

# EXPOSURE DRAFT

**Attorney-General**

(Prepared by Parliamentary Counsel's Office)

## Information Privacy Bill 2012

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## **EXPOSURE DRAFT**



# EXPOSURE DRAFT

**Attorney-General**

(Prepared by Parliamentary Counsel's Office)

## Information Privacy Bill 2012

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### **A Bill for**

An Act to regulate the handling of personal information by public sector agencies and contracted service providers, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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J2012-257

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Information Privacy Act 2012*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*territory record*—see the *Territory Records Act 2002*, section 9 (3).' means that the term 'territory record' is defined in that provision and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).



#### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

#### 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

#### 6 Relationship with other laws

This Act does not affect the operation of any other territory law, including—

- (a) the *Freedom of Information Act 1989*; and
- (b) the *Health Records (Privacy and Access) Act 1997*; and
- (c) the *Residential Tenancies Act 1997*, part 7 (Residential tenancy databases); and
- (d) the *Territory Records Act 2002*.

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## Part 2 Objects and important concepts

### 7 Objects of Act

The objects of this Act are to—

- (a) promote the protection of the privacy of individuals; and
- (b) recognise that the protection of the privacy of individuals is balanced with the interests of public sector agencies in carrying out their functions or activities; and
- (c) promote responsible and transparent handling of personal information by public sector agencies and contracted service providers; and
- (d) provide a way for individuals to complain about an alleged interference with their privacy.

### 8 Meaning of *personal information*

For this Act, *personal information*—

- (a) means 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
- (b) does not include personal health information.

**9 Meaning of *public sector agency***

For this Act, a *public sector agency* means—

- (a) a Minister; or
- (b) an administrative unit; or
- (c) a statutory office-holder and the staff assisting the statutory office-holder; or
- (d) a territory authority; or
- (e) a territory instrumentality; or
- (f) a territory-owned corporation or a subsidiary of a territory-owned corporation; or
- (g) an ACT court; or
- (h) an entity prescribed by regulation.

**10 Reference to *act* or *practice* of a public sector agency etc**

- (1) A reference in this Act to an *act* or *practice*—
  - (a) of a public sector agency—is a reference to an act done, or a practice engaged in, by the agency; and
  - (b) of a contracted service provider under a government contract—is a reference to an act done, or a practice engaged in, by the provider for the purpose of performing its obligations under the contract.

*Note* A reference to an act done, or a practice engaged in, by a public sector agency or contracted service provider includes a reference to a person exercising a function of the entity, whether under a delegation, subdelegation or otherwise (see Legislation Act, s 184A).

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- (2) A reference in this Act to *doing* an act includes a reference to—
- (a) doing an act in accordance with a practice; or
  - (b) failing to do an act.

*Note* **Fail** includes refuse (see Legislation Act , dict, pt 1).

## 11 Meaning of *interference* with individual's privacy

- (1) For this Act, an act or practice of a public sector agency is an *interference* with an individual's privacy if the act or practice breaches—
- (a) a TPP in relation to personal information about the individual; or
  - (b) an approved TPP code that binds the agency in relation to personal information about the individual.
- (2) For this Act, an act or practice of a contracted service provider under a government contract is an *interference* with an individual's privacy if the act or practice would be an interference with an individual's privacy if the act or practice was done or engaged in by the relevant public sector agency for the contract.
- (3) In this section:
- relevant public sector agency**, for a government contract, means—
- (a) if the Territory is a party to the contract—the public sector agency that entered into the contract on behalf of the Territory; or
  - (b) if the Territory is not a party to the contract—the public sector agency that is a party to the contract.

**12 Meaning of *breach* a TPP etc**

- (1) For this Act, an act or practice *breaches* a TPP only if it is contrary to, or inconsistent with, the TPP.
- (2) However, an act or practice does not *breach* a TPP if—
  - (a) the act is done, or the practice is engaged in, outside the ACT; and
  - (b) the act or practice is required by a law of another jurisdiction or a foreign country.
- (3) In this section:  
*TPP* includes an approved TPP code.

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## Part 3 Territory privacy principles

### Division 3.1 Important concepts—Territory privacy principles

#### 13 Territory privacy principles

- (1) The Territory privacy principles (the *TPPs*) are set out in schedule 1.

*Note* The TPPs differ from the Commonwealth APPs (see sch 1, note 3).

- (2) If a provision of this Act refers to a TPP by a number, the reference is a reference to the provision of schedule 1 having that number.

#### 14 Definitions—sch 1

In schedule 1:

*Australian law*—

- (a) means a Territory, Commonwealth or State law; and  
(b) includes the common law.

*Note* *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

*collects*, personal information—see section 15.

*court or tribunal order*—

- (a) means an order, direction or other instrument made by an ACT court; and  
(b) includes an order, direction or other instrument of an interim or interlocutory nature.

*de-identified*, personal information—see section 18.

***enforcement body*** means any of the following:

- (a) the Australian Federal Police;
- (b) a State police force or service;
  - Note* ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).
- (c) the DPP or similar body established under a Commonwealth or State law;
- (d) a body established under a territory, Commonwealth or State law to the extent that it is responsible for administering, or exercising a function under—
  - (i) a law that imposes a penalty or sanction; or
  - (ii) a law prescribed by regulation;
- (e) a body established under a territory, Commonwealth or State law to conduct criminal investigations or inquiries;
- (f) a body established under a territory, Commonwealth or State law to the extent that it is responsible for administering a law relating to the protection of public revenue;
- (g) a body prescribed by regulation.

***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

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- (c) the conduct of protective or custodial activities; or
- (d) the enforcement of law relating to the confiscation of the proceeds of crime; or
- (e) the protection of public revenue; or
- (f) the prevention, detection, investigation or remedying of misconduct of a serious nature, or other conduct prescribed by regulation; or
- (g) the preparation for, or conduct of, a proceeding before a court or tribunal; or
- (h) the implementation of a court or tribunal order.

***holds***, personal information—see section 16.

***permitted general situation***, in relation to the collection, use or disclosure of personal information—see section 19.

