

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Information Privacy Bill 2014

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2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Information Privacy Bill 2014

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Information Privacy Act 2014*.

4 **2 Commencement**

5 (1) This Act commences on a day fixed by the Minister by written
6 notice.

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

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

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

15 (2) The day fixed under subsection (1) is also the day fixed for the
16 purposes of the *Australian Capital Territory Government Service*
17 *(Consequential Provisions) Act 1994* (Cwlth), section 23 (1).

18 **3 Dictionary**

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

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

23 For example, the signpost definition '*territory record*, for schedule 1
24 (Territory privacy principles)—see the *Territory Records Act 2002*,
25 section 9 (3).' means that the term 'territory record' is defined in that
26 section and the definition applies to this Act.

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

1 **4** **Notes**

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

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

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

6 Other legislation applies in relation to offences against this Act.

7 *Note 1* *Criminal Code*

8 The [Criminal Code](#), ch 2 applies to all offences against this Act (see
9 Code, pt 2.1).

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

14 *Note 2* *Penalty units*

15 The [Legislation Act](#), s 133 deals with the meaning of offence penalties
16 that are expressed in penalty units.

17 **6** **Relationship with other laws**

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

20 (a) the [Freedom of Information Act 1989](#); and

21 (b) the [Health Records \(Privacy and Access\) Act 1997](#); and

22 (c) the [Residential Tenancies Act 1997](#), part 7 (Residential tenancy
23 databases); and

24 (d) the [Territory Records Act 2002](#).

1 **Part 2** **Objects and important concepts**

2 **7** **Objects of Act**

3 The objects of this Act are to—

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

13 **8** **Meaning of *personal information***

14 (1) For this Act, *personal information*—

- 15 (a) means information or an opinion about an identified individual,
16 or an individual who is reasonably identifiable—
- 17 (i) whether the information or opinion is true or not; and
- 18 (ii) whether the information or opinion is recorded in a
19 material form or not; but
- 20 (b) does not include personal health information about the
21 individual.

22 (2) In this section:

23 *personal health information*—see the [Health Records \(Privacy and](#)
24 [Access\) Act 1997](#), dictionary.

- 1 **9** **Meaning of *public sector agency***
- 2 For this Act, a *public sector agency* means—
- 3 (a) a Minister; or
- 4 (b) an administrative unit; or
- 5 (c) a statutory office-holder and the staff assisting the statutory
- 6 office-holder; or
- 7 (d) a territory authority; or
- 8 (e) a territory instrumentality; or
- 9 (f) a territory-owned corporation or a subsidiary of a
- 10 territory-owned corporation; or
- 11 (g) an ACT court; or
- 12 (h) an entity prescribed by regulation.
- 13 **10** **Reference to *act* or *practice* of a public sector agency etc**
- 14 (1) A reference in this Act to an *act* or *practice*—
- 15 (a) of a public sector agency—is a reference to an act done, or a
- 16 practice engaged in, by the agency; and
- 17 (b) of a contracted service provider under a government contract—
- 18 is a reference to an act done, or a practice engaged in, by the
- 19 provider for the purpose of performing its obligations under the
- 20 contract.
- 21 *Note* A reference to an act done, or a practice engaged in, by a public sector
- 22 agency or contracted service provider includes a reference to a person
- 23 exercising a function of the entity, whether under a delegation,
- 24 subdelegation or otherwise (see [Legislation Act](#), s 184A).
- 25 (2) A reference in this Act to *doing* an act includes a reference to—
- 26 (a) doing an act in accordance with a practice; or

1 (b) failing to do an act.

2 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).

3 **11 Meaning of *interference* with individual's privacy**

4 (1) For this Act, an act or practice of a public sector agency is
5 an *interference* with an individual's privacy if the act or practice
6 breaches—

7 (a) a TPP in relation to personal information about the individual;
8 or

9 (b) a TPP code that binds the agency in relation to personal
10 information about the individual.

11 (2) For this Act, an act or practice of a contracted service provider
12 under a government contract is an *interference* with an individual's
13 privacy if the act or practice would be an interference with an
14 individual's privacy if the act or practice was done or engaged in by
15 the relevant public sector agency for the contract.

16 (3) In this section:

17 **relevant public sector agency**, for a government contract, means—

18 (a) if the Territory is a party to the contract—the public sector
19 agency that entered into the contract on behalf of the Territory;
20 or

21 (b) if the Territory is not a party to the contract—the public sector
22 agency that is a party to the contract.

23 **12 Meaning of *breach* a TPP etc**

24 (1) For this Act, an act or practice *breaches* a TPP only if it is contrary
25 to, or inconsistent with, the TPP.

26 (2) However, an act or practice does not *breach* a TPP if—

27 (a) the act is done, or the practice is engaged in, outside the ACT;
28 and

- 1 (b) the act or practice is required by a law of another jurisdiction
2 or a foreign country.
- 3 (3) In this section:
4 ***TPP*** includes a TPP code.

- 1 **Part 3** **Territory privacy principles**
- 2 **Division 3.1** **Important concepts—Territory privacy**
3 **principles**
- 4 **13** **Territory privacy principles**
- 5 (1) The Territory privacy principles (the *TPPs*) are set out in
6 schedule 1.
- 7 *Note* The TPPs differ from the Commonwealth APPs (see sch 1, note 3).
- 8 (2) If a provision of this Act refers to a TPP by a number, the reference
9 is a reference to the provision of schedule 1 having that number.
- 10 **14** **Definitions—sch 1**
- 11 In schedule 1:
- 12 *Australian law*—
- 13 (a) means a Territory, Commonwealth or State law; and
- 14 (b) includes the common law.
- 15 *Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).
- 16 *collects*, personal information—see section 15.
- 17 *court or tribunal order*—
- 18 (a) means an order, direction or other instrument made by an ACT
19 court; and
- 20 (b) includes an order, direction or other instrument of an interim or
21 interlocutory nature.
- 22 *de-identified*, personal information—see section 18.

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

- 2 (a) the Australian Federal Police;
3 (b) a State police force or service;

4 *Note* ***State*** includes the Northern Territory (see [Legislation Act](#), dict,
5 pt 1).

