

Information Privacy Regulation 2014

Subordinate law SL2014–25

made under the

Information Privacy Act 2014, section 25 (Exempt acts or practices)

EXPLANATORY STATEMENT

The *Information Privacy Act 2014* ('the Act'), which regulates the handling of personal information by ACT public sector agencies and contracted service providers, and for other purposes, commenced on 1 September 2014.

Section 25 of the Act provides for acts and practices to which the Act does not apply.

Section 25 (1) provides that the Act does not apply to the following acts or 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;
- (d) for officers of the Assembly—an act done, or a practice engaged in, by the officer of the Assembly other than an act done, or a practice engaged in, by the officer in relation to a matter of an administrative nature;
- (e) 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;
- (f) an act done, or a practice engaged in, by a public sector agency in relation to a record that has originated with, or has been received from, a Commonwealth enforcement or intelligence body;
- (g) an act done, or a practice engaged in, by a public sector agency that involves the disclosure of personal information to a Commonwealth intelligence body if the

body, in connection with its functions, requests that the agency disclose the personal information and—

- (i) the disclosure is made to an officer or employee of the Commonwealth intelligence body authorised in writing by the head (however described) of the body to receive the disclosure; and
 - (ii) the officer or employee certifies in writing that the disclosure is connected with the performance of the body's functions;
- (h) 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.

Section 25(2) provides definitions for words used in section 25(1), namely for “Commonwealth enforcement or intelligence body”, Commonwealth intelligence body”, “Defence Department”, “FOI Act” and “FOI exempt agency”.

The exemptions in s 25 are in place so that the functions of specific bodies of the judiciary and the executive are kept independent from the mechanisms of government in order that those bodies can effectively perform the functions given to them by the Australian Constitution or other Commonwealth and Territory laws.

Exemptions for Commonwealth enforcement or intelligence bodies in sections 25(f) and (g) reflect exemptions in the Commonwealth *Privacy Act 1988* which had applied in the ACT since 1994 and as modified in 2000.

S 25 of the Act recognises that while the Act will generally apply to all public sector agencies that fall within the definition of public sector agency in section 9 of the Act, some aspects of the operations or functions of specific public sector agencies will not be subject to the Act.

The Act provides sufficient flexibility to add to the exemptions expressly provided for in the Act, by enabling regulations to prescribe other exemptions.

Section 25(1)(h) of the Act provides a regulation-making power to prescribe by regulation an agency for which the Act does not apply to an act done, or practice engaged in, by the agency in relation to a matter prescribed by regulation.

The *Information Privacy Regulation 2014* (‘the Regulation’) prescribes acts or practices by two prescribed public sector agencies under section 25(1)(h) of the Act to which the Act does not apply.

Overview and Purpose

The Asbestos Response Taskforce (‘the Taskforce’) was established by the ACT Government on 25 June 2014 to provide a coordinated response by the Government to the issue of loose fill asbestos affected properties.

The Taskforce provides a single point of contact for those in the community who are affected by, or who have concerns about, loose-fill asbestos.

At the time of the making of the Regulation, it has been the policy of the ACT Government and the Taskforce to maintain the privacy of affected home owners and not publish information relating to the addresses of affected properties. Rather, the Taskforce has worked with relevant areas of the ACT Government to introduce a number of measures to balance the interests of current affected home owners with the interests of tradespeople, previous owners and current and previous occupants of affected residential premises.

One of these measures has been to require owners and occupiers of affected residential premises to affix approved warning labels to electricity meter boards and switch boards.

In addition, the Environment and Planning Directorate (EPD) and the Taskforce have developed a process to allow former tenants and home owners to find out if a property they resided in or owned contained loose-fill asbestos and was part of an asbestos removal program.

This process has been underpinned by the balancing of privacy considerations and restrictions with the importance of providing this information.

A former owner or tenant who can prove a connection with an address (ie. through a rates notice, utilities or rental statement, express permission of current owner etc) or through providing a statutory declaration, can apply to EPD for a response.

This can be undertaken by completing the form at http://www.actpla.act.gov.au/customer_information/community/new_building_file_search_process_-_asbestos_removal_program.

Tradespeople who have carried out, or who intend to carry out building work on residential premises will also be able to apply to EPD for a response using this process.

While neither EPD nor the Taskforce have disclosed, nor intend to disclose, the identity of any individual through disclosing whether a property contained loose-fill asbestos or was part of an asbestos removal program, a person can find out the identity of the proprietor of the Crown lease of land by carrying out a search of the title.

This regulation removes all doubt that the intention behind the existing policy by EPD and the Taskforce is to allow previous owners, current and previous occupants and tradespeople who have carried out, are carrying out, or intend to carry out building work on residential premises (people who can prove they have a connection with the property) to find out if the residential property contained loose-fill asbestos or was part of an asbestos removal program, not for the purposes of disclosing personal information.

The regulation makes clear that “any relevant related information” excludes the identity of an individual.

The disclosure of names of owners or residents of affected residential properties by EPD or the Taskforce to any person or the disclosure of information about affected properties to people who are not able to demonstrate a connection to the property (disclosure to people who are not current or former owners or who are not current or former occupants or people would be not tradespeople who have carried out, are carrying out or intend to carry out building work on the premises) would be outside the scope of the Regulation.

Clause notes

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Information Privacy Regulation 2014*.

Clause 2 Commencement

This clause provides that the regulation commences the day after its notification day.

Clause 3 Dictionary

This clause provides that the Dictionary at the end of the regulation is part of the regulation.

Clause 4 Notes

This clause provides that a note included in the regulation is explanatory and is not part of the regulation.

Clause 5 Asbestos Response Taskforce a *public sector agency*—Act, s 9 (h)

Section 9 of the Act defines “public sector agency” for the Act. The asbestos response taskforce is not an administrative unit, statutory office holder, territory authority, territory instrumentality or territory-owned corporation or subsidiary.

This clause prescribes the asbestos response taskforce as a public sector agency under section 9(h) of the Act.

Clause 6 Exemptions—Act, s 25 (1) (h)

Clause 6(1) prescribes the Environment and Planning Directorate of the ACT Government and the asbestos response taskforce as public sector agencies for the section.

Clause (6)(2) provides that the Act does not apply to a prescribed public sector agency in relation to the disclosure of information about whether residential premises contain, or have contained, loose fill asbestos insulation including any relevant related information (other than the identity of an individual) to anyone who was an owner of the premises or who is, or was, an occupier of the premises, or anyone who has carried out, is carrying out or intends to carry out building work on the premises.

Examples are included to illustrate the intended meaning of “relevant related information” as used in clause 6(2).

Dictionary

The Dictionary defines words and expressions used in the Regulation. It also contains references to definitions in the *Legislation Act 2001* of terms used in the Regulation.