***related body corporate***—see the *Corporations Act 2001*, section 9.

***sensitive information***, in relation to an individual, means personal information that is—

- (a) about the individual's—
  - (i) racial or ethnic origin; or
  - (ii) political opinions; or
  - (iii) membership of a political association; or
  - (iv) religious beliefs or affiliations; or
  - (v) philosophical beliefs; or
  - (vi) membership of a professional or trade association; or
  - (vii) membership of a trade union; or

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- (viii) sexual orientation or practices; or
- (ix) criminal record; or
- (b) genetic information about the individual; or
- (c) biometric information about the individual that is to be used for the purpose of automated biometric verification or biometric identification; or
- (d) a biometric template that relates to the individual.

*Note* Sensitive information does not include personal health information (see s 8).

*solicits*, personal information—see section 17.

*territory record*—see the *Territory Records Act 2002*, section 9 (3).

*TPP privacy policy*—see TPP 1.3.

**15 Meaning of *collects* personal information—sch 1**

For schedule 1, a public sector agency *collects* personal information only if the agency collects the personal information for inclusion in a record or generally available publication.

**16 Meaning of *holds* personal information—sch 1**

For schedule 1, a public sector agency *holds* personal information if the agency has possession or control of a record that contains the personal information.

**17 Meaning of *solicits* personal information—sch 1**

For schedule 1, a public sector agency *solicits* personal information if the agency requests another entity to provide—

- (a) the personal information; or

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- (b) a kind of information in which the personal information is included.

**18 Meaning of *de-identified* personal information—sch 1**

For schedule 1, personal information is *de-identified* if the information is no longer about an identifiable individual or an individual who is reasonably identifiable.

**19 Meaning of *permitted general situation* in relation to the collection, use or disclosure of personal information—sch 1**

- (1) For schedule 1, a *permitted general situation* exists in relation to the collection, use or disclosure by a public sector agency of personal information about an individual if—
  - (a) both of the following apply:
    - (i) it is unreasonable or impracticable to obtain the individual’s consent to the collection, use or disclosure;
    - (ii) the agency reasonably believes that 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; or
  - (b) both of the following apply:
    - (i) the agency has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the agency’s functions or activities has been, is being or may be engaged in;
    - (ii) the agency reasonably believes that the collection, use or disclosure is necessary in order for the agency to take appropriate action in relation to the matter; or

- (c) both of the following apply:
- (i) the agency reasonably believes that the collection, use or disclosure is reasonably necessary to assist an entity to locate a person who has been reported as missing;

*Note* **Entity** includes an unincorporated body and a person (including a person occupying a position) (see Legislation Act, dict, pt 1).

- (ii) the collection, use or disclosure complies with the rules made under subsection (2); or
- (d) the collection, use or disclosure is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim; or
- (e) the collection, use or disclosure is reasonably necessary for the purposes of a confidential alternative dispute resolution process.
- (2) For subsection (1) (c) (ii), the information privacy commissioner may make rules relating to the collection, use or disclosure of personal information.

*Note* See s 57 (Instruments made by information privacy commissioner).

- (3) A rule is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

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## Division 3.2 Compliance with TPPs

### 20 Public sector agencies must comply with TPPs

A public sector agency must not do an act, or engage in a practice, that breaches a TPP.

### 21 Privacy protection requirements for government contracts

- (1) A public sector agency must not enter into a government contract unless the contract contains appropriate contractual measures to ensure that the contracted service provider, and any subcontractor, for the contract does not do an act, or engage in a practice, (a *contravening act*) that breaches a TPP, or an approved TPP code that binds the agency.
- (2) Also, a public sector agency must not enter into a government contract that authorises a contracted service provider, or any subcontractor, for the contract to do or engage in a contravening act.
- (3) Failure by a public sector agency to comply with this section does not affect any obligation the agency, or the contracted service provider, has under this Act or the government contract in relation to compliance with the TPPs, or an approved TPP code that binds the agency.
- (4) In this section:  
*subcontractor*, in relation to a government contract—
  - (a) means a person engaged by the contracted service provider under the government contract to provide the services the subject of the government contract; and

- (b) includes any other person engaged under a subcontracting arrangement to provide the services the subject of the government contract.

## **22 Serious and repeated interferences with privacy**

A public sector agency or contracted service provider contravenes this section if it—

- (a) does an act, or engages in a practice, that is a serious interference with an individual's privacy; or
- (b) repeatedly does an act, or engages in a practice, that is an interference with the privacy of 1 or more individuals.

Maximum civil penalty: 2 000 civil penalty units.

**Note**

Machinery provisions will need to be included in the Bill to support the imposition of the civil penalty.

## **Division 3.3 Other privacy compliance matters**

### **23 Deemed breach in relation to acts and practices of overseas recipients of personal information**

- (1) This section applies if—
  - (a) a public sector agency discloses personal information about an individual to an overseas recipient; and
  - (b) TPP 8.1 applies to the disclosure of the information; and
  - (c) the TPPs 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 a TPP (other than TPP 1) if the TPP applied to the act or practice.
- (2) The act done, or the practice engaged in, by the overseas recipient is taken, for this Act—
  - (a) to have been done, or engaged in, by the public sector agency; and
  - (b) to be a breach of the TPP by the agency.

**24 Commonwealth APPs apply to certain public sector agencies engaged in commercial activities**

- (1) This section applies to the acts and practices of a public sector agency if—
  - (a) the agency is—
    - (i) mentioned in the *Freedom of Information Regulation 1991*, schedule 2 in relation to documents that relate to its commercial activities or the commercial activities of another entity; or
    - (ii) prescribed by regulation; and
  - (b) the acts and practices relate to the agency's commercial activities.
- (2) The Commonwealth APPs apply to the acts and practices of the public sector agency as if the agency were an organisation within the meaning of the Commonwealth Act.

## Part 4 Exemptions from application of Act

### 25 Exempt public sector agencies

This Act does not apply to the following public sector agencies:

- (a) a board of inquiry under the *Inquiries Act 1991*;
- (b) a judicial commission under the *Judicial Commissions Act 1994*;
- (c) a royal commission under the *Royal Commissions Act 1991*;
- (d) an agency prescribed by regulation.