6 (c) the DPP or similar body established under a Commonwealth or
7 State law;

8 (d) a body established under a territory, Commonwealth or State
9 law to the extent that it is responsible for administering, or
10 exercising a function under—

11 (i) a law that imposes a penalty or sanction; or

12 (ii) a law prescribed by regulation;

13 (e) a body established under a territory, Commonwealth or State
14 law to conduct criminal investigations or inquiries;

15 (f) a body established under a territory, Commonwealth or State
16 law to the extent that it is responsible for administering a law
17 relating to the protection of public revenue;

18 (g) a body prescribed by regulation.

19 ***enforcement-related activity*** means—

20 (a) the prevention, detection, investigation, prosecution or
21 punishment of—

22 (i) criminal offences; or

- 1 (ii) breaches of a law imposing a penalty or sanction; or
2 (b) the conduct of surveillance activities, intelligence gathering
3 activities or monitoring activities; or
4 (c) the conduct of protective or custodial activities; or
5 (d) the enforcement of law relating to the confiscation of the
6 proceeds of crime; or
7 (e) the protection of public revenue; or
8 (f) the prevention, detection, investigation or remedying of
9 misconduct of a serious nature, or other conduct prescribed by
10 regulation; or
11 (g) the preparation for, or conduct of, a proceeding before a court
12 or tribunal; or
13 (h) the implementation of a court or tribunal order.
- 14 ***holds***, personal information—see section 16.
- 15 ***permitted general situation***, in relation to the collection, use or
16 disclosure of personal information—see section 19.
- 17 ***related body corporate***—see the [Corporations Act](#), section 9.
- 18 ***sensitive information***, in relation to an individual, means personal
19 information that is—
- 20 (a) about the individual's—
21 (i) racial or ethnic origin; or
22 (ii) political opinions; or
23 (iii) membership of a political association; or
24 (iv) religious beliefs or affiliations; or
25 (v) philosophical beliefs; or
26 (vi) membership of a professional or trade association; or

- 1 (vii) membership of a trade union; or
2 (viii) sexual orientation or practices; or
3 (ix) criminal record; or
4 (b) genetic information about the individual; or
5 (c) biometric information about the individual that is to be used for
6 the purpose of automated biometric verification or biometric
7 identification; or
8 (d) a biometric template that relates to the individual.

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

11 *solicits*, personal information—see section 17.

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

13 *TPP privacy policy*—see TPP 1.3.

14 **15 Meaning of *collects* personal information—sch 1**

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

18 **16 Meaning of *holds* personal information—sch 1**

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

22 **17 Meaning of *solicits* personal information—sch 1**

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

- 25 (a) the personal information; or

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

3 **18 Meaning of *de-identified* personal information—sch 1**

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

7 **19 Meaning of *permitted general situation* in relation to the
8 collection, use or disclosure of personal information—
9 sch 1**

10 (1) For schedule 1, a *permitted general situation* exists in relation to
11 the collection, use or disclosure by a public sector agency of
12 personal information about an individual if—

13 (a) both of the following apply:

14 (i) it is unreasonable or impracticable to obtain the
15 individual's consent to the collection, use or disclosure;

16 (ii) the agency reasonably believes that the collection, use or
17 disclosure is necessary to lessen or prevent a serious
18 threat to the life, health or safety of an individual, or to
19 public health or safety; or

20 (b) both of the following apply:

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

25 (ii) the agency reasonably believes that the collection, use or
26 disclosure is necessary in order for the agency to take
27 appropriate action in relation to the matter; or

- 1 (c) both of the following apply:
- 2 (i) the agency reasonably believes that the collection, use or
- 3 disclosure is reasonably necessary to assist an entity to
- 4 locate a person who has been reported as missing;
- 5 *Note* **Entity** includes an unincorporated body and a person
- 6 (including a person occupying a position) (see [Legislation](#)
- 7 [Act](#), dict, pt 1).
- 8 (ii) the collection, use or disclosure complies with the rules
- 9 made under subsection (2); or
- 10 (d) the collection, use or disclosure is reasonably necessary for the
- 11 establishment, exercise or defence of a legal or equitable claim;
- 12 or
- 13 (e) the collection, use or disclosure is reasonably necessary for the
- 14 purposes of a confidential alternative dispute resolution
- 15 process.
- 16 (2) For subsection (1) (c) (ii), the information privacy commissioner
- 17 may make rules relating to the collection, use or disclosure of
- 18 personal information.
- 19 *Note* See s 56 (Instruments made under this Act).
- 20 (3) A rule is a notifiable instrument.
- 21 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

22 **Division 3.2 Compliance with TPPs**

23 **20 Public sector agencies must comply with TPPs**

24 A public sector agency must not do an act, or engage in a practice,

25 that breaches a TPP.

- 1 **21 Privacy protection requirements for government**
2 **contracts**
- 3 (1) A public sector agency must not enter into a government contract
4 unless the contract contains appropriate contractual measures to
5 ensure that the contracted service provider, and any subcontractor,
6 for the contract does not do an act, or engage in a practice,
7 (a *contravening act*) that breaches a TPP, or a TPP code that binds
8 the agency.
- 9 (2) Also, a public sector agency must not enter into a government
10 contract that authorises a contracted service provider, or any
11 subcontractor, for the contract to do or engage in a contravening act.
- 12 (3) Failure by a public sector agency to comply with this section does
13 not affect any obligation the agency, or the contracted service
14 provider, has under this Act or the government contract in relation
15 to compliance with the TPPs, or a TPP code that binds the agency.
- 16 (4) In this section:
- 17 *subcontractor*, in relation to a government contract—
- 18 (a) means a person engaged by the contracted service provider
19 under the government contract to provide the services the
20 subject of the government contract; and
- 21 (b) includes any other person engaged under a subcontracting
22 arrangement to provide the services the subject of the
23 government contract.

24 **Division 3.3 Other privacy compliance matters**

- 25 **22 Deemed breach in relation to acts and practices of**
26 **overseas recipients of personal information**
- 27 (1) This section applies if—
- 28 (a) a public sector agency discloses personal information about an
29 individual to an overseas recipient; and

- 1 (b) TPP 8.1 applies to the disclosure of the information; and
2 (c) the TPPs do not apply, under this Act, to an act done, or a
3 practice engaged in, by the overseas recipient in relation to the
4 information; and
5 (d) the overseas recipient does an act, or engages in a practice, in
6 relation to the information that would be a breach of a TPP
7 (other than TPP 1) if the TPP applied to the act or practice.
8 (2) The act done, or the practice engaged in, by the overseas recipient is
9 taken, for this Act—
10 (a) to have been done, or engaged in, by the public sector agency;
11 and
12 (b) to be a breach of the TPP by the agency.

