 6(1)

Insert:

CP derived information about an individual means any personal information (other than sensitive information) about the individual:
(a) that is derived from credit reporting information about the individual that was disclosed to a credit provider by a credit reporting body under Division 2 of Part IIIA; and

(b) that has any bearing on the individual's credit worthiness; and

(c) that is used, has been used or could be used in establishing the individual's eligibility for consumer credit.

14 Subsection 6(1)

Insert:

CRB derived information about an individual means any personal information (other than sensitive information) about the individual:

(a) that is derived by a credit reporting body from credit information about the individual that is held by the body; and

(b) that has any bearing on the individual's credit worthiness; and

(c) that is used, has been used or could be used in establishing the individual's eligibility for consumer credit.

15 Subsection 6(1) (definition of *credit*)

Repeal the definition, substitute:

credit has the meaning given by subsections 6M(1) and (3).

16 Subsection 6(1) (definition of *credit card*)

Omit "loans" (wherever occurring), substitute "credit".

17 Subsection 6(1)

Insert:

credit eligibility information about an individual means:

(a) credit reporting information about the individual that was disclosed to a credit provider by a credit reporting body under Division 2 of Part IIIA; or

(b) CP derived information about the individual.

18 Subsection 6(1) (definition of *credit enhancement*)

Omit "a loan", substitute "credit".

19 Subsection 6(1) (paragraphs (a) and (b) of the definition of *credit enhancement*)

Omit "the loan", substitute "the credit".

20 Subsection 6(1)

Insert:

credit guarantee purpose of a credit provider in relation to an individual means the purpose of assessing whether to accept the individual as a guarantor in relation to:

(a) credit provided by the provider to a person other than the individual; or

(b) credit for which an application has been made to the provider by a person other than the individual.

21 Subsection 6(1)

Insert:

credit information has the meaning given by section 6N.

22 Subsection 6(1) (definition of *credit information file*)

Repeal the definition.

23 Subsection 6(1) (definition of *credit provider*)

Omit "section 11B", substitute "sections 6G to 6K".

24 Subsection 6(1) (definition of *credit report*)

Repeal the definition.

25 Subsection 6(1) (definition of *credit reporting agency*)

Repeal the definition.

26 Subsection 6(1)

Insert:

credit reporting body means:

(a) an organisation; or

(b) an agency prescribed by the regulations;

that carries on a credit reporting business.

27 Subsection 6(1) (definition of *credit reporting business*)

Repeal the definition, substitute:

credit reporting business has the meaning given by section 6P.

28 Subsection 6(1)

Insert:

credit reporting information about an individual means credit information, or CRB derived information, about the individual.

29 Subsection 6(1)

Insert:

credit worthiness of an individual means the individual's:

(a) eligibility to be provided with consumer credit; or

(b) history in relation to consumer credit; or

(c) capacity to repay an amount of credit that relates to consumer credit.

30 Subsection 6(1) (definition of *current credit provider)*

Repeal the definition.

31 Subsection 6(1)

Insert:

default information has the meaning given by section 6Q.

32 Subsection 6(1) (definition of *eligible communications service)*

Repeal the definition.

33 Subsection 6(1) (definition of *guarantee)*

Repeal the definition, substitute:

guarantee includes an indemnity given against the default of a person in making a payment in relation to credit that has been applied for by, or provided to, the person.

34 Subsection 6(1)

Insert:

identification information about an individual means:

(a) the individual's full name; or

(b) an alias or previous name of the individual; or

(c) the individual's date of birth; or
(d) the individual's sex; or
(e) the individual's current or last known address, and 2 previous addresses (if any); or
(f) the name of the individual's current or last known employer; or
(g) if the individual holds a driver's licence—the individual's driver's licence number.

35 Subsection 6(1)

Insert:

information request has the meaning given by section 6R.

36 Subsection 6(1)

Insert:

interested party has the meaning given by subsections 20T(3) and 21V(3).

37 Subsection 6(1)

Insert:

licensee has the meaning given by the *National Consumer Credit Protection Act 2009*.

38 Subsection 6(1) (definition of *loan)*

Repeal the definition.

39 Subsection 6(1)

Insert:

managing credit does not include the act of collecting overdue payments in relation to credit.

40 Subsection 6(1) (definition of *mortgage credit*)

Repeal the definition, substitute:

mortgage credit means consumer credit:

(a) that is provided in connection with the acquisition, maintenance, renovation or improvement of real property; and

(b) in relation to which the real property is security.

41 Subsection 6(1)

Insert:

mortgage insurance purpose of a mortgage insurer in relation to an individual is the purpose of assessing:

(a) whether to provide insurance to, or the risk of providing insurance to, a credit provider in relation to mortgage credit:

(i) provided by the provider to the individual; or

(ii) for which an application to the provider has been made by the individual; or

(b) the risk of the individual defaulting on mortgage credit in relation to which the insurer has provided insurance to a credit provider; or

(c) the risk of the individual being unable to meet a liability that might arise under a guarantee provided, or proposed to be provided, in relation to mortgage credit provided by a credit provider to another person.

42 Subsection 6(1) (definition of *mortgage insurer*)

Repeal the definition, substitute:

mortgage insurer means an organisation, or small business operator, that carries on a business or undertaking that involves providing insurance to credit providers in relation to mortgage credit provided by providers to other persons.

43 Subsection 6(1)

Insert:

National Personal Insolvency Index has the meaning given by the Bankruptcy Act.

44 Subsection 6(1)

Insert:

new arrangement information has the meaning given by section 6S.

45 Subsection 6(1)

Insert:

payment information has the meaning given by section 6T.

46 Subsection 6(1)

Insert:

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

47 Subsection 6(1)

Insert:

pending correction request in relation to credit information or CRB derived information means:

(a) a request made under subsection 20T(1) in relation to the information if a notice has not been given under subsection 20U(2) or (3) in relation to the request; or

(b) a request made under subsection 21V(1) in relation to the information if:

(i) the credit reporting body referred to in subsection 20V(3) has been consulted about the request under subsection 21V(3); and

(ii) a notice has not been given under subsection 21W(2) or (3) in relation to the request.

48 Subsection 6(1)

Insert:

pending dispute in relation to credit information or CRB derived information means:

(a) a complaint made under section 23A that relates to the information if a decision about the complaint has not been made under subsection 23B(4); or

(b) a matter that relates to the information and that is still being dealt with by a recognised external dispute resolution scheme; or

(c) a complaint made to the Commissioner under Part V that relates to the information and that is still being dealt with.

49 Subsection 6(1)

Insert:

permitted CP disclosure has the meaning given by sections 21J to 21N.

50 Subsection 6(1)

Insert:

permitted CP use has the meaning given by section 21H.

51 Subsection 6(1)

Insert:

permitted CRB disclosure has the meaning given by section 20F.

52 Subsection 6(1)

Insert:

personal insolvency information has the meaning given by section 6U.

53 Subsection 6(1)

Insert:

pre-screening assessment means an assessment made under paragraph 20G(2)(d).

54 Subsection 6(1)

Insert:

purchase, in relation to credit, includes the purchase of rights to receive payments relating to the credit.

55 Subsection 6(1)

Insert:

regulated information of an affected information recipient means:

(a) if the recipient is a mortgage insurer or trade insurer—personal information disclosed to the recipient under Division 2 or 3 of Part IIIA; or

(b) if the recipient is a body corporate referred to in paragraph 21G(3)(b)—credit eligibility information disclosed to the recipient under that paragraph; or

(c) if the recipient is a person referred to in paragraph 21G(3)(c)—credit eligibility information disclosed to the recipient under that paragraph; or

(d) if the recipient is an entity or adviser referred to in paragraph 21N(2)(a)—credit eligibility information disclosed to the recipient under subsection 21N(2).

56 Subsection 6(1)

Insert:

repayment history information has the meaning given by subsection 6V(1).

57 Subsection 6(1)

Insert:

residential property has the meaning given by section 204 of the National Credit Code (within the meaning of the *National Consumer Credit Protection Act 2009*).

58 Subsection 6(1)

Insert:

respondent for a complaint made under section 23A means the credit reporting body or credit provider to which the complaint is made.

59 Subsection 6(1)

Insert:

retention period has the meaning given by sections 20W and 20X.

60 Subsection 6(1) (subparagraphs (a)(i) and (ii) of the definition of *securitisation arrangement*)

Repeal the subparagraphs, substitute:

(i) credit that has been, or is to be, provided by a credit provider; or

(ii) the purchase of credit by a credit provider;

61 Subsection 6(1) (paragraph (b) of the definition of *securitisation arrangement*)

Omit "loans", substitute "credit".

62 Subsection 6(1)

Insert:

securitisation related purpose of a credit provider in relation to an individual is the purpose of:

(a) assessing the risk in purchasing, by means of a securitisation arrangement, credit that has been provided to, or applied for by:

(i) the individual; or

(ii) a person for whom the individual is, or is proposing to be, a guarantor; or

(b) assessing the risk in undertaking credit enhancement in relation to credit:

(i) that is, or is proposed to be, purchased or funded by means of a securitisation arrangement; and

(ii) that has been provided to, or applied for by, the individual or a person for whom the individual is, or is proposing to be, a guarantor.

63 Subsection 6(1) (definition of *serious credit infringement*)

Repeal the definition, substitute:

serious credit infringement means:

(a) an act done by an individual that involves fraudulently obtaining consumer credit, or attempting fraudulently to obtain consumer credit; or

(b) an act done by an individual that involves fraudulently evading the individual's obligations in relation to consumer credit, or attempting fraudulently to evade those obligations; or

(c) an act done by an individual if:

(i) a reasonable person would consider that the act indicates an intention, on the part of the individual, to no longer comply with the individual's obligations in relation to consumer credit provided by a credit provider; and

(ii) the provider has, after taking such steps as are reasonable in the circumstances, been unable to contact the individual about the act; and

(iii) at least 6 months have passed since the provider last had contact with the individual.

64 Subsection 6(1)

Insert:

trade insurance purpose of a trade insurer in relation to an individual is the purpose of assessing:

(a) whether to provide insurance to, or the risk of providing insurance to, a credit provider in relation to commercial credit provided by the provider to the individual or another person; or

(b) the risk of a person defaulting on commercial credit in relation to which the insurer has provided insurance to a credit provider.

65 Subsection 6(1) (definition of *trade insurer*)

Repeal the definition, substitute:

trade insurer means an organisation, or small business operator, that carries on a business or undertaking that involves providing insurance to credit providers in relation to commercial credit provided by providers to other persons.

66 Subsections 6(5A) to (5D)

Repeal the subsections.

67 Subsection 6(10)

Omit "***credit***", substitute "***consumer credit***".

68 At the end of subsection 6D(4)

Add:

; or (f) is a credit reporting body.

69 After section 6F

Insert:

Division 2—Key definitions relating to credit reporting

Subdivision A—Credit provider

6G Meaning of *credit provider*

General

(1) Each of the following is a ***credit provider***:
  (a) a bank;
  (b) an organisation or small business operator if:
    (i) the organisation or operator carries on a business or undertaking; and
    (ii) a substantial part of the business or undertaking is the provision of credit;
  (c) an organisation or small business operator:
    (i) that carries on a retail business; and
    (ii) that, in the course of the business, issues credit cards to individuals in connection with the sale of goods, or the supply of services, by the organisation or operator (as the case may be);
  (d) an agency, organisation or small business operator:
    (i) that carries on a business or undertaking that involves providing credit; and
    (ii) that is prescribed by the regulations.

Other credit providers

(2) If:
  (a) an organisation or small business operator (the ***supplier***) carries on a business or undertaking in the course of which the supplier provides credit in connection with the sale of goods, or the supply of services, by the supplier; and
  (b) the repayment, in full or in part, of the amount of credit is deferred for at least 7 days; and

(c) the supplier is not a credit provider under subsection (1);

then the supplier is a ***credit provider*** but only in relation to the credit.

(3) If:

(a) an organisation or small business operator (the ***lessor***) carries on a business or undertaking in the course of which the lessor provides credit in connection with the hiring, leasing or renting of goods; and

(b) the credit is in force for at least 7 days; and

(c) no amount, or an amount less than the value of the goods, is paid as a deposit for the return of the goods; and

(d) the lessor is not a credit provider under subsection (1);

then the lessor is a ***credit provider*** but only in relation to the credit.

(4) An organisation or small business operator is a ***credit provider*** if subsection 6H(1), 6J(1) or 6K(1) provides that the organisation or operator is a credit provider.

Exclusions

(5) Despite subsections (1) to (4) of this section, an organisation or small business operator acting in the capacity of:

(a) a real estate agent; or

(b) a general insurer (within the meaning of the *Insurance Act 1973*); or

(c) an employer of an individual;

is not a ***credit provider*** while acting in that capacity.

(6) Despite subsections (1) to (4) of this section, an organisation or small business operator is not a ***credit provider*** if it is included in a class of organisations or operators prescribed by the regulations.

6H Agents of credit providers

(1) If an organisation or small business operator (the ***agent***) is acting as an agent of a credit provider (the ***principal***) in performing, on behalf of the principal, a task that is reasonably necessary:

(a) in processing an application for credit made to the principal; or

(b) in managing credit provided by the principal;

then, while the agent is so acting, the agent is a ***credit provider***.

(2) Subsection (1) does not apply if the principal is an organisation or small business operator that is a credit provider because of a previous application of that subsection.

(3) If subsection (1) applies in relation to credit that has been provided by the principal, the credit is taken, for the purposes of this Act, to have been provided by both the principal and the agent.

(4) If subsection (1) applies in relation to credit for which an application has been made to the principal, the application is taken, for the purposes of this Act, to have been made to both the principal and the agent.

6J Securitisation arrangements etc.

(1) If:

(a) an organisation or small business operator (the ***securitisation entity***) carries on a business that is involved in either or both of the following:

(i) a securitisation arrangement;

(ii) managing credit that is the subject of a securitisation arrangement; and

(b) the securitisation entity performs a task that is reasonably necessary for:

(i) purchasing, funding or managing, or processing an application for, credit by means of a securitisation arrangement; or

(ii) undertaking credit enhancement in relation to credit; and

(c) the credit has been provided by, or is credit for which an application has been made to, a credit provider (the ***original credit provider***);

then, while the securitisation entity performs such a task, the securitisation entity is a ***credit provider***.

(2) Subsection (1) does not apply if the original credit provider is an organisation or small business operator that is a credit provider because of a previous application of that subsection.

(3) If subsection (1) applies in relation to credit that has been provided by the original credit provider, the credit is taken, for the purposes

of this Act, to have been provided by both the original credit provider and the securitisation entity.

(4) If subsection (1) applies in relation to credit for which an application has been made to the original credit provider, the application is taken, for the purposes of this Act, to have been made to both the original credit provider and the securitisation entity.

6K Acquisition of the rights of a credit provider

(1) If:

(a) an organisation or small business operator (the ***acquirer***) acquires, whether by assignment, subrogation or any other means, the rights of a credit provider (the ***original credit provider***) in relation to the repayment of an amount of credit; and

(b) the acquirer is not a credit provider under subsection 6G(1);

then the acquirer is a ***credit provider*** but only in relation to the credit.

(2) If subsection (1) of this section applies in relation to credit that has been provided by the original credit provider, the credit is taken, for the purposes of this Act, to have been provided by the acquirer.

(3) If subsection (1) of this section applies in relation to credit for which an application has been made to the original credit provider, the application is taken, for the purposes of this Act, to have been made to the acquirer.

Subdivision B—Other definitions

6L Meaning of *access seeker*

(1) An ***access seeker*** in relation to credit reporting information, or credit eligibility information, about an individual is:

(a) the individual; or

(b) a person:

(i) who is assisting the individual to deal with a credit reporting body or credit provider; and

(ii) who is authorised, in writing, by the individual to make a request in relation to the information under subsection 20R(1) or 21T(1).

(2) An individual must not authorise a person under subparagraph (1)(b)(ii) if the person is:

(a) a credit provider; or

(b) a mortgage insurer; or

(c) a trade insurer; or

(d) a person who is prevented from being a credit provider by subsection 6G(5) or (6).

(3) Subparagraph (1)(b)(ii) does not apply to a person who provides the National Relay Serviceor a person prescribed by the regulations.

6M Meaning of *credit* and *amount of credit*

(1) ***Credit*** is a contract, arrangement or understanding under which:

(a) payment of a debt owed by one person to another person is deferred; or

(b) one person incurs a debt to another person and defers the payment of the debt.

(2) The ***amount of credit*** is the amount of the debt that is actually deferred, or that may be deferred, but does not include any fees or charges payable in connection with the deferral of the debt.

(3) Without limiting subsection (1), ***credit*** includes:

(a) a hire-purchase agreement; and

(b) a contract, arrangement or understanding of a kind referred to in that subsection that is for the hire, lease or rental of goods, or for the supply of services, other than a contract, arrangement or understanding under which:

(i) full payment is made before, or at the same time as, the goods or services are provided; and

(ii) in the case of goods—an amount greater than, or equal to, the value of the goods is paid as a deposit for the return of the goods.

6N Meaning of *credit information*

Credit information about an individual is personal information (other than sensitive information) that is:

(a) identification information about the individual; or

(b) consumer credit liability information about the individual; or

(c) repayment history information about the individual; or

(d) a statement that an information request has been made in relation to the individual by a credit provider, mortgage insurer or trade insurer; or

(e) the type of consumer credit or commercial credit, and the amount of credit, sought in an application:

(i) that has been made by the individual to a credit provider; and

(ii) in connection with which the provider has made an information request in relation to the individual; or

(f) default information about the individual; or

(g) payment information about the individual; or

(h) new arrangement information about the individual; or

(i) court proceedings information about the individual; or

(j) personal insolvency information about the individual; or

(k) publicly available information about the individual:

(i) that relates to the individual's activities in Australia or the external Territories and the individual's credit worthiness; and

(ii) that is not court proceedings information about the individual or information about the individual that is entered or recorded on the National Personal Insolvency Index; or

(l) the opinion of a credit provider that the individual has committed, in circumstances specified by the provider, a serious credit infringement in relation to consumer credit provided by the provider to the individual.

6P Meaning of *credit reporting business*

(1) A ***credit reporting business*** is a business or undertaking that involves collecting, holding, using or disclosing personal information about individuals for the purpose of, or for purposes

including the purpose of, providing an entity with information about the credit worthiness of an individual.

(2) Subsection (1) applies whether or not the information about the credit worthiness of an individual is:
  (a) provided for profit or reward; or
  (b) provided, or intended to be provided, for the purposes of assessing an application for consumer credit.

(3) In determining whether a business or undertaking carried on by a credit provider is a credit reporting business, disregard the provision of information about the credit worthiness of an individual to a related body corporate by the provider.

(4) Despite subsection (1), a business or undertaking is not a ***credit reporting business*** if the business or undertaking is included in a class of businesses or undertakings prescribed by the regulations.

6Q Meaning of *default information*

Consumer credit defaults

(1) ***Default information*** about an individual is informationabout a payment (including a payment that is wholly or partly a payment of interest) that the individual is overdue in making in relation to consumer credit that has been provided by a credit provider to the individual if:
  (a) the individual is at least 60 days overdue in making the payment; and
  (b) the provider has given a written notice to the individual informing the individual of the overdue payment and requesting that the individual pay the amount of the overdue payment; and
  (c) the provider is not prevented by a statute of limitations from recovering the amount of the overdue payment; and
  (d) the amount of the overdue payment is equal to or more than:
    (i) $150; or
    (ii) such higher amount as is prescribed by the regulations.

Guarantor defaults

(2) ***Default information*** about an individual is informationabout a payment that the individual is overdue in making as a guarantor under a guarantee given against any default by a person (the ***borrower***) in repaying all or any of the debt deferred under consumer credit provided by a credit provider to the borrower if:

(a) the provider has given the individual written notice of the borrower's default that gave rise to the individual's obligation to make the overdue payment; and

(b) the notice requests that the individual pay the amount of the overdue payment; and

(c) at least 60 days have passed since the day on which the notice was given; and

(d) in addition to giving the notice, the provider has taken other steps to recover the amount of the overdue payment from the individual; and

(e) the provider is not prevented by a statute of limitations from recovering the amount of the overdue payment.

6R Meaning of *information request*

Credit provider

(1) A credit provider has made an ***information request*** in relation to an individual if the provider has sought information about the individual from a credit reporting body:

(a) in connection with an application for consumer credit made by the individual to the provider; or

(b) in connection with an application for commercial credit made by a person to the provider; or

(c) for a credit guarantee purpose of the provider in relation to the individual; or

(d) for a securitisation related purpose of the provider in relation to the individual.

Mortgage insurer

(2) A mortgage insurer has made an ***information request*** in relation to an individual if:

(a) the insurer has sought information about the individual from a credit reporting body; and

(b) the information was sought in connection with the provision of insurance to a credit provider in relation to mortgage credit provided by the provider to:

(i) the individual; or

(ii) a person for whom the individual is, or is proposing to be, a guarantor.

Trade insurer

(3) A trade insurer has made an ***information request*** in relation to an individual if:

(a) the insurer has sought information about the individual from a credit reporting body; and

(b) the information was sought in connection with the provision of insurance to a credit provider in relation to commercial credit provided by the provider to the individual or another person.

6S Meaning of *new arrangement information*

Consumer credit defaults

(1) If:

(a) a credit provider has disclosed default information about an individual to a credit reporting body; and

(b) the default information relates to a payment that the individual is overdue in making in relation to consumer credit (the ***original consumer credit***) that has been provided by the provider to the individual; and

(c) because of the individual being so overdue:

(i) the terms or conditions of the original consumer credit that relate to the repayment of the amount of credit are varied; or

(ii) the individual is provided with other consumer credit (the ***new consumer credit***) by a credit provider that relates, wholly or in part, to that amount of credit;

then ***new arrangement information*** about the individual is a statement that those terms or conditions of the original consumer

credit have been varied, or that the individual has been provided with the new consumer credit.

Serious credit infringements

(2) If:

(a) a credit provider is of the opinion that an individual has committed a serious credit infringement in relation to consumer credit (the ***original consumer credit***) provided by the provider to the individual; and

(b) the provider has disclosed the opinion to a credit reporting body; and

(c) because of the provider having that opinion:

(i) the terms or conditions of the original consumer credit that relate to the repayment of the amount of credit are varied; or

(ii) the individual is provided with other consumer credit (the ***new consumer credit***) by a credit provider that relates, wholly or in part, to that amount of credit;

then ***new arrangement information*** about the individual is a statement that those terms or conditions of the original consumer credit have been varied, or that the individual has been provided with the new consumer credit.

6T Meaning of *payment information*

If:

(a) a credit provider has disclosed default information about an individual to a credit reporting body; and

(b) on a day after the default information was disclosed, the amount of the overdue payment to which the information relates is paid;

then ***payment information*** about the individual is a statement that the amount of the overdue payment has been paid on that day.

6U Meaning of *personal insolvency information*

(1) ***Personal insolvency information*** about an individual is information:

(a) that is entered or recorded in the National Personal Insolvency Index; and

(b) that relates to:

(i) a bankruptcy of the individual; or

(ii) a debt agreement proposal given by the individual; or

(iii) a debt agreement made by the individual; or

(iv) a personal insolvency agreement executed by the individual; or

(v) a direction given, or an order made, under section 50 of the Bankruptcy Act that relates to the property of the individual; or

(vi) an authority signed under section 188 of that Act that relates to the property of the individual.

(2) Despite subparagraph (1)(b)(i), personal insolvency information about an individual must not relate to:

(a) the presentation of a creditor's petition against the individual; or

(b) an administration under Part XI of the Bankruptcy Act of the individual's estate.

(3) An expression used in paragraph (1)(b) or (2)(a) that is also used in the Bankruptcy Act has the same meaning in that paragraph as it has in that Act.

6V Meaning of *repayment history information*

(1) If a credit provider provides consumer credit to an individual, the following information about the consumer credit is ***repayment history information*** about the individual:

(a) whether or not the individual has met an obligation to make a monthly payment that is due and payable in relation to the consumer credit;

(b) the day on which the monthly payment is due and payable;

(c) if the individual makes the monthly payment after the day on which the payment is due and payable—the day on which the individual makes that payment.

(2) The regulations may make provision in relation to:

(a) whether or not an individual has met an obligation to make a monthly payment that is due and payable in relation to consumer credit; and

(b) whether or not a payment is a monthly payment.

Division 3—Other matters

70 Paragraphs 7(1)(a) and 8(1)(a)

Omit "credit reporting agency" (wherever occurring), substitute "credit reporting body".

71 Sections 11A and 11B

Repeal the sections.

72 Part IIIA

Repeal the Part, substitute:

Part IIIA—Credit reporting

Division 1—Introduction

19 Guide to this Part

In general, this Part deals with the privacy of information relating to credit reporting.

Divisions 2 and 3 contain rules that apply to credit reporting bodies and credit providers in relation to their handling of information relating to credit reporting.

Division 4 contains rules that apply to affected information recipients in relation to their handling of their regulated information.

Division 5 deals with complaints to credit reporting bodies or credit providers about acts or practices that may be a breach of certain provisions of this Part or the registered CR code.

Division 6 deals with entities that obtain credit reporting information or credit eligibility information by false pretence, or when they are not authorised to do so under this Part.

Division 7 provides for compensation orders, and other orders, to be made by the Federal Court or Federal Magistrates Court.

Division 2—Credit reporting bodies

Subdivision A—Introduction and application of this Division etc.