### 26 Exempt acts or practices of certain public sector agencies

- (1) This Act does not apply to the following acts and practices:
  - (a) for a Minister—an act done, or a practice engaged in, by the Minister other than an act done, or a practice engaged in, by the Minister in relation to the affairs of a public sector agency administered by the Minister;
  - (b) for an ACT court—an act done, or a practice engaged in, by the ACT court other than an act done, or a practice engaged in, by the ACT court in relation to a matter of an administrative nature;
  - (c) for the Office of the Legislative Assembly—an act done, or a practice engaged in, by the Office other than an act done, or a practice engaged in, by the Office in exercising a function in relation to a proceeding of the Legislative Assembly;

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- (d) for an FOI exempt agency—an act done, or a practice engaged in, by the agency in relation to a document in relation to which the agency is exempt from the operation of the FOI Act;
- (e) for an agency prescribed by regulation—an act done, or a practice engaged in, by the agency in relation to a matter prescribed by regulation.

*Note* A reference to an act done, or a practice engaged in, by a public sector agency includes a reference to a person exercising a function of the agency, whether under a delegation, subdelegation or otherwise (see Legislation Act, s 184A).

- (2) In this section:

**FOI Act** means the *Freedom of Information Act 1989*.

**FOI exempt agency** means a public sector agency—

- (a) mentioned in the FOI Act, section 6 (Exemption of certain bodies); or
- (b) exempted by regulation under the FOI Act, section 6 (4) (b); or
- (c) responsible for a document to which—
  - (i) the FOI Act, section 6A (Exemption of lists of housing assistance properties) applies; or
  - (ii) the *Housing Assistance Act 2007*, section 29 (FOI Act exemption—documents containing protected information) applies.



## Part 5 Information privacy commissioner

### 27 Appointment of information privacy commissioner

The Executive must appoint a person as Information Privacy Commissioner.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

### 28 Term and conditions of appointment

- (1) The information privacy commissioner must not be appointed for longer than 7 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (2) The information privacy commissioner is appointed on the conditions agreed between the Executive and the commissioner, subject to this part and any determination under the *Remuneration Tribunal Act 1995*.

### 29 Information privacy commissioner's functions

The information privacy commissioner's functions are to—

- (a) promote an understanding of the TPPs and the objects of the TPPs; and
- (b) provide information and educational programs to promote the protection of the privacy of individuals; and

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- (c) help public sector agencies to comply with the TPPs and approved TPP codes; and
- (d) investigate privacy complaints made under this Act; and
- (e) exercise any other functions given to the commissioner under this Act or another territory law.

**30 Disclosure of interests**

The information privacy commissioner must give written notice to the Executive of all financial and other interests that the commissioner has or acquires that conflict or could conflict with the proper exercise of the commissioner's functions.

**31 Delegation of information privacy commissioner's functions**

The information privacy commissioner may delegate the commissioner's functions under this Act or another territory law to a person.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

**32 Ending of information privacy commissioner's appointment**

- (1) The Executive may end the information privacy commissioner's appointment—
  - (a) if the commissioner contravenes a territory law or law of another jurisdiction; or
  - (b) for misbehaviour; or

- (c) if the commissioner becomes bankrupt or personally insolvent;  
or

*Note* ***Bankrupt or personally insolvent***—see the Legislation Act, dictionary, pt 1.

- (d) if the commissioner is absent, other than on approved leave, for 14 consecutive days or for 28 days in any 12-month period.

- (2) The Executive must end the information privacy commissioner's appointment—

- (a) for physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions; or

- (b) if the commissioner fails to comply, without reasonable excuse, with section 30 (Disclosure of interests).

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

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## Part 6 Privacy complaints

### Division 6.1 Important concepts

#### 33 What is a *privacy complaint* etc?

In this Act:

*complainant*, in relation to a privacy complaint, means the individual who made the complaint.

*privacy complaint* means a complaint about an act or practice of a public sector agency or contracted service provider that may be an interference with an individual's privacy.

*respondent*, in relation to a privacy complaint, means the public sector agency or contracted service provider to which the complaint relates.

### Division 6.2 Making privacy complaints

#### 34 Who may make a privacy complaint?

- (1) An individual may make a privacy complaint to the information privacy commissioner.
- (2) For an act or practice of a public sector agency or contracted service provider that may be an interference with the privacy of 2 or more individuals, any 1 of those individuals may make a privacy complaint on behalf of all of the individuals.

- (3) The information privacy commissioner must give help to the individual to make the privacy complaint, as the commissioner considers appropriate.

**Examples—help**

- 1 advising the individual about the complaint process
- 2 helping the individual to put a privacy complaint in writing

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **35 How may a privacy complaint be made?**

- (1) A privacy complaint must—
- (a) be in writing; and
  - (b) include the complainant's name, address and telephone number; and
  - (c) identify the respondent and include details about the act or practice the subject of the complaint.

*Note* If a form is approved under s 58 for this provision, the form must be used.

- (2) Despite subsection (1) (a), a privacy complaint may be made orally to the information privacy commissioner if the commissioner is reasonably satisfied that exceptional circumstances justify the commissioner dealing with the complaint without it being in writing.

**Example—exceptional circumstances**

waiting until the privacy complaint is put in writing would make dealing with the complaint impossible or impractical

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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**36 Privacy complaint may be referred to commissioner**

- (1) A privacy complaint may be referred to the information privacy commissioner by any of the following:
  - (a) the ombudsman;
  - (b) the human rights commission;
  - (c) an entity having functions, under a State or Commonwealth law that corresponds to this Act, that correspond to the functions of the information privacy commissioner;
  - (d) an entity prescribed by regulation.
- (2) If an entity mentioned in subsection (1) refers a privacy complaint to the information privacy commissioner, the entity must—
  - (a) give the commissioner any information the entity has in relation to the complaint; and
  - (b) tell the complainant about the referral.

**37 Commissioner must tell respondent about complaint**

After receiving a privacy complaint, the information privacy commissioner must give a copy of the complaint to the respondent.

*Note 1* The information privacy commissioner must comply with this section as soon as possible after receiving a privacy complaint (see Legislation Act, s 151B).