13 **23 Commonwealth APPs apply to certain public sector**
14 **agencies engaged in commercial activities**

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

1 **Part 4** **Exemptions from application of**
2 **Act**

3 **24 Exempt public sector agencies**

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

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

10 **25 Exempt acts or practices of certain public sector**
11 **agencies**

12 (1) This Act does not apply to the following acts and practices:

- 13 (a) for a Minister—an act done, or a practice engaged in, by the
14 Minister other than an act done, or a practice engaged in, by
15 the Minister in relation to the affairs of a public sector agency
16 administered by the Minister;
- 17 (b) for an ACT court—an act done, or a practice engaged in, by
18 the ACT court other than an act done, or a practice engaged in,
19 by the ACT court in relation to a matter of an administrative
20 nature;
- 21 (c) for the Office of the Legislative Assembly—an act done, or a
22 practice engaged in, by the Office other than an act done, or a
23 practice engaged in, by the Office in exercising a function in
24 relation to a proceeding of the Legislative Assembly;

- 1 (d) for officers of the Assembly—an act done, or a practice
2 engaged in, by the officer of the Assembly other than an act
3 done, or a practice engaged in, by the officer in relation to a
4 matter of an administrative nature;
- 5 (e) for an FOI exempt agency—an act done, or a practice engaged
6 in, by the agency in relation to a document in relation to which
7 the agency is exempt from the operation of the FOI Act;
- 8 (f) for an agency prescribed by regulation—an act done, or a
9 practice engaged in, by the agency in relation to a matter
10 prescribed by regulation.

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

15 (2) In this section:

16 **FOI Act** means the [Freedom of Information Act 1989](#).

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

- 18 (a) mentioned in the FOI Act, section 6 (Exemption of certain
19 bodies); or
- 20 (b) exempted by regulation under the FOI Act, section 6 (4) (b); or
- 21 (c) responsible for a document to which—
- 22 (i) the FOI Act, section 6A (Exemption of lists of housing
23 assistance properties) applies; or
- 24 (ii) the [Housing Assistance Act 2007](#), section 29 (FOI Act
25 exemption—documents containing protected information)
26 applies.

1 **Part 5** Information privacy
2 commissioner

3 **26 Appointment of information privacy commissioner**

4 The Executive may appoint a person as Information Privacy
5 Commissioner.

6 *Note 1* For the making of appointments (including acting appointments), see
7 the [Legislation Act](#), pt 19.3.

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

10 **27 Term and conditions of appointment**

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

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

16 (2) The information privacy commissioner is appointed on the
17 conditions agreed between the Executive and the commissioner,
18 subject to this part and any determination under the [Remuneration
19 Tribunal Act 1995](#).

20 **28 Arrangements for privacy commissioner of another
21 jurisdiction to exercise functions**

22 If an appointment is not made under section 26, the Minister may
23 make arrangements for the commissioner (however described)
24 responsible for exercising functions under a Commonwealth or State
25 law that substantially correspond to this Act to exercise 1 or more of
26 the functions of the information privacy commissioner.

1 **29 Information privacy commissioner’s functions**

2 The information privacy commissioner’s functions are to—

- 3 (a) promote an understanding of the TPPs and the objects of the
4 TPPs; and
- 5 (b) provide information and educational programs to promote the
6 protection of the privacy of individuals; and
- 7 (c) help public sector agencies to comply with the TPPs and TPP
8 codes; and
- 9 (d) investigate privacy complaints made under this Act; and
- 10 (e) exercise any other functions given to the commissioner under
11 this Act or another territory law.

12 **30 Disclosure of interests**

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

17 **31 Delegation of information privacy commissioner’s
18 functions**

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

22 *Note* For the making of delegations and the exercise of delegated functions,
23 see the [Legislation Act](#), pt 19.4.

- 1 **32 Ending of information privacy commissioner's**
2 **appointment**
- 3 (1) If an appointment is made under section 26, the Executive may end
4 the appointment—
- 5 (a) if the information privacy commissioner contravenes a territory
6 law or law of another jurisdiction; or
- 7 (b) for misbehaviour; or
- 8 (c) if the commissioner becomes bankrupt or personally insolvent;
9 or
- 10 *Note* **Bankrupt or personally insolvent**—see the [Legislation Act](#),
11 dictionary, pt 1.
- 12 (d) if the commissioner is absent, other than on approved leave, for
13 14 consecutive days or for 28 days in any 12-month period.
- 14 (2) The Executive must end the information privacy commissioner's
15 appointment—
- 16 (a) for physical or mental incapacity, if the incapacity substantially
17 affects the exercise of the commissioner's functions; or
- 18 (b) if the commissioner fails to comply, without reasonable
19 excuse, with section 30 (Disclosure of interests).
- 20 *Note* A person's appointment also ends if the person resigns (see [Legislation](#)
21 [Act](#), s 210).

1 **Part 6** **Privacy complaints**

2 **Division 6.1** **Important concepts**

3 **33** **What is a *privacy complaint* etc?**

4 In this Act:

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

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

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

13 **Division 6.2** **Making privacy complaints**

14 **34** **Who may make a privacy complaint?**

15 (1) An individual may make a privacy complaint to the information
16 privacy commissioner.

17 (2) For an act or practice of a public sector agency or contracted service
18 provider that may be an interference with the privacy of 2 or more
19 individuals, any 1 of those individuals may make a privacy
20 complaint on behalf of all of the individuals.

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

24 **Examples—help**

25 1 advising the individual about the complaint process

1 2 helping the individual to put a privacy complaint in writing

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

5 **35 How may a privacy complaint be made?**

6 (1) A privacy complaint must—

7 (a) be in writing; and

8 (b) include the complainant's name, address and telephone
9 number; and

10 (c) identify the respondent and include details about the act or
11 practice the subject of the complaint.

12 *Note* If a form is approved under s 57 for this provision, the form must be
13 used.

