

IMPROVED EXPOSURE DRAFT
**(Part of the Submission by Prof G Greenleaf
and Mr N Waters, Cyberspace Law & Policy
Centre, UNSW Faculty of Law)**

EXPOSURE DRAFT

Australian Privacy Principles
EXPOSURE DRAFT

Australian Privacy Principles Part A
Introduction Division 1

Section 1

Part A—Australian Privacy Principles

Division 1—Introduction

1 Guide to this Part **[OMITTED]**

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Australian Privacy Principles **Part A**
Consideration of personal information privacy **Division 2**

Section 2

Division 2—Consideration of personal information privacy

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

- (1) The object of this principle is to ensure that entities manage personal information in an open and transparent way.

Compliance with the Australian Privacy Principles etc.

- (2) An entity must take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the entity's functions and activities that:
- (a) will ensure that the entity complies with the Australian Privacy Principles; and
 - (b) will enable the entity to deal with inquiries or complaints from individuals about the entity's compliance with the Australian Privacy Principles.

Privacy policy

- (3) An entity must have a clearly expressed and up-to-date policy (the **privacy policy**) about the management of personal information by the entity.
- (4) Without limiting subsection (3), the privacy policy must contain the following information:
- (a) the kinds of personal information that the entity collects and holds;
 - (b) how the entity collects and holds personal information;
 - (c) the purposes for which the entity collects, holds, uses and discloses personal information;
 - (d) the usual recipients of personal information from the entity;
 - (e) how an individual may access personal information about the individual that is held by the entity and seek the correction of such information;
 - (f) how an individual may complain about an interference with the privacy of the individual and how the entity will deal with such a complaint;

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- (g) contact details of the person responsible for responding to access requests and complaints;
- (h) whether the entity is likely to disclose personal information to overseas recipients;
- (i) if the entity is likely to disclose personal information to overseas recipients—any countries in which such recipients are likely to be located if it is practicable to specify those countries in the privacy policy, and if it is not practicable to specify some countries, an explanation of why not.

Availability of privacy policy etc.

- (⁵) An entity must make its privacy policy available:
 - (a) free of charge; and
 - (b) in such forms as are appropriate, including in electronic form if the entity makes other information available in electronic form.

- (6) If an individual requests a copy of an entity's privacy policy in a particular form, the entity must take such steps as are reasonable in the circumstances to give the individual a copy in that form.

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3 Australian Privacy Principle 2—anonymity and pseudonymity

- (1) Individuals must have the option of not identifying themselves when dealing with an entity.
- (2) Where subsection (1) does not apply, an individual must have the option of using a pseudonym unless it is impractical for an entity to deal with individuals who use a pseudonym;
- (3) Subsection (1) does not apply if:
 - (a) an entity is required or authorised by or under an Australian law, or an order of a court or tribunal, to deal with individuals who have identified themselves; or
 - (b) it is impracticable for an entity to deal with individuals who have not identified themselves.

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Division 3—Collection of personal information

4 Australian Privacy Principle 3—collection of solicited personal information

Personal information other than sensitive information

- (1) An entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for, and directly related to, one or more of the entity's lawful functions or activities.

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Sensitive information

- (2) An entity must not collect sensitive information about an individual unless:
- (a) both of the following apply:
 - (i) the information is reasonably necessary for, and directly related to, one or more of the entity's lawful functions or activities;
 - (ii) the individual consents to the collection of the information; or
 - (b) subsection (3) applies in relation to the information.
- (3) This subsection applies in relation to sensitive information about an individual (the ***affected individual***) if:
- (a) the collection of the information is required or authorised by or under an Australian law, or an order of a court or tribunal; or
 - (b) both of the following apply:
 - (i) the entity reasonably believes that the collection of the information is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety;
 - (ii) it is unreasonable or impracticable to obtain the affected individual's consent to the collection; or
 - (c) both of the following apply:
 - (i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the

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- entity's functions or activities has been, is being or may be engaged in;
- (ii) the entity reasonably believes that the collection of the information is necessary in order for the entity to take appropriate action in relation to the matter; or
- (d) both of the following apply:
- (i) the entity is an enforcement body;
- (ii) the entity reasonably believes that the collection of the information is necessary for and directly related to, one or more of the entity's functions or activities; or

6 Australian Privacy Principles

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<#>the entity is an agency; .