*Note 2* If the respondent is a contracted service provider under a government contract, the information privacy commissioner must also give a copy of the privacy complaint to the public sector agency to which the contract relates (see s 48).

## **Division 6.3            Dealing with privacy complaints**

### **38            Commissioner may make preliminary inquiries**

The information privacy commissioner may make inquiries of the respondent for a privacy complaint, or any other person, for the purpose of deciding whether to deal with the complaint.

### **39            Commissioner may decide not to deal with privacy complaint**

The information privacy commissioner may decide not to deal with a privacy complaint if the commissioner is reasonably satisfied—

- (a) the act or practice the subject of the complaint is not an interference with an individual's privacy; or
- (b) the complaint was made more than 12 months after the complainant became aware of the act or practice; or
- (c) the complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith; or
- (d) the act or practice is the subject of an application under another territory law, or a State or Commonwealth law, and the substance of the complaint has been, or is being, dealt with adequately under that law; or
- (e) the complaint would be better dealt with under another territory law, or a State or Commonwealth law; or
- (f) dealing, or further dealing, with the act or practice is not warranted having regard to all the circumstances; or

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- (g) the complainant has complained to the respondent about the act or practice and—
  - (i) the respondent has dealt, or is dealing, adequately with the complaint; or
  - (ii) the respondent has not yet had an adequate opportunity to deal with the complaint.

**40 Dealing with privacy complaints**

- (1) If the information privacy commissioner decides to deal with a privacy complaint, the commissioner may make inquiries and investigations in relation to the complaint, as the commissioner thinks appropriate.
- (2) The information privacy commissioner may decide not to continue dealing with the privacy complaint, or part of the complaint, if—
  - (a) the complainant does not comply with a reasonable request made by the commissioner in dealing with the complaint, or part of the complaint; or
  - (b) the commissioner is reasonably satisfied that the complainant, without reasonable excuse, has not cooperated in the commissioner's dealing with the complaint, or part of the complaint; or
  - (c) the commissioner has not been able to contact the complainant for a reasonable period of time using the contact details stated in the privacy complaint.

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**41 Commissioner must tell parties about decision to not deal with privacy complaint**

If the information privacy commissioner decides not to deal with a privacy complaint, or to stop dealing with a privacy complaint, the commissioner must tell the complainant and respondent about the decision, including the reasons for the decision.

**42 Commissioner may refer privacy complaint to other entity**

- (1) If the information privacy commissioner, after considering a privacy complaint, is reasonably satisfied that the complaint would be better dealt with by an investigative entity with power to investigate the complaint, the commissioner may refer the privacy complaint to the entity.
- (2) If the information privacy commissioner refers the privacy complaint to an investigative entity, the commissioner must—
  - (a) give the entity any information the commissioner has in relation to the complaint; and
  - (b) tell the complainant and respondent about the referral.
- (3) In this section:

*investigative entity* means—

  - (a) the ombudsman; or
  - (b) the human rights commission; or
  - (c) an entity having functions, under a State or Commonwealth law that corresponds to this Act, that correspond to the functions of the information privacy commissioner; or
  - (d) an entity prescribed by regulation.

**43 Commissioner may obtain information**

- (1) The information privacy commissioner may ask anyone to give the commissioner information so that the commissioner may deal with a privacy complaint.
- (2) A public sector agency or public official for the agency must comply with a request made to the agency or official.
- (3) In this section:  
*public official*, for a public sector agency, means a person who is or has been—
  - (a) an employee of the public sector agency; or
  - (b) a contractor, employee of a contractor or volunteer exercising a function of the public sector agency.

**Division 6.4 Application to court**

**44 Meaning of *court*—div 6.4**

In this division:

*court* includes the ACAT.

**45 Commissioner must tell parties that application may be made to court**

If the information privacy commissioner after dealing with a privacy complaint is reasonably satisfied that the act or practice the subject of the complaint is an interference with the complainant's privacy the commissioner must give written notice to the complainant and the respondent for the complaint telling them—

- (a) that the commissioner is reasonably satisfied that the act or practice the subject of the complaint is an interference with the complainant's privacy; and
- (b) that the complainant may apply to a court for an order.

**46 Complainant may apply for court order**

- (1) A complainant may, within 6 months after the day the complainant is notified under section 45, apply to a court for an order mentioned in section 47.
- (2) For the *ACT Civil and Administrative Tribunal Act 2008*, section 16 (Meaning of civil dispute and civil dispute application—Act) an application under this section is a civil dispute application.

**47 What orders may a court make?**

On application by a complainant in relation to a privacy complaint, the court may make 1 or more of the following orders:

- (a) an order that the complaint, or a part of the complaint, has been substantiated, together with, if considered appropriate, 1 or more of the following orders:
  - (i) that an act or practice of the respondent is an interference with the privacy of the complainant and that the respondent must not repeat or continue the act or practice;

- (ii) that the respondent must engage in a stated reasonable act or practice to compensate for loss or damage suffered by the complainant;
  - (iii) that the respondent must make a stated amendment of a record it holds;
  - (iv) that the complainant is entitled to a stated amount, of not more than \$100 000, to compensate the complainant for economic loss or damage suffered by the complainant because of the act or practice complained of;
- (b) an order that the complaint, or a part of the complaint, has been substantiated together with an order that no further action is required to be taken;
  - (c) an order that the complaint, or a part of the complaint, has not been substantiated, together with an order that the complaint or part is dismissed;
  - (d) an order that the complainant be reimbursed for expenses reasonably incurred in relation to making the complaint.

## **Division 6.5 Contracted service providers**

### **48 Private sector agency must be kept informed about privacy complaint involving contracted service provider**

- (1) This section applies if—
  - (a) the respondent in relation to a privacy complaint is a contracted service provider under a government contract; and
  - (b) the information privacy commissioner is required under this division to tell, or give, something to the respondent.

- (2) The information privacy commissioner must also tell, or give, the thing to the public sector agency to which the government contract relates.