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

19 **Example—exceptional circumstances**

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

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

25 **36 Privacy complaint may be referred to commissioner**

26 (1) A privacy complaint may be referred to the information privacy
27 commissioner by any of the following:

28 (a) the ombudsman;

29 (b) the human rights commission;

- 1 (c) an entity having functions, under a State or Commonwealth
2 law that corresponds to this Act, that correspond to the
3 functions of the information privacy commissioner;
- 4 (d) an entity prescribed by regulation.
- 5 (2) If an entity mentioned in subsection (1) refers a privacy complaint to
6 the information privacy commissioner, the entity must—
- 7 (a) give the commissioner any information the entity has in
8 relation to the complaint; and
- 9 (b) tell the complainant about the referral.

10 **37 Commissioner must tell respondent about complaint**

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

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

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

20 **Division 6.3 Dealing with privacy complaints**

21 **38 Commissioner may make preliminary inquiries**

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

1 **39 Commissioner may decide not to deal with privacy**
2 **complaint**

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

- 5 (a) the act or practice the subject of the complaint is not an
6 interference with an individual's privacy; or
- 7 (b) the complaint was made more than 12 months after the
8 complainant became aware of the act or practice; or
- 9 (c) the complaint is frivolous, vexatious, misconceived, lacking in
10 substance or not made in good faith; or
- 11 (d) the act or practice is the subject of an application under another
12 territory law, or a State or Commonwealth law, and the
13 substance of the complaint has been, or is being, dealt with
14 adequately under that law; or
- 15 (e) the complaint would be better dealt with under another
16 territory law, or a State or Commonwealth law; or
- 17 (f) dealing, or further dealing, with the act or practice is not
18 warranted having regard to all the circumstances; or
- 19 (g) the complainant has complained to the respondent about the act
20 or practice and—
- 21 (i) the respondent has dealt, or is dealing, adequately with
22 the complaint; or
- 23 (ii) the respondent has not yet had an adequate opportunity to
24 deal with the complaint.

25 **40 Dealing with privacy complaints**

- 26 (1) If the information privacy commissioner decides to deal with a
27 privacy complaint, the commissioner may make inquiries and
28 investigations in relation to the complaint, as the commissioner
29 thinks appropriate.

- 1 (2) The information privacy commissioner may decide not to continue
2 dealing with the privacy complaint, or part of the complaint, if—
- 3 (a) the complainant does not comply with a reasonable request
4 made by the commissioner in dealing with the complaint, or
5 part of the complaint; or
- 6 (b) the commissioner is reasonably satisfied that the complainant,
7 without reasonable excuse, has not cooperated in the
8 commissioner's dealing with the complaint, or part of the
9 complaint; or
- 10 (c) the commissioner has not been able to contact the complainant
11 for a reasonable period of time using the contact details stated
12 in the privacy complaint.

13 **41 Commissioner must tell parties about decision to not**
14 **deal with privacy complaint**

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

19 **42 Commissioner may refer privacy complaint to other entity**

- 20 (1) If the information privacy commissioner, after considering a privacy
21 complaint, is reasonably satisfied that the complaint would be better
22 dealt with by an investigative entity with power to investigate the
23 complaint, the commissioner may refer the privacy complaint to the
24 entity.
- 25 (2) If the information privacy commissioner refers the privacy
26 complaint to an investigative entity, the commissioner must—
- 27 (a) give the entity any information the commissioner has in
28 relation to the complaint; and
- 29 (b) tell the complainant and respondent about the referral.

- 1 (3) In this section:
2 *investigative entity* means—
3 (a) the ombudsman; or
4 (b) the human rights commission; or
5 (c) an entity having functions, under a State or Commonwealth
6 law that corresponds to this Act, that correspond to the
7 functions of the information privacy commissioner; or
8 (d) an entity prescribed by regulation.

9 **43 Commissioner may report serious or repeated**
10 **interferences to Minister**

- 11 (1) If the information privacy commissioner, after dealing with a
12 privacy complaint, is reasonably satisfied that the act or practice the
13 subject of the complaint is a serious or repeated interference with
14 the complainant's privacy, the commissioner may give the Minister
15 a written report about the complaint.
16 (2) If the commissioner gives the Minister a report mentioned in
17 subsection (1), the Minister must present the report to the
18 Legislative Assembly within 6 sitting days after the day the Minister
19 receives the report.

20 **44 Commissioner may obtain information**

- 21 (1) The information privacy commissioner may ask anyone to give the
22 commissioner information so that the commissioner may deal with a
23 privacy complaint.
24 (2) A public sector agency or public official for the agency must
25 comply with a request made to the agency or official.

- 1 (3) In this section:
- 2 *public official*, for a public sector agency, means a person who is or
- 3 has been—
- 4 (a) an employee of the public sector agency; or
- 5 (b) a contractor, employee of a contractor or volunteer exercising a
- 6 function of the public sector agency.

7 **Division 6.4 Application to court**

8 **45 Commissioner must tell parties application may be made**

9 **to court**

10 If the information privacy commissioner after dealing with a privacy

11 complaint is reasonably satisfied that the act or practice the subject

12 of the complaint is an interference with the complainant's privacy,

13 the commissioner must give written notice to the complainant and

14 the respondent for the complaint telling them—

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

19 **46 Complainant may apply for court order**

20 A complainant may, within 6 months after the day the complainant

21 is notified under section 45, apply to a court for an order mentioned

22 in section 47.

- 1 **47 What orders may a court make?**
- 2 On application by a complainant in relation to a privacy complaint,
3 the court may make 1 or more of the following orders:
- 4 (a) an order that the complaint, or a part of the complaint, has been
5 substantiated, together with, if considered appropriate, 1 or
6 more of the following orders:
- 7 (i) that an act or practice of the respondent is an interference
8 with the privacy of the complainant and that the
9 respondent must not repeat or continue the act or practice;
- 10 (ii) that the respondent must engage in a stated reasonable act
11 or practice to compensate for loss or damage suffered by
12 the complainant;
- 13 (iii) that the respondent must make a stated amendment of a
14 record it holds;
- 15 (iv) that the complainant is entitled to a stated amount, of not
16 more than \$100 000, to compensate the complainant for
17 economic loss or damage suffered by the complainant
18 because of the act or practice complained of;
- 19 (b) an order that the complaint, or a part of the complaint, has been
20 substantiated together with an order that no further action is
21 required to be taken;
- 22 (c) an order that the complaint, or a part of the complaint, has not
23 been substantiated, together with an order that the complaint or
24 part is dismissed;
- 25 (d) an order that the complainant be reimbursed for expenses
26 reasonably incurred in relation to making the complaint.