20 Guide to this Division

This Division sets out rules that apply to credit reporting bodies in relation to their handling of the following:

(a) credit reporting information;

(b) CP derived information;

(c) credit reporting information that is de-identified;

(d) a pre-screening assessment.

The rules apply in relation to that kind of information or assessment instead of the Australian Privacy Principles.

20A Application of this Division and the Australian Privacy Principles to credit reporting bodies

(1) This Division applies to a credit reporting body in relation to the following:
  (a) credit reporting information;
  (b) CP derived information;
  (c) credit reporting information that is de-identified;
  (d) a pre-screening assessment.

(2) The Australian Privacy Principles do not apply to a credit reporting body in relation to personal information that is:
  (a) credit reporting information; or
  (b) CP derived information; or
  (c) a pre-screening assessment.

Note: The Australian Privacy Principles apply to the credit reporting body in relation to other kinds of personal information.

Subdivision B—Consideration of information privacy

20B Open and transparent management of credit reporting information

(1) The object of this section is to ensure that credit reporting bodies manage credit reporting information in an open and transparent way.

Compliance with this Division etc.

(2) A credit reporting body must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the credit reporting business of the body that:

(a) will ensure that the body complies with this Division and the registered CR code; and

(b) will enable the body to deal with inquiries or complaints from individuals about the body's compliance with this Division or the registered CR code.

Policy about the management of credit reporting information

(3) A credit reporting body must have a clearly expressed and up-to-date policy about the management of credit reporting information by the body.

(4) Without limiting subsection (3), the policy of the credit reporting body must contain the following information:

(a) the kinds of credit information that the body collects and how the body collects that information;

(b) the kinds of credit reporting information that the body holds and how the body holds that information;

(c) the kinds of personal information that the body usually derives from credit information that the body holds;

(d) the purposes for which the body collects, holds, uses and discloses credit reporting information;

(e) information about the effect of section 20G (which deals with direct marketing) and how the individual may make a request under subsection (5) of that section;

(f) how an individual may access credit reporting information about the individual that is held by the body and seek the correction of such information;

(g) information about the effect of section 20T (which deals with individuals requesting the correction of credit information etc.);

(h) how an individual may complain about a failure of the body to comply with this Division or the registered CR code and how the body will deal with such a complaint.

Availability of policy etc.

(5) A credit reporting body must take such steps as are reasonable in the circumstances to make the policy available:

(a) free of charge; and

(b) in such form as is appropriate.

Note: A credit reporting body will usually make the policy available on the body's website.

(6) If a person or body requests a copy, in a particular form, of the policy of a credit reporting body, the credit reporting body must take such steps as are reasonable in the circumstances to give the person or body a copy in that form.

Subdivision C—Collection of credit information

20C Collection of solicited credit information

Prohibition on collection

(1) A credit reporting body must not collect credit information about an individual.

Civil penalty: 2,000 penalty units.

Exceptions

(2) Subsection (1) does not apply if the collection of the credit information is required or authorised by or under an Australian law or a court/tribunal order.

(3) Subsection (1) does not apply if:

(a) the credit reporting body collects the credit information about the individual from a credit provider who is permitted under section 21D to disclose the information to the body; and

(b) the body collects the information in the course of carrying on a credit reporting business; and

(c) if the information is identification information about the individual—the body also collects from the provider, or already holds, credit information of another kind about the individual.

(4) Subsection (1) does not apply if:

(a) the credit reporting body:

(i) collects the credit information about the individual from an entity (other than a credit provider) in the course of carrying on a credit reporting business; and

(ii) knows, or believes on reasonable grounds, that the individual is at least 18 years old; and

(b) the information does not relate to an act, omission, matter or thing that occurred or existed before the individual turned 18; and

(c) if the information relates to consumer credit or commercial credit—the credit is or has been provided, or applied for, in Australia; and

(d) if the information is identification information about the individual—the body also collects from the entity, or already holds, credit information of another kind about the individual; and

(e) if the information is repayment history information about the individual—the body collects the information from another credit reporting body that has an Australian link.

(5) Paragraph (4)(b) does not apply to identification information about the individual.

(6) Despite paragraph (4)(b), consumer credit liability information about the individual may relate to consumer credit that was entered into on a day before the individual turned 18, so long as the consumer credit was not terminated, or did not otherwise cease to be in force, on a day before the individual turned 18.

Means of collection

(7) A credit reporting body must collect credit information only by lawful and fair means.

Solicited credit information

(8) This section applies to the collection of credit information that is solicited by a credit reporting body.

20D Dealing with unsolicited credit information

(1) If:

(a) a credit reporting body receives credit information about an individual; and

(b) the body did not solicit the information;

the body must, within a reasonable period after receiving the information, determine whether or not the body could have collected the information under section 20C if the body had solicited the information.

(2) The credit reporting body may use or disclose the credit information for the purposes of making the determination under subsection (1).

(3) If the credit reporting body determines that it could have collected the credit information, sections 20E to 20ZA apply in relation to the information as if the body had collected the information under section 20C.

(4) If the credit reporting body determines that it could not have collected the credit information, the body must, as soon as practicable, destroy the information.

Civil penalty: 1,000 penalty units.

(5) Subsection (4) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, to retain the credit information.

Subdivision D—Dealing with credit reporting information etc.

20E Use or disclosure of credit reporting information

Prohibition on use or disclosure

(1) If a credit reporting body holds credit reporting information about an individual, the body must not use or disclose the information.

Civil penalty: 2,000 penalty units.

Permitted uses

(2) Subsection (1) does not apply to the use of credit reporting information about the individual if:
  (a) the credit reporting body uses the information in the course of carrying on the body's credit reporting business; or
  (b) the use is required or authorised by or under an Australian law or a court/tribunal order; or
  (c) the use is a use prescribed by the regulations.

Permitted disclosures

(3) Subsection (1) does not apply to the disclosure of credit reporting information about the individual if:
  (a) the disclosure is a permitted CRB disclosure in relation to the individual; or
  (b) the disclosure is to another credit reporting body that has an Australian link; or
  (c) both of the following apply:
    (i) the disclosure is for the purposes of a recognised external dispute resolution scheme;
    (ii) a credit reporting body or credit provider is a member of the scheme; or
  (d) both of the following apply:
    (i) the disclosure is to an enforcement body;
    (ii) the credit reporting body is satisfied that the body, or another enforcement body, believes on reasonable grounds that the individual has committed a serious credit infringement; or

(e) the disclosure is required or authorised by or under an Australian law or a court/tribunal order; or

(f) the disclosure is a disclosure prescribed by the regulations.

(4) However, if the credit reporting information is, or was derived from, repayment history information about the individual, the credit reporting body must not disclose the information under paragraph (3)(a) or (f) unless the recipient of the information is:

(a) a credit provider who is a licensee or is prescribed by the regulations; or

(b) a mortgage insurer.

Civil penalty: 2,000 penalty units.

(5) If a credit reporting body discloses credit reporting information under this section, the body must make a written note of that disclosure.

Civil penalty: 500 penalty units.

Note: Other Acts may provide that the note must not be made (see for example the *Australian Crime Commission Act 2002* and the *Law Enforcement Integrity Commissioner Act 2006*).

No use or disclosure for the purposes of direct marketing

(6) This section does not apply to the use or disclosure of credit reporting information for the purposes of direct marketing.

Note: Section 20G deals with the use or disclosure of credit reporting information for the purposes of direct marketing.

20F Permitted CRB disclosures in relation to individuals

(1) A disclosure by a credit reporting body of credit reporting information about an individual is a ***permitted CRB disclosure*** in relation to the individual if:

(a) the disclosure is to an entity that is specified in an item of the table and that has an Australian link; and

(b) such conditions as are specified for the item are satisfied.

Permitted CRB disclosures

Item	If the disclosure is to ...	the condition or conditions are ...
1	a credit provider	the provider requests the information for a

Permitted CRB disclosures		
Item	**If the disclosure is to ...**	**the condition or conditions are ...**
		consumer credit related purpose of the provider in relation to the individual.
2	a credit provider	(a) the provider requests the information for a commercial credit related purpose of the provider in relation to a person; and (b) the individual expressly consents to the disclosure of the information to the provider for that purpose.
3	a credit provider	(a) the provider requests the information for a credit guarantee purpose of the provider in relation to the individual; and (b) the individual expressly consents, in writing, to the disclosure of the information to the provider for that purpose.
4	a credit provider	the credit reporting body is satisfied that the provider, or another credit provider, believes on reasonable grounds that the individual has committed a serious credit infringement.
5	a credit provider	(a) the credit reporting body holds consumer credit liability information that relates to consumer credit provided by the provider to the individual; and (b) the consumer credit has not been terminated, or has not otherwise ceased to be in force.
6	a credit provider under subsection 6J(1)	the provider requests the information for a securitisation related purpose of the provider in relation to the individual.
7	a mortgage insurer	the insurer requests the information for a mortgage insurance purpose of the insurer in relation to the individual.
8	a trade insurer	(a) the insurer requests the information for a trade insurance purpose of the insurer in relation to the individual; and (b) the individual expressly consents, in writing, to the disclosure of the information to the insurer for that purpose.

(2) The consent of the individual under paragraph (b) of item 2 of the table in subsection (1) must be given in writing unless:

(a) the credit provider referred to in that item requests the information for the purpose of assessing an application for commercial credit made by a person to the provider; and

(b) the application has not been made in writing.

20G Use or disclosure of credit reporting information for the purposes of direct marketing

Prohibition on direct marketing

(1) If a credit reporting body holds credit reporting information about an individual, the body must not use or disclose the information for the purposes of direct marketing.

Civil penalty: 2,000 penalty units.

Permitted use for pre-screening

(2) Subsection (1) does not apply to the use by the credit reporting body of credit information about the individual for the purposes of direct marketing by, or on behalf of, a credit provider if:

(a) the provider has an Australian link and is a licensee; and

(b) the direct marketing is about consumer credit that the provider provides in Australia; and

(c) the information is not consumer credit liability information, or repayment history information, about the individual; and

(d) the body uses the information to assess whether or not the individual is eligible to receive the direct marketing communications of the credit provider; and

(e) the individual has not made a request under subsection (5); and

(f) the body complies with any requirements that are set out in the registered CR code.

(3) In assessing under paragraph (2)(d) whether or not the individual is eligible to receive the direct marketing communications of the credit provider, the credit reporting body must have regard to the eligibility requirements nominated by the provider.

(4) An assessment under paragraph (2)(d) is not credit reporting information about the individual.

Request not to use information for pre-screening

(5) An individual may request a credit reporting body that holds credit information about the individual not to use the information under subsection (2).

(6) If the individual makes a request under subsection (5), the credit reporting body must not charge the individual for the making of the request or to give effect to the request.

Written note of use

(7) If a credit reporting body uses credit information under subsection (2), the body must make a written note of that use.

Civil penalty: 500 penalty units.

20H Use or disclosure of pre-screening assessments

Use or disclosure by credit reporting bodies

(1) If a credit reporting body makes a pre-screening assessment in relation to direct marketing by, or on behalf of, a credit provider, the body must not use or disclose the assessment.

Civil penalty: 2,000 penalty units.

(2) Subsection (1) does not apply if:
   (a) the credit reporting body discloses the pre-screening assessment for the purposes of the direct marketing by, or on behalf of, the credit provider; and
   (b) the recipient of the assessment is an entity (other than the provider) that has an Australian link.

(3) If the credit reporting body discloses the pre-screening assessment under subsection (2), the body must make a written note of that disclosure.

Civil penalty: 500 penalty units.

Use or disclosure by recipients

(4) If the credit reporting body discloses the pre-screening assessment under subsection (2), the recipient must not use or disclose the assessment.

Civil penalty: 1,000 penalty units.

(5) Subsection (4) does not apply if the recipient uses the pre-screening assessment for the purposes of the direct marketing by, or on behalf of, the credit provider.

(6) If the recipient uses the pre-screening assessment under subsection (5), the recipient must make a written note of that use.

Civil penalty: 500 penalty units.

Interaction with the Australian Privacy Principles

(7) If the recipient is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the recipient in relation to a pre-screening assessment.

20J Destruction of pre-screening assessment

(1) If an entity has possession or control of a pre-screening assessment, the entity must destroy the assessment if:
   (a) the entity no longer needs the assessment for any purpose for which it may be used or disclosed under section 20H; and
   (b) the entity is not required by or under an Australian law, or a court/tribunal order, to retain the assessment.

Civil penalty: 1,000 penalty units.

(2) If the entity is an APP entity but not a credit reporting body, Australian Privacy Principle 11.2 does not apply to the entity in relation to the pre-screening assessment.

20K No use or disclosure of credit reporting information during a ban period

(1) If:
   (a) a credit reporting body holds credit reporting information about an individual; and

(b) the individual believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud (including identity fraud); and

(c) the individual requests the body not to use or disclose the information under this Division;

then, despite any other provision of this Division, the body must not use or disclose the information during the ban period for the information.

Civil penalty: 2,000 penalty units.

(2) Subsection (1) does not apply if:

(a) the individual expressly consents, in writing, to the use or disclosure of the credit reporting information under this Division; or

(b) the use or disclosure of the credit reporting information is required by or under an Australian law or a court/tribunal order.

Ban period

(3) The ***ban period*** for credit reporting information about an individual is the period that:

(a) starts when the individual makes a request under paragraph (1)(c); and

(b) ends:

(i) 21 days after the day on which the request is made; or

(ii) if the period is extended under subsection (4)—on the day after the extended period ends.

(4) If:

(a) there is a ban period for credit reporting information about an individual that is held by a credit reporting body; and

(b) before the ban period ends, the individual requests the body to extend that period; and

(c) the body believes on reasonable grounds that the individual has been, or is likely to be, a victim of fraud (including identity fraud);

the body must:

(d) extend the ban period by such period as the body considers is reasonable in the circumstances; and

(e) give the individual written notification of the extension.

Civil penalty: 1,000 penalty units.

(5) A ban period for credit reporting information may be extended more than once under subsection (4).

No charge for request etc.

(6) If an individual makes a request under paragraph (1)(c) or (4)(b), a credit reporting body must not charge the individual for the making of the request or to give effect to the request.

20L Adoption of government related identifiers

(1) If:

(a) a credit reporting body holds credit reporting information about an individual; and

(b) the information is a government related identifier of the individual;

the body must not adopt the government related identifier as its own identifier of the individual.

Civil penalty: 2,000 penalty units.

(2) Subsection (1) does not apply if the adoption of the government related identifier is required or authorised by or under an Australian law or a court/tribunal order.

20M Use or disclosure of credit reporting information that is de-identified

Use or disclosure

(1) If:

(a) a credit reporting body holds credit reporting information; and

(b) the information (the ***de-identified information***) is de-identified;

the body must not use or disclose the de-identified information.

(2) Subsection (1) does not apply to the use or disclosure of the de-identified information if:

(a) the use or disclosure is for the purposes of conducting research in relation to credit; and

(b) the credit reporting body complies with the rules made under subsection (3).

Commissioner may make rules

(3) The Commissioner may, by legislative instrument, make rules relating to the use or disclosure by a credit reporting body of de-identified information for the purposes of conducting research in relation to credit.

(4) Without limiting subsection (3), the rules may relate to the following matters:

(a) the kinds of de-identified information that may or may not be used or disclosed for the purposes of conducting the research;

(b) whether or not the research is research in relation to credit;

(c) the purposes of conducting the research;

(d) consultation about the research;

(e) how the research is conducted.

Subdivision E—Integrity of credit reporting information

20N Quality of credit reporting information

(1) A credit reporting body must take such steps as are reasonable in the circumstances to ensure that the credit information the body collects is accurate, up-to-date and complete.

(2) A credit reporting body must take such steps as are reasonable in the circumstances to ensure that the credit reporting information the body uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

(3) Without limiting subsections (1) and (2), a credit reporting body must:

(a) enter into agreements with credit providers that require the providers to ensure that credit information that they disclose to the body under section 21D is accurate, up-to-date and complete; and

(b) ensure that regular audits are conducted by an independent person to determine whether those agreements are being complied with; and

(c) identify and deal with suspected breaches of those agreements.

20P False or misleading credit reporting information

Offence

(1) A credit reporting body commits an offence if:

(a) the body uses or discloses credit reporting information under this Division (other than subsections 20D(2) and 20T(4)); and

(b) the information is false or misleading in a material particular.

Penalty: 200 penalty units.

Civil penalty

(2) A credit reporting body must not use or disclose credit reporting information under this Division (other than subsections 20D(2) and 20T(4)) if the information is false or misleading in a material particular.

Civil penalty: 2,000 penalty units.

20Q Security of credit reporting information

(1) If a credit reporting body holds credit reporting information, the body must take such steps as are reasonable in the circumstances to protect the information:

(a) from misuse, interference and loss; and

(b) from unauthorised access, modification or disclosure.

(2) Without limiting subsection (1), a credit reporting body must:

(a) enter into agreements with credit providers that require the providers to protect credit reporting information that is disclosed to them under this Division:

(i) from misuse, interference and loss; and

(ii) from unauthorised access, modification or disclosure; and

(b) ensure that regular audits are conducted by an independent person to determine whether those agreements are being complied with; and

(c) identify and deal with suspected breaches of those agreements.

Subdivision F—Access to, and correction of, information

20R Access to credit reporting information

Access

(1) If a credit reporting body holds credit reporting information about an individual, the body must, on request by an access seeker in relation to the information, give the access seeker access to the information.

Exceptions to access

(2) Despite subsection (1), the credit reporting body is not required to give the access seeker access to the credit reporting information to the extent that:

(a) giving access would be unlawful; or

(b) denying access is required or authorised by or under an Australian law or a court/tribunal order; or

(c) giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body.

Dealing with requests for access

(3) The credit reporting body must respond to the request within a reasonable period, but not longer than 10 days, after the request is made.

Means of access

(4) If the credit reporting body gives access to the credit reporting information, the access must be given in the manner set out in the registered CR code.

Access charges

(5) If a request under subsection (1) in relation to the individual has not been made to the credit reporting body in the previous 12 months, the body must not charge the access seeker for the making of the request or for giving access to the information.

(6) If subsection (5) does not apply, any charge by the credit reporting body for giving access to the information must not be excessive and must not apply to the making of the request.

Refusal to give access

(7) If the credit reporting body refuses to give access to the information because of subsection (2), the body must give the access seeker a written notice that:

(a) sets out the reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and

(b) states that, if the access seeker is not satisfied with the response to the request, the access seeker may:

(i) access a recognised external dispute resolution scheme of which the body is a member; or

(ii) make a complaint to the Commissioner under Part V.

20S Correction of credit reporting information

(1) If:

(a) a credit reporting body holds credit reporting information about an individual; and

(b) the body is satisfied that, having regard to a purpose for which the information is held by the body, the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

the body must take such steps (if any) as are reasonable in the circumstances to correct the information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete, relevant and not misleading.

(2) If:

(a) the credit reporting body corrects credit reporting information under subsection (1); and

(b) the body has previously disclosed the information under this Division (other than subsections 20D(2) and 20T(4));

the body must, within a reasonable period, give each recipient of the information written notice of the correction.

(3) Subsection (2) does not apply if:

(a) it is impracticable for the credit reporting body to give the notice under that subsection; or

(b) the credit reporting body is required by or under an Australian law, or a court/tribunal order, not to give the notice under that subsection.

20T Individual may request the correction of credit information etc.

Request

(1) An individual may request a credit reporting body to correct personal information about the individual if:

(a) the personal information is:

(i) credit information about the individual; or

(ii) CRB derived information about the individual; or

(iii) CP derived information about the individual; and

(b) the body holds at least one kind of the personal information referred to in paragraph (a).

Correction

(2) If the credit reporting body is satisfied that the personal information is inaccurate, out-of-date, incomplete, irrelevant or misleading, the body must take such steps (if any) as are reasonable in the circumstances to correct the information within:

(a) the period of 30 days that starts on the day on which the request is made; or

(b) such longer period as the individual has agreed to in writing.

Consultation

(3) If the credit reporting body considers that the body cannot be satisfied of the matter referred to in subsection (2) in relation to the personal information without consulting either or both of the following (the ***interested party***):

(a) another credit reporting body that holds or held the information and that has an Australian link;

(b) a credit provider that holds or held the information and that has an Australian link;

the body must consult that interested party, or those interested parties, about the individual's request.

(4) The use or disclosure of personal information about the individual for the purposes of the consultation is taken, for the purposes of this Act, to be a use or disclosure that is authorised by this subsection.

No charge

(5) The credit reporting body must not charge the individual for the making of the request or for correcting the information.

20U Notice of correction etc. must be given

(1) This section applies if an individual requests a credit reporting body to correct personal information under subsection 20T(1).

Notice of correction etc.

(2) If the credit reporting body corrects the personal information under subsection 20T(2), the body must, within a reasonable period:

(a) give the individual written notice of the correction; and

(b) if the body consulted an interested party under subsection 20T(3) about the individual's request—give the party written notice of the correction; and

(c) if the correction relates to information that the body has previously disclosed under this Division (other than subsections 20D(2) and 20T(4))—give each recipient of the information written notice of the correction.

(3) If the credit reporting body does not correct the personal information under subsection 20T(2), the body must, within a reasonable period, give the individual written notice that:

(a) states that the correction has not been made; and

(b) sets out the body's reasons for not correcting the information (including evidence substantiating the correctness of the information); and

(c) states that, if the individual is not satisfied with the response to the request, the individual may:

(i) access a recognised external dispute resolution scheme of which the body is a member; or

(ii) make a complaint to the Commissioner under Part V.

Exceptions

(4) Paragraph (2)(c) does not apply if it is impracticable for the credit reporting body to give the notice under that paragraph.

(5) Subsection (2) or (3) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, not to give the notice under that subsection.

Subdivision G—Dealing with credit reporting information after the retention period ends etc.

20V Destruction etc. of credit reporting information after the retention period ends

(1) This section applies if:

(a) a credit reporting body holds credit information about an individual; and

(b) the retention period for the information ends.

Note: There is no retention period for identification information or credit information of a kind referred to in paragraph 6N(k).

Destruction etc. of credit information

(2) The credit reporting body must destroy the credit information, or ensure that the information is de-identified, within 1 month after the retention period for the information ends.

Civil penalty: 1,000 penalty units.

(3) Despite subsection (2), the credit reporting body must neither destroy the credit information nor ensure that the information is de-identified, if immediately before the retention period ends:

(a) there is a pending correction request in relation to the information; or

(b) there is a pending dispute in relation to the information.

Civil penalty: 500 penalty units.

(4) Subsection (2) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, to retain the credit information.

Destruction etc. of CRB derived information

(5) The credit reporting body must destroy any CRB derived information about the individual that was derived from the credit information, or ensure that the CRB derived information is de-identified:

(a) if:

(i) the CRB derived information was derived from 2 or more kinds of credit information; and

(ii) the body is required to do a thing referred to in subsection (2) to one of those kinds of credit information;

at the same time that the body does that thing to that credit information; or

(b) otherwise—at the same time that the body is required to do a thing referred to in subsection (2) to the credit information from which the CRB derived information was derived.

Civil penalty: 1,000 penalty units.

(6) Despite subsection (5), the credit reporting body must neither destroy the CRB derived information nor ensure that the information is de-identified, if immediately before the retention period ends:

(a) there is a pending correction request in relation to the information; or

(b) there is a pending dispute in relation to the information.

Civil penalty: 500 penalty units.

(7) Subsection (5) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, to retain the CRB derived information.

20W Retention period for credit information—general

The following table sets out the ***retention period*** for credit information:

(a) that is information of a kind referred to in an item of the table; and

(b) that is held by a credit reporting body.

Retention period

Item	If the credit information is ...	the *retention period* for the information is ...
1	consumer credit liability information	the period of 2 years that starts on the day on which the consumer credit to which the information relates is terminated or otherwise ceases to be in force.
2	repayment history information	the period of 2 years that starts on the day on which the monthly payment to which the information relates is due and payable.
3	information of a kind referred to in paragraph 6N(d) or (e)	the period of 5 years that starts on the day on which the information request to which the information relates is made.
4	default information	the period of 5 years that starts on the day on which the credit reporting body collects the information.
5	payment information	the period of 5 years that starts on the day on which the credit reporting body collects the default information to which the payment information relates.
6	new arrangement information within the meaning of subsection 6S(1)	the period of 2 years that starts on the day on which the credit reporting body collects the default information referred to in that subsection.
7	new arrangement information within the meaning of subsection 6S(2)	the period of 2 years that starts on the day on which the credit reporting body collects the information about the opinion referred to in that subsection.
8	court proceedings information	the period of 5 years that starts on the day on which the judgement to which the

Retention period		
Item	**If the credit information is ...**	**the *retention period* for the information is ...**
		information relates is made or given.
9	information of a kind referred to in paragraph 6N(l)	the period of 7 years that starts on the day on which the credit reporting body collects the information.