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## Part 7 TPP codes

### 49 Meaning of *TPP code*

- (1) For this Act, a *TPP code* is a code of practice about information privacy.
- (2) A TPP code must—
  - (a) set out how 1 or more of the TPPs are to be applied or complied with; and
  - (b) state the public sector agencies that are bound by the code, or a way of working out which public sector agencies are bound by the code; and
  - (c) set out when the code is in force.
- (3) A TPP code may do 1 or more of the following:
  - (a) impose additional requirements to those imposed by 1 or more TPPs that are not contrary to, or inconsistent with, the TPPs;
  - (b) deal with the internal handling of privacy complaints;
  - (c) provide for the reporting to the information privacy commissioner about privacy complaints;
  - (d) deal with any other relevant matters.

### 50 Development of TPP codes and proposed amendment and repeal of approved TPP codes

- (1) A public sector agency—
  - (a) may—
    - (i) initiate the preparation of a draft TPP code or draft amendment of an approved TPP code; and

- (ii) develop the draft or amendment in consultation with any other entity the agency considers appropriate; or
  - (b) may propose the repeal of an approved TPP code and consult any other entity about the repeal that the agency considers appropriate.
- (2) The public sector agency must consult the information privacy commissioner about—
  - (a) the draft TPP code or draft amendment before publishing it under subsection (3); or
  - (b) the proposed repeal of an approved TPP code before publishing a notice about it (a *repeal notice*) under subsection (3).
- (3) The public sector agency must—
  - (a) publish the draft TPP code, draft amendment or repeal notice on the agency’s website or in a daily newspaper; and
  - (b) invite the public to make submissions to the agency about the draft, amendment or repeal within a stated period of at least 28 days; and
  - (c) consider any submissions made within the stated period.

**51 Approval of TPP codes and amendment and repeal of approved TPP codes**

- (1) A public sector agency may—
  - (a) give a TPP code or amendment of an approved TPP code to the information privacy commissioner for approval; or
  - (b) recommend that the commissioner repeal an approved TPP code.

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- (2) The commissioner may—
- (a) approve the TPP code or amendment; or
  - (b) repeal the approved TPP code.
- Note* See s 57 (Instruments made by information privacy commissioner).
- (3) In deciding whether to approve the TPP code or amendment, or repeal the approved TPP code, the commissioner—
- (a) may consult anyone the commissioner considers appropriate; and
  - (b) must consider any relevant guidelines made under section 56 (Information privacy commissioner may make guidelines).
- (4) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**52 Public sector agencies must comply with binding approved TPP codes**

A public sector agency must not do an act, or engage in a practice, that breaches an approved TPP code that binds the agency.



## Part 8                      Miscellaneous

### 53                      Protection of officials from liability

- (1) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.
- (3) In this section:

*official* means—

- (a) the information privacy commissioner; or
- (b) a person authorised under this Act to do or not to do a thing.

*Note*        A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

### 54                      Offence—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
  - (a) the person uses information; and
  - (b) the information is protected information about someone else; and

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- (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
  - (a) the person does something that divulges information; and
  - (b) the information is protected information about someone else; and
  - (c) the person is reckless about whether—
    - (i) the information is protected information about someone else; and
    - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply—
  - (a) if the information is used or divulged—
    - (i) under this Act or another territory law; or
    - (ii) in relation to the exercise of a function by a person to whom this section applies under this Act or another territory law; or
    - (iii) in a court proceeding; or
  - (b) to the using or divulging of protected information about a person with the person's consent.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

(4) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law in force in the ACT.

(5) In this section:

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

*divulge* includes—

- (a) communicate; or
- (b) publish.

*person to whom this section applies* means a person who exercises, or has exercised, a function under this Act.

*produce* includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

*use*, in relation to information, includes make a record of the information.

## **55 Report by information privacy commissioner**

- (1) The information privacy commissioner must, for each financial year, give a report to the Minister about—
  - (a) the total number of privacy complaints made or referred to the commissioner; and

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- (b) the total number of privacy complaints dealt with by the commissioner; and
  - (c) the total number of privacy complaints in relation to which the commissioner has given a notice under section 45 (Commissioner must tell parties that application may be made to court); and
  - (d) anything else prescribed by regulation.
- (2) The report—
- (a) must identify the respondent in relation to each privacy complaint reported on under subsection (1); but
  - (b) must not include the complainant's personal information.
- (3) The Minister must present the report to the Legislative Assembly within 15 sitting days after the day the report is given to the Minister.

**56 Information privacy commissioner may make guidelines**

- (1) The information privacy commissioner may make guidelines about the following:
- (a) to help public sector agencies bound by approved TPP codes to apply or comply with the codes;
  - (b) matters the commissioner must consider in deciding whether to approve a TPP code or vary or repeal an approved TPP code;
  - (c) the conduct of disclosure of personal information about an individual by a public sector agency for TPP 6.3 (d).

*Note* See s 57 (Instruments made by information privacy commissioner).

- (2) A guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**57 Instruments made by information privacy commissioner**

An instrument made by the information privacy commissioner under this Act may apply, adopt or incorporate another instrument as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

**58 Approved forms**

- (1) The information privacy commissioner may approve forms for this Act.
- (2) If the information privacy commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**59 Regulation-making power**

The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

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## Schedule 1 Territory privacy principles

(see s 13)

*Note 1* This schedule sets out the TPPs.

- Pt 1.1 sets out principles that require public sector agencies to consider the privacy of personal information, including ensuring that public sector agencies manage personal information in an open and transparent way.
- Pt 1.2 sets out principles that deal with the collection of personal information, including unsolicited personal information.
- Pt 1.3 sets out principles about how public sector agencies deal with personal information. The part includes principles about the use and disclosure of personal information.
- Pt 1.4 sets out principles about the integrity of personal information. The part includes principles about the quality and security of personal information.
- Pt 1.5 sets out principles that deal with requests for access to, and the correction of, personal information.

*Note 2* The TPPs are:

- TPP 1—open and transparent management of personal information
- TPP 2—anonymity and pseudonymity
- TPP 3—collection of solicited personal information
- TPP 4—dealing with unsolicited personal information
- TPP 5—notification of the collection of personal information
- TPP 6—use or disclosure of personal information
- TPP 8—cross-border disclosure of personal information
- TPP 10—quality of personal information
- TPP 11—security of personal information
- TPP 12—access to personal information
- TPP 13—correction of personal information.