1 **Division 6.5** **Contracted service providers**

2 **48** **Private sector agency must be kept informed about**
3 **privacy complaint involving contracted service provider**

- 4 (1) This section applies if—
- 5 (a) the respondent in relation to a privacy complaint is a contracted
6 service provider under a government contract; and
- 7 (b) the information privacy commissioner is required under this
8 part to tell, or give, something to the respondent.
- 9 (2) The information privacy commissioner must also tell, or give, the
10 thing to the public sector agency to which the government contract
11 relates.

1 **Part 7 TPP codes**

2 **49 Meaning of *TPP code***

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

19 **50 Development of TPP codes and proposed amendment of
20 TPP codes**

- 21 (1) A public sector agency may develop a draft TPP code or draft
22 amendment of a TPP code.
- 23 (2) Before adopting a TPP code, the public sector agency must—
- 24 (a) publish the draft TPP code or draft amendment on the agency's
25 website or in a daily newspaper; and

1 (b) invite the public to make submissions to the agency about the
2 draft or amendment within a stated period of at least 28 days;
3 and

4 (c) consider any submissions made within the stated period.

5 (3) A TPP code adopted by a public sector agency is a notifiable
6 instrument.

7 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

8 *Note 2* See s 56 (Instruments made under this Act).

9 **51 Public sector agencies must comply with TPP codes**

10 A public sector agency must not do an act, or engage in a practice,
11 that breaches a TPP code notified under section 50 (3).

1 **Part 8** **Miscellaneous**

2 **52** **Protection of officials from liability**

3 (1) An official is not civilly liable for anything done or omitted to be
4 done honestly and without recklessness—

5 (a) in the exercise of a function under this Act; or

6 (b) in the reasonable belief that the act or omission was in the
7 exercise of a function under this Act.

8 (2) Any civil liability that would, apart from subsection (1), attach to an
9 official attaches instead to the Territory.

10 (3) In this section:

11 *official* means—

12 (a) the information privacy commissioner; or

13 (b) a person authorised under this Act to do or not to do a thing.

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

17 **53** **Offence—use or divulge protected information**

18 (1) A person to whom this section applies commits an offence if—

19 (a) the person uses information; and

20 (b) the information is protected information about someone else;
21 and

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

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

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

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

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

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

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

- 1 (5) In this section:
2 *court* includes a tribunal, authority or person having power to
3 require the production of documents or the answering of
4 questions.
5 *divulge* includes—
6 (a) communicate; or
7 (b) publish.
8 *person to whom this section applies* means a person who
9 exercises, or has exercised, a function under this Act.
10 *produce* includes allow access to.
11 *protected information* means information about a person that is
12 disclosed to, or obtained by, a person to whom this section
13 applies because of the exercise of a function under this Act by
14 the person or someone else.
15 *use*, in relation to information, includes make a record of the
16 information.
- 17 **54 Report by information privacy commissioner**
- 18 (1) The information privacy commissioner must, for each financial
19 year, give a report to the Minister about—
20 (a) the total number of privacy complaints made or referred to the
21 commissioner; and
22 (b) the total number of privacy complaints dealt with by the
23 commissioner; and
24 (c) the total number of privacy complaints in relation to which the
25 commissioner has given a notice under section 45
26 (Commissioner must tell parties application may be made to
27 court); and
28 (d) anything else prescribed by regulation.

- 1 (2) The report—
- 2 (a) must identify the respondent in relation to each privacy
- 3 complaint reported on under subsection (1); but
- 4 (b) must not include the complainant’s personal information.
- 5 (3) The Minister must present the report to the Legislative Assembly
- 6 within 15 sitting days after the day the report is given to the
- 7 Minister.

8 **55 Information privacy commissioner may make guidelines**

- 9 (1) The information privacy commissioner may make guidelines about
- 10 the following:
- 11 (a) to help public sector agencies bound by TPP codes to apply or
- 12 comply with the codes;
- 13 (b) matters the public sector agency must consider when
- 14 developing a TPP code under section 50;
- 15 (c) the conduct of disclosure of personal information about an
- 16 individual by a public sector agency for TPP 6.3 (d).
- 17 (2) A guideline is a notifiable instrument.

18 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

19 **56 Instruments made under this Act**

20 An instrument made under this Act may apply, adopt or incorporate

21 another instrument as in force from time to time.

22 *Note 1* The text of an applied, adopted or incorporated instrument, whether

23 applied as in force from time to time or as at a particular time, is taken

24 to be a notifiable instrument if the operation of the [Legislation Act](#),

25 s 47 (5) or (6) is not disapplied (see s 47 (7)).

26 *Note 2* A notifiable instrument must be notified under the [Legislation Act](#).

1 **57 Approved forms**

2 (1) The information privacy commissioner may approve forms for this
3 Act.

4 (2) If the information privacy commissioner approves a form for a
5 particular purpose, the approved form must be used for that purpose.

6 *Note* For other provisions about forms, see the [Legislation Act](#), s 255.

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

8 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

9 **58 Regulation-making power**

10 The Executive may make regulations for this Act.

11 *Note* A regulation must be notified, and presented to the Legislative
12 Assembly, under the [Legislation Act](#).

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.

- 1 *Note 3* The TPPs do not include provisions equivalent to the
2 Commonwealth APPs relating to certain private sector and other
3 entities. To maintain consistent numbering between the TPPs and the
4 Commonwealth APPs—
- 5 • if the Commonwealth APPs contain a provision that is not included
6 in this Act—the relevant TPP in this schedule is numbered to
7 maintain consistency in numbering between provisions common to
8 both Acts; and
 - 9 • a note appears under the relevant TPP in this schedule describing
10 the omitted provision of the Commonwealth APPs.
- 11 The TPPs also contain minor textual and formatting differences to the
12 Commonwealth APPs.

13 **Part 1.1 Consideration of personal**
14 **information privacy**

15 **1 TPP 1—open and transparent management of personal**
16 **information**

17 1.1 The object of this TPP is to ensure that public sector agencies
18 manage personal information in an open and transparent way.