20X Retention period for credit information—personal insolvency information

(1) The following table has effect:

Item	**If personal insolvency information relates to ...**	**the *retention period* for the information is whichever of the following periods ends later ...**
1	a bankruptcy of an individual	(a) the period of 5 years that starts on the day on which the individual becomes a bankrupt; (b) the period of 2 years that starts on the day the bankruptcy ends.
2	a personal insolvency agreement to which item 3 of this table does not apply	(a) the period of 5 years that starts on the day on which the agreement is executed; (b) the period of 2 years that starts on the day the agreement is terminated or set aside under the Bankruptcy Act.
3	a personal insolvency agreement in relation to which a certificate has been signed under section 232 of the Bankruptcy Act	(a) the period of 5 years that starts on the day on which the agreement is executed; (b) the period that ends on the day on which the certificate is signed.
4	a debt agreement to which item 5 of this table does not apply	(a) the period of 5 years that starts on the day on which the agreement is made; (b) the period of 2 years that starts on the day: (i) the agreement is terminated under the Bankruptcy Act; or (ii) an order declaring that all the

Item	If personal insolvency information relates to ...	the *retention period* for the information is whichever of the following periods ends later ...
		agreement is void is made under that Act.
5	a debt agreement that ends under section 185N of the Bankruptcy Act	(a) the period of 5 years that starts on the day on which the agreement is made; (b) the period that ends on the day on which the agreement ends.

Debt agreement proposals

(2) If personal insolvency information relates to a debt agreement proposal, the ***retention period*** for the information is the period that ends on the day on which:

(a) the proposal is withdrawn; or

(b) the proposal is not accepted under section 185EC of the Bankruptcy Act; or

(c) the acceptance of the proposal for processing is cancelled under section 185ED of that Act; or

(d) the proposal lapses under section 185G of that Act.

Control of property

(3) If personal insolvency information relates to a direction given, or an order made, under section 50 of the Bankruptcy Act, the ***retention period*** for the information is the period that ends on the day on which the control of the property to which the direction or order relates ends.

Note: See subsection 50(1B) of the Bankruptcy Act for when the control of the property ends.

(4) If the personal insolvency information relates to an authority signed under section 188 of the Bankruptcy Act, the ***retention period*** for the information is the period that ends on the day on which the property to which the authority relates is no longer subject to control under Division 2 of Part X of that Act.

Interpretation

(5) An expression used in this section that is also used in the Bankruptcy Act has the same meaning in this section as it has in that Act.

20Y Destruction of credit reporting information in cases of fraud

(1) This section applies if:
  (a) a credit reporting body holds credit reporting information about an individual; and
  (b) the information relates to consumer credit that has been provided by a credit provider to the individual, or a person purporting to be the individual; and
  (c) the body is satisfied that:
    (i) the individual has been a victim of fraud (including identity fraud); and
    (ii) the consumer credit was provided as a result of that fraud.

Destruction of credit reporting information

(2) The credit reporting body must:
  (a) destroy the credit reporting information; and
  (b) within a reasonable period after the information is destroyed:
    (i) give the individual a written notice that states that the information has been destroyed and sets out the effect of subsection (4); and
    (ii) give the credit provider a written notice that states that the information has been destroyed.

Civil penalty: 1,000 penalty units.

(3) Subsection (2) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, to retain the credit reporting information.

Notification of destruction to third parties

(4) If:
  (a) a credit reporting body destroys credit reporting information about an individual under subsection (2); and

(b) the body has previously disclosed the information to one or more recipients under Subdivision D of this Division;

the body must, within a reasonable period after the destruction, notify those recipients of the destruction and the matters referred to in paragraph (1)(c).

Civil penalty: 500 penalty units.

(5) Subsection (4) does not apply if the credit reporting body is required by or under an Australian law, or a court/tribunal order, not to give the notification.

20Z Dealing with information if there is a pending correction request etc.

(1) This section applies if a credit reporting body holds credit reporting information about an individual and either:

(a) subsection 20V(3) applies in relation to the information; or

(b) subsection 20V(6) applies in relation to the information.

Notification of Commissioner

(2) The credit reporting body must, as soon as practicable, notify in writing the Commissioner of the matter referred to in paragraph (1)(a) or (b) of this section.

Civil penalty: 1,000 penalty units.

Use or disclosure

(3) The credit reporting body must not use or disclose the information under Subdivision D of this Division.

Civil penalty: 2,000 penalty units.

(4) However, the credit reporting body may use or disclose the information under this subsection if:

(a) the use or disclosure is for the purposes of the pending correction request, or pending dispute, in relation to the information; or

(b) the use or disclosure of the information is required by or under an Australian law or a court/tribunal order.

(5) If the credit reporting body uses or discloses the information under subsection (4), the body must make a written note of the use or disclosure.

Civil penalty: 500 penalty units.

Direction to destroy information etc.

(6) The Commissioner may, by legislative instrument, direct the credit reporting body to destroy the information, or ensure that the information is de-identified, by a specified day.

(7) If the Commissioner gives a direction under subsection (6) to the credit reporting body, the body must comply with the direction.

Civil penalty: 1,000 penalty units.

(8) To avoid doubt, section 20M applies in relation to credit reporting information that is de-identified as a result of the credit reporting body complying with the direction.

20ZA Dealing with information if an Australian law etc. requires it to be retained

(1) This section applies if a credit reporting body is not required:
   (a) to do a thing referred to in subsection 20V(2) to credit information because of subsection 20V(4); or
   (b) to do a thing referred to in subsection 20V(5) to CRB derived information because of subsection 20V(7); or
   (c) to destroy credit reporting information under subsection 20Y(2) because of subsection 20Y(3).

Use or disclosure

(2) The credit reporting body must not use or disclose the information under Subdivision D of this Division.

Civil penalty: 2,000 penalty units.

(3) However, the credit reporting body may use or disclose the information under this subsection if the use or disclosure of the information is required by or under an Australian law or a court/tribunal order.

(4) If the credit reporting body uses or discloses the information under subsection (3), the body must make a written note of the use or disclosure.

Civil penalty: 500 penalty units.

Other requirements

(5) Subdivision E of this Division (other than section 20Q) does not apply in relation to the use or disclosure of the information.

Note: Section 20Q deals with the security of credit reporting information.

(6) Subdivision F of this Division does not apply in relation to the information.

Division 3—Credit providers

Subdivision A—Introduction and application of this Division

21 Guide to this Division

This Division sets out rules that apply to credit providers in relation to their handling of the following:

(a) credit information;

(b) credit eligibility information;

(c) CRB derived information.

If a credit provider is an APP entity, the rules apply in relation to that information in addition to, or instead of, any relevant Australian Privacy Principles.

21A Application of this Division to credit providers

(1) This Division applies to a credit provider in relation to the following:
(a) credit information;
(b) credit eligibility information;
(c) CRB derived information.

(2) If the credit provider is an APP entity, this Division may apply to the provider in relation to information referred to in subsection (1) in addition to, or instead of, the Australian Privacy Principles.

Subdivision B—Consideration of information privacy

21B Open and transparent management of credit information etc.

(1) The object of this section is to ensure that credit providers manage credit information and credit eligibility information in an open and transparent way.

Compliance with this Division etc.

(2) A credit provider must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the provider's functions or activities as a credit provider that:

(a) will ensure that the provider complies with this Division and the registered CR code if it binds the provider; and

(b) will enable the provider to deal with inquiries or complaints from individuals about the provider's compliance with this Division or the registered CR code if it binds the provider.

Policy about the management of credit information etc.

(3) A credit provider must have a clearly expressed and up-to-date policy about the management of credit information and credit eligibility information by the provider.

(4) Without limiting subsection (3), the policy of the credit provider must contain the following information:

(a) the kinds of credit information that the provider collects and holds, and how the provider collects and holds that information;

(b) the kinds of credit eligibility information that the provider holds and how the provider holds that information;

(c) the kinds of CP derived information that the provider usually derives from credit reporting information disclosed to the provider by a credit reporting body under Division 2 of this Part;

(d) the purposes for which the provider collects, holds, uses and discloses credit information and credit eligibility information;

(e) how an individual may access credit eligibility information about the individual that is held by the provider;

(f) how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by the provider;

(g) how an individual may complain about a failure of the provider to comply with this Division or the registered CR code if it binds the provider;

(h) how the provider will deal with such a complaint;

(i) whether the provider is likely to disclose credit information or credit eligibility information to entities that do not have an Australian link;

(j) if the provider is likely to disclose credit information or credit eligibility information to such entities—the countries in which those entities are likely to be located if it is practicable to specify those countries in the policy.

Availability of policy etc.

(5) A credit provider must take such steps as are reasonable in the circumstances to make the policy available:

(a) free of charge; and

(b) in such form as is appropriate.

Note: A credit provider will usually make the policy available on the provider's website.

(6) If a person or body requests a copy, in a particular form, of the policy of a credit provider, the provider must take such steps as are reasonable in the circumstances to give the person or body a copy in that form.

Interaction with the Australian Privacy Principles

(7) If a credit provider is an APP entity, Australian Privacy Principles 1.3 and 1.4 do not apply to the provider in relation to credit information or credit eligibility information.

Subdivision C—Dealing with credit information

21C Additional notification requirements for the collection of personal information etc.

(1) At or before the time a credit provider collects personal information about an individual that the provider is likely to disclose to a credit reporting body, the provider must:

(a) notify the individual of the following matters:

(i) the name and contact details of the body;

(ii) any other matter specified in the registered CR code; or

(b) otherwise ensure that the individual is aware of those matters.

(2) If a credit provider is an APP entity, subsection (1) applies to the provider in relation to personal information in addition to Australian Privacy Principle 5.

(3) If a credit provider is an APP entity, then the matters for the purposes of Australian Privacy Principle 5.1 include the following matters to the extent that the personal information referred to in that principle is credit information or credit eligibility information:

(a) that the policy (the ***credit reporting policy***) of the provider that is referred to in subsection 21B(3) contains information about how an individual may access the credit eligibility information about the individual that is held by the provider;

(b) that the credit reporting policy of the provider contains information about how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by the provider;

(c) that the credit reporting policy of the provider contains information about how an individual may complain about a failure of the provider to comply with this Division or the registered CR code if it binds the provider;

(d) that the credit reporting policy of the provider contains information about how the provider will deal with such a complaint;

(e) whether the provider is likely to disclose credit information or credit eligibility information to entities that do not have an Australian link;

(f) if the provider is likely to disclose credit information or credit eligibility information to such entities—the countries

in which those entities are likely to be located if it is practicable to specify those countries in the credit reporting policy.

21D Disclosure of credit information to a credit reporting body

Prohibition on disclosure

(1) A credit provider must not disclose credit information about an individual to a credit reporting body (whether or not the body's credit reporting business is carried on in Australia).

Civil penalty: 2,000 penalty units.

Permitted disclosure

(2) Subsection (1) does not apply to the disclosure of credit information about the individual if:

(a) the credit provider:

(i) is a member of a recognised external dispute resolution schemeor is prescribed by the regulations; and

(ii) knows, or believes on reasonable grounds, that the individual is at least 18 years old; and

(b) the credit reporting body is:

(i) an agency; or

(ii) an organisation that has an Australian link; and

(c) the information meets the requirements of subsection (3).

Note: Section 21F limits the disclosure of credit information if there is a ban period for the information.

(3) Credit information about an individual meets the requirements of this subsection if:

(a) the information does not relate to an act, omission, matter or thing that occurred or existed before the individual turned 18; and

(b) if the information relates to consumer credit or commercial credit—the credit is or has been provided, or applied for, in Australia; and

(c) if the information is repayment history information about the individual:

(i) the credit provider is a licenseeor is prescribed by the regulations; and

(ii) the consumer credit to which the information relates is consumer credit in relation to which the provider also discloses, or a credit provider has previously disclosed, consumer credit liability information about the individual to the credit reporting body; and

(iii) the provider complies with any requirements relating to the disclosure of the information that are prescribed by the regulations; and

(d) if the information is default information about the individual:

(i) the credit provider has given the individual a notice in writing stating that the provider intends to disclose the information to the credit reporting body; and

(ii) at least 14 days havepassed since the giving of the notice.

(4) Paragraph (3)(a) does not apply to identification information about the individual.

(5) Despite paragraph (3)(a), consumer credit liability information about the individual may relate to consumer credit that was entered into on a day before the individual turned 18, so long as the consumer credit was not terminated, or did not otherwise cease to be in force, on a day before the individual turned 18.

Written note of disclosure

(6) If a credit provider discloses credit information under this section, the provider must make a written note of that disclosure.

Civil penalty: 500 penalty units.

Interaction with the Australian Privacy Principles

(7) If a credit provider is an APP entity, Australian Privacy Principles 6 and 8 do not apply to the disclosure by the provider of credit information to a credit reporting body.

21E Payment information must be disclosed to a credit reporting body

If:

(a) a credit provider has disclosed default information about an individual to a credit reporting body under section 21D; and

(b) after the default information was disclosed, the amount of the overdue payment to which the information relates is paid;

the provider must, within a reasonable period after the amount is paid, disclose payment information about the amount to the body under that section.

Civil penalty: 500 penalty units.

21F Limitation on the disclosure of credit information during a ban period

(1) This section applies if:

(a) a credit reporting body holds credit reporting information about an individual; and

(b) a credit provider requests the body to disclose the information to the provider for the purpose of assessing an application for consumer credit made to the provider by the individual, or a person purporting to be the individual; and

(c) the body is not permitted to disclose the information because there is a ban period for the information; and

(d) during the ban period, the provider provides the consumer credit to which the application relates to the individual, or the person purporting to be the individual.

(2) If the credit provider holds credit information about the individual that relates to the consumer credit, the provider must not, despite sections 21D and 21E, disclose the information to a credit reporting body.

Civil penalty: 2,000 penalty units.

(3) Subsection (2) does not apply if the credit provider has taken such steps as are reasonable in the circumstances to verify the identity of the individual.

Subdivision D—Dealing with credit eligibility information etc.

21G Use or disclosure of credit eligibility information

Prohibition on use or disclosure

(1) If a credit provider holds credit eligibility information about an individual, the provider must not use or disclose the information.

Civil penalty: 2,000 penalty units.

Permitted uses

(2) Subsection (1) does not apply to the use of credit eligibility informationabout the individual if:

(a) the use is for a consumer credit related purpose of the credit provider in relation to the individual; or

(b) the use is a permitted CP use in relation to the individual; or

(c) both of the following apply:

(i) the credit provider believes on reasonable grounds that the individual has committed a serious credit infringement;

(ii) the provider uses the information in connection with the infringement; or

(d) the use is required or authorised by or under an Australian law or a court/tribunal order; or

(e) the use is a use prescribed by the regulations.

Permitted disclosures

(3) Subsection (1) does not apply to the disclosure of credit eligibility informationabout the individual if:

(a) the disclosure is a permitted CP disclosure in relation to the individual; or

(b) the disclosure is to a related body corporate of the credit provider; or

(c) the disclosure is to:

(i) a person for the purpose of processing an application for credit made to the credit provider; or

(ii) a person who manages credit provided by the credit provider for use in managing that credit; or

(d) both of the following apply:
(i) the credit provider believes on reasonable grounds that the individual has committed a serious credit infringement;
(ii) the provider discloses the information to another credit provider that has an Australian link, or to an enforcement body; or
(e) both of the following apply:
(i) the disclosure is for the purposes of a recognised external dispute resolution scheme;
(ii) a credit provider or credit reporting body is a member of the scheme; or
(f) the disclosure is required or authorised by or under an Australian law or a court/tribunal order; or
(g) the disclosure is a disclosure prescribed by the regulations.

Note: See section 21NA for additional rules about the disclosure of credit eligibility information under paragraph (3)(b) or (c).

(4) However, if the credit eligibility information about the individual is, or was derived from, repayment history information about the individual, the credit provider must not disclose the information under subsection (3).

Civil penalty: 2,000 penalty units.

(5) Subsection (4) does not apply if:
(a) the recipient of the credit eligibility information is another credit provider who is a licensee; or
(b) the disclosure is a permitted CP disclosure within the meaning of section 21L; or
(c) the credit provider discloses the credit eligibility information under paragraph (3)(b), (c), (e) or (f); or
(d) the credit provider discloses the credit eligibility information under paragraph (3)(d) to an enforcement body.

Written note of use or disclosure

(6) If a credit provider uses or discloses credit eligibility information under this section, the provider must make a written note of that use or disclosure.

Civil penalty: 500 penalty units.

Interaction with the Australian Privacy Principles

(7) If a credit provider is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the provider in relation to credit eligibility information.

(8) If:

(a) a credit provider is an APP entity; and

(b) the credit eligibility information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the provider in relation to the information.

21H Permitted CP uses in relation to individuals

A use by a credit provider of credit eligibility information about an individual is a ***permitted CP use*** in relation to the individual if:

(a) the relevant credit reporting information was disclosed to the provider under a provision specified in column 1 of the table for the purpose (if any) specified in that column; and

(b) the provider uses the credit eligibility information for the purpose specified in column 2 of the table.

Permitted CP uses

	Column 1	Column 2
Item	**The relevant credit reporting information was disclosed to the credit provider under ...**	**The credit provider uses the credit eligibility information for ...**
1	item 1 of the table in subsection 20F(1) for the purpose of assessing an application for consumer credit made by the individual to the provider.	(a) a securitisation related purpose of the provider in relation to the individual; or (b) the internal management purposes of the provider that are directly related to the provision or management of consumer credit by the provider.
2	item 2 of the table in subsection 20F(1) for a particular commercial credit related purpose of the provider in relation to the individual.	that particular commercial credit related purpose.

Permitted CP uses		
	Column 1	**Column 2**
Item	**The relevant credit reporting information was disclosed to the credit provider under ...**	**The credit provider uses the credit eligibility information for ...**
3	item 2 of the table in subsection 20F(1) for the purpose of assessing an application for commercial credit made by a person to the provider.	the internal management purposes of the provider that are directly related to the provision or management of commercial credit by the provider.
4	item 3 of the table in subsection 20F(1) for a credit guarantee purpose of the provider in relation to the individual.	(a) the credit guarantee purpose; or (b) the internal management purposes of the provider that are directly related to the provision or management of any credit by the provider.
5	item 5 of the table in subsection 20F(1).	the purpose of assisting the individual to avoid defaulting on his or her obligations in relation to consumer credit provided by the provider to the individual.
6	item 6 of the table in subsection 20F(1) for a particular securitisation related purpose of the provider in relation to the individual.	that particular securitisation related purpose.

21J Permitted CP disclosures between credit providers

Consent

(1) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to another credit provider (the ***recipient***) for a particular purpose; and

(b) the recipient has an Australian link; and

(c) the individual expressly consents to the disclosure of the information to the recipient for that purpose.

(2) The consent of the individual under paragraph (1)(c):

(a) must be given in writing unless:

(i) the disclosure of the information to the recipient is for the purpose of assessing an application for consumer credit or commercial credit made to the recipient; and

(ii) the application has not been made in writing; and

(b) must be given to the credit provider or recipient.

Agents of credit providers

(3) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the provider is acting as an agent of another credit provider that has an Australian link; and

(b) while the provider is so acting, the provider is a credit provider under subsection 6H(1); and

(c) the provider discloses the information to the other credit provider in the provider's capacity as such an agent.

Securitisation arrangements etc.

(4) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the provider is a credit provider under subsection 6J(1) in relation to credit; and

(b) the credit has been provided by, or is credit for which an application has been made to, another credit provider (the ***original credit provider***) that has an Australian link; and

(c) the original credit provider is not a credit provider under that subsection; and

(d) the information is disclosed to:

(i) the original credit provider; or

(ii) another credit provider that is a credit provider under that subsection in relation to the credit and that has an Australian link; and

(e) the disclosure of the information is reasonably necessary for:

(i) purchasing, funding or managing, or processing an application for, the credit by means of a securitisation arrangement; or

(ii) undertaking credit enhancement in relation to the credit.

Mortgage credit secured by the same real property

(5) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to another credit provider that has an Australian link; and

(b) both credit providers have provided mortgage credit to the individual in relation to which the same real property forms all or part of the security; and

(c) the individual is at least 60 days overdue in making a payment in relation to the mortgage credit provided by either provider; and

(d) the information is disclosed for the purpose of either provider deciding what action to take in relation to the overdue payment.

21K Permitted CP disclosures relating to guarantees etc.

Offer to act as a guarantor etc.

(1) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) either:

(i) the provider has provided credit to the individual; or

(ii) the individual has applied to the provider for credit; and

(b) the disclosure is to a person for the purpose of that person considering whether:

(i) to offer to act as a guarantor in relation to the credit; or

(ii) to offer property as security for the credit; and

(c) the person has an Australian link; and

(d) the individual expressly consents to the disclosure of the information to the person for that purpose.

(2) The consent of the individual under paragraph (1)(d) must be given in writing unless:

(a) if subparagraph (1)(a)(i) applies—the application for the credit was not made in writing; or

(b) if subparagraph (1)(a)(ii) applies—the application for the credit has not been made in writing.

Guarantors etc.

(3) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to a person who:

(i) is a guarantor in relation to credit provided by the provider to the individual; or

(ii) has provided property as security for such credit; and

(b) the person has an Australian link; and

(c) either:

(i) the individual expressly consents to the disclosure of the information to the person; or

(ii) if subparagraph (a)(i) applies—the information is disclosed to the person for a purpose related to the enforcement, or proposed enforcement, of the guarantee.

(4) The consent of the individual under subparagraph (3)(c)(i) must be given in writing unless the application for the credit was not made in writing.

21L Permitted CP disclosures to mortgage insurers

A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if the disclosure is to a mortgage insurer that has an Australian link for:

(a) a mortgage insurance purpose of the insurer in relation to the individual; or

(b) any purpose arising under a contract for mortgage insurance that has been entered into between the provider and the insurer.

21M Permitted CP disclosures to debt collectors

(1) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to a person or body that carries on a business or undertaking that involves the collection of debts on behalf of others; and

(c) the information is disclosed to the person or body for the primary purpose of the person or body collecting payments that are overdue in relation to:

(i) consumer credit provided by the provider to the individual; or

(ii) commercial credit provided by the provider to a person; and

(d) the information is information of a kind referred to in subsection (2).

Note: See section 21NA for additional rules about the disclosure of credit eligibility information under this subsection.

(2) The information for the purposes of paragraph (1)(d) is:

(a) identification information about the individual; or

(b) court proceedings information about the individual; or

(c) personal insolvency information about the individual; or

(d) if subparagraph (1)(c)(i) applies—default information about the individual if:

(i) the information relates to a payment that the individual is overdue in making in relation to consumer credit that has been provided by the credit provider to the individual; and

(ii) the provider does not hold, or has not held, payment information about the individual that relates to that overdue payment.

21N Permitted CP disclosures to other recipients

Mortgage credit assistance schemes

(1) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:

(a) the disclosure is to a State or Territory authority; and
(b) the functions or responsibilities of the authority include:
(i) giving assistance (directly or indirectly) that facilitates the provision of mortgage credit to individuals; or
(ii) the management or supervision of schemes or arrangements under which such assistance is given; and
(c) the information is disclosed for the purpose of enabling the authority:
(i) to determine the extent of the assistance (if any) to give in relation to the provision of mortgage credit to the individual; or
(ii) to manage or supervise such a scheme or arrangement.

Assignment of debts owed to credit providers etc.

(2) A disclosure by a credit provider of credit eligibility information about an individual is a ***permitted CP disclosure*** in relation to the individual if:
(a) the disclosure is to one or more of the following (the ***recipient***):
(i) an entity;
(ii) a professional legal adviser of the entity;
(iii) a professional financial adviser of the entity; and
(b) the recipient has an Australian link; and
(c) subsection (3) applies to the information.

(3) This subsection applies to the credit eligibility information if the recipient proposes to use the information:
(a) in the process of the entity considering whether to:
(i) accept an assignment of a debt owed to the credit provider; or
(ii) accept a debt owed to the provider as security for credit provided to the provider; or
(iii) purchase an interest in the provider or a related body corporate of the provider; or
(b) in connection with exercising rights arising from the acceptance of such an assignment or debt, or the purchase of such an interest.

21NA Disclosures to certain persons and bodies that do not have an Australian link

Related bodies corporate and credit managers etc.

(1) Before a credit provider discloses credit eligibility information under paragraph 21G(3)(b) or (c) to a related body corporate, or person, that does not have an Australian link, the provider must take such steps as are reasonable in the circumstances to ensure that the body or person does not breach the following provisions (the ***relevant provisions***) in relation to the information:

(a) for a disclosure under paragraph 21G(3)(b)—section 22D;

(b) for a disclosure under paragraph 21G(3)(c)—section 22E;

(c) in both cases—the Australian Privacy Principles (other than Australian Privacy Principles 1, 6, 7, 8 and 9.2).

(2) If:

(a) a credit provider discloses credit eligibility information under paragraph 21G(3)(b) or (c) to a related body corporate, or person, that does not have an Australian link; and

(b) the relevant provisions do not apply, under this Act, to an act done, or a practice engaged in, by the body or person in relation to the information; and

(c) the body or person does an act, or engages in a practice, in relation to the information that would be a breach of the relevant provisions if those provisions applied to the act or practice;

the act done, or the practice engaged in, by the body or person is taken, for the purposes of this Act, to have been done, or engaged in, by the provider and to be a breach of those provisions by the provider.

Debt collectors

(3) Before a credit provider discloses credit eligibility information under subsection 21M(1) to a person or body that does not have an Australian link, the provider must take such steps as are reasonable in the circumstances to ensure that the person or body does not breach the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information.

(4) If:

(a) a credit provider discloses credit eligibility information under subsection 21M(1) to a person or body that does not have an Australian link; and

(b) the Australian Privacy Principles do not apply, under this Act, to an act done, or a practice engaged in, by the person or body in relation to the information; and

(c) the person or body does an act, or engages in a practice, in relation to the information that would be a breach of the Australian Privacy Principles (other than Australian Privacy Principle 1) if those Australian Privacy Principles applied to the act or practice;

the act done, or the practice engaged in, by the person or body is taken, for the purposes of this Act, to have been done, or engaged in, by the provider and to be a breach of those Australian Privacy Principles by the provider.