*Note 3* The TPPs do not include provisions equivalent to the Commonwealth APPs relating to certain private sector and other entities. To maintain consistent numbering between the TPPs and the Commonwealth APPs—

- if the Commonwealth APPs contain a provision that is not included in this Act—the relevant TPP in this schedule is numbered to maintain consistency in numbering between provisions common to both Acts; and
- a note appears under the relevant TPP in this schedule describing the omitted provision of the Commonwealth APPs.

The TPPs also contain minor textual and formatting differences to the Commonwealth APPs.

## Part 1.1                      **Consideration of personal information privacy**

### **1                      TPP 1—open and transparent management of personal information**

- 1.1 The object of this TPP is to ensure that public sector agencies manage personal information in an open and transparent way.

*Compliance with the TPPs etc*

- 1.2 A public sector agency must take all steps that are reasonable in the circumstances to implement practices, procedures and systems relating to the agency's functions or activities that—

- (a) will ensure that the agency complies with the TPPs and any approved TPP code that binds the agency; and
- (b) will enable the agency to deal with inquiries or complaints from individuals about the agency's compliance with the TPPs or a code.

*TPP privacy policy*

- 1.3 A public sector agency must have a clearly expressed and up-to-date policy (the ***TPP privacy policy***) about the management of personal information by the agency.

- 1.4 Without limiting TPP 1.3, the TPP privacy policy of the public sector agency must contain the following information:

- (a) the kinds of personal information that the agency collects and holds;
- (b) how the agency collects and holds personal information;
- (c) the purposes for which the agency collects, holds, uses and discloses personal information;



- (d) how an individual may access personal information about the individual that is held by the agency and seek the correction of the information;
- (e) how an individual may complain about a breach of the TPPs, or any approved TPP code that binds the agency, and how the agency will deal with the complaint;
- (f) whether the agency is likely to disclose personal information to overseas recipients;
- (g) if the agency is likely to disclose personal information to overseas recipients—the countries in which the recipients are likely to be located if it is practicable to state those countries in the policy.

*Availability of TPP privacy policy etc*

- 1.5 A public sector agency must take all steps that are reasonable in the circumstances to make its TPP privacy policy available—
- (a) free of charge; and
  - (b) in an appropriate form.

**Example**

on the agency's website

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- 1.6 If a person requests a copy of the TPP privacy policy of a public sector agency in a particular form, the agency must take all steps that are reasonable in the circumstances to give the person a copy in that form.

*Note* **Person** includes a reference to a corporation as well as an individual (see Legislation Act, s 160).

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**2 TPP 2—anonymity and pseudonymity**

- 2.1 Individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with a public sector agency in relation to a particular matter.
- 2.2 TPP 2.1 does not apply if, in relation to the matter—
- (a) the public sector agency is required or authorised by or under an Australian law, or a court or tribunal order, to deal with individuals who have identified themselves; or
  - (b) it is impracticable for the public sector agency to deal with individuals who have not identified themselves.

## **Part 1.2**                      **Collection of personal information**

### **3**                      **TPP 3—collection of solicited personal information**

*Personal information other than sensitive information*

- 3.1 A public sector agency must not collect personal information (other than sensitive information) unless the information is reasonably necessary for, or directly related to, 1 or more of the agency's functions or activities.

*Note*      The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 3, s 3.2).

*Sensitive information*

- 3.3 A public sector agency must not collect sensitive information about an individual unless—
- (a) the individual consents to the collection of the information and the information is reasonably necessary for, or directly related to, 1 or more of the agency's functions or activities; or
  - (b) TPP 3.4 applies in relation to the information.

*Note*      The equivalent provision in the Commonwealth APPs also applies to certain private sector entities (see Commonwealth APP 3, s 3.3 (a) (ii)).

- 3.4 This subsection 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 or tribunal order; or

- (b) a permitted general situation exists in relation to the collection of the information by the public sector agency; or

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 3, s 3.4 (c)).

- (d) the public sector agency is an enforcement body and the agency reasonably believes that the collection of the information is reasonably necessary for, or directly related to, 1 or more of the agency's functions or activities.

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to—

- the Commonwealth Immigration Department (see Commonwealth APP 3, s 3.4 (d) (i)); and
- non-profit organisations (see Commonwealth APP 3, s 3.4 (e)).

*Means of collection*

3.5 A public sector agency must collect personal information only by lawful and fair means.

3.6 A public sector agency must collect personal information about an individual only from the individual unless—

- (a) either—
- (i) the individual consents to the collection of the information from someone other than the individual; or
  - (ii) the agency is required or authorised by or under an Australian law, or a court or tribunal order, to collect the information from someone other than the individual; or
- (b) it is unreasonable or impracticable to do so.

*Note* The equivalent provision in the Commonwealth APPs applies, in part, to certain private sector entities.

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*Solicited personal information*

3.7 This TPP applies to the collection of personal information that is solicited by a public sector agency.

**4 TPP 4—dealing with unsolicited personal information**

4.1 If—

- (a) a public sector agency receives personal information; and
- (b) the agency did not solicit the information;

the agency must, within a reasonable period after receiving the information, decide whether or not the agency could have collected the information under TPP 3 if the agency had solicited the information.

4.2 The public sector agency may use or disclose the personal information for the purposes of making the decision under TPP 4.1.

4.3 If—

- (a) the public sector agency decides that the agency could not have collected the personal information; and
- (b) the information is not contained in a territory record;

the agency 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 TPP 4.3 does not apply in relation to the personal information, TPPs 5 to 13 apply in relation to the information as if the agency had collected the information under TPP 3.