19 *Compliance with the TPPs etc*

20 1.2 A public sector agency must take reasonable steps to implement
21 practices, procedures and systems relating to the agency's functions
22 or activities that—

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

- 1 *TPP privacy policy*
- 2 1.3 A public sector agency must have a clearly expressed and up-to-date
3 policy (the ***TPP privacy policy***) about the management of personal
4 information by the agency.
- 5 1.4 Without limiting TPP 1.3, the TPP privacy policy of the public
6 sector agency must contain the following information:
- 7 (a) the kinds of personal information that the agency collects and
8 holds;
- 9 (b) how the agency collects and holds personal information;
- 10 (c) the purposes for which the agency collects, holds, uses and
11 discloses personal information;
- 12 (d) how an individual may access personal information about the
13 individual that is held by the agency and seek the correction of
14 the information;
- 15 (e) how an individual may complain about a breach of the TPPs,
16 or any TPP code that binds the agency, and how the agency
17 will deal with the complaint;
- 18 (f) whether the agency is likely to disclose personal information to
19 overseas recipients;
- 20 (g) if the agency is likely to disclose personal information to
21 overseas recipients—the countries in which the recipients are
22 likely to be located if it is practicable to state those countries in
23 the policy.
- 24 *Availability of TPP privacy policy etc*
- 25 1.5 A public sector agency must take reasonable steps to make its TPP
26 privacy policy available—
- 27 (a) free of charge; and

1 (b) in an appropriate form.

2 **Example**

3 on the agency's website

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

7 1.6 If a person requests a copy of the TPP privacy policy of a public
8 sector agency in a particular form, the agency must take reasonable
9 steps to give the person a copy in that form.

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

12 **2 TPP 2—anonymity and pseudonymity**

13 2.1 Individuals must have the option of not identifying themselves, or of
14 using a pseudonym, when dealing with a public sector agency in
15 relation to a particular matter.

16 2.2 TPP 2.1 does not apply if, in relation to the matter—

17 (a) the public sector agency is required or authorised by or under
18 an Australian law, or a court or tribunal order, to deal with
19 individuals who have identified themselves; or

20 (b) it is impracticable for the public sector agency to deal with
21 individuals who have not identified themselves or who have
22 used a pseudonym.

1 **Part 1.2** **Collection of personal**
2 **information**

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

4 *Personal information other than sensitive information*

- 5 3.1 A public sector agency must not collect personal information (other
6 than sensitive information) unless the information is reasonably
7 necessary for, or directly related to, 1 or more of the agency's
8 functions or activities.

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

12 *Sensitive information*

- 13 3.3 A public sector agency must not collect sensitive information about
14 an individual unless—

15 (a) the individual consents to the collection of the information and
16 the information is reasonably necessary for, or directly related
17 to, 1 or more of the agency's functions or activities; or

18 (b) TPP 3.4 applies in relation to the information.

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

- 21 3.4 This subsection applies in relation to sensitive information about an
22 individual if—

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

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

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

6 (d) the public sector agency is an enforcement body and the
7 agency reasonably believes that the collection of the
8 information is reasonably necessary for, or directly related to,
9 1 or more of the agency's functions or activities.

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

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

15 *Means of collection*

16 3.5 A public sector agency must collect personal information only by
17 lawful and fair means.

18 3.6 A public sector agency must collect personal information about an
19 individual only from the individual unless—

20 (a) either—

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

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

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

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

1 *Solicited personal information*

2 3.7 TPP 3 applies to the collection of personal information that is
3 solicited by a public sector agency.

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

5 4.1 If—

6 (a) a public sector agency receives personal information; and

7 (b) the agency did not solicit the information;

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

12 4.2 The public sector agency may use or disclose the personal
13 information for the purposes of making the decision under TPP 4.1.

14 4.3 If—

15 (a) the public sector agency decides that the agency could not have
16 collected the personal information; and

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

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

21 4.4 If TPP 4.3 does not apply in relation to the personal information,
22 TPPs 5 to 13 apply in relation to the information as if the agency
23 had collected the information under TPP 3.

- 1 **5** **TPP 5—notification of the collection of personal**
2 **information**
- 3 5.1 At or before the time or, if that is not practicable, as soon as
4 practicable after, a public sector agency collects personal
5 information about an individual, the agency must take reasonable
6 steps—
- 7 (a) to notify the individual of the matters mentioned in TPP 5.2
8 that are reasonable in the circumstances; or
- 9 (b) to otherwise ensure that the individual is aware of those
10 matters.
- 11 5.2 The matters for TPP 5.1 are as follows:
- 12 (a) the identity and contact details of the public sector agency;
- 13 (b) if—
- 14 (i) the public sector agency collects the personal information
15 from someone other than the individual; or
- 16 (ii) the individual may not be aware that the public sector
17 agency has collected the personal information;
- 18 the fact that the agency collects, or has collected, the
19 information and the circumstances of that collection;
- 20 (c) if the collection of the personal information is required or
21 authorised by or under an Australian law, or a court or tribunal
22 order—the fact that the collection is required or authorised
23 (including the name of the Australian law, or details of the
24 court or tribunal order, that requires or authorises the
25 collection);
- 26 (d) the purposes for which the public sector agency collects the
27 personal information;

- 1 (e) the main consequences (if any) for the individual if all or some
2 of the personal information is not collected by the public sector
3 agency;
- 4 (f) any other public sector agency or entity, or the kinds of any
5 other public sector agencies or entities, to which the public
6 sector agency usually discloses personal information of the
7 kind collected by the agency;
- 8 (g) that the TPP privacy policy of the public sector agency
9 contains information about how the individual may access the
10 personal information about the individual that is held by the
11 agency and seek the correction of the information;
- 12 (h) that the TPP privacy policy of the public sector agency
13 contains information about how the individual may complain
14 about a breach of the TPPs, or any TPP code that binds the
15 agency, and how the agency will deal with the complaint;
- 16 (i) whether the public sector agency is likely to disclose the
17 personal information to overseas recipients;
- 18 (j) if the public sector agency is likely to disclose the personal
19 information to overseas recipients—the countries in which the
20 recipients are likely to be located if it is practicable to state
21 those countries in the notification or to otherwise make the
22 individual aware of them.