21P Notification of a refusal of an application for consumer credit

(1) This section applies if:

(a) a credit provider refuses an application for consumer credit made in Australia:

(i) by an individual; or

(ii) jointly by an individual and one or more other persons (the ***other applicants***); and

(b) the refusal is based wholly or partly on credit eligibility information about one or more of the following:

(i) the individual;

(ii) a person who is proposing to act as a guarantor in relation to the consumer credit;

(iii) if the application is an application of a kind referred to in subparagraph (a)(ii)—one of the other applicants; and

(c) a credit reporting body disclosed the relevant credit reporting information to the provider for the purposes of assessing the application.

(2) The credit provider must, within a reasonable period after refusing the application, give the individual a written notice that:

(a) states that the application has been refused; and

(b) states that the refusal is based wholly or partly on credit eligibility information about one or more of the persons referred to in paragraph (1)(b); and

(c) if that information is about the individual—sets out:

(i) the name and contact details of the credit reporting body that disclosed the relevant credit reporting information to the provider; and

(ii) any other matter specified in the registered CR code.

Subdivision E—Integrity of credit information and credit eligibility information

21Q Quality of credit eligibility information

(1) A credit provider must take such steps (if any) as are reasonable in the circumstances to ensure that the credit eligibility information the provider collects is accurate, up-to-date and complete.

(2) A credit provider must take such steps (if any) as are reasonable in the circumstances to ensure that the credit eligibility information the provider uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

(3) If a credit provider is an APP entity, Australian Privacy Principle 10 does not apply to the provider in relation to credit eligibility information.

21R False or misleading credit information or credit eligibility information

Offences

(1) A credit provider commits an offence if:

(a) the provider discloses credit information under section 21D; and

(b) the information is false or misleading in a material particular.

Penalty: 200 penalty units.

(2) A credit provider commits an offence if:

(a) the provider uses or discloses credit eligibility information under this Division; and

(b) the information is false or misleading in a material particular.

Penalty: 200 penalty units.

Civil penalties

(3) A credit provider must not disclose credit information under section 21D if the information is false or misleading in a material particular.

Civil penalty: 2,000 penalty units.

(4) A credit provider must not use or disclose credit eligibility information under this Division if the information is false or misleading in a material particular.

Civil penalty: 2,000 penalty units.

21S Security of credit eligibility information

(1) If a credit provider holds credit eligibility information, the provider must take such steps as are reasonable in the circumstances to protect the information:

(a) from misuse, interference and loss; and

(b) from unauthorised access, modification or disclosure.

(2) If:

(a) a credit provider holds credit eligibility information about an individual; and

(b) the provider no longer needs the information for any purpose for which the information may be used or disclosed by the provider under this Division; and

(c) the provider is not required by or under an Australian law, or a court/tribunal order, to retain the information;

the provider must take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de-identified.

Civil penalty: 1,000 penalty units.

(3) If a credit provider is an APP entity, Australian Privacy Principle 11 does not apply to the provider in relation to credit eligibility information.

Subdivision F—Access to, and correction of, information

21T Access to credit eligibility information

Access

(1) If a credit provider holds credit eligibility information about an individual, the provider must, on request by an access seeker in relation to the information, give the access seeker access to the information.

Exceptions to access

(2) Despite subsection (1), the credit provider is not required to give the access seeker access to the credit eligibility information to the extent that:

(a) giving access would be unlawful; or

(b) denying access is required or authorised by or under an Australian law or a court/tribunal order; or

(c) giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body.

Dealing with requests for access

(3) The credit provider must respond to the request within a reasonable period after the request is made.

Means of access

(4) If the credit provider gives access to the credit eligibility information, the access must be given in the manner set out in the registered CR code.

Access charges

(5) If the credit provider is an agency, the provider must not charge the access seeker for the making of the request or for giving access to the information.

(6) If a credit provider is an organisation or small business operator, any charge by the provider for giving access to the information

must not be excessive and must not apply to the making of the request.

Refusal to give access

(7) If the provider refuses to give access to the information because of subsection (2), the provider must give the access seeker a written notice that:

(a) sets out the reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and

(b) states that, if the access seeker is not satisfied with the response to the request, the access seeker may:

(i) access a recognised external dispute resolution scheme of which the provider is a member; or

(ii) make a complaint to the Commissioner under Part V.

Interaction with the Australian Privacy Principles

(8) If a credit provider is an APP entity, Australian Privacy Principle 12 does not apply to the provider in relation to credit eligibility information.

21U Correction of credit information or credit eligibility information

(1) If:

(a) a credit provider holds credit information or credit eligibility information about an individual; and

(b) the provider is satisfied that, having regard to a purpose for which the information is held by the provider, the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

the provider must take such steps (if any) as are reasonable in the circumstances to correct the information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete, relevant and not misleading.

Notice of correction

(2) If:

(a) the credit provider corrects credit information or credit eligibility information under subsection (1); and

(b) the provider has previously disclosed the information under:

(i) this Division (other than subsection 21V(4)); or

(ii) the Australian Privacy Principles (other than Australian Privacy Principle 4.2);

the provider must, within a reasonable period, give each recipient of the information written notice of the correction.

(3) Subsection (2) does not apply if:

(a) it is impracticable for the credit provider to give the notice under that subsection; or

(b) the credit provider is required by or under an Australian law, or a court/tribunal order, not to give the notice under that subsection.

Interaction with the Australian Privacy Principles

(4) If a credit provider is an APP entity, Australian Privacy Principle 13:

(a) applies to the provider in relation to credit information or credit eligibility information that is identification information; but

(b) does not apply to the provider in relation to any other kind of credit information or credit eligibility information.

Note: Identification information may be corrected under this section or Australian Privacy Principle 13.

21V Individual may request the correction of credit information etc.

Request

(1) An individual may request a credit provider to correct personal information about the individual if:

(a) the personal information is:

(i) credit information about the individual; or

(ii) CRB derived information about the individual; or

(iii) CP derived information about the individual; and

(b) the provider holds at least one kind of the personal information referred to in paragraph (a).

Correction

(2) If the credit provider is satisfied that the personal information is inaccurate, out-of-date, incomplete, irrelevant or misleading, the provider must take such steps (if any) as are reasonable in the circumstances to correct the information within:

(a) the period of 30 days that starts on the day on which the request is made; or

(b) such longer period as the individual has agreed to in writing.

Consultation

(3) If the credit provider considers that the provider cannot be satisfied of the matter referred to in subsection (2) in relation to the personal information without consulting either or both of the following (the ***interested party***):

(a) a credit reporting body that holds or held the information and that has an Australian link;

(b) another credit provider that holds or held the information and that has an Australian link;

the provider must consult that interested party, or those interested parties, about the individual's request.

(4) The use or disclosure of personal information about the individual for the purposes of the consultation is taken, for the purposes of this Act, to be a use or disclosure that is authorised by this subsection.

No charge

(5) The credit provider must not charge the individual for the making of the request or for correcting the information.

Interaction with the Australian Privacy Principles

(6) If a credit provider is an APP entity, Australian Privacy Principle 13:

(a) applies to the provider in relation to personal information referred to in paragraph (1)(a) that is identification information; but

(b) does not apply to the provider in relation to any other kind of personal information referred to in that paragraph.

Note: Identification information may be corrected under this section or Australian Privacy Principle 13.

21W Notice of correction etc. must be given

(1) This section applies if an individual requests a credit provider to correct personal information under subsection 21V(1).

Notice of correction etc.

(2) If the credit provider corrects personal information about the individual under subsection 21V(2), the provider must, within a reasonable period:

(a) give the individual written notice of the correction; and

(b) if the provider consulted an interested party under subsection 21V(3) about the individual's request—give the party written notice of the correction; and

(c) if the correction relates to information that the provider has previously disclosed under:

(i) this Division (other than subsection 21V(4)); or

(ii) the Australian Privacy Principles (other than Australian Privacy Principle 4.2);

give each recipient of the information written notice of the correction.

(3) If the credit provider does not correct the personal information under subsection 21V(2), the provider must, within a reasonable period, give the individual written notice that:

(a) states that the correction has not been made; and

(b) sets out the provider's reasons for not correcting the information (including evidence substantiating the correctness of the information); and

(c) states that, if the individual is not satisfied with the response to the request, the individual may:

(i) access a recognised external dispute resolution scheme of which the provider is a member; or

(ii) make a complaint to the Commissioner under Part V.

Exceptions

(4) Paragraph (2)(c) does not apply if it is impracticable for the credit provider to give the notice under that paragraph.

(5) Subsection (2) or (3) does not apply if the credit provider is required by or under an Australian law, or a court/tribunal order, not to give the notice under that subsection.

Division 4—Affected information recipients

22 Guide to this Division

This Division sets out rules that apply to affected information recipients in relation to their handling of their regulated information.

If an affected information recipient is an APP entity, the rules apply in relation to the regulated information of the recipient in addition to, or instead of, any relevant Australian Privacy Principles.

Subdivision A—Consideration of information privacy

22A Open and transparent management of regulated information

(1) The object of this section is to ensure that an affected information recipient manages the regulated information of the recipient in an open and transparent way.

Compliance with this Division etc.

(2) An affected information recipient must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the recipient's functions or activities that:

(a) will ensure that the recipient complies with this Division and the registered CR code if it binds the recipient; and

(b) will enable the recipient to deal with inquiries or complaints from individuals about the recipient's compliance with this Division or the registered CR code if it binds the recipient.

Policy about the management of regulated information

(3) An affected information recipient must have a clearly expressed and up-to-date policy about the recipient's management of the regulated information of the recipient.

(4) Without limiting subsection (3), the policy of the affected information recipient must contain the following information:

(a) the kinds of regulated information that the recipient collects and holds, and how the recipient collects and holds that information;

(b) the purposes for which the recipient collects, holds, uses and discloses regulated information;

(c) how an individual may access regulated information about the individual that is held by the recipient and seek the correction of such information;

(d) how an individual may complain about a failure of the recipient to comply with this Division or the registered CR code if it binds the recipient;

(e) how the recipient will deal with such a complaint.

Availability of policy etc.

(5) An affected information recipient must take such steps as are reasonable in the circumstances to make the policy available:

(a) free of charge; and

(b) in such form as is appropriate.

Note: An affected information recipient will usually make the policy available on the recipient's website.

(6) If a person or body requests a copy, in a particular form, of the policy of an affected information recipient, the recipient must take such steps as are reasonable in the circumstances to give the person or body a copy in that form.

Interaction with the Australian Privacy Principles

(7) If an affected information recipient is an APP entity, Australian Privacy Principles 1.3 and 1.4 do not apply to the recipient in relation to the regulated information of the recipient.

Subdivision B—Dealing with regulated information

22B Additional notification requirements for affected information recipients

If an affected information recipient is an APP entity, then the matters for the purposes of Australian Privacy Principle 5.1 include

the following matters to the extent that the personal information referred to in that principle is regulated information of the recipient:

(a) that the policy (the ***credit reporting policy***) of the recipient that is referred to in subsection 22A(3) contains information about how an individual may access the regulated information about the individual that is held by the recipient, and seek the correction of such information;

(b) that the credit reporting policy of the recipient contains information about how an individual may complain about a failure of the recipient to comply with this Division or the registered CR code if it binds the recipient; and

(c) that the credit reporting policy of the recipient contains information about how the recipient will deal with such a complaint.

22C Use or disclosure of information by mortgage insurers or trade insurers

Prohibition on use or disclosure

(1) If:

(a) a mortgage insurer or trade insurer holds or held personal information about an individual; and

(b) the information was disclosed to the insurer by a credit reporting body or credit provider under Division 2 or 3 of this Part;

the insurer must not use or disclose the information, or any personal information about the individual derived from that information.

Civil penalty: 2,000 penalty units.

Permitted uses

(2) Subsection (1) does not apply to the use of the information if:

(a) for a mortgage insurer—the use is for:

(i) a mortgage insurance purpose of the insurer in relation to the individual; or

(ii) any purpose arising under a contract for mortgage insurance that has been entered into between the credit provider and the insurer; or

(b) for a trade insurer—the use is for a trade insurance purpose of the insurer in relation to the individual; or

(c) the use is required or authorised by or under an Australian law or a court/tribunal order.

Permitted disclosure

(3) Subsection (1) does not apply to the disclosure of the information if the disclosure is required or authorised by or under an Australian law or a court/tribunal order.

Interaction with the Australian Privacy Principles

(4) If the mortgage insurer or trade insurer is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the insurer in relation to the information.

(5) If:

(a) the mortgage insurer or trade insurer is an APP entity; and

(b) the information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the insurer in relation to the information.

22D Use or disclosure of information by a related body corporate

Prohibition on use or disclosure

(1) If:

(a) a body corporate holds or held credit eligibility information about an individual; and

(b) the information was disclosed to the body by a credit provider under paragraph 21G(3)(b);

the body must not use or disclose the information, or any personal information about the individual derived from that information.

Civil penalty: 1,000 penalty units.

Permitted use or disclosure

(2) Subsection (1) does not apply to the use or disclosure of the information by the body corporate if the body would be permitted to use or disclose the information under section 21G if the body were the credit provider.

(3) In determining whether the body corporate would be permitted to use or disclose the information under section 21G, assume that the body is whichever of the following is applicable:

(a) the credit provider that has provided the relevant credit to the individual;

(b) the credit provider to which the relevant application for credit was made by the individual.

Interaction with the Australian Privacy Principles

(4) If the body corporate is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the body in relation to the information.

(5) If:

(a) the body corporate is an APP entity; and

(b) the information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the body in relation to the information.

22E Use or disclosure of information by credit managersetc.

Prohibition on use or disclosure

(1) If:

(a) a person holds or held credit eligibility information about an individual; and

(b) the information was disclosed to the person by a credit provider under paragraph 21G(3)(c);

the person must not use or disclose the information, or any personal information about the individual derived from that information.

Civil penalty: 1,000 penalty units.

Permitted uses

(2) Subsection (1) does not apply to the use of the information if:

(a) the person uses the information for the purpose for which it was disclosed to the person under paragraph 21G(3)(c); or

(b) the use is required or authorised by or under an Australian law or a court/tribunal order.

Permitted disclosure

(3) Subsection (1) does not apply to the disclosure of the information if:

(a) the disclosure is to the credit provider; or

(b) the disclosure is required or authorised by or under an Australian law or a court/tribunal order.

Interaction with the Australian Privacy Principles

(4) If the person is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the person in relation to the information.

(5) If:

(a) the person is an APP entity; and

(b) the information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the person in relation to the information.

22F Use or disclosure of information by advisers etc.

Prohibition on use or disclosure

(1) If:

(a) any of the following (the ***recipient***) holds or held credit eligibility information about an individual:

(i) an entity;

(ii) a professional legal adviser of the entity;

(iii) a professional financial adviser of the entity; and

(b) the information was disclosed to the recipient by a credit provider under subsection 21N(2);

the recipient must not use or disclose the information, or any personal information about the individual derived from that information.

Civil penalty: 1,000 penalty units.

Permitted uses

(2) Subsection (1) does not apply to the use of the information if:
  (a) for a recipient that is the entity—the information is used for a matter referred to in subsection 21N(3); or
  (b) for a recipient that is the professional legal adviser, or professional financial adviser, of the entity—the information is used:
    (i) in the adviser's capacity as an adviser of the entity; and
    (ii) in connection with advising the entity about a matter referred to in subsection 21N(3); or
  (c) the use is required or authorised by or under an Australian law or a court/tribunal order.

Permitted disclosure

(3) Subsection (1) does not apply to the disclosure of the information if the disclosure is required or authorised by or under an Australian law or a court/tribunal order.

Interaction with the Australian Privacy Principles

(4) If the recipient is an APP entity, Australian Privacy Principles 6, 7 and 8 do not apply to the recipient in relation to the information.

(5) If:
  (a) the recipient is an APP entity; and
  (b) the information is a government related identifier of the individual;

Australian Privacy Principle 9.2 does not apply to the recipient in relation to the information.

Division 5—Complaints

23 Guide to this Division

This Division deals with complaints about credit reporting bodies or credit providers.

Individuals may complain to credit reporting bodies or credit providers about acts or practices that may be a breach of certain provisions of this Part or the registered CR code.

If a complaint is made, the respondent for the complaint must investigate the complaint and make a decision about the complaint.

23A Individual may complain about a breach of a provision of this Part etc.

Complaint

(1) An individual may complain to a credit reporting body about an act or practice engaged in by the body that may be a breach of either of the following provisions in relation to the individual:

(a) a provision of this Part (other than section 20R or 20T);

(b) a provision of the registered CR code (other than a provision that relates to that section).

Note: A complaint about a breach of section 20R or 20T, or a provision of the registered CR code that relates to that section, may be made to the Commissioner under Part V.

(2) An individual may complain to a credit provider about an act or practice engaged in by the provider that may be a breach of either of the following provisions in relation to the individual:

(a) a provision of this Part (other than section 21T or 21V);

(b) a provision of the registered CR code (other than a provision that relates to that section) if it binds the credit provider.

Note: A complaint about a breach of section 21T or 21V, or a provision of the registered CR code that relates to that section, may be made to the Commissioner under Part V.

Nature of complaint

(3) If an individual makes a complaint, the individual must specify the nature of the complaint.

(4) The complaint may relate to personal information that has been destroyed or de-identified.

No charge

(5) The credit reporting body or credit provider must not charge the individual for the making of the complaint or for dealing with the complaint.

23B Dealing with complaints

(1) If an individual makes a complaint under section 23A, the respondent for the complaint:

(a) must, within 7 days after the complaint is made, give the individual a written notice that:

(i) acknowledges the making of the complaint; and

(ii) sets out how the respondent will deal with the complaint; and

(b) must investigate the complaint.

Consultation about the complaint

(2) If the respondent for the complaint considers that it is necessary to consult a credit reporting body or credit provider about the complaint, the respondent must consult the body or provider.

(3) The use or disclosure of personal information about the individual for the purposes of the consultation is taken, for the purposes of this Act, to be a use or disclosure that is authorised by this subsection.

Decision about the complaint

(4) After investigating the complaint, the respondent must, within the period referred to in subsection (5), make a decision about the complaint and give the individual a written notice that:

(a) sets out the decision; and

(b) states that, if the individual is not satisfied with the decision, the individual may:

(i) access a recognised external dispute resolution scheme of which the respondent is a member; or

(ii) make a complaint to the Commissioner under Part V.

(5) The period for the purposes of subsection (4) is:

(a) the period of 30 days that starts on the day on which the complaint is made; or

(b) such longer period as the individual has agreed to in writing.

23C Notification requirements relating to correction complaints

(1) This section applies if an individual makes a complaint under section 23A about an act or practice that may breach section 20S or 21U (which deal with the correction of personal information by credit reporting bodies and credit providers).

Notification of complaint etc.

(2) If:

(a) the respondent for the complaint is a credit reporting body; and

(b) the complaint relates to credit information or credit eligibility information that a credit provider holds;

the respondent must, in writing:

(c) notify the provider of the making of the complaint as soon as practicable after it is made; and

(d) notify the provider of the making of a decision about the complaint under subsection 23B(4) as soon as practicable after it is made.

(3) If:

(a) the respondent for the complaint is a credit provider; and

(b) the complaint relates to:

(i) credit reporting information that a credit reporting body holds; or

(ii) credit information or credit eligibility information that another credit provider holds;

the respondent must, in writing:

(c) notify the body or other provider (as the case may be) of the making of the complaint as soon as practicable after it is made; and

(d) notify the body or other provider (as the case may be) of the making of a decision about the complaint under subsection 23B(4) as soon as practicable after it is made.

Notification of recipients of disclosed information

(4) If:

(a) a credit reporting body discloses credit reporting information to which the complaint relates under Division 2 of this Part; and

(b) at the time of the disclosure, a decision about the complaint under subsection 23B(4) has not been made;

the body must, at that time, notify in writing the recipient of the information of the complaint.

(5) If:

(a) a credit provider discloses personal information to which the complaint relates under Division 3 of this Part or under the Australian Privacy Principles; and

(b) at the time of the disclosure, a decision about the complaint under subsection 23B(4) has not been made;

the provider must, at that time, notify in writing the recipient of the information of the complaint.

Exceptions

(6) Subsection (2), (3), (4) or (5) does not apply if:

(a) it is impracticable for the credit reporting body or credit provider to give the notification under that subsection; or

(b) the credit reporting body or credit provider is required by or under an Australian law, or a court/tribunal order, not to give the notification under that subsection.

Division 6—Unauthorised obtaining of credit reporting information etc.

24 Obtaining credit reporting information from a credit reporting body

Offences

(1) An entity commits an offence if:
  (a) the entity obtains credit reporting information; and
  (b) the information is obtained from a credit reporting body; and
  (c) the entity is not:
    (i) an entity to which the body is permitted to disclose the information under Division 2 of this Part; or
    (ii) an access seeker for the information.

Penalty: 200 penalty units.

(2) An entity commits an offence if:
  (a) the entity obtains credit reporting information; and
  (b) the information is obtained from a credit reporting body; and
  (c) the information is obtained by false pretence.

Penalty: 200 penalty units.

Civil penalties

(3) An entity must not obtain credit reporting information from a credit reporting body if the entity is not:
  (a) an entity to which the body is permitted to disclose the information under Division 2 of this Part; or
  (b) an access seeker for the information.

Civil penalty: 2,000 penalty units.

(4) An entity must not obtain, by false pretence, credit reporting information from a credit reporting body.

Civil penalty: 2,000 penalty units.

24A Obtaining credit eligibility information from a credit provider

Offences

(1) An entity commits an offence if:
  (a) the entity obtains credit eligibility information; and
  (b) the information is obtained from a credit provider; and
  (c) the entity is not:
    (i) an entity to which the provider is permitted to disclose the information under Division 3 of this Part; or
    (ii) an access seeker for the information.

Penalty: 200 penalty units.

(2) An entity commits an offence if:
  (a) the entity obtains credit eligibility information; and
  (b) the information is obtained from a credit provider; and
  (c) the information is obtained by false pretence.

Penalty: 200 penalty units.

Civil penalties

(3) An entity must not obtain credit eligibility information from a credit provider if the entity is not:
  (a) an entity to which the provider is permitted to disclose the information under Division 3 of this Part; or
  (b) an access seeker for the information.

Civil penalty: 2,000 penalty units.

(4) An entity must not obtain, by false pretence, credit eligibility information from a credit provider.

Civil penalty: 2,000 penalty units.

Division 7—Court orders

25 Compensation orders

(1) The Federal Court or the Federal Magistrates Court may order an entity to compensate a person for loss or damage (including injury to the person's feelings or humiliation) suffered by the person if:

(a) either:

(i) a civil penalty order has been made against the entity for a contravention of a civil penalty provision (other than section 13G); or

(ii) the entity is found guilty of an offence against this Part; and

(b) that loss or damage resulted from the contravention or commission of the offence.

The order must specify the amount of compensation.

(2) The court may make the order only if:

(a) the person applies for an order under this section; and

(b) the application is made within 6 years of the day the cause of action that relates to the contravention or commission of the offence accrued.

(3) If the court makes the order, the amount of compensation specified in the order that is to be paid to the person may be recovered as a debt due to the person.

25A Other orders to compensate loss or damage

(1) This section applies if:

(a) either:

(i) a civil penalty order has been made against an entity for a contravention of a civil penalty provision (other than section 13G); or

(ii) an entity is found guilty of an offence against this Part; and

(b) a person has suffered, or is likely to suffer, loss or damage (including injury to the person's feelings or humiliation) as a result of the contravention or commission of the offence.

(2) The Federal Court or the Federal Magistrates Court may make such order as the Court considers appropriate against the entity to:

(a) compensate the person, in whole or in part, for that loss or damage; or

(b) prevent or reduce that loss or damage suffered, or likely to be suffered, by the person.

(3) Without limiting subsection (2), examples of orders the court may make include:

(a) an order directing the entity to perform any reasonable act, or carry out any reasonable course of conduct, to redress the loss or damage suffered by the person; and

(b) an order directing the entity to pay the person a specified amount to reimburse the person for expenses reasonably incurred by the person in connection with the contravention or commission of the offence; and

(c) an order directing the defendant to pay to the person the amount of loss or damage the plaintiff suffered.

(4) The court may make the order only if:

(a) the person applies for an order under this section; and

(b) the application is made within 6 years of the day the cause of action that relates to the contravention or commission of the offence accrued.

(5) If the court makes an order that the entity pay an amount to the person, the person may recover the amount as a debt due to the person.

73 Subsections 30(3) and (4)

Omit "credit reporting agency" (wherever occurring), substitute "credit reporting body".

74 Subsection 49(4) (paragraph (a) of the definition of *credit reporting offence*)

Omit "18C(4), 18D(4), 18K(4), 18L(2), 18N(2), 18R(2) or 18S(3) or section 18T", substitute "20P(1), 21R(1) or (2), 24(1) or (2) or 24A(1) or (2)".

75 Subsection 68(1)

Omit "credit reporting agency", substitute "credit reporting body".

Schedule 3—Privacy codes

Privacy Act 1988

1 Subsection 6(1)

Insert:

APP code has the meaning given by section 26C.