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## 5 **TPP 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, a public sector agency collects personal information about an individual, the agency must take all steps that are reasonable in the circumstances—
- (a) to notify the individual of the matters mentioned in TPP 5.2 that are reasonable in the circumstances; or
  - (b) to otherwise ensure that the individual is aware of those matters.
- 5.2 The matters for TPP 5.1 are as follows:
- (a) the identity and contact details of the public sector agency;
  - (b) if—
    - (i) the public sector agency collects the personal information from someone other than the individual; or
    - (ii) the individual may not be aware that the public sector agency has collected the personal information;  
the fact that the agency 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 or tribunal order—the fact that the collection is required or authorised (including the name of the Australian law, or details of the court or tribunal order, that requires or authorises the collection);
  - (d) the purposes for which the public sector agency 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 public sector agency;
- (f) any other public sector agency or entity, or the kinds of any other public sector agencies or entities, to which the public sector agency usually discloses personal information of the kind collected by the agency;
- (g) that the TPP privacy policy of the public sector agency contains information about how the individual may access the personal information about the individual that is held by the agency and seek the correction of the information;
- (h) that the TPP privacy policy of the public sector agency contains information about how the individual may complain about a breach of the TPPs, or any approved TPP code that binds the agency, and how the agency will deal with the complaint;
- (i) whether the public sector agency is likely to disclose the personal information to overseas recipients;
- (j) if the public sector agency is likely to disclose the personal information to overseas recipients—the countries in which the recipients are likely to be located if it is practicable to state those countries in the notification or to otherwise make the individual aware of them.

## **EXPOSURE DRAFT**

## Part 1.3 Dealing with personal information

### 6 TPP 6—use or disclosure of personal information

#### *Use or disclosure*

6.1 If a public sector agency holds personal information about an individual that was collected for a particular purpose (the *primary purpose*), the agency 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) TPP 6.2 or TPP 6.3 applies in relation to the use or disclosure of the information.

*Note* TPP 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 subsection applies in relation to the use or disclosure of personal information about an individual if—

- (a) the individual would reasonably expect the public sector agency 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 or tribunal order; or



- (c) a permitted general situation exists in relation to the use or disclosure of the information by the public sector agency; or

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 6, s 6.2 (d)).

- (e) the public sector agency reasonably believes that the use or disclosure of the information is reasonably necessary for 1 or more enforcement related activities conducted by, or on behalf of, an enforcement body.

6.3 This subsection applies in relation to the disclosure of personal information about an individual by a public sector 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 information privacy commissioner for this subsection.

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 6, s 6.4).

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*Written note of use or disclosure*

- 6.5 If a public sector agency uses or discloses personal information in accordance with TPP 6.2 (e), the agency must make a written note of the use or disclosure.

*Related bodies corporate*

- 6.6 If—
- (a) a public sector agency is a corporation; and
  - (b) the agency collects personal information from a related body corporate;

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

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 6, s 6.7).

## **7 Direct marketing**

*Note 1* The Commonwealth Act includes a privacy principle prohibiting direct marketing by certain private sector entities (see Commonwealth APP 7).

*Note 2* However, Commonwealth APP 7 applies to an act or practice of a public sector agency if the agency engages in commercial activities (see s 24).

## **8 TPP 8—cross-border disclosure of personal information**

8.1 Before a public sector agency discloses personal information about an individual to a person (an *overseas recipient*)—

- (a) who is not in Australia or an external territory; and
- (b) who is not the agency or the individual;

the agency must take all steps that are reasonable in the circumstances to ensure that the overseas recipient does not breach the TPPs (other than TPP 1) in relation to the information.

*Note* In certain circumstances, an act done, or a practice engaged in, by an overseas recipient is taken, under s 23, to have been done, or engaged in, by the public sector agency and to be a breach of the TPPs.

8.2 TPP 8.1 does not apply to the disclosure of personal information about an individual by a public sector agency to the overseas recipient if—

- (a) the agency 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 TPPs 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 agency expressly informs the individual that if the individual consents to the disclosure of the information, TPP 8.1 will not apply to the disclosure;

- (ii) after being 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 or tribunal order; or
- (d) a permitted general situation (other than the situation mentioned in section 19 (1) (d) or (e)) exists in relation to the disclosure of the information by the agency; or
- (e) the disclosure of the information is required or authorised by or under an international agreement relating to information sharing to which Australia or the Territory is a party; or
- (f) both of the following apply:
  - (i) the agency reasonably believes that the disclosure of the information is reasonably necessary for 1 or more enforcement related activities conducted by, or on behalf of, an enforcement body;
  - (ii) the recipient is a body that exercises functions that are similar to those exercised by an enforcement body.

## **9 Adoption, use or disclosure of government related identifiers**

*Note 1* The Commonwealth Act includes a privacy principle regulating the adoption, use or disclosure of government related identifiers by certain private sector entities (see Commonwealth APP 9).

*Note 2* However, Commonwealth APP 9 applies to an act or practice of a public sector agency if the agency engages in commercial activities (see s 24).

## **Part 1.4 Integrity of personal information**

### **10 TPP 10—quality of personal information**

- 10.1 A public sector agency must take all steps that are reasonable in the circumstances to ensure that the personal information that the agency collects is accurate, up-to-date and complete.
- 10.2 A public sector agency must take all steps that are reasonable in the circumstances to ensure that the personal information that the agency uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

### **11 TPP 11—security of personal information**

- 11.1 If a public sector agency holds personal information, the agency must take all steps that are reasonable in the circumstances to protect the information—
- (a) from misuse, interference or loss; and
  - (b) from unauthorised access, modification or disclosure.
- 11.2 If—
- (a) a public sector agency holds personal information about an individual; and
  - (b) the agency no longer needs the information for a purpose for which the information may be used or disclosed by the agency under the TPPs; and
  - (c) the information is not contained in a territory record; and

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

the agency must take all steps that are reasonable in the circumstances to destroy the information or to ensure that the information is de-identified.

## **Part 1.5**                      **Access to, and correction of, personal information**

### **12**                      **TPP 12—access to personal information**

*Access*

- 12.1 If a public sector agency holds personal information about an individual, the agency must, on request by the individual, give the individual access to the information.

*Exception to access—agency*

- 12.2 If the public sector agency is required or authorised to refuse to give the individual access to the personal information by or under—
- (a) the *Freedom of Information Act 1989*; or
  - (b) another law in force in the ACT that provides for access by people to documents;

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

*Note*     The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 12, s 12.3).

*Dealing with requests for access*

- 12.4 The public sector agency must—
- (a) respond to the request for access to the personal information within 30 days after the day the request is made; or

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

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 12, s 12.4 (a) (ii)).