1 **Part 1.3 Dealing with personal**
2 **information**

3 **6 TPP 6—use or disclosure of personal information**

4 *Use or disclosure*

5 6.1 If a public sector agency holds personal information about an
6 individual that was collected for a particular purpose (the *primary*
7 *purpose*), the agency must not use or disclose the information for
8 another purpose (the *secondary purpose*) unless—

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

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

13 *Note* TPP 8 sets out requirements for the disclosure of personal information
14 to a person who is not in Australia or an external territory.

15 6.2 This subsection applies in relation to the use or disclosure of
16 personal information about an individual if—

17 (a) the individual would reasonably expect the public sector
18 agency to use or disclose the information for the secondary
19 purpose and the secondary purpose is—

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

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

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

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

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

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

10 6.3 This subsection applies in relation to the disclosure of personal
11 information about an individual by a public sector agency if—

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

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

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

16 (d) the disclosure is conducted in accordance with the guidelines
17 made by the information privacy commissioner for this
18 subsection.

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

22 *Written note of use or disclosure*

23 6.5 If a public sector agency uses or discloses personal information in
24 accordance with TPP 6.2 (e), the agency must make a written note
25 of the use or disclosure.

26 *Related bodies corporate*

27 6.6 If—

28 (a) a public sector agency is a corporation; and

1 (b) the agency collects personal information from a related body
2 corporate;

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

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

9 **7 Direct marketing**

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

12 *Note 2* However, Commonwealth APP 7 applies to an act or practice of a
13 public sector agency if the agency engages in commercial activities (see
14 s 23).

15 **8 TPP 8—cross-border disclosure of personal information**

16 8.1 Before a public sector agency discloses personal information about
17 an individual to a person (an *overseas recipient*)—

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

19 (b) who is not the agency or the individual;

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

23 *Note* In certain circumstances, an act done, or a practice engaged in, by an
24 overseas recipient is taken, under s 22, to have been done, or engaged
25 in, by the public sector agency and to be a breach of the TPPs.

- 1 8.2 TPP 8.1 does not apply to the disclosure of personal information
2 about an individual by a public sector agency to the overseas
3 recipient if—
- 4 (a) the agency reasonably believes that—
- 5 (i) the recipient of the information is subject to a law, or
6 binding scheme, that has the effect of protecting the
7 information in a way that, overall, is at least substantially
8 similar to the way in which the TPPs protect the
9 information; and
- 10 (ii) there are mechanisms that the individual can access to
11 take action to enforce that protection of the law or
12 binding scheme; or
- 13 (b) both of the following apply:
- 14 (i) the agency expressly informs the individual that if the
15 individual consents to the disclosure of the information,
16 TPP 8.1 will not apply to the disclosure;
- 17 (ii) after being informed, the individual consents to the
18 disclosure; or
- 19 (c) the disclosure of the information is required or authorised by or
20 under an Australian law, or a court or tribunal order; or
- 21 (d) a permitted general situation (other than the situation
22 mentioned in section 19 (1) (d) or (e)) exists in relation to the
23 disclosure of the information by the agency; or
- 24 (e) the disclosure of the information is required or authorised by or
25 under an international agreement relating to information
26 sharing to which Australia or the Territory is a party; or

- 1 (f) both of the following apply:
- 2 (i) the agency reasonably believes that the disclosure of the
- 3 information is reasonably necessary for 1 or more
- 4 enforcement-related activities conducted by, or on behalf
- 5 of, an enforcement body;
- 6 (ii) the recipient is a body that exercises functions that are
- 7 similar to those exercised by an enforcement body.

8 **9 Adoption, use or disclosure of government-related**

9 **identifiers**

10 *Note 1* The Commonwealth Act includes a privacy principle regulating the

11 adoption, use or disclosure of government-related identifiers by certain

12 private sector entities (see Commonwealth APP 9).

13 *Note 2* However, Commonwealth APP 9 applies to an act or practice of a

14 public sector agency if the agency engages in commercial activities

15 (see s 23).

1 **Part 1.4** **Integrity of personal information**

2 **10** **TPP 10—quality of personal information**

3 10.1 A public sector agency must take reasonable steps to ensure that the
4 personal information that the agency collects is accurate, up-to-date
5 and complete.

6 10.2 A public sector agency must take reasonable steps to ensure that the
7 personal information that the agency uses or discloses is, having
8 regard to the purpose of the use or disclosure, accurate, up-to-date,
9 complete and relevant.

10 **11** **TPP 11—security of personal information**

11 11.1 If a public sector agency holds personal information, the agency
12 must take reasonable steps to protect the information—

13 (a) from misuse, interference or loss; and

14 (b) from unauthorised access, modification or disclosure.

15 11.2 If—

16 (a) a public sector agency holds personal information about an
17 individual; and

18 (b) the agency no longer needs the information for a purpose for
19 which the information may be used or disclosed by the agency
20 under the TPPs; and

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

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

24 the agency must take reasonable steps to destroy the information or
25 to ensure that the information is de-identified.

1 **Part 1.5** **Access to, and correction of,**
2 **personal information**

3 **12** **TPP 12—access to personal information**

4 *Access*

- 5 12.1 If a public sector agency holds personal information about an
6 individual, the agency must, on request by the individual, give the
7 individual access to the information.

8 *Exception to access—agency*

- 9 12.2 If the public sector agency is required or authorised to refuse to give
10 the individual access to the personal information by or under—

- 11 (a) the *Freedom of Information Act 1989*; or
12 (b) another law in force in the ACT that provides for access by
13 people to documents;

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

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

20 *Dealing with requests for access*

- 21 12.4 The public sector agency must—
22 (a) respond to the request for access to the personal information
23 within 30 days after the day the request is made; or

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

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

6 *Other means of access*

7 12.5 If the public sector agency refuses—

8 (a) to give access to the personal information because of TPP 12.2;
9 or

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

11 the agency must take reasonable steps to give access in a way that
12 meets the needs of the agency and the individual.

13 12.6 Without limiting TPP 12.5, access may be given through the use of
14 a mutually agreed intermediary.

15 *Access charges*

16 12.7 The public sector agency must not charge the individual for the
17 making of the request or for giving access to the personal
18 information.