2 Subsection 6(1)

Insert:

APP code developer means:

(a) an APP entity; or

(b) a group of APP entities; or

(c) a body or association representing one or more APP entities.

3 Subsection 6(1) (definition of *approved privacy code*)

Repeal the definition.

4 Subsection 6(1) (definition of *code complaint*)

Omit “an approved privacy code”, substitute “a registered APP code”.

5 Subsection 6(1) (definition of *Code of Conduct*)

Repeal the definition.

6 Subsection 6(1)

Insert:

Codes Register has the meaning given by subsection 26U(1).

7 Subsection 6(1)

Insert:

CR code has the meaning given by section 26N.

8 Subsection 6(1)

Insert:

CR code developer means:

(a) an entity that is subject to Part IIIA; or

(b) a group of entities that are subject to Part IIIA; or

(c) a body or association representing one or more entities that are subject to Part IIIA.

9 Subsection 6(1) (definition of *credit provider*)

After "III,", insert "IIIB,".

10 Subsection 6(1) (paragraph (a) of the definition of *credit reporting complaint*)

Omit "the Code of Conduct", substitute "the registered CR code".

11 Subsection 6(1) (definition of *credit reporting infringement*)

Repeal the definition.

12 Subsection 6(1) (definition of *privacy code*)

Repeal the definition.

13 Subsection 6(1)

Insert:

registered APP code has the meaning given by section 26B.

14 Subsection 6(1)

Insert:

registered CR code has the meaning given by section 26M.

15 Subsection 6(3A)

Repeal the subsection.

16 At the end of subsection 6(7)

Add:

; or (g) being both an APP complaint and a code complaint.

17 Section 6B (heading)

Repeal the heading, substitute:

6B Breach of a registered APP code

18 Subsections 6B(1), (2), (3) and (4)

Omit “an approved privacy code”, substitute “a registered APP code”.

19 After section 6B

Insert:

6BA Breach of the registered CR code

For the purposes of this Act, an act or practice breaches the registered CR code if, and only if, it is contrary to, or inconsistent with, the code.

20 Subsection 7(2)

Omit “an approved privacy code”, substitute “a registered APP code”.

21 Subsection 7B(2) (note)

Omit “or a binding approved privacy code”, substitute “, or a registered APP code that binds the organisation,”.

22 Subsection 13B(1) (note)

Omit “or a binding approved privacy code”, substitute “and a registered APP code that binds them”.

23 Subsection 13B(1) (paragraph (b) of the note)

Omit “or a corresponding provision in a binding approved privacy code”.

24 Subsection 13B(1A) (note)

Omit “a binding approved privacy code”, substitute “a registered APP code that binds the body”.

25 Subsection 13C(1) (note)

Omit “or a binding approved privacy code”, substitute “and a registered APP code that binds them”.

26 Subsection 13C(1) (note)

Omit "or a corresponding provision in a binding approved privacy code".

27 Division 5 of Part III

Repeal the Division.

28 Part IIIAA

Repeal the Part.

29 Before Part IV

Insert:

Part IIIB—Privacy codes

Division 1—Introduction

26 Guide to this Part

This Part deals with privacy codes.

Division 2 deals with codes of practice about information privacy, called APP codes. APP code developers or the Commissioner may develop APP codes, which:

(a) must set out how one or more of the Australian Privacy Principles are to be applied or complied with; and

(b) may impose additional requirements to those imposed by the Australian Privacy Principles; and

(c) may deal with other specified matters.

If the Commissioner includes an APP code on the Codes Register, an APP entity bound by the code must not breach it. A breach of a registered APP code is an interference with the privacy of an individual.

Division 3 deals with a code of practice about credit reporting, called a CR code. CR code developers or the Commissioner may develop a CR code, which:

(a) must set out how one or more of the provisions of Part IIIA are to be applied or complied with; and

(b) must deal with matters required or permitted by Part IIIA to be provided for by the registered CR code; and

(c) may deal with other specified matters.

If the Commissioner includes a CR code on the Codes Register, an entity bound by the code must not breach it. A breach of the registered CR code is an interference with the privacy of an individual.

Division 4 deals with the Codes Register, guidelines relating to codes and the review of the operation of registered codes.

Division 2—Registered APP codes

Subdivision A—Compliance with registered APP codes etc.

26A APP entities to comply with binding registered APP codes

An APP entity must not do an act, or engage in a practice, that breaches a registered APP code that binds the entity.

26B What is a *registered APP code*

(1) A ***registered APP code*** is an APP code:
  (a) that is included on the Codes Register; and
  (b) that is in force.

(2) A registered APP code is a legislative instrument.

(3) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a registered APP code may be expressed to take effect before the date it is registered under that Act.

Note: An APP code cannot come into force before it is included on the Codes Register: see paragraph 26C(2)(c).

26C What is an *APP code*

(1) An ***APP code*** is a written code of practice about information privacy.

(2) An APP code must:

(a) set out how one or more of the Australian Privacy Principles are to be applied or complied with; and

(b) specify the APP entities that are bound by the code, or a way of determining the APP entities that are bound by the code; and

(c) set out the period during which the code is in force (which must not start before the day the code is registered under section 26H).

(3) An APP code may do one or more of the following:

(a) impose additional requirements to those imposed by one or more of the Australian Privacy Principles, so long as the additional requirements are not contrary to, or inconsistent with, those principles;

(b) cover an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3);

(c) deal with the internal handling of complaints;

(d) provide for the reporting to the Commissioner about complaints;

(e) deal with any other relevant matters.

(4) An APP code may be expressed to apply to any one or more of the following:

(a) all personal information or a specified type of personal information;

(b) a specified activity, or a specified class of activities, of an APP entity;

(c) a specified industry sector or profession, or a specified class of industry sectors or professions;

(d) APP entities that use technology of a specified kind.

(5) An APP code is not a legislative instrument.

26D Extension of Act to exempt acts or practices covered by registered APP codes

If a registered APP code covers an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3), this Act applies in relation to the code as if that act or practice were not exempt.

Subdivision B—Development and registration of APP codes

26E Development of APP codes by APP code developers

Own initiative

(1) An APP code developer may develop an APP code.

At the Commissioner's request

(2) The Commissioner may, in writing, request an APP code developer to develop an APP code, and apply to the Commissioner for the code to be registered, if the Commissioner is satisfied it is in the public interest for the code to be developed.

(3) The request must:
  (a) specify the period within which the request must be complied with; and
  (b) set out the effect of section 26A.

(4) The period:
  (a) must run for at least 120 days from the date the request is made; and
  (b) may be extended by the Commissioner.

(5) The request may:
  (a) specify one or more matters that the APP code must deal with; and
  (b) specify the APP entities, or a class of APP entities, that should be bound by the code.

(6) Despite paragraph (5)(a), the Commissioner must not require an APP code to cover an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3). However, the APP code that is developed by the APP code developer may cover such an act or practice.

(7) The Commissioner must make a copy of the request publicly available as soon as practicable after the request is made.

26F Application for registration of APP codes

(1) If an APP code developer develops an APP code, the developer may apply to the Commissioner for registration of the code.

(2) Before making the application, the APP code developer must:
   (a) make a draft of the APP code publicly available; and
   (b) invite the public to make submissions to the developer about the draft within a specified period (which must run for at least 28 days); and
   (c) give consideration to any submissions made within the specified period.

(3) The application must:
   (a) be made in the form and manner specified by the Commissioner; and
   (b) be accompanied by such information as is specified by the Commissioner.

(4) The APP code developer may vary the APP code at any time before the Commissioner registers the code, but only with the consent of the Commissioner.

26G Development of APP codes by the Commissioner

(1) This section applies if the Commissioner made a request under subsection 26E(2) and either:
   (a) the request has not been complied with; or
   (b) the request has been complied with but the Commissioner has decided not to register, under section 26H, the APP code that was developed as requested.

(2) The Commissioner may develop an APP code if the Commissioner is satisfied that it is in public interest to develop the code. However, despite subsection 26C(3)(b), the APP code must not cover an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3).

(3) Before registering the APP code under section 26H, the Commissioner must:

(a) make a draft of the code publicly available; and

(b) invite the public to make submissions to the Commissioner about the draft within a specified period (which must run for at least 28 days); and

(c) give consideration to any submissions made within the specified period.

26H Commissioner may register APP codes

(1) If:

(a) an application for registration of an APP code is made under section 26F; or

(b) the Commissioner develops an APP code under section 26G;

the Commissioner may register the code by including it on the Codes Register.

(2) In deciding whether to register the APP code, the Commissioner may:

(a) consult any person the Commissioner considers appropriate; and

(b) consider the matters specified in any relevant guidelines made under section 26V.

(3) If the Commissioner decides not to register an APP code developed by an APP code developer, the Commissioner must give written notice of the decision to the developer, including reasons for the decision.

Subdivision C—Variation and removal of registered APP codes

26J Variation of registered APP codes

(1) The Commissioner may, in writing, approve a variation of a registered APP code:

(a) on his or her own initiative; or

(b) on application by an APP entity that is bound by the code; or

(c) on application by a body or association representing one or more APP entities that are bound by the code.

(2) An application under paragraph (1)(b) or (c) must:
  (a) be made in the form and manner specified by the Commissioner; and
  (b) be accompanied by such information as is specified by the Commissioner.

(3) If the Commissioner varies a registered APP code on his or her own initiative, then, despite subsection 26C(3)(b), the variation must not deal with an act or practice that is exempt within the meaning of subsection 7B(1), (2) or (3).

(4) Before deciding whether to approve a variation, the Commissioner must:
  (a) make a draft of the variation publicly available; and
  (b) consult any person the Commissioner considers appropriate about the variation; and
  (c) consider the extent to which members of the public have been given an opportunity to comment on the variation.

(5) In deciding whether to approve a variation, the Commissioner may consider the matters specified in any relevant guidelines made under section 26V.

(6) If the Commissioner approves a variation of a registered APP code (the ***original code***), the Commissioner must:
  (a) remove the original code from the Codes Register; and
  (b) register the APP code, as varied, by including it on the Register.

(7) If the Commissioner approves a variation, the variation comes into effect on the day specified in the approval, which must not be before the day on which the APP code, as varied, is included on the Codes Register.

(8) An approval is not a legislative instrument.

Note: The APP code, as varied, is a legislative instrument once it is included on the Codes Register: see section 26B.

26K Removal of registered APP codes

(1) The Commissioner may remove a registered APP code from the Codes Register:

(a) on his or her own initiative; or
(b) on application by an APP entity that is bound by the code; or
(c) on application by a body or association representing one or more APP entities that are bound by the code.

(2) An application under paragraph (1)(b) or (c) must:
(a) be made in the form and manner specified by the Commissioner; and
(b) be accompanied by such information as is specified by the Commissioner.

(3) Before deciding whether to remove the registered APP code, the Commissioner must:
(a) consult any person the Commissioner considers appropriate about the proposed removal; and
(b) consider the extent to which members of the public have been given an opportunity to comment on the proposed removal.

(4) In deciding whether to remove the registered APP code, the Commissioner may consider the matters specified in any relevant guidelines made under section 26V.

Division 3—Registered CR code

Subdivision A—Compliance with the registered CR code

26L Entities to comply with the registered CR code if bound by the code

If an entity is bound by the registered CR code, the entity must not do an act, or engage in a practice, that breaches the code.

Note: There must always be one, and only one, registered CR code at all times after this Part commences: see subsection 26S(4).

26M What is the *registered CR code*

(1) The ***registered CR code*** is the CR code that is included on the Codes Register.

(2) The registered CR code is a legislative instrument.

(3) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, the registered CR code may be expressed to take effect before the date it is registered under that Act.

26N What is a *CR code*

(1) A ***CR code*** is a written code of practice about credit reporting.

(2) A CR code must:
  (a) set out how one or more of the provisions of Part IIIA are to be applied or complied with; and
  (b) make provision for, or in relation to, matters required or permitted by Part IIIA to be provided for by the registered CR code; and
  (c) bind all credit reporting bodies; and
  (d) specify the credit providers that are bound by the code, or a way of determining which credit providers are bound; and
  (e) specify any other entities subject to Part IIIA that are bound by the code, or a way of determining which of those entities are bound.

(3) A CR code may do one or more of the following:
  (a) impose additional requirements to those imposed by Part IIIA, so long as the additional requirements are not contrary to, or inconsistent with, that Part;
  (b) deal with the internal handling of complaints;
  (c) provide for the reporting to the Commissioner about complaints;
  (d) deal with any other relevant matters.

(4) A CR code may be expressed to apply differently in relation to:
  (a) classes of entities that are subject to Part IIIA; and
  (b) specified classes of credit information, credit reporting information or credit eligibility information; and
  (c) specified classes of activities of entities that are subject to Part IIIA.

(5) A CR code is not a legislative instrument.

Subdivision B—Development and registration of CR code

26P Development of CR code by CR code developers

(1) The Commissioner may, in writing, request a CR code developer to develop a CR code and apply to the Commissioner for the code to be registered.

(2) The request must:
  (a) specify the period within which the request must be complied with; and
  (b) set out the effect of section 26L.

(3) The period:
  (a) must run for at least 120 days from the date the request is made; and
  (b) may be extended by the Commissioner.

(4) The request may:
  (a) specify one or more matters that the CR code must deal with; and
  (b) specify the credit providers, or a class of credit providers, that should be bound by the code; and
  (c) specify the other entities, or a class of other entities, subject to Part IIIA that should be bound by the code.

(5) The Commissioner must make a copy of the request publicly available as soon as practicable after the request is made.

26Q Application for registration of CR code

(1) If a CR code developer develops a CR code, the developer may apply to the Commissioner for registration of the code.

(2) Before making the application, the CR code developer must:
  (a) make a draft of the CR code publicly available; and
  (b) invite the public to make submissions to the developer about the draft within a specified period (which must run for at least 28 days); and
  (c) give consideration to any submissions made within the specified period.

(3) The application must:
(a) be made in the form and manner specified by the Commissioner; and
(b) be accompanied by such information as is specified by the Commissioner.

(4) The CR code developer may vary the CR code at any time before the Commissioner registers the code, but only with the consent of the Commissioner.

26R Development of CR code by the Commissioner

(1) The Commissioner may develop a CR code if the Commissioner made a request under section 26P and either:
(a) the request has not been complied with; or
(b) the request has been complied with but the Commissioner has decided not to register, under section 26S, the CR code that was developed as requested.

(2) Before registering the CR code under section 26S, the Commissioner must:
(a) make a draft of the code publicly available; and
(b) invite the public to make submissions to the Commissioner about the draft within a specified period (which must run for at least 28 days); and
(c) give consideration to any submissions made within the specified period.

26S Commissioner may register CR code

(1) If:
(a) an application for registration of a CR code is made under section 26Q; or
(b) the Commissioner develops a CR code under section 26R;
the Commissioner may register the code by including it on the Codes Register.

(2) In deciding whether to register the CR code, the Commissioner may:
(a) consult any person the Commissioner considers appropriate; and

(b) consider the matters specified in any guidelines made under section 26V.

(3) If the Commissioner decides not to register a CR code developed by a CR code developer, the Commissioner must give written notice of the decision to the developer, including reasons for the decision.

(4) The Commissioner must ensure that there is one, and only one, registered CR code at all times after this Part commences.

Subdivision C—Variation of the registered CR code

26T Variation of the registered CR code

(1) The Commissioner may, in writing, approve a variation of the registered CR code:
(a) on his or her own initiative; or
(b) on application by an entity that is bound by the code; or
(c) on application by a body or association representing one or more of the entities that are bound by the code.

(2) An application under paragraph (1)(b) or (c) must:
(a) be made in the form and manner specified by the Commissioner; and
(b) be accompanied by such information as is specified by the Commissioner.

(3) Before deciding whether to approve a variation, the Commissioner must:
(a) make a draft of the variation publicly available; and
(b) consult any person the Commissioner considers appropriate about the variation; and
(c) consider the extent to which members of the public have been given an opportunity to comment on the variation.

(4) In deciding whether to approve a variation, the Commissioner may consider the matters specified in any relevant guidelines made under section 26V.

(5) If the Commissioner approves a variation of the registered CR code (the ***original code***), the Commissioner must:

(a) remove the original code from the Codes Register; and
(b) register the CR code, as varied, by including it on the Register.

(6) If the Commissioner approves a variation, the variation comes into effect on the day specified in the approval, which must not be before the day on which the CR code, as varied, is included on the Codes Register.

(7) An approval is not a legislative instrument.

Note: The CR code, as varied, is a legislative instrument once it is included on the Codes Register: see section 26M.

Division 4—General matters

26U Codes Register

(1) The Commissioner must keep a register (the ***Codes Register***) which includes:
(a) the APP codes the Commissioner has decided to register under section 26H; and
(b) the APP codes the Commissioner must register under section 26J; and
(c) the CR code the Commissioner has decided to register under section 26S; and
(d) the CR code the Commissioner must register under section 26T.

(2) Despite subsection (1), the Commissioner is not required to include on the Codes Register:
(a) an APP code removed from the Register under section 26J or 26K; or
(b) the CR code removed from the Register under section 26T.

(3) The Commissioner must make the Codes Register available on the Commissioner's website.

(4) The Commissioner may charge fees for providing copies of, or extracts from, the Codes Register.

26V Guidelines relating to codes

(1) The Commissioner may make written guidelines:
  (a) to assist APP code developers to develop APP codes; or
  (b) to assist APP entities bound by registered APP codes to apply or comply with the codes; or
  (c) to assist CR code developers to develop a CR code; or
  (d) to assist entities bound by the registered CR code to apply or comply with the code.

(2) The Commissioner may make written guidelines about matters the Commissioner may consider in deciding whether:
  (a) to register an APP code or a CR code; or
  (b) to approve a variation of a registered APP code or the registered CR code; or
  (c) to remove a registered APP code from the Codes Register.

(3) The Commissioner may publish any such guidelines on the Commissioner's website.

(4) Guidelines are not a legislative instrument.

26W Review of operation of registered codes

(1) The Commissioner may review the operation of a registered APP code.

  Note: The review may inform a decision by the Commissioner to approve a variation of a registered APP code or to remove a registered APP code from the Codes Register.

(2) The Commissioner may review the operation of the registered CR code.

  Note: The review may inform a decision by the Commissioner to approve a variation of the registered CR code.

30 Subsection 36(1)

Omit "Subject to subsection (1A), an", substitute "An".

31 Subsections 36(1A), (1B) and (1C)

Repeal the subsections.

32 Subsections 54(1A), 55A(7) and 55B(2)

Repeal the subsections.

33 Subsection 55B(3)

Omit "or (2)".

34 Subsection 55B(3)

Omit "or adjudicator".

35 Subsection 55B(4)

Omit "or (2)".

36 Subsection 64(1)

Omit "(1)".

37 Subsection 64(2)

Repeal the subsection.

38 Section 95C

Omit "an approved privacy code", substitute "a registered APP code".

Schedule 4—Other amendments of the Privacy Act 1988

1 After section 2

Insert:

2A Objects of this Act

The objects of this Act are:

(a) to promote the protection of the privacy of individuals; and

(b) to recognise that the protection of the privacy of individuals is balanced with the interests of entities in carrying out their functions or activities; and

(c) to provide the basis for nationally consistent regulation of privacy and the handling of personal information; and

(d) to promote responsible and transparent handling of personal information by entities; and

(e) to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected; and

(f) to facilitate the free flow of information across national borders while ensuring that the privacy of individuals is respected; and

(g) to provide a means for individuals to complain about an alleged interference with their privacy; and

(h) to implement Australia's international obligation in relation to privacy.

2 Subsections 5B(1) and (1A)

Repeal the subsections, substitute:

Agencies

(1) This Act, a registered APP code and the registered CR code extend to an act done, or practice engaged in, outside Australia and the external Territories by an agency.

Note: The act or practice overseas will not breach an Australian Privacy Principle or a registered APP code if the act or practice is required by an applicable foreign law (see sections 6A and 6B).

Organisations and small business operators

(1A) This Act, a registered APP code and the registered CR code extend to an act done, or practice engaged in, outside Australia and the external Territories by an organisation, or small business operator, that has an Australian link.

Note: The act or practice overseas will not breach an Australian Privacy Principle or a registered APP code if the act or practice is required by an applicable foreign law (see sections 6A and 6B).

3 Subsection 5B(2) (heading)

Repeal the heading, substitute:

Australian link

4 Subsection 5B(2)

Omit "The organisation must be", substitute "An organisation or small business operator has an ***Australian link*** if the organisation or operator is".

5 Subsection 5B(3) (heading)

Repeal the heading.

6 Subsection 5B(3)

Omit "All of the following conditions must be met", substitute "An organisation or small business operator also has an ***Australian link*** if all of the following apply".

7 Paragraphs 5B(3)(a), (b) and (c)

After "organisation", insert "or operator".

8 Subsection 5B(4)

After "subsection (1)", insert "or (1A)".

9 Subsection 6(1)

Insert:

advice related functions has the meaning given by subsection 28B(1).

10 Subsection 6(1)

Insert:

Australian link has the meaning given by subsections 5B(2) and (3).

11 Subsection 6(1) (all the definitions of *breach*)

Repeal the definitions, substitute:

breach:

(a) in relation to an Australian Privacy Principle, has the meaning given by section 6A; and

(b) in relation to a registered APP code, has the meaning given by section 6B; and

(c) in relation to the registered CR code, has the meaning given by section 6BA.

12 Subsection 6(1)

Insert:

civil penalty order has the meaning given by subsection 80W(4).

13 Subsection 6(1)

Insert:

civil penalty provision has the meaning given by section 80U.

14 Subsection 6(1) (definition of *code complaint*)

Omit "the complainant", substitute "an individual".

15 Subsection 6(1)

Insert:

committee of management of an unincorporated association means a body (however described) that governs, manages or conducts the affairs of the association.

16 Subsection 6(1) (definition of *credit reporting complaint*)

Omit "the complainant", substitute "an individual".

17 Subsection 6(1)

Insert:

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

18 Subsection 6(1) (definition of *file number complaint*)

Omit "the complainant", substitute "an individual".

19 Subsection 6(1) (paragraph (a) of the definition of *file number complaint*)

Omit "guideline", substitute "rule".

20 Subsection 6(1)

Insert:

guidance related functions has the meaning given by subsection 28(1).

21 Subsection 6(1) (definition of *individual concerned*)

Repeal the definition.

22 Subsection 6(1)

Insert:

interference with the privacy of an individual has the meaning given by sections 13 to 13F.

23 Subsection 6(1)

Insert:

monitoring related functions has the meaning given by subsections 28A(1) and (2).

24 Subsection 6(1)

Insert:

offence against this Act includes an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence against this Act.

25 Subsection 6(1)

Insert:

recognised external dispute resolution scheme means an external dispute resolution scheme recognised under section 35A.

26 Subsection 6(1) (definition of *tax file number information*)

Omit "(including information forming part of a database)".

27 Subsection 6(3)

Omit "guideline" (wherever occurring), substitute "rule".

28 Subsection 6(6)

Omit "Department of Defence", substitute "Defence Department".

29 Paragraphs 7(1)(ca) and (g) and (1A)(c)

Omit "Department of Defence", substitute "Defence Department".

30 Subsection 7(2)

Omit "under section 27", substitute "in relation to the principles and such a code".

31 Paragraph 7(2)(b)

Omit "Department of Defence", substitute "Defence Department".

32 Subsection 7(3A)

Repeal the subsection.

33 Subsection 7(4)

Omit "paragraphs 27(1)(b), (c), (d), (e), (g), (k) and (m)", substitute "section 28, of paragraphs 28A(2)(a) to (e)".

34 Section 12B (heading)

Repeal the heading, substitute:

12B Severability—additional effect of this Act

35 Subsections 12B(1) and (2)

Repeal the subsections, substitute:

(1) Without limiting its effect apart from this section, this Act has effect in relation to the following (the ***regulated entities***) as provided by this section:

(a) an agency;

(b) an organisation;

(c) a small business operator;

(d) a body politic.

Note: Subsection 27(4) applies in relation to an investigation of an act or practice referred to in subsection 29(1) of the *Healthcare Identifiers Act 2010*.

(2) This Act also has the effect it would have if its operation in relation to regulated entities were expressly confined to an operation to give effect to the following:

(a) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23), and in particular Articles 17 and 24(1) of the Covenant;

(b) Article 16 of the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4).

Note: In 2012, the text of the Covenant and Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

36 Subsection 12B(3)

Omit "to organisations", substitute "to regulated entities".

37 Subsection 12B(3)

Omit "subsection 5B(1)", substitute "section 5B".

38 Subsection 12B(3)

Omit "by organisations".

39 Subsections 12B(4) and (5)

Omit "organisations" (wherever occurring), substitute "regulated entities".

40 After subsection 12B(5)

Insert:

(5A) This Act also has the effect it would have if its operation in relation to regulated entities were expressly confined to acts or practices engaged in by regulated entities in the course of:

(a) banking (other than State banking not extending beyond the limits of the State concerned); or

(b) insurance (other than State insurance not extending beyond the limits of the State concerned).

41 Subsections 12B(6) to (8)

Omit "organisations" (wherever occurring), substitute "regulated entities".

42 Sections 13 and 13A

Repeal the sections, substitute:

13 Interferences with privacy

APP entities

(1) An act or practice of an APP entity is an ***interference with the privacy of an individual*** if:

(a) the act or practice breaches an Australian Privacy Principle in relation to personal information about the individual; or

(b) the act or practice breaches a registered APP code that binds the entity in relation to personal information about the individual.