<#>the entity reasonably believes that the collection of the information is necessary for the entity's diplomatic or consular functions or activities; or .

(f) the entity is the Defence Force and the entity reasonably believes that the collection of the information is necessary for any of the following occurring outside Australia: .

<#>war or warlike operations; .

<#>peacekeeping or peace enforcement; .

<#>civil aid, humanitarian assistance, medical or civil emergency or disaster relief; or .

(g) both of the following apply: .

<#>the entity reasonably believes that the collection of the information is reasonably necessary to assist any entity, body or person to locate a person who has been reported as missing; .

<#>the collection complies with the Australian Privacy Rules made under paragraph 21(a); or .

(h) both of the following apply: .

(i) the information is collected by a non-profit organisation and relates to the activities of the non-profit organisation; .

(ii) the information relates solely to the members of the non-profit organisation, or to individuals who have .

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Australian Privacy Principles Part A
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- (e) the collection of the information is necessary for the establishment, exercise or defence of a legal or equitable claim; or
(f) the collection of the information is necessary for the purposes of a confidential alternative dispute resolution process.

Means of collection

- (4) An entity must collect personal information only by lawful and fair means.
- (5) An entity must collect personal information about an individual only from the individual unless:
- (a) if the entity is an agency—the entity is required or expressly authorised by or under an Australian law, or an order of a court or tribunal, to collect the information other than from the individual; or
 - (b) it is unreasonable or impracticable to do so.

Solicited personal information

- (6) This principle applies to the collection of personal information that is solicited by an entity.

5 Australian Privacy Principle 4—receiving unsolicited personal information

- (1) If:
- (a) an entity receives personal information about an individual; and
 - (b) the entity did not solicit the information;
- the entity must, within a reasonable period of receiving the information, determine whether or not the entity could have collected the information under Australian Privacy Principle 3 if the entity had solicited the information.

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- (2) The entity may use or disclose the personal information for the purposes of making the determination under subsection (1).
- (3) If the entity determines that the entity could have collected the personal information, Australian Privacy Principles 5 to 13 apply in relation to the information as if the entity had so collected the information.
- (4) If the entity determines that the entity could not have collected the personal information, the entity must, as soon as practicable but only if it is lawful and reasonable to do so:
 - (a) destroy the information; or
 - (b) ensure that the information is no longer personal information.

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

- (1) At or before the time or, if that is not practicable, as soon as practicable after, an entity collects personal information about an individual, the entity must take such steps (if any) as are reasonable in the circumstances:
 - (a) to notify the individual of such matters referred to in subsection (2) as is reasonable in the circumstances; or
 - (b) to otherwise ensure that the individual is aware of any such matters.
- (2) The matters for the purposes of subsection (1) are as follows:
 - (a) the identity and contact details of the entity;
 - (b) if:
 - (i) the entity collects the personal information from someone other than the individual; or
 - (ii) the individual may not be aware that the entity has collected the personal information;the fact that the entity so collects, or has collected, the information and the circumstances of that collection;
 - (c) if the collection of the personal information is required or expressly authorised by or under an Australian law or an order of a court or tribunal—the fact that the collection is so required or expressly authorised (including the name of the Australian law, or

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Collection of personal information Division 3

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which order of a court or tribunal requires or authorises the collection);

- (d) the purposes for which the entity collects the personal information;
- (e) the main consequences (if any) for the individual if all or part of the personal information is not collected by the entity;
- (f) any other entity, body or person, or the types of any other entities, bodies or persons, to which the entity usually discloses personal information of the kind collected by the entity;
- (g) that the entity's privacy policy contains information about how the individual may access the personal information about the individual that is held by the entity and seek the correction of such information;
- (h) that the entity's privacy policy contains information about how the individual may complain about an interference with the privacy of the individual and how the entity will deal with such a complaint;
- (i) whether the entity is likely to disclose the personal information to recipients outside Australia;
- (j) if the entity is likely to disclose the personal information to overseas recipients—any countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise specify them, and if it is not practical to specify all such countries, to explain why not.