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

22 *Refusal to give access*

23 12.9 If the public sector agency refuses to give access to the personal
24 information because of TPP 12.2, or to give access in the way
25 requested by the individual, the agency must give the individual a
26 written notice that sets out—

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

- 1 (b) the mechanisms available to complain about the refusal; and
2 (c) any other matter prescribed by regulation.

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

6 **13 TPP 13—correction of personal information**

7 *Correction*

8 13.1 If—

- 9 (a) a public sector agency holds personal information about an
10 individual; and
11 (b) either—
12 (i) the agency is satisfied that, having regard to a purpose for
13 which the information is held, the information is
14 inaccurate, out-of-date, incomplete, irrelevant or
15 misleading; or
16 (ii) the individual requests the agency to correct the
17 information;

18 the agency must take reasonable steps to correct the information to
19 ensure that, having regard to the purpose for which it is held, the
20 information is accurate, up-to-date, complete, relevant and not
21 misleading.

22 *Notification of correction to third parties*

23 13.2 If—

- 24 (a) the public sector agency corrects personal information about an
25 individual that the agency previously disclosed to another
26 public sector agency; and

1 (b) the individual requests the agency to notify the other public
2 sector agency of the correction;

3 the agency must take reasonable steps to give the notification unless
4 it is impracticable or unlawful to do so.

5 *Refusal to correct information*

6 13.3 If the public sector agency refuses to correct the personal
7 information as requested by the individual, the agency must give the
8 individual a written notice that sets out—

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

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

12 (c) any other matter prescribed by regulation.

13 *Request to associate a statement*

14 13.4 If—

15 (a) the public sector agency refuses to correct the personal
16 information as requested by the individual; and

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

20 the agency must take reasonable steps to associate the statement in a
21 way that will make the statement apparent to users of the
22 information.

23 *Dealing with requests*

24 13.5 If a request is made under TPP 13.1 or TPP 13.4, the public sector
25 agency—

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

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1 (b) must not charge the individual for the making of the request,
2 for correcting the personal information or for associating the
3 statement with the personal information.

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

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:

- ACT
- administrative unit
- Coroner’s Court
- corporation
- Corporations Act
- 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
- officer of the Assembly
- State
- statutory office-holder
- Supreme Court
- territory authority
- territory instrumentality
- territory-owned corporation
- tribunal
- working day.

- 1 **act**—see section 10.
- 2 **ACT court**—
- 3 (a) means the Supreme Court, Magistrates Court, Coroner’s Court
4 or a tribunal; and
- 5 (b) includes a judge, magistrate, tribunal member and any other
6 person exercising a function of the court or tribunal in relation
7 to the hearing or determination of a matter before it.
- 8 **Australian law**, for schedule 1 (Territory privacy principles)—see
9 section 14.
- 10 **breach**, a TPP—see section 12.
- 11 **collects**, personal information, for schedule 1 (Territory privacy
12 principles)—see section 15.
- 13 **Commonwealth Act** means the [Privacy Act 1988](#) (Cwlth).
- 14 **Commonwealth APPs** means the Australian privacy principles set
15 out in the Commonwealth Act, schedule 1.
- 16 **complainant**, in relation to a privacy complaint—see section 33.
- 17 **consent** means express or implied consent.
- 18 **contracted service provider**—
- 19 (a) means a person engaged under a government contract to
20 provide services to the Territory or a public sector agency; and
- 21 (b) includes a subcontractor in relation to the contract.
- 22 **court or tribunal order**, for schedule 1 (Territory privacy
23 principles)—see section 14.
- 24 **de-identified**, personal information, for schedule 1 (Territory
25 privacy principles)—see section 18.
- 26 **doing**, an act—see section 10 (2).
- 27 **enforcement body**, for schedule 1 (Territory privacy principles)—
28 see section 14.

- 1 **enforcement-related activity**, for schedule 1 (Territory privacy
2 principles)—see section 14.
- 3 **generally available publication** means a magazine, book, article,
4 newspaper or other publication that is, or will be, generally available
5 to members of the public—
- 6 (a) whether or not it is published in print, electronically or in any
7 other form; and
- 8 (b) whether or not it is available on the payment of a fee.
- 9 **government contract** means a contract, to which the Territory or a
10 public sector agency is a party, under which services are to be
11 provided to—
- 12 (a) the Territory or agency; or
- 13 (b) another entity in relation to the exercise of the agency’s
14 functions.
- 15 **holds**, personal information, for schedule 1 (Territory privacy
16 principles)—see section 16.
- 17 **information privacy commissioner** means—
- 18 (a) the Information Privacy Commissioner appointed under
19 section 26; or
- 20 (b) if an appointment is not made under section 26, the person
21 exercising 1 or more functions under an arrangement
22 mentioned in section 28.
- 23 **interference**, with an individual’s privacy—see section 11.
- 24 **misconduct**, of a person includes fraud, negligence, default, breach
25 of trust, breach of duty, breach of discipline by or any other
26 misconduct of the person in the exercise of the person’s functions as
27 a public official.
- 28 **overseas recipient**, in relation to personal information—see
29 TPP 8.1.

- 1 ***permitted general situation***, in relation to the collection, use or
2 disclosure of personal information, for schedule 1 (Territory privacy
3 principles)—see section 19.
- 4 ***personal information***—see section 8.
- 5 ***practice***—see section 10.
- 6 ***privacy complaint***—see section 33.
- 7 ***public sector agency***—see section 9.
- 8 ***record***—
- 9 (a) includes—
- 10 (i) a document; or
- 11 (ii) an electronic or other device; and
- 12 (b) does not include—
- 13 (i) a generally available publication; or
- 14 (ii) anything kept in a library, art gallery or museum for the
15 purposes of reference, study or exhibition; or
- 16 (iii) a record open to public access under the *Territory*
17 *Records Act 2002*, part 3; or
- 18 (iv) a letter or other item in the course of being sent by post.
- 19 *Note* ***Document***—see the *Legislation Act*, dictionary, pt 1.
- 20 ***related body corporate***, for schedule 1 (Territory privacy
21 principles)—see the *Corporations Act*, section 9.
- 22 ***respondent***, in relation to a privacy complaint—see section 33.
- 23 ***sensitive information***, for schedule 1 (Territory privacy
24 principles)—see section 14.
- 25 ***solicits***, personal information, for schedule 1 (Territory privacy
26 principles)—see section 17.