Credit reporting

(2) An act or practice of an entity is an ***interference with the privacy of an individual*** if:

(a) the act or practice breaches a provision of Part IIIA in relation to personal information about the individual; or

(b) the act or practice breaches the registered CR code in relation to personal information about the individual and the code binds the entity.

Contracted service providers

(3) An act or practice of an organisation is an ***interference with the privacy of an individual*** if:

(a) the act or practice relates to personal information about the individual; and

(b) the organisation is a contracted service provider for a Commonwealth contract (whether or not the organisation is a party to the contract); and

(c) the act or practice does not breach:

(i) an Australian Privacy Principle; or

(ii) a registered APP code that binds the organisation;

in relation to the personal information because of a provision of the contract that is inconsistent with the principle or code; and

(d) the act is done, or the practice is engaged in, in a manner contrary to, or inconsistent with, that provision.

Note: See subsections 6A(2) and 6B(2) for when an act or practice does not breach an Australian Privacy Principle or a registered APP code.

Tax file numbers

(4) An act or practice is an ***interference with the privacy of an individual*** if:

(a) it is an act or practice of a file number recipient and the act or practice breaches a rule issued under section 17 in relation to tax file number information that relates to the individual; or

(b) the act or practice involves an unauthorised requirement or request for disclosure of the tax file number of the individual.

Other interferences with privacy

(5) An act or practice is an ***interference with the privacy of an individual*** if the act or practice:

(a) constitutes a breach of Part 2 of the *Data-matching Program (Assistance and Tax) Act 1990* or the rules issued under section 12 of that Act; or

(b) constitutes a breach of the rules issued under section 135AA of the *National Health Act 1953*.

Note: Other Acts may provide that an act or practice is an interference with the privacy of an individual. For example, see the *Healthcare Identifiers Act 2010*, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and the *Personal Property Securities Act 2009*.

43 Subsection 13B(1)

Omit "paragraphs 13A(1)(a) and (b)", substitute "subsection 13(1)".

44 Subsection 13B(1)

Omit "of an individual", substitute "***of an individual***".

45 Subsection 13B(2)

Repeal the subsection, substitute:

Relationship with subsection 13(3)

(2) Subsection (1) does not prevent an act or practice of an organisation from being an ***interference with the privacy of an individual*** under subsection 13(3).

46 Subsection 13C(1)

Omit "of the individual", substitute "***of the individual***".

47 Subsection 13C(2)

Repeal the subsection, substitute:

Effect of subsection (1)

(2) Subsection (1) has effect despite subsections 13(1) and (3).

48 Subsection 13D(1)

Omit "of an individual", substitute "***of an individual***".

49 Subsection 13D(2)

Repeal the subsection, substitute:

Effect of subsection (1)

(2) Subsection (1) has effect despite subsections 13(1) and (3).

50 Sections 13E and 13F

Repeal the sections, substitute:

13E Effect of sections 13B, 13C and 13D

Sections 13B, 13C and 13D do not prevent an act or practice of an organisation from being an ***interference with the privacy of an individual*** under subsection 13(2), (4) or (5).

13F Act or practice not covered by section 13 is not an interference with privacy

An act or practice that is not covered by section 13 is not an ***interference with the privacy of an individual***.

13G Serious and repeated interferences with privacy

An entity contravenes this subsection if:

(a) the entity does an act, or engages in a practice, that is a serious interference with the privacy of an individual; or

(b) the entity repeatedly does an act, or engages in a practice, that is an interference with the privacy of one or more individuals.

Civil penalty: 2,000 penalty units.

51 Section 17

Repeal the section, substitute:

17 Rules relating to tax file number information

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

52 Section 18 (heading)

Repeal the heading, substitute:

18 File number recipients to comply with rules

53 Section 18

Omit “guideline”, substitute “rule”.

54 Sections 27 to 29

Repeal the sections, substitute:

27 Functions of the Commissioner

(1) The Commissioner has the following functions:

(a) the functions that are conferred on the Commissioner by or under:

(i) this Act; or

(ii) any other law of the Commonwealth;

(b) the guidance related functions;

(c) the monitoring related functions;

(d) the advice related functions;

(e) to do anything incidental or conducive to the performance of any of the above functions.

(2) The Commissioner has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Commissioner's functions.

(3) Without limiting subsection (2), the Commissioner may establish a panel of persons with expertise in relation to a particular matter to assist the Commissioner in performing any of the Commissioner's functions.

(4) Section 38 of the *Healthcare Identifiers Act 2010*, rather than section 12B of this Act, applies in relation to an investigation of an act or practice referred to in subsection 29(1) of that Act in the same way as it applies to Parts 3 and 4 of that Act.

Note: Section 38 of the *Healthcare Identifiers Act 2010* deals with the additional effect of Parts 3 and 4 of that Act.

28*Guidance related functions* of the Commissioner

(1) The following are the ***guidance related functions*** of the Commissioner:

(a) making guidelines for the avoidance of acts or practices that may or might be interferences with the privacy of individuals, or which may otherwise have any adverse effects on the privacy of individuals;

(b) making, by legislative instrument, guidelines for the purposes of paragraph (d) of Australian Privacy Principle 6.3;

(c) promoting an understanding and acceptance of:
(i) the Australian Privacy Principles and the objects of those principles; and
(ii) a registered APP code; and
(iii) the provisions of Part IIIA and the objects of those provisions; and
(iv) the registered CR code;
(d) undertaking educational programs for the purposes of promoting the protection of individual privacy.

(2) The Commissioner may publish the guidelines referred to in paragraphs (1)(a) and (b) in such manner as the Commissioner considers appropriate.

(3) The educational programs referred to in paragraph (1)(d) may be undertaken by:
(a) the Commissioner; or
(b) a person or authority acting on behalf of the Commissioner.

(4) Guidelines made under paragraph (1)(a) are not a legislative instrument.

28A*Monitoring related functions* of the Commissioner

Credit reporting and tax file number information

(1) The following are the ***monitoring related functions*** of the Commissioner:
(a) monitoring the security and accuracy of information held by an entity that is information to which Part IIIA applies;
(b) examining the records of entities to ensure that the entities:
(i) are not using information to which Part IIIA applies for unauthorised purposes; and
(ii) are taking adequate measures to prevent the unlawful disclosure of such information;
(c) examining the records of the Commissioner of Taxation to ensure that the Commissioner:
(i) is not using tax file number information for purposes beyond his or her powers; and

(ii) is taking adequate measures to prevent the unlawful disclosure of the tax file number information that he or she holds;

(d) evaluating compliance with the rules issued under section 17;

(e) monitoring the security and accuracy of tax file number information kept by file number recipients.

Other matters

(2) The following are also the ***monitoring related functions*** of the Commissioner:

(a) examining a proposed enactment that would require or authorise acts or practices of an entity that might otherwise be interferences with the privacy of individuals, or which may otherwise have any adverse effects on the privacy of individuals;

(b) examining a proposal for data matching or linkage that may involve an interference with the privacy of individuals, or which may otherwise have any adverse effects on the privacy of individuals;

(c) ensuring that any adverse effects of the proposed enactment or the proposal on the privacy of individuals are minimised;

(d) undertaking research into, and monitoring developments in, data processing and technology (including data matching and linkage) to ensure that any adverse effects of such developments on the privacy of individuals are minimised;

(e) reporting to the Minister the results of that research and monitoring;

(f) monitoring and reporting on the adequacy of equipment and user safeguards.

(3) The functions referred to in paragraphs (2)(a) and (b) may be performed by the Commissioner:

(a) on request by a Minister or Norfolk Island Minister; or

(b) on the Commissioner's own initiative.

(4) If the reporting referred to in paragraph (2)(e) or (f) is done in writing, the instrument is not a legislative instrument.

28B*Advice related functions* of the Commissioner

(1) The following are the ***advice related functions*** of the Commissioner:

(a) providing advice to a Minister, Norfolk Island Minister or entity about any matter relevant to the operation of this Act;

(b) informing the Minister of action that needs to be taken by an agency in order to comply with the Australian Privacy Principles;

(c) providing reports and recommendations to the Minister in relation to any matter concerning the need for, or the desirability of, legislative or administrative action in the interests of the privacy of individuals;

(d) providing advice to file number recipients about:

(i) their obligations under the *Taxation Administration Act 1953* in relation to the confidentiality of tax file number information; or

(ii) any matter relevant to the operation of this Act.

(2) The functions referred to in paragraphs (1)(a), (c) and (d) may be performed by the Commissioner on request or on the Commissioner's own initiative.

(3) The Commissioner may perform the function referred to in paragraph (1)(b) whenever the Commissioners think it is necessary to do so.

(4) If the Minister is informed under paragraph (1)(b) in writing, or the report referred to in paragraph (1)(c) is provided in writing, the instrument is not a legislative instrument.

29 Commissioner must have due regard to the objects of the Act

The Commissioner must have due regard to the objects of this Act in performing the Commissioner's functions, and exercising the Commissioner's powers, conferred by this Act.

Note: The objects of this Act are set out in section 2A.

55 Subparagraph 30(1)(b)(ii)

Repeal the subparagraph, substitute:

(ii) does not consider that it is reasonably possible that the matter that gave rise to the investigation can be conciliated successfully or has attempted to conciliate the matter without success.

56 Subsection 30(3)

Omit "under paragraph 27(1)(a), 28(1)(b) or (c) or 28A(1)(b)".

57 Subsection 30(3)

After "credit provider" (first occurring), insert "that is an interference with the privacy of an individual under subsection 13(1), (2) or (4)".

58 Subsection 30(6)

Repeal the subsection.

59 Subsection 31(1)

Omit "paragraph 27(1)(b)", substitute "paragraph 28A(2)(a)".

60 Subsection 31(2)

Omit "agency or organisation", substitute "entity".

61 Section 32 (heading)

Repeal the heading, substitute:

32 Commissioner may report to the Minister if the Commissioner has monitored certain activities etc.

62 Subsection 32(1)

Repeal the subsection, substitute:

(1) If the Commissioner has:

(a) monitored an activity in the performance of a function under paragraph 28(1)(d), 28A(1)(a), (b), (d) or (e) or (2)(b), (c) or (d) or 28B(1)(b) or (c); or

(b) conducted an assessment under section 33C;

the Commissioner may report to the Minister about the activity or assessment, and must do so if so directed by the Minister.

63 Subsection 32(2)

After "activity", insert "or assessment".

64 After section 33B

Insert:

Division 3A—Assessments by, or at the direction of, the Commissioner

33C Commissioner may conduct an assessment relating to the Australian Privacy Principles etc.

(1) The Commissioner may conduct an assessment of the following matters:

(a) whether personal information held by an APP entity is being maintained and handled in accordance with the following:

(i) the Australian Privacy Principles;

(ii) a registered APP code that binds the entity;

(b) whether information held by an entity is being maintained and handled in accordance with the following to the extent that they apply to the information:

(i) the provisions of Part IIIA;

(ii) the registered CR code if it binds the entity;

(c) whether tax file number information held by a file number recipient is being maintained and handled in accordance with any relevant rules issued under section 17;

(d) whether the data matching program (within the meaning of the *Data-matching Program (Assistance and Tax) Act 1990*) of an agency complies with Part 2 of that Act and the rules issued under section 12 of that Act;

(e) whether information to which section 135AA of the *National Health Act 1953* applies is being maintained and handled in accordance with the rules issued under that section.

(2) The Commissioner may conduct the assessment in such manner as the Commissioner considers fit.

33D Commissioner may direct an agency to give a privacy impact assessment

(1) If:

(a) an agency proposes to engage in an activity or function involving the handling of personal information about individuals; and

(b) the Commissioner considers that the activity or function might have a significant impact on the privacy of individuals;

the Commissioner may, in writing, direct the agency to give the Commissioner, within a specified period, a privacy impact assessment about the activity or function.

(2) A direction under subsection (1) is not a legislative instrument.

Privacy impact assessment

(3) A ***privacy impact assessment*** is a written assessment of an activity or function that:

(a) identifies the impact that the activity or function might have on the privacy of individuals; and

(b) sets out recommendations for managing, minimising or eliminating that impact.

(4) Subsection (3) does not limit the matters that the privacy impact assessment may deal with.

(5) A privacy impact assessment is not a legislative instrument.

Failure to comply with a direction

(6) If an agency does not comply with a direction under subsection (1), the Commissioner must advise both of the following of the failure:

(a) the Minister;

(b) if another Minister is responsible for the agency—that other Minister.

Review

(7) Before the fifth anniversary of the commencement of this section, the Minister must cause a review to be undertaken of whether this section should apply in relation to organisations.

Division 3B—Enforceable undertakings

33E Commissioner may accept undertakings

(1) The Commissioner may accept any of the following undertakings:

(a) a written undertaking given by an entity that the entity will, in order to comply with this Act, take specified action;

(b) a written undertaking given by an entity that the entity will, in order to comply with this Act, refrain from taking specified action;

(c) a written undertaking given by an entity that the entity will take specified action directed towards ensuring that the entity does not do an act, or engage in a practice, in the future that interferes with the privacy of an individual.

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The entity may withdraw or vary the undertaking at any time, but only with the consent of the Commissioner.

(4) The Commissioner may, by written notice given to the entity, cancel the undertaking.

(5) The Commissioner may publish the undertaking on the Commissioner's website.

33F Enforcement of undertakings

(1) If:

(a) an entity gives an undertaking under section 33E; and

(b) the undertaking has not been withdrawn or cancelled; and

(c) the Commissioner considers that the entity has breached the undertaking;

the Commissioner may apply to the Federal Court or Federal Magistrates Court for an order under subsection (2).

(2) If the court is satisfied that the entity has breached the undertaking, the court may make any or all of the following orders:

(a) an order directing the entity to comply with the undertaking;

(b) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(c) any other order that the court considers appropriate.

65 Subsections 34(1) and (2)

Omit "functions referred to in section 27", substitute "Commissioner's functions".

66 At the end of Part IV

Add:

35A Commissioner may recognise external dispute resolution schemes

(1) The Commissioner may, by written notice, recognise an external dispute resolution scheme:

(a) for an entity or a class of entities; or

(b) for a specified purpose.

(2) In considering whether to recognise an external dispute resolution scheme, the Commissioner must take the following matters into account:

(a) the accessibility of the scheme;

(b) the independence of the scheme;

(c) the fairness of the scheme;

(d) the accountability of the scheme;

(e) the efficiency of the scheme;

(f) the effectiveness of the scheme;

(g) any other matter the Commissioner considers relevant.

(3) The Commissioner may:

(a) specify a period for which the recognition of an external dispute resolution scheme is in force; and

(b) make the recognition of an external dispute resolution scheme subject to specified conditions, including conditions relating to the conduct of an independent review of the operation of the scheme; and

(c) vary or revoke:

(i) the recognition of an external dispute resolution scheme; or

(ii) the period for which the recognition is in force; or

(iii) a condition to which the recognition is subject.

(4) A notice under subsection (1) is not a legislative instrument.

67 Part V (heading)

Repeal the heading, substitute:

Part V—Investigations etc.

68 Before Division 1 of Part V

Insert:

Division 1A—Introduction

36A Guide to this Part

In general, this Part deals with complaints and investigations about acts or practices that may be an interference with the privacy of an individual.

An individual may complain to the Commissioner about an act or practice that may be an interference with the privacy of the individual. If a complaint is made, the Commissioner is required to investigate the act or practice except in certain circumstances.

The Commissioner may also, on his or her own initiative, investigate an act or practice that may be an interference with the privacy of an individual or a breach of Australian Privacy Principle 1.

The Commissioner has a range powers relating to the conduct of investigations including powers:

(a) to conciliate complaints; and

(b) to make preliminary inquiries of any person; and

(c) to require a person to give information or documents, or to attend a compulsory conference; and

(d) to transfer matters to an alternative complaint body in certain circumstances.

After an investigation, the Commissioner may make a determination in relation to the investigation. An entity to which a determination relates must comply with certain declarations included in the determination. Court proceedings may be commenced to enforce a determination.

69 Subsection 36(7) (note)

Omit "Section 70A contains", substitute "Sections 98A to 98C contain".

70 Subsection 36(8)

Omit "one of paragraphs 13(b) to (d) (inclusive)", substitute "subsection 13(2), (4) or (5)".

71 Subsection 36(8)

After "person", insert "or entity".

72 Subsection 38(1)

Omit "or accepted under subsection 40(1B)".

73 Paragraph 38(1)(a)

After "person", insert "or entity".

74 Subsection 38(2)

Omit "or accepted under subsection 40(1B)".

75 Subsection 38B(2)

Omit all the words after "representative", substitute:

complaint:

(a) if the complaint was lodged without the consent of the member—at any time; or

(b) otherwise—at any time before the Commissioner begins to hold an inquiry into the complaint.

76 Add at the end of subsection 38B(2)

Add:

Note: If a class member withdraws from a representative complaint that relates to a matter, the former member may make a complaint under section 36 that relates to the matter.

77 Subsections 40(1B) and (1C)

Repeal the subsections, substitute:

(1B) Subsection (1A) does not apply if the complaint is about an act or practice that may breach:

(a) section 20R, 20T, 21T or 21V (which are about access to, and correction of, credit reporting information etc.); or

(b) a provision of the registered CR code that relates to that section.

78 Subsection 40(2)

After "Commissioner may", insert ", on the Commissioner's own initiative,".

79 Paragraph 40(2)(a)

After "individual", insert "or a breach of Australian Privacy Principle 1".

80 Section 40A

Repeal the section, substitute:

40A Conciliation of complaints

(1) If:

(a) a complaint about an act or practice is made under section 36; and

(b) the Commissioner considers it is reasonably possible that the complaint may be conciliated successfully;

the Commissioner must make a reasonable attempt to conciliate the complaint.

(2) Subsection (1) does not apply if the Commissioner has decided under section 41 or 50 not to investigate, or not to investigate further, the act or practice.

(3) If the Commissioner is satisfied that there is no reasonable likelihood that the complaint will be resolved by conciliation, the Commissioner must,in writing, notify the complainant and respondent of that matter.

(4) If a notification is given under subsection (3), the Commissioner may decide not to investigate, or not to investigate further, the act or practice.

(5) Evidence of anything said or done in the course of the conciliation is not admissible in any hearing before the Commissioner, or in any legal proceedings, relating to complaint or the act or practice unless:

(a) the complainant and respondent otherwise agree; or

(b) the thing was said or done in furtherance of the commission of a fraud or an offence, or the commission of an act that renders a person liable to a civil penalty.

81 Section 41 (heading)

Repeal the heading, substitute:

41 Commissioner may or must decide not to investigate etc. in certain circumstances

82 Subsection 41(1)

Omit “, or which the Commissioner has accepted under subsection 40(1B),”.

83 At the end of paragraphs 41(1)(a) and (c)

Add “or”.

84 Paragraph 41(1)(d)

Omit “or lacking in substance;”, substitute “, lacking in substance or not made in good faith; or”.

85 After paragraph 41(1)(d)

Insert:

(da) an investigation, or further investigation, of the act or practice is not warranted having regard to all the circumstances; or

(db) the complainant has not responded, within the period specified by the Commissioner, to a request for information in relation to the complaint; or

(dc) the act or practice is being dealt with by a recognised external dispute resolution scheme; or

(dd) the act or practice would be more effectively or appropriately dealt with by a recognised external dispute resolution scheme; or

86 After subsection 41(1)

Insert:

(1A) The Commissioner must not investigate, or investigate further, an act or practice about which a complaint has been made under section 36 if the Commissioner is satisfied that the complainant has withdrawn the complaint.

87 Subsections 41(2) and (3)

Omit ", or accepted by the Commissioner under subsection 40(1B),".

88 Section 42

Before "Where", insert "(1)".

89 Section 42

Omit "or the Commissioner accepts a complaint under subsection 40(1B),".

90 Section 42

Omit "respondent", substitute "respondent or any other person".

91 At the end of section 42

Add:

(2) The Commissioner may make inquiries of any person for the purpose of determining whether to investigate an act or practice under subsection 40(2).

92 After subsection 43(1)

Insert:

(1AA) Before commencing an investigation of an act or practice of a person or entity under subsection 40(2), the Commissioner must inform the person or entity that the act or practice is to be investigated.

93 Subsection 43(2)

Omit "in private but otherwise".

94 Subsections 43(4), (5) and (6)

Repeal the subsections, substitute:

(4) The Commissioner may make a determination under section 52 in relation to an investigation under this Division without holding a hearing, if:

(a) it appears to the Commissioner that the matter to which the investigation relates can be adequately determined in the absence of:

(i) in the case of an investigation under subsection 40(1)—the complainant and respondent; or

(ii) otherwise—the person or entity that engaged in the act or practice that is being investigated; and

(b) the Commissioner is satisfied that there are no unusual circumstances that would warrant the Commissioner holding a hearing; and

(c) an application for a hearing has not been made under section 43A.

95 Subsection 43(7)

Omit "afford the complainant or respondent an opportunity to appear before the Commissioner and to make submissions under subsection (5)", substitute "hold a hearing".

96 Subsection 43(8A)

Omit "an approved privacy code or the National Privacy Principles", substitute "the Australian Privacy Principles or a registered APP code".

97 After section 43

Insert:

43A Interested party may request a hearing

(1) An interested party in relation to an investigation under this Division may, in writing, request that the Commissioner hold a hearing before the Commissioner makes a determination under section 52 in relation to the investigation.

(2) If an interested party makes request under subsection (1), the Commissioner must:
  (a) notify any other interested party of the request; and
  (b) give all interested parties a reasonable opportunity to make a submission about the request; and
  (c) decide whether or not to hold a hearing.

(3) In this section:

interested party in relation to an investigation means:
  (a) in the case of an investigation under subsection 40(1)—the complainant or respondent; or
  (b) otherwise—the person or entity that engaged in the act or practice that is being investigated.

98 Subsection 44(4)

Omit "sections 69 and", substitute "section".

99 Subsection 46(1)

Omit "(except an NPP complaint or a code complaint accepted under subsection 40(1B))".

100 Subsection 50(1)

Insert:

alternative complaint body means:
  (a) the Australian Human Rights Commission; or
  (b) the Ombudsman; or
  (c) the Postal Industry Ombudsman; or
  (d) the Overseas Students Ombudsman; or
  (e) the Public Service Commissioner; or
  (f) the Norfolk Island Public Service Board; or

(g) a recognised external dispute resolution scheme.

101 At the end of paragraph 50(2)(a)

Add:

(v) to a recognised external dispute resolution scheme; or

102 Subsection 50(2)

Omit "Australian Human Rights Commission, the Ombudsman, the Postal Industry Ombudsman, the Overseas Students Ombudsman or the Public Service Commissioner, as the case may be", substitute "alternative complaint body".

103 Paragraphs 50(2)(c) and (e)

Omit "Australian Human Rights Commission, the Ombudsman, the Postal Industry Ombudsman, the Overseas Students Ombudsman or the Public Service Commissioner", substitute "alternative complaint body".

104 At the end of paragraph 50(3)(a)

Add:

(v) to the recognised external dispute resolution scheme; or

105 Subsection 50A(2) (note 2)

Repeal the note, substitute:

Note 2: The Commissioner may determine under section 53B that the determination applies in relation to an agency if the organisation has not complied with the determination.

106 Subparagraph 52(1)(b)(i)

Omit "should" (wherever occurring), substitute "must".

107 After subparagraph 52(1)(b)(i)

Insert:

(ia) a declaration that the respondent must take specified steps within a specified period to ensure that such conduct is not repeated or continued;

108 Subparagraph 52(1)(b)(ii)

Omit "should", substitute "must".

109 Subsection 52(1A)

Repeal the subsection, substitute:

(1A) After investigating an act or practice of a person or entity under subsection 40(2), the Commissioner may make a determination that includes one or more of the following:

(a) a declaration that:

(i) the act or practice is an interference with the privacy of one or more individuals; and

(ii) the person or entity must not repeat or continue the act or practice;

(b) a declaration that the person or entity must take specified steps within a specified period to ensure that the act or practice is not repeated or continued;

(c) a declaration that the person or entity must perform any reasonable act or course of conduct to redress any loss or damage suffered by one or more of those individuals;

(d) a declaration that one or more of those individuals are entitled to a specified amount by way of compensation for any loss or damage suffered by reason of the act or practice;

(e) a declaration that it would be inappropriate for any further action to be taken in the matter.

(1AA) The steps specified by the Commissioner under subparagraph (1)(b)(ia) or paragraph (1A)(b) must be reasonable and appropriate.

(1AB) The loss or damage referred to in paragraph (1)(b) or subsection (1A) includes:

(a) injury to the feelings of the complainant or individual; and

(b) humiliation suffered by the complainant or individual.

110 Subsection 52(1B)

After "subsection (1)", insert "or (1A)".

111 Subsections 52(3A) and (3B)

Repeal the subsections, substitute:

(3A) A determination under paragraph (1)(b) or subsection (1A) may include any order that the Commissioner considers necessary or appropriate.

112 Subsection 53A(1)

Omit "to which a contracted service provider for a Commonwealth contract is the respondent", substitute "that applies in relation to a contracted service provider for a Commonwealth contract".

113 Section 53B (heading)

Repeal the heading, substitute:

53B Substituting an agency for a contracted service provider

114 Paragraph 53B(1)(a)

Repeal the paragraph, substitute:

(a) a determination under section 52 applies in relation to a contracted service provider for a Commonwealth contract; and

115 After subparagraph 53B(1)(b)(i)

Insert:

(ia) a declaration under paragraph 52(1A)(d) that one or more individuals are entitled to a specified amount by way of the compensation; or

116 Paragraph 53B(1)(c)

Omit "respondent", substitute "provider".