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Division 4 Dealing with personal information

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Division 4—Dealing with personal information

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

Use or disclosure

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

- (a) the individual has consented to the use or disclosure of the information; or
- (b) subsection (2) applies in relation to the use or disclosure of the information.

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

- (2) This subsection applies in relation to the use or disclosure of personal information about an individual (the **affected individual**) if:

- (a) the affected individual would reasonably expect the entity to use or disclose the information for the secondary purpose and the secondary purpose is:
 - (i) if the information is sensitive information—directly related to the primary purpose; or
 - (ii) if the information is not sensitive information—related to the primary purpose; or
- (b) the use or disclosure of the information is required or **expressly** authorised by or under an Australian law, or an order of a court or tribunal; or
- (c) both of the following apply:
 - (i) the entity reasonably believes that the use or disclosure of the information is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety;
 - (ii) it is unreasonable or impracticable to obtain the affected individual's consent to the use or disclosure; or

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- (d) both of the following apply:
- (i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in;
 - (ii) the entity reasonably believes that the use or disclosure of the information is necessary for the entity to take appropriate action in relation to the matter; or
- (e) the entity reasonably believes that the use or disclosure of the information is necessary for one or more enforcement related activities by, or on behalf of, an enforcement body; or
- (h) the use or disclosure of the information is necessary for the establishment, exercise or defence of a legal or equitable claim; or
- (i) the use or disclosure of the information is necessary for the purposes of a confidential alternative dispute resolution process.

Written note of use or disclosure

If an entity uses or discloses personal information in accordance with paragraph (2)(e), the entity must make a written note of the use or disclosure.

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the entity is an agency; -
the entity reasonably believes that the use or disclosure of the information is necessary for the entity's diplomatic or consular functions or activities; or -
(g) both of the following apply: -
the entity reasonably believes that the use or disclosure of the information is reasonably necessary to assist any entity, body or person to locate a person who has been reported as missing; -
the use or disclosure complies with the Australian Privacy Rules made under paragraph 21(b); or

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Related bodies corporate

(4) If:

- (a) an entity is a body corporate; and
- (b) the entity collects personal information from a related body corporate;

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

8 Australian Privacy Principle 7—direct marketing

Direct marketing

(1) If an entity holds personal information about an individual, the organisation must not use or disclose the information for the purpose of direct marketing unless:

- (a) if the information is sensitive information and paragraph (c) does not apply—the individual has consented to the use or disclosure of the information for that purpose; or
- (b) if the information is not sensitive information and paragraph (c) does not apply—subsection (2) or (3) applies in relation to the use or disclosure of the information for that purpose; or

(c) such use or disclosure is required or specifically authorised by law.

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(5) This principle does not apply to the use or disclosure by an organisation of: .
<#>personal information for the purpose of direct marketing; or .
<#>government related identifiers. .

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<#>the organisation is a contracted service provider for a Commonwealth contract; and .
<#>the organisation collected the information for the purpose of meeting (directly or indirectly) an obligation under the contract; .
the use or disclosure is necessary to meet (directly or .
indirectly) an obligation under the contract. .

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Note: An act or practice of an agency may be treated as an act or practice of an organisation.

Personal information collected from the individual

- (2) This subsection applies in relation to the use or disclosure by an organisation of personal information about an individual for the purpose of direct marketing if:
- (a) the organisation collected the information from the individual; and
 - (b) the individual would reasonably expect the organisation to use or disclose the information for that purpose; and
 - (c) the organisation provides a simple means by which the individual may easily request not to receive direct marketing communications from the organisation; and
 - (d) in each direct marketing communication with the individual:
 - (i) the organisation includes a statement that the individual may make such a request; or
 - (ii) the organisation otherwise expressly and prominently draws the individual's attention to the fact that the individual may make such a request; and
 - (e) the individual has not made such a request to the organisation.

Personal information collected from another person etc.

- (3) This subsection applies in relation to the use or disclosure by an organisation of personal information about an individual for the purpose of direct marketing if:
- (a) the organisation collected the information from:
 - (i) the individual and the individual would not reasonably expect the organisation to use or disclose the information for that purpose; or
 - (ii) a person other than the individual; and
 - (b) either:
 - (i) the individual has consented to the use or disclosure of the information for that purpose; or
 - (ii) it is impracticable to obtain that consent; and
 - (c) the organisation provides