*Other means of access*

- 12.5 If the public sector agency refuses—

- (a) to give access to the personal information because of TPP 12.2;  
or  
(b) to give access in the way requested by the individual;

the agency must take all steps that are reasonable in the circumstances to give access in a way that meets the needs of the agency and the individual.

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

*Access charges*

- 12.7 The public sector agency must not charge the individual for the making of the request or for giving access to the personal information.

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 12, s 12.8).



*Refusal to give access*

- 12.9 If the public sector agency refuses to give access to the personal information because of TPP 12.2, or to give access in the way requested by the individual, the agency 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 regulation.

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 12, s 12.10).

**13 TPP 13—correction of personal information**

*Correction*

- 13.1 If—
- (a) a public sector agency holds personal information about an individual; and
  - (b) either—
    - (i) the agency is satisfied that, having regard to a purpose for which the information is held, the information is inaccurate, out-of-date, incomplete, irrelevant or misleading; or

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- (ii) the individual requests the agency to correct the information;

the agency must take all steps that 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.

*Notification of correction to third parties*

13.2 If—

- (a) the public sector agency corrects personal information about an individual that the agency previously disclosed to another public sector agency; and
- (b) the individual requests the agency to notify the other public sector agency of the correction;

the agency must take all steps that are reasonable in the circumstances to give the notification unless it is impracticable or unlawful to do so.

*Refusal to correct information*

13.3 If the public sector agency refuses to correct the personal information as requested by the individual, the agency 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 regulation.

*Request to associate a statement*

13.4 If—

- (a) the public sector agency refuses to correct the personal information as requested by the individual; and
- (b) the individual requests the agency to associate with the information a statement that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading;

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

*Dealing with requests*

13.5 If a request is made under TPP 13.1 or TPP 13.4, the public sector agency—

- (a) must respond to the request within 30 days after the day the request is made; or
- (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.

*Note* The equivalent provision in the Commonwealth APPs includes a provision applying to certain private sector entities (see Commonwealth APP 13, s 13.5 (a) (ii)).

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## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- ACT
- administrative unit
- Coroner's Court
- corporation
- document
- DPP
- exercise (a function)
- external territory
- function
- human rights commission
- individual
- judge
- magistrate
- Magistrates Court
- Minister (see s 162)
- Office of the Legislative Assembly
- State
- statutory office-holder
- Supreme Court
- territory authority
- territory instrumentality
- territory-owned corporation
- tribunal
- working day.

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*act*—see section 10.

*ACT court*—

- (a) means the Supreme Court, Magistrates Court, Coroner’s Court or a tribunal; and
- (b) includes a judge, magistrate, tribunal member and any other person exercising a function of the court or tribunal in relation to the hearing or determination of a matter before it.

*approved TPP code* means a TPP code approved under section 51 (Approval of TPP codes and amendment and repeal of approved TPP codes).

*Australian law*, for schedule 1 (Territory privacy principles)—see section 14.

*breach*, a TPP—see section 12.

*collects*, personal information, for schedule 1 (Territory privacy principles)—see section 15.

*Commonwealth Act* means the *Privacy Act 1988* (Cwlth).

*Commonwealth APPs* means the Australian privacy principles set out in the Commonwealth Act, schedule 1.

*complainant*, in relation to a privacy complaint—see section 33.

*consent* means express or implied consent.

*contracted service provider*—

- (a) means a person engaged under a government contract to provide services to the Territory or a public sector agency; and
- (b) includes a subcontractor in relation to the contract.

*court*, for division 6.4 (Application to court)—see section 44.

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***court or tribunal order***, for schedule 1 (Territory privacy principles)—see section 14.

***de-identified***, personal information, for schedule 1 (Territory privacy principles)—see section 18.

***doing***, an act—see section 10 (2).

***enforcement body***, for schedule 1 (Territory privacy principles)—see section 14.

***enforcement related activity***, for schedule 1 (Territory privacy principles)—see section 14.

***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.

***government contract*** means a contract, to which the Territory or a public sector agency is a party, under which services are to be provided to—

- (a) the Territory or agency; or
- (b) another entity in relation to the exercise of the agency's functions.

***holds***, personal information, for schedule 1 (Territory privacy principles)—see section 16.

***information privacy commissioner*** means the Information Privacy Commissioner appointed under section 27.

***interference***, with an individual's privacy—see section 11.

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***misconduct***, of a person includes fraud, negligence, default, breach of trust, breach of duty, breach of discipline by or any other misconduct of the person in the exercise of the person's functions as a public official.

***overseas recipient***, in relation to personal information—see TPP 8.1.

***permitted general situation***, in relation to the collection, use or disclosure of personal information, for schedule 1 (Territory privacy principles)—see section 19.

***personal health information***, of a consumer—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

***personal information***—see section 8.

***practice***—see section 10.

***privacy complaint***—see section 33.

***public sector agency***—see section 9.

***record***—

(a) includes—

- (i) a document; or
- (ii) an electronic or other device; and

(b) does not include—

- (i) a generally available publication; or
- (ii) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
- (iii) a record open to public access under the *Territory Records Act 2002*, part 3; or

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(iv) a letter or other item in the course of being sent by post.

*Note* **Document**—see the Legislation Act, dictionary, pt 1.

**related body corporate**, for schedule 1 (Territory privacy principles)—see the *Corporations Act 2001*, section 9.

**respondent**, in relation to a privacy complaint—see section 33.

**sensitive information**, for schedule 1 (Territory privacy principles)—see section 14.

**solicits**, personal information, for schedule 1 (Territory privacy principles)—see section 17.

**subcontractor**, in relation to a government contract—see section 21 (4) (Privacy protection requirements for government contracts).

**territory record**, for schedule 1 (Territory privacy principles)—see the *Territory Records Act 2002*, section 9 (3).

**TPP code**—see section 49.

**TPP privacy policy**, for schedule 1 (Territory privacy principles)—see TPP 1.3.

**TPPs**—see section 13 (Territory privacy principles).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2012.

**2 Notification**

Notified under the Legislation Act on 2012.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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