117 Paragraph 53B(1)(d)

After "complainant", insert "or individuals".

118 Paragraph 53B(1)(d)

Omit "subparagraph (b)(i) or (b)(ii)", substitute "paragraph (b)".

119 Subsection 53B(2)

After "writing that", insert "the determination under section 52 instead applies in relation to".

120 Subsection 53B(2)

Omit "is the respondent to the determination under section 52".

121 Subsection 53B(2) (at the end of the note)

Add "or individuals".

122 Subsection 54(1)

Omit "respondent to the determination is", substitute "determination applies in relation to".

123 Section 55

Repeal the section, substitute:

55 Obligations of organisations and small business operators

If the determination applies in relation to an organisation or small business operator, the organisation or operator:

(a) must not repeat or continue conduct that is covered by a declaration included in the determination under sub-subparagraph 52(1)(b)(i)(B) or paragraph 52(1A)(a); and

(b) must take the steps that are specified in a declaration included in the determination under subparagraph 52(1)(b)(ia) or paragraph 52(1A)(b) within the specified period; and

(c) must perform the act or course of conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(ii) or paragraph 52(1A)(c).

124 Subsection 55A(1)

Omit "Any of the", substitute "The".

125 Paragraphs 55A(1)(a) to (c)

Repeal the paragraphs, substitute:

(a) if the determination was made under subsection 52(1)—the complainant;

(b) the Commissioner.

126 Subsection 55A(2)

Omit "respondent", substitute "person or entity in relation to which the determination applies".

127 Subsection 55A(2)

Omit "the complainant", substitute "an individual".

128 Subsection 55A(5)

Omit "respondent", substitute "person or entity in relation to which the determination applies".

129 Subsection 55A(5)

Omit "the complainant", substitute "an individual".

130 Paragraph 55A(6)(c)

Omit "appearance", substitute "hearing".

131 Paragraph 55A(6)(c)

Omit "under subsection 43(5)".

132 Subsection 55A(7A)

Omit "matters that paragraph 29(a) requires the Commissioner to have due regard to", substitute "objects of this Act".

133 Paragraphs 55B(1)(a) and (b) and (3)(a) and (b)

Repeal the paragraphs, substitute:

(a) a specified APP entity had breached an Australian Privacy Principle; or

(b) a specified APP entity had breached a registered APP code that binds the entity.

134 Subsection 57(1)

Omit "has an agency, or the principal executive of an agency, as the respondent", substitute "that applies in relation to an agency or the principal executive of an agency".

135 Section 58

Repeal the section, substitute:

58 Obligations of agencies

If this Division applies to a determination and the determination applies in relation to an agency, the agency:

(a) must not repeat or continue conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(i) or paragraph 52(1A)(a); and

(b) must take the steps that are specified in a declaration included in the determination under subparagraph 52(1)(b)(ia) or paragraph 52(1A)(b) within the specified period; and

(c) must perform the act or course of conduct that is covered by a declaration included in the determination under subparagraph 52(1)(b)(ii) or paragraph 52(1A)(c).

136 Section 59

Omit "the principal executive of an agency is the respondent to a determination to which this Division applies", substitute "this Division applies to a determination and the determination applies in relation to the principal executive of an agency".

137 Paragraph 59(b)

After "subparagraph 52(1)(b)(i)", insert "or paragraph 52(1A)(a)".

138 After paragraph 59(b)

Insert:

(ba) that the steps specified in a declaration included in the determination under subparagraph 52(1)(b)(ia) or paragraph 52(1A)(b) are taken within the specified period; and

139 At the end of paragraph 59(c)

Add "or paragraph 52(1A)(c)".

140 Subsection 60(1)

After "subparagraph 52(1)(b)(iii)", insert ", paragraph 52(1A)(d)".

141 Subsection 60(1)

After "complainant", insert "or individual".

142 Subsection 60(2)

Omit "respondent is", substitute "determination applies in relation to".

143 Subsection 60(2)

After "complainant" (wherever occurring), insert "or individual".

144 Section 61

Repeal the section.

145 Subsection 62(3)

Repeal the subsection, substitute:

(3) The application may be made by:

(a) if the determination was made under subsection 52(1)—the complainant; or

(b) the Commissioner.

146 Subsection 62(4)

Omit "respondent", substitute "agency or principal executive".

147 Paragraph 62(5)(a)

Omit "section 61", substitute "section 96".

148 At the end of section 62

Add:

(6) In this section:

complainant, in relation to a representative complaint, means a class member.

149 Subsection 63(2A)

Omit "NPP", substitute "APP".

150 Paragraphs 67(aa) and (ab)

Repeal the paragraphs.

151 Sections 69 and 70A

Repeal the sections.

152 Subsection 72(1)

Repeal the subsection.

153 Subsection 72(2) (heading)

Repeal the heading, substitute:

Determinations about an APP entity's acts and practices

154 Paragraph 72(2)(a)

Repeal the paragraph, substitute:

(a) an act or practice of an APP entity breaches, or may breach:

(i) an Australian Privacy Principle; or

(ii) a registered APP code that binds the entity; but

155 Paragraph 72(2)(b)

Omit "organisation", substitute "entity".

156 Paragraph 72(2)(b)

Omit "Principle", substitute "principle".

157 Subsection 72(2)

Omit "make a written", substitute ", by legislative instrument, make a".

158 Subsection 72(3)

Omit "organisation is taken not to contravene section 16A if the organisation", substitute "APP entity is taken not to contravene section 15 or 26A if the entity".

159 Subsection 72(4)

Omit "make a written", substitute ", by legislative instrument, make a".

160 Subsection 72(4)

Omit "organisation is taken to contravene section 16A", substitute "APP entity is taken to contravene section 15 or 26A".

161 Subsection 72(4)

Omit "organisation does", substitute "APP entity does".

162 Subsection 72(4)

Omit "organisation or any other organisation", substitute "entity or any other APP entity".

163 Section 73 (heading)

Repeal the heading, substitute:

73 Application by APP entity

164 Subsection 73(1)

Omit "An agency or organisation", substitute "An APP entity".

165 Subsection 73(1)

Omit "the agency or organisation", substitute "the entity".

166 After subsection 73(1)

Insert:

(1A) If:

(a) an application is made under subsection (1); and

(b) the Commissioner is satisfied that the application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;

the Commissioner may, in writing, dismiss the application.

167 Section 74 (heading)

Repeal the heading, substitute:

74 Publication of application etc.

168 Subsection 74(1)

Omit all the words after "notice", substitute:

of:

(a) the receipt by the Commissioner of an application; and

(b) if the Commissioner dismisses an application under subsection 73(1A)—the dismissal of the application.

169 At the end of subsection 75(1)

Add "unless the Commissioner dismisses the application under subsection 73(1A)".

170 Subsection 79(3)

Repeal the subsection.

171 Section 80

Repeal the section.

172 Paragraph 80A(1)(a)

Omit "agency or organisation", substitute "APP entity".

173 Subparagraphs 80A(1)(a)(i) and (ii)

Repeal the subparagraphs, substitute:

(i) an Australian Privacy Principle; or

(ii) a registered APP code that binds the entity; and

174 Paragraph 80A(1)(b)

Omit "agency or organisation", substitute "entity".

175 Paragraph 80A(1)(b)

Omit "Principle", substitute "principle".

176 Subsection 80A(2)

Omit "make a written temporary public interest", substitute ", by legislative instrument, make a".

177 Paragraph 80A(2)(a)

Omit "agency or organisation", substitute "APP entity".

178 Subsection 80A(3)

Repeal the subsection, substitute:

(3) The Commissioner must specify in the determination a period of up to 12 months during which the determination is in force (subject to subsection 80D(2)).

179 Subsections 80B(1) and (2)

Repeal the subsections, substitute:

APP entity covered by a determination

(1) If an act or practice of an APP entity is the subject of a temporary public interest determination, the entity is taken not to breach section 15 or 26A if the entity does the act, or engages in the practice, while the determination is in force.

180 Subsection 80B(3)

Omit "make a written", substitute ", by legislative instrument, make a".

181 Subsection 80B(3)

Omit "organisation is taken to contravene section 16A", substitute "APP entity is taken to contravene section 15 or 26A".

182 Subsection 80B(3)

Omit "organisation does", substitute "APP entity does".

183 Subsection 80B(3)

Omit "organisation or another organisation", substitute "entity or another APP entity".

184 Section 80C

Repeal the section.

185 Paragraph 80D(2)(a)

Omit "subsection 72(1) or (2) (as appropriate)", substitute "subsection 72(2)".

186 Paragraph 80P(1)(a)

Omit "concerned".

187 Subsections 80P(4) and (5)

Repeal the subsections, substitute:

(4) An entity does not breach an Australian Privacy Principle, or a registered APP code that binds the entity, in respect of a collection, use or disclosure of personal information authorised by subsection (1).

188 Paragraphs 80Q(2)(a) and (b)

Repeal the paragraphs, substitute:

(a) if the first person is an APP entity—a disclosure permitted under an Australian Privacy Principle or a registered APP code that binds the person;

189 After Part VIA

Insert:

Part VIB—Civil penalty orders

Division 1—Civil penalty provisions

80U Civil penalty provisions

A subsection of this Act (or a section of this Act that is not divided into subsections) is a ***civil penalty provision*** if the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the subsection (or section).

80V Ancillary contravention of civil penalty provisions

(1) An entity must not:

(a) attempt to contravene a civil penalty provision; or

(b) aid, abet, counsel or procure a contravention of a civil penalty provision; or

(c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or

(d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or

(e) conspire with others to effect a contravention of a civil penalty provision.

(2) An entity that contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Division 2—Obtaining a civil penalty order

80W Civil penalty orders

Application for order

(1) The Commissioner may apply to the Federal Court or Federal Magistrates Court for an order that an entity, that is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.

(2) The Commissioner must make the application within 6 years of the alleged contravention.

Court may order entity to pay pecuniary penalty

(3) If the court is satisfied that the entity has contravened the civil penalty provision, the court may order the entity to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the court may order the entity to pay.

(4) An order under subsection (3) is a ***civil penalty order***.

Determining pecuniary penalty

(5) The pecuniary penalty must not be more than:
(a) if the entity is a body corporate—5 times the amount of the pecuniary penalty specified for the civil penalty provision; or
(b) otherwise—the amount of the pecuniary penalty specified for the civil penalty provision.

(6) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
(a) the nature and extent of the contravention; and
(b) the nature and extent of any loss or damage suffered because of the contravention; and
(c) the circumstances in which the contravention took place; and
(d) whether the entity has previously been found by a court in proceedings under this Act to have engaged in any similar conduct.

80X Civil enforcement of penalty

(1) A pecuniary penalty is a debt payable to the Commonwealth.

(2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the entity to recover a debt due by the entity. The debt arising from the order is taken to be a judgement debt.

80Y Conduct contravening more than one civil penalty provision

(1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Division against an entity in relation to the contravention of any one or more of those provisions.

(2) However, the entity is not liable to more than one pecuniary penalty under this Division in relation to the same conduct.

80Z Multiple contraventions

(1) The Federal Court or Federal Magistrates Court may make a single civil penalty order against an entity for multiple contraventions of a civil penalty provision if:

(a) proceedings for the contraventions are founded on the same facts; or

(b) the contraventions form, or are part of, a series of contraventions of the same or a similar character.

(2) However, the pecuniary penalty must not exceed the sum of the maximum pecuniary penalties that could be ordered if a separate civil penalty order were made for each of the contraventions.

Note: In determining the pecuniary penalty, the court must take into account all relevant matters including the matters mentioned in subsection 80W(6).

80ZA Proceedings may be heard together

The Federal Court or Federal Magistrates Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

80ZB Civil evidence and procedure rules for civil penalty orders

The Federal Court or Federal Magistrates Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

80ZC Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

Division 3—Civil proceedings and criminal proceedings

80ZD Civil proceedings after criminal proceedings

The Federal Court or Federal Magistrates Court must not make a civil penalty order against an entity for a contravention of a civil penalty provision if the entity has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

80ZE Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order against an entity for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are commenced or have already been commenced against the entity for an offence; and

(b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) The proceedings for the civil penalty order may be resumed if the entity is not convicted of the offence. Otherwise:

(a) the proceedings are dismissed; and

(b) costs must not be awarded in relation to the proceedings.

80ZF Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against an entity for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the entity in relation to the contravention.

80ZG Evidence given in proceedings for civil penalty order not admissible in criminal proceedings

(1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the

individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

190 After paragraph 82(2)(a)

Insert:

(aa) the Privacy Commissioner (within the meaning of the *Australian Information Commissioner Act 2010*); and

191 Paragraph 82(2)(b)

Omit "6 other", substitute "8 other".

192 Subsection 82(3)

After "Commissioner", insert "and Privacy Commissioner (within the meaning of that Act)".

193 Paragraph 82(7)(a)

Repeal the paragraph, substitute:

(a) at least one must be a person who has had at least 5 years' experience at a high level in industry or commerce; and

(aa) at least one must be a person who has had at least 5 years' experience at a high level in public administration, or the service of a government or an authority of a government; and

(ab) at least one must be a person who has had extensive experience in health privacy; and

194 Paragraph 82(7)(b)

Omit "shall", substitute "must".

195 At the end of paragraph 82(7)(b)

Add "and".

196 Paragraph 82(7)(c)

Repeal the paragraph, substitute:

(c) at least one must be a person who has had extensive experience in information and communication technologies; and

197 Paragraphs 82(7)(d) and (e)

Omit "shall", substitute "must".

198 Paragraph 83(b)

Omit "guidelines", substitute "rules or guidelines".

199 Subsections 95(5), 95A(7) and 95AA(3)

Repeal the subsections.

200 After section 95C

Insert:

96 Review by the Administrative Appeals Tribunal

(1) An application may be made to the Administrative Appeals Tribunal for review of the following decisions of the Commissioner:

(a) a decision under subsection 26H(1) not to register an APP code developed by an APP code developer;

(b) a decision under subsection 26S(1) not to register a CR code developed by a CR code developer;

(c) a decision under subsection 52(1) or (1A) to make a determination;

(d) a decision under subsection 73(1A) to dismiss an application;

(e) a decision under section 95 to refuse to approve the issue of guidelines;

(f) a decision under subsection 95A(2) or (4) or 95AA(2) to refuse to approve guidelines;

(g) a decision under subsection 95A(6) to revoke an approval of guidelines.

(2) An application under paragraph (1)(a) may only be made by the APP code developer that developed the APP code.

(3) An application under paragraph (1)(b) may only be made by the CR code developer that developed the CR code.

201 After section 98

Insert:

98A Treatment of partnerships

(1) If, apart from this subsection, this Act would impose an obligation on a partnership, the obligation is imposed instead on each partner but may be discharged by any of the partners.

(2) If, apart from this subsection, an offence against this Act would be committed by a partnership, the offence is taken to have been committed by each partner.

(3) If, apart from this subsection, a partnership would contravene a civil penalty provision, the contravention is taken to have been committed by each partner.

(4) A partner does not commit an offence against this Act because of subsection (2), or contravene a civil penalty provision because of subsection (3), if the partner:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

98B Treatment of unincorporated associations

(1) If, apart from this subsection, this Act would impose an obligation on an unincorporated association, the obligation is imposed instead on each member of the association's committee of management but may be discharged by any of the members.

(2) If, apart from this subsection, an offence against this Act would be committed by an unincorporated association, the offence is taken to have been committed by each member of the association's committee of management.

(3) If, apart from this subsection, an unincorporated association would contravene a civil penalty provision, the contravention is taken to have been committed by each member of the association's committee of management.

(4) A member of an unincorporated association's committee of management does not commit an offence against this Act because of subsection (2), or contravene a civil penalty provision because of subsection (3), if the member:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

98C Treatment of trusts

(1) If, apart from this subsection, this Act would impose an obligation on a trust, the obligation is imposed instead on each trustee of the trust but may be discharged by any of the trustees.

(2) If, apart from this subsection, an offence against this Act would be committed by a trust, the offence is taken to have been committed by each trustee of the trust.

(3) If, apart from this subsection, a trust would contravene a civil penalty provision, the contravention is taken to have been committed by each trustee of the trust.

(4) A trustee of a trust does not commit an offence against this Act because of subsection (2), or contravene a civil penalty provision because of subsection (3), if the trustee:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the trustee becomes aware of those circumstances.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

202 Subsection 99A(1)

After "this Act", insert "or for a civil penalty order".

203 Subsection 99A(2)

After "this Act", insert "or proceedings for a civil penalty order".

204 Subsection 99A(3)

After "this Act", insert "or for a civil penalty order".

205 Subsection 99A(4)

After "this Act", insert "or proceedings for a civil penalty order".

206 Subsection 99A(9)

Repeal the subsection.

Schedule 5—Amendment of other Acts

Part 1—Amendments relating to the Australian Privacy Principles

Acts Interpretation Act 1901

1 Section 2B

Insert:

Australian Privacy Principle has the same meaning as in the *Privacy Act 1988*.

Aged Care Act 1997

2 Subsection 91-2(3)

Omit "Information Privacy Principles 1, 2 and 3 of the *Privacy Act 1988*", substitute "Australian Privacy Principles 3 and 5".

3 Subsection 92-7(4)

Omit "Information Privacy Principles 1, 2 and 3 of the *Privacy Act 1988*", substitute "Australian Privacy Principles 3 and 5".

4 Subsection 93-1(5)

Omit "Information Privacy Principles 1, 2 and 3 of the *Privacy Act 1988*", substitute "Australian Privacy Principles 3 and 5".

5 Clause 1 of Schedule 1 (definition of *personal information*)

Repeal the definition, substitute:

personal information has the same meaning as in the *Privacy Act 1988*.

A New Tax System (Family Assistance) (Administration) Act 1999

6 Paragraphs 219GA(7)(a) and (b)

Repeal the paragraphs, substitute:

(a) paragraph 6.2(b) of Australian Privacy Principle 6; and

7 Subsection 219GA(7)

Omit "that is authorised by law", substitute "that is authorised by this Act".

8 Section 219PA

Omit "law", substitute "this Act".

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

9 Subsection 35A(3)

Omit "law for the purposes of paragraph 2.1(g) of National Privacy Principle 2 in Schedule 3 to the *Privacy Act 1988*", substitute "this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6".

10 Subsection 126(3)

Omit "Information Privacy Principles set out in section 14 of the *Privacy Act 1988*", substitute "Australian Privacy Principles".

AusCheck Act 2007

11 Subsections 13(1) and (2)

Omit "law", substitute "this Act".

12 Subsection 16(2)

Omit "law", substitute "this Act".

Australian Citizenship Act 2007

13 Subsection 43(1A) (note 2)

Omit "Paragraph 3 of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "Australian Privacy Principle 6".

Australian Curriculum, Assessment and Reporting Authority Act 2008

14 Subsection 40(2)

Omit "law for the purposes of Information Privacy Principle 10 in section 14 of the *Privacy Act 1988*", substitute "this Act for the purposes of Australian Privacy Principle 6".

15 Subsection 40(3)

Omit "law for the purposes of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "this Act for the purposes of Australian Privacy Principle 6".

16 Subsection 40(3) (note)

Omit "Paragraph 3 of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "Australian Privacy Principle 6".

Australian Passports Act 2005

17 Paragraphs 42(3)(a) and (b)

Repeal the paragraphs, substitute:

(a) paragraph 6.2(b) of Australian Privacy Principle 6; and

18 Subsection 42(3)

Omit "or authorised by law", substitute "or authorised by this Act".

19 Section 46 (note)

Omit "section 14 of the *Privacy Act 1988* (including Information Privacy Principles 4(b) and 11.3)", substitute "the Australian Privacy Principles".

20 Subsection 47(1) (note)

Omit "section 14 of the *Privacy Act 1988* (including Information Privacy Principles 1 and 4)", substitute "the Australian Privacy Principles".

Australian Prudential Regulation Authority Act 1998

21 Subsection 56(12)

Omit "law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6".

Commonwealth Electoral Act 1918

22 Subsection 7A(1C)

Omit "law", substitute "this Act".

23 Subsection 7A(1C) (note)

Omit "paragraph (1)(c) of Information Privacy Principle 10 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

24 Paragraph 7A(1D)(a)

Omit "law", substitute "this Act".

25 Subsection 7A(1D) (note)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

Crimes Act 1914

26 Paragraph 85ZZ(2)(e)

Omit "Information Privacy Principles set out in section 14 of the Privacy Act", substitute "Australian Privacy Principles".

Dairy Produce Act 1986

27 Subsection 37ZB(1)

Omit "A record keeper who has possession or control of", substitute "An APP entity that holds".

Defence Act 1903

28 Subsection 72Q(3)

Omit "law for the purposes of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "this Act for the purposes of Australian Privacy Principle 6".

29 Subsection 72Q(3) (note)

Omit "Paragraph 3 of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "Australian Privacy Principle 6".

Defence Force (Home Loans Assistance) Act 1990

30 Subsection 36A(4)

Omit "to be authorised by law", substitute "to be authorised by this Act".

Defence Home Ownership Assistance Scheme Act 2008

31 Subsection 79(4)

Omit "to be authorised by law", substitute "to be authorised by this Act".

Defence Service Homes Act 1918

32 Subsection 45C(4)

Omit "to be authorised by law", substitute "to be authorised by this Act".

Education Services for Overseas Students Act 2000

33 Subsection 50D(1) (note 1)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

Extradition Act 1988

34 Subsection 54A(1)

Omit "law", substitute "this Act".

Fair Work (Building Industry) Act 2012

35 Subsection 65(7)

Omit "law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6".

Freedom of Information Act 1982

36 Subsection 4(1) (definition of *personal information*)

Repeal the definition, substitute:

personal information has the same meaning as in the *Privacy Act 1988*.

Healthcare Identifiers Act 2010

37 Section 5 (definition of *National Privacy Principle*)

Repeal the definition.

38 Subsection 9(6)

Repeal the subsection, substitute:

(6) A healthcare identifier is a government related identifier for the purposes of the *Privacy Act 1988*.

39 Section 18

Omit "a person who is responsible (within the meaning of subclause 2.5 of National Privacy Principle 2)", substitute "a responsible person (within the meaning of the *Privacy Act 1988*)".

40 Paragraph 23(b)

Omit "a person who is responsible (within the meaning of subclause 2.5 of National Privacy Principle 2)", substitute "a responsible person (within the meaning of the *Privacy Act 1988*)".

41 Paragraph 26(2)(c)

Omit "section 16E", substitute "section 16".

Higher Education Support Act 2003

42 Subsection 19-60(1)

Omit "information privacy principles set out in section 14 of the *Privacy Act 1988*", substitute "Australian Privacy Principles".

43 Section 179-5 (paragraph (a) of the definition of *personal information*)

Repeal the paragraph, substitute:

(a) information or an opinion about an identified individual, or an individual who is reasonably identifiable:
  (i) whether the information or opinion is true or not; and
  (ii) whether the information or opinion is recorded in a material form or not; and

44 Subclause 23(1) of Schedule 1A

Omit "information privacy principles set out in section 14 of the *Privacy Act 1988*", substitute "Australian Privacy Principles".

45 Clause 72 of Schedule 1A (paragraph (a) of the definition of *VET personal information*)

Repeal the paragraph, substitute:

(a) information or an opinion about an identified individual, or an individual who is reasonably identifiable:
  (i) whether the information or opinion is true or not; and
  (ii) whether the information or opinion is recorded in a material form or not; and

Horse Disease Response Levy Collection Act 2011

46 Subsection 36(2) (note 2)

Omit "paragraph 3 of Information Privacy Principle 11 in section 14 of that Act", substitute "Australian Privacy Principle 6".

Inspector of Transport Security Act 2006

47 Subsection 35(4) (note)

Omit "paragraph 2.1(g) of National Privacy Principle 2 in Schedule 3 to the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

48 Subsection 36(3) (note)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

49 Subsection 37(5) (note)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

50 Subsection 71(2) (note)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

51 Subsection 76(2) (note)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

Migration Act 1958

52 Paragraphs 140ZI(2)(a) and (b)

Repeal the paragraphs, substitute:

(a) paragraph 6.2(b) of Australian Privacy Principle 6; and

53 Subsection 140ZI(2)

Omit "that is authorised by law", substitute "that is authorised by this Act".

54 Subsection 336FD(1)

Repeal the subsection, substitute:

(1) For the purposes of paragraph 6.2(b) of Australian Privacy Principle 6,the disclosure by a person of personal information about another person (the ***subject***) is taken to be a disclosure that is authorised by this Act if:

(a) the person is disclosing a personal identifier of the subject and the disclosure is authorised by section 336FC; and

(b) the personal information is disclosed together with the personal identifier; and

(c) the disclosure of the personal information is for the purpose mentioned in paragraph 336FC(1)(b).

55 Subsection 503A(7)

Omit "Information Privacy Principles set out in section 14 of the *Privacy Act 1988*, to be authorised by law", substitute "Australian Privacy Principles, to be authorised by this Act".

Military Rehabilitation and Compensation Act 2004

56 Subsection 409(4)

Omit "Information Privacy Principles set out in section 14 of the *Privacy Act 1988*, to be authorised by law", substitute "Australian Privacy Principles, to be authorised by this Act".

Mutual Assistance in Criminal Matters Act 1987

57 Subsection 43D(1)

Omit "law", substitute "this Act".

National Health Act 1953

58 Subsection 9BA(5)

Omit "law for the purposes of paragraph (1)(c) of Information Privacy Principle 10 in section 14 of the *Privacy Act 1988*", substitute "this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6".

59 Subsection 9BA(6)

Omit "law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6".

60 Subsection 9BA(7) (definition of *personal information*)

Repeal the definition, substitute:

personal information has the same meaning as in the *Privacy Act 1988*.

61 Subsection 135AB(3)

Omit "IPP", substitute "APP".

62 Subsection 135AC(1)

Omit "law for the purposes of subparagraph 10.2(b)(i) of National Privacy Principle 10 in Schedule 3 to", substitute "this Act for the purposes of subparagraph 16B(1)(b)(i) of".

National Health Reform Act 2011

63 Subsection 127(3)

Omit "law", substitute "this Act".

National Health Security Act 2007

64 Sections 19, 20, 47, 52, 85, 86, 87, 88 and 89 (notes)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*" (wherever occurring), substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

National Vocational Education and Training Regulator Act 2011

65 Paragraphs 210(2)(a) and (b)

Repeal the paragraphs, substitute:

(a) paragraph 6.2(b) of Australian Privacy Principle 6; and

66 Subsection 210(2)

Omit "that is authorised by law", substitute "that is authorised by this Act".

Olympic Insignia Protection Act 1987

67 Subsection 57(3) (note)

Omit "Principles 1, 2 and 3 in section 14 of the *Privacy Act 1988*", substitute "Australian Privacy Principles 3 and 5".

Ombudsman Act 1976

68 Subsections 7A(1D) and 8(2D)

Omit "law", substitute "this Act".

Paid Parental Leave Act 2010

69 Subsection 128(1) (note)

Omit "section 14 of the *Privacy Act 1988*", substitute "the Australian Privacy Principles".

70 Subsection 207(7)

Omit "to be authorised by law", substitute "to be authorised by this Act".

Personally Controlled Electronic Health Records Act 2012

71 Paragraph 73(b)

Omit "or 13A".

Private Health Insurance Act 2007

72 Subsection 250-10(2)

Omit "to be authorised by law", substitute "to be authorised by this Act".

73 Clause 1 of Schedule 1 (definition of *personal information*)

Repeal the definition, substitute:

personal information has the same meaning as in the *Privacy Act 1988.*

Product Stewardship Act 2011

74 Subsection 60(1) (note 1)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

Quarantine Act 1908

75 Section 66AZD

Omit "law", substitute "this Act".

76 Section 66AZD (note)

Omit "paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*", substitute "paragraph 6.2(b) of Australian Privacy Principle 6".

Retirement Savings Accounts Act 1997

77 Subsection 137A(3)

Omit "subclauses 7.1 and 7.1A of National Privacy Principle 7 in Schedule 3 to the *Privacy Act 1988*", substitute "Australian Privacy Principle 9".

78 Subsection 137A(3) (note 1)

Omit "Subclause 7.1", substitute "Australian Privacy Principle 9".

Social Security (Administration) Act 1999

79 Subsection 202(8) (note)

Omit "section 14 of the *Privacy Act 1988*", substitute "the Australian Privacy Principles".

Stronger Futures in the Northern Territory Act 2012

80 Subsection 105(2)

Omit "law", substitute "this Act".

Superannuation Industry (Supervision) Act 1993

81 Subsection 299LA(3)

Omit "subclauses 7.1 and 7.1A of National Privacy Principle 7 in Schedule 3 to the *Privacy Act 1988*", substitute "Australian Privacy Principle 9".

82 Subsection 299LA(3) (note 1)

Omit "Subclause 7.1", substitute "Australian Privacy Principle 9".

Supported Accommodation Assistance Act 1994

83 Paragraph 12(3)(b)

Omit "principles set out in that Act", substitute "Australian Privacy Principles".

Telecommunications Act 1997

84 Subparagraph 117(1)(k)(i)

Omit "National Privacy Principles (as defined in the *Privacy Act 1988*)", substitute "Australian Privacy Principles".

85 Subparagraph 117(1)(k)(ii)

Omit "that Act that relate to those Principles", substitute "the *Privacy Act 1988* that relate to those principles".

86 Subsection 118(1) (note)

Omit "National", substitute "Australian".

87 Paragraph 118(4A)(a)

Omit "National Privacy Principles (as defined in the *Privacy Act 1988*)", substitute "Australian Privacy Principles".

88 Paragraph 118(4A)(b)

Omit "that Act relating to those Principles", substitute "the *Privacy Act 1988* relating to those principles".

89 Subsection 121(1A)

Omit "National Privacy Principles (as defined in the *Privacy Act 1988*)", substitute "Australian Privacy Principles".

90 Subsection 122(3)

Omit "National Privacy Principles (as defined in the *Privacy Act 1988*)", substitute "Australian Privacy Principles".

91 Subsection 130(1) (note)

Omit "National", substitute "Australian".

92 Paragraph 134(1)(a)

Omit "National Privacy Principles (as defined in the *Privacy Act 1988*)", substitute "Australian Privacy Principles".

93 Paragraph 134(1)(b)

Omit "that Act relating to those Principles", substitute "the *Privacy Act 1988* relating to those principles".

94 Section 303B (heading)

Repeal the heading, substitute:

303B Acts taken to be authorised by this Act for purposes of Privacy Act

95 Subsections 303B(1) and (2)

Omit "law", substitute "this Act".

96 Subclause 15(2) of Schedule 2

Omit "Information Privacy Principles set out in section 14 of the *Privacy Act 1988* and the National Privacy Principles (as defined in that Act)", substitute "Australian Privacy Principles".

Telecommunications (Consumer Protection and Service Standards) Act 1999

97 Subparagraphs 147(2)(l)(i) and (ia)

Repeal the subparagraphs, substitute:

(i) Australian Privacy Principle 6;

Therapeutic Goods Act 1989

98 Subsections 61(4B) and (5B)

Omit "paragraph 1(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*, to be authorised by law", substitute "paragraph 6.2(b) of Australian Privacy Principle 6, to be authorised by this Act".

Trade Marks Act 1995

99 Subsection 143(1) (note 2)

Omit "Principles 1, 2 and 3 in section 14 of the *Privacy Act 1988*", substitute "Australian Privacy Principles 3 and 5".

Veterans' Entitlements Act 1986

100 Subsection 38AA(1)

Omit "A record keeper who has possession or control of", substitute "An APP entity that holds".

101 Subsection 38AA(2)

Omit "Information Privacy Principles set out in section 14 of the *Privacy Act 1988*, to be authorised by law", substitute "Australian Privacy Principles, to be authorised by this Act".

Part 2—Amendments relating to credit reporting

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

102 Section 5 (definition of *assessment*)

Omit "agency", substitute "body".

103 Section 5 (definition of *credit information file*)

Repeal the definition.

104 Section 5 (definition of *credit reporting agency*)

Repeal the definition.

105 Section 5

Insert:

> ***credit reporting body*** has the same meaning as in the *Privacy Act 1988*.

106 Section 35A (heading)

Repeal the heading, substitute:

35A Reporting entities may disclose certain personal information to credit reporting bodies for identity verification purposes

107 Paragraph 35A(1)(a)

Omit "agency", substitute "body".

108 Paragraph 35A(1)(b)

Omit "agency" (first occurring), substitute "body".

109 Paragraph 35A(1)(b)

Omit "contained in a credit information file in the possession or control of the credit reporting agency", substitute "held by the credit reporting body".

110 Subparagraph 35A(2)(a)(ii)

Omit “agency”, substitute “body”.

111 Subparagraph 35A(2)(a)(iii)

Omit “agency” (first occurring), substitute “body”.

112 Subparagraph 35A(2)(a)(iii)

Omit “contained in a credit information file in the possession or control of the credit reporting agency”, substitute “held by the credit reporting body”.

113 Subparagraph 35A(2)(a)(iv)

Omit “agency”, substitute “body”.

114 Subparagraph 35A(2)(a)(v)

Omit “agency”, substitute “body”.

115 Subparagraph 35A(2)(a)(v)

Omit “the names, residential addresses and dates of birth contained in credit information files of other individuals”, substitute “personal information held by the body that is the names, residential addresses and dates of birth of other individuals”.

116 Section 35B (heading)

Repeal the heading, substitute:

35B Credit reporting bodies may use and disclose certain personal information for identity verification purposes

117 Subsection 35B(1)

Omit “agency” (first occurring), substitute “body”.

118 Paragraph 35B(1)(a)

Omit “contained in a credit information file in the possession or control of the credit reporting agency”, substitute “held by the credit reporting body”.

119 Paragraph 35B(1)(b)

Omit "the names, residential addresses and dates of birth contained in credit information files of other individuals", substitute "personal information held by the credit reporting body that is the names, residential addresses and dates of birth of other individuals".

120 Paragraph 35B(2)(a)

Omit "contained in a credit information file in the possession or control of the credit reporting agency", substitute "held by the credit reporting body".

121 Subsection 35B(3)

Omit "contained in an individual's credit information file", substitute "held by the credit reporting body".

122 Subsection 35B(3)

Omit "law for the purposes of paragraph 18K(1)(m)", substitute "this Act for the purposes of paragraph 20E(3)(e)".

123 Paragraph 35C(2)(b)

Omit "agency", substitute "body".

124 Section 35D

Repeal the section, substitute:

35D Verification information not to be collected or held by a credit reporting body

Subject to section 35E, a credit reporting body must not collect or hold personal information about an individual that relates to a verification request or an assessment in relation to the individual.

125 Section 35E (heading)

Repeal the heading, substitute:

35E Retention of verification information—credit reporting bodies

126 Sections 35E, 35F and 35G

Omit "agency" (wherever occurring), substitute "body".

127 Section 35L

Repeal the section, substitute:

35L Breach of requirement is an interference with privacy

A breach of a requirement of this Division in relation to an individual constitutes an act or practice involving an interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*.

Note: The act or practice may be the subject of a complaint under section 36 of that Act.

Australian Crime Commission Act 2002

128 Paragraph 29A(7)(b)

Omit "agency (within the meaning of section 11A of the *Privacy Act 1988*) would be required, under subsection 18K(5)", substitute "body (within the meaning of the *Privacy Act 1988*) would be required, under subsection 20E(5)".

Law Enforcement Integrity Commissioner Act 2006

129 Paragraph 77A(9)(c)

Omit "agency (within the meaning of section 11A of the *Privacy Act 1988*) would be required, under subsection 18K(5)", substitute "body (within the meaning of the *Privacy Act 1988*) would be required, under subsection 20E(5)".

130 Paragraph 91(9)(c)

Omit "agency (within the meaning of section 11A of the *Privacy Act 1988*) would be required, under subsection 18K(5)", substitute "body (within the meaning of the *Privacy Act 1988*) would be required, under subsection 20E(5)".

National Consumer Credit Protection Act 2009

131 Paragraph 88(3)(i) of the *National Credit Code*

Repeal the paragraph, substitute:

(i) that, under the *Privacy Act 1988*, a credit reporting body (within the meaning of that Act) may collect and hold default

information (within the meaning of that Act) in relation to the default; and

132 Paragraph 179D(2)(h) of the *National Credit Code*

Repeal the paragraph, substitute:

(h) that, under the *Privacy Act 1988*, a credit reporting body (within the meaning of that Act) may collect and hold default information (within the meaning of that Act) in relation to the default; and

Taxation Administration Act 1953

133 Section 355-200 in Schedule 1 (example)

Omit "agency" (wherever occurring), substitute "body".

134 Section 355-200 in Schedule 1 (example)

Omit "record of the disclosure in the entity's credit information file, as required by subsection 18K(5)", substitute "written note of the disclosure as required by subsection 20E(5)".

Part 3—Amendments relating to codes

Australian Information Commissioner Act 2010

135 Paragraph 32(1)(b)

Repeal the paragraph, substitute:

(b) a statement about the operation of registered APP codes under the *Privacy Act 1988* that contain procedures covered by subsection (2), including details about the number of complaints made under codes, their nature and outcome.

Telecommunications Act 1997

136 Section 116A

Omit "an approved privacy code", substitute "a registered APP code".

137 Subparagraph 117(1)(k)(iii)

Omit "an approved privacy code", substitute "a registered APP code".

138 Subparagraph 117(1)(k)(iv)

Omit "the approved privacy code", substitute "the registered APP code".

139 Subsection 118(1) (note)

Omit "approved privacy code", substitute "registered APP code".

140 Paragraph 118(4A)(c)

Omit "an approved privacy code", substitute "a registered APP code".

141 Paragraph 118(4A)(d)

Omit "the approved privacy code", substitute "the registered APP code".

142 Subsections 121(1A) and 122(3)

Omit "an approved privacy code (as defined in that Act)", substitute "a registered APP code (within the meaning of the *Privacy Act 1988*)".

143 Subsection 130(1) (note)

Omit “an approved privacy code”, substitute “a registered APP code”.

144 Paragraphs 134(1)(c) and (d)

Omit “an approved privacy code”, substitute “a registered APP code”.

145 Subsections 303B(1), 303B(2) and 303C(1)

Omit “an approved privacy code”, substitute “a registered APP code”.

Telecommunications (Consumer Protection and Service Standards) Act 1999

146 Subparagraph 147(2)(l)(ib)

Omit “approved privacy code”, substitute “registered APP code”.

Part 4—Other amendments

Australian Human Rights Commission Act 1986

147 Paragraph 20(4A)(b)

Omit "in the performance of the functions referred to in paragraph 27(1)(a) or 28(1)(b) or (c) of the *Privacy Act 1988*", substitute "under the *Privacy Act 1988* as an interference with the privacy of an individual under subsection 13(1) or (4) of that Act".

Australian Information Commissioner Act 2010

148 Subsection 9(2) (table item 3, column headed "Provision")

Omit ", and the Schedule".

149 Paragraphs 12(4)(a) and (b)

Repeal the paragraphs, substitute:

(a) performing the functions, and exercising the powers, conferred on the Commissioner by Part IIIB of the *Privacy Act 1988*;

150 Paragraph 12(4)(c)

Repeal the paragraph, substitute:

(c) the making of guidelines under paragraph 28(1)(a) or (b) of the *Privacy Act 1988*, or the variation or revocation of those guidelines;

151 Paragraph 12(4)(d)

Repeal the paragraph, substitute:

(d) the issue, variation or revocation of rules under:

(i) section 17 of the *Privacy Act 1988*; or

(ii) section 12 of the *Data-matching Program (Assistance and Tax) Act 1990*; or

(iii) section 135AA of the *National Health Act 1953*;

152 Paragraph 12(4)(e)

Omit "paragraph 27(1)(r)", substitute "paragraph 28B(1)(c)".

153 Paragraph 12(4)(f)

Repeal the paragraph.

154 Paragraph 25(k)

Omit "guidelines", substitute "rules".

155 Paragraph 32(1)(a)

Omit "paragraphs 28(1)(a) and (f)", substitute "section 17 and paragraph 28A(1)(d)".

Crimes Act 1914

156 Subsection 85ZZG(1)

Omit ", 96".

Data-matching Program (Assistance and Tax) Act 1990

157 Subsection 5(2)

Omit "Guidelines", substitute "Rules".

158 Section 12 (heading)

Repeal the heading, substitute:

12 Rules relating to privacy

159 Section 12

Omit "guidelines" (wherever occurring), substitute "rules".

160 Subsection 13(2)

Omit "guidelines in the Schedule", substitute "rules issued under section 12".

161 Subsections 13(3) and (4)

Omit "guidelines", substitute "rules".

162 Subsection 13(7)

Omit "Part 5 and section 99", substitute "Part V".

163 Subsection 14(1)

Omit "guidelines", substitute "rules".

Healthcare Identifiers Act 2010

164 Subsection 29(3)

Repeal the subsection, substitute:

Assessment by Information Commissioner

(3) For the purpose of paragraph 33C(1)(a) of the *Privacy Act 1988*, a healthcare identifier is taken to be personal information.

National Health Act 1953

165 Section 135AA (heading)

Repeal the heading, substitute:

135AA Privacy rules

166 Subsection 135AA(3) (heading)

Repeal the heading, substitute:

Issuing rules

167 Subsections 135AA(3) and (3A)

Omit "guidelines", substitute "rules".

168 Subsection 135AA(4) (heading)

Repeal the heading, substitute:

Replacing or varying rules

169 Subsection 135AA(4)

Omit "guidelines" (wherever occurring), substitute "rules".

170 Subsection 135AA(5) (heading)

Repeal the heading, substitute:

Content of rules

171 Subsections 135AA(5) and (5A)

Omit "guidelines" (wherever occurring), substitute "rules".

172 Subsection 135AA(5AA)

Omit "guidelines", substitute "rules".

173 Subsections 135AA(5B) and (6)

Omit "guidelines" (wherever occurring), substitute "rules".

174 Subsection 135AA(8) (heading)

Repeal the heading, substitute:

When rules take effect

175 Subsection 135AA(8)

Omit "guidelines" (wherever occurring), substitute "rules".

176 Section 135AB (heading)

Repeal the heading, substitute:

135AB Breaches of the privacy rules

177 Subsections 135AB(1) and (2)

Omit "guidelines", substitute "rules".

Retirement Savings Accounts Act 1997

178 Subsection 137A(3) (note 2)

Omit "guidelines", substitute "rules".

179 Section 147

Omit "guidelines", substitute "rules".

Superannuation Industry (Supervision) Act 1993

180 Subsection 299LA(3) (note 2)

Omit “guidelines”, substitute “rules”.

Schedule 6—Application, transitional and savings provisions

Part 1—Definitions

1 Definitions

In this Schedule:

commencement time means the time Schedule 1 to this Act commences.

Privacy Act means the *Privacy Act 1988*.

transition period means the period:

(a) starting on the day this Act receives the Royal Assent; and

(b) ending immediately before the commencement time.

Part 2—Provisions relating to Schedule 1 to this Act

2 Application—court/tribunal orders

The definition of ***court/tribunal order*** in subsection 6(1) of the Privacy Act, as inserted by Schedule 1 to this Act, applies in relation to an order, direction or other instrument made before or after the commencement time.

3 Saving—guidelines relating to medical research etc.

(1) This item applies to guidelines if:

(a) the guidelines were issued or approved under subsection 95(1), 95A(2), 95A(4) or 95AA(2) of the Privacy Act; and

(b) the guidelines were in force immediately before the commencement time.

(2) The guidelines have effect, after that time, as if they had been issued or approved under that subsection, as amended by Schedule 1 to this Act.

Part 3—Provisions relating to Schedule 2 to this Act

4 Application—credit reporting

(1) To the extent that the amendments of the Privacy Act made by Schedule 2 to this Act apply in relation to credit, they apply in relation to credit applied for, or provided, before or after the commencement time.

(2) The definition of ***court proceedings information*** in subsection 6(1) of the Privacy Act, as inserted by Schedule 2 to this Act, applies in relation to a judgement of an Australian court made or given before or after the commencement time.

(3) The definition of ***serious credit infringement*** in subsection 6(1) of the Privacy Act, as inserted by Schedule 2 to this Act, applies in relation to an act done before or after the commencement time.

(4) Paragraph 6N(k) of the Privacy Act, as inserted by Schedule 2 to this Act, applies in relation to activities done before or after the commencement time.

(5) Section 6R of the Privacy Act, as inserted by Schedule 2 to this Act, applies in relation to an information request made before or after the commencement time.

(6) Section 6V of the Privacy Act, as inserted by Schedule 2 to this Act, applies in relation to a monthly payment that is due and payable on or after the day this Act receives the Royal Assent.

Part 4—Provisions relating to Schedule 3 to this Act

5 Privacy codes may be developed etc. during the transition period

(1) A function or power conferred on the Commissioner or an entity by Part IIIB of the Privacy Act, as inserted by Schedule 3 to this Act, may be performed or exercised during the transition period as if the Privacy Act, as amended by this Act, was in force during that period.

(2) The performance of such a function, or the exercise of such a power, during the transition period has effect, after the commencement time, as if it had been performed or exercised under Part IIIB of the Privacy Act as inserted by Schedule 3 to this Act.

Part 5—Provisions relating to Schedule 4 to this Act

6 Application—section 13G of the Privacy Act

Section 13G of the Privacy Act, as inserted by Schedule 4 to this Act, applies in relation to an act done, or a practice engaged in, after the commencement time.

7 Saving—guidelines relating to tax file number information

(1) This item applies to guidelines if:

(a) the guidelines were issued under subsection 17(1) of the Privacy Act; and

(b) the guidelines were in force immediately before the commencement time.

(2) The guidelines have effect, after that time, as if they had been rules issued under section 17 of that Act, as inserted by Schedule 4 to this Act.

8 Saving—guidelines prepared and published under the Privacy Act

(1) This item applies to guidelines if:

(a) the guidelines were prepared and published under paragraph 27(1)(e) or 28A(1)(e) of the Privacy Act; and

(b) the guidelines were in force immediately before the commencement time.

(2) The guidelines have effect, after that time, as if they had been made under paragraph 28(1)(a) of that Act, as inserted by Schedule 4 to this Act.

9 Audits by the Commissioner

(1) This item applies if:

(a) before the commencement time, the Commissioner was conducting an audit under paragraph 27(1)(h) or (ha), 28(1)(e) or 28A(1)(g) of the Privacy Act; and

(b) immediately before that time, the audit has not been completed.

(2) Despite the amendments of the Privacy Act made by this Act, the Commissioner may continue, after the commencement time, to conduct the audit as if those amendments had not been made.

10 Application—amendment made by item 75 of Schedule 4

The amendment made by item 75 of Schedule 4 to this Act applies in relation to a representative complaint lodged after the commencement time.

11 Application—paragraph 41(1)(db) of the Privacy Act

Paragraph 41(1)(db) of the Privacy Act, as inserted by Schedule 4 to this Act, applies in relation to a request made after the commencement time.

12 Saving—public interest determinations

(1) This item applies to a determination if:

(a) the determination was made under section 72 of the Privacy Act; and

(b) the determination was in force immediately before the commencement time.

(2) The determination has effect, after the commencement time, as if it had been made under that section, as amended by Schedule 4 to this Act.

(3) The Commissioner may, by legislative instrument, vary the determination after the commencement time to take account of the amendments of the Privacy Act made by this Act.

(4) In deciding whether to vary the determination, the Commissioner may:

(a) consult any person or entity; and

(b) take into account any matter that the Commissioner considers relevant.

13 Application—subsection 73(1A) of the Privacy Act

Subsection 73(1A) of the Privacy Act, as inserted by Schedule 4 to this Act, applies in relation to an application made under subsection 73(1) of the Privacy Act after the commencement time.

14 Application—review by the Administrative Appeals Tribunal

Paragraphs 96(1)(c), (e), (f) and (g) of the Privacy Act, as inserted by Schedule 4 to this Act, apply in relation to a decision made after the commencement time.

Part 6—Provisions relating to Schedule 5 to this Act

15 Saving—guidelines issued under other Acts

(1) This item applies to guidelines if:

(a) the guidelines were issued under section 135AA of the *National Health Act 1953* or section 12 of the *Data-matching Program (Assistance and Tax) Act 1990*; and

(b) the guidelines were in force immediately before the commencement time.

(2) The guidelines have effect, after that time, as if they had been rules issued under that section, as amended by Schedule 5 to this Act.

Part 7—Provisions relating to other matters

16 Pre-commencement complaints

(1) This item applies if:

(a) before the commencement time, a complaint about an act or practice was made to the Commissioner under section 36 of the Privacy Act; and

(b) immediately before that time, the Commissioner has not:

(i) decided under Part V of that Act not to investigate, or not to investigate further, the act or practice; or

(ii) made a determination under section 52 of that Act in relation to the complaint.

(2) Despite the amendments of the Privacy Act made by this Act, the complaint may be dealt with under the Privacy Act after the commencement time as if those amendments had not been made.

17 Pre-commencement own initiative investigations

(1) This item applies if:

(a) before the commencement time, the Commissioner commenced an investigation under subsection 40(2) of the Privacy Act; and

(b) immediately before that time, the Commissioner has not finished conducting the investigation.

(2) Despite the amendments of the Privacy Act made by this Act, the Commissioner may continue to conduct the investigation under the Privacy Act after the commencement time as if those amendments had not been made.

18 Pre-commencement acts and practices

(1) This item applies if:

(a) before the commencement time, an act was done, or a practice was engaged in, by an agency or organisation; and

(b) the act or practice may be an interference with the privacy of an individual under section 13 or 13A of the Privacy Act (as in force immediately before that time); and

(c) immediately before that time:

(i) the individual has not made a complaint about the act or practice to the Commissioner under section 36 of that Act; and

(ii) the Commissioner has not decided to investigate the act or practice under subsection 40(2) of that Act.

(2) Despite the amendments of the Privacy Act made by this Act, the individual may, after the commencement time, complain to the Commissioner about the act or practice, and the complaint may be dealt with, under the Privacy Act as if those amendments had not been made.

(3) Despite the amendments of the Privacy Act made by this Act, the Commissioner may, after the commencement time, investigate the act or practice under subsection 40(2) of the Privacy Act as if those amendments had not been made.

19 Regulations may deal with transitional etc. matters

The Governor-General may make regulations dealing with matters of a transitional, application or saving nature relating to the amendments made by this Act.

[*Minister's second reading speech made in—*
House of Representatives on 23 May 2012
Senate on 18 September 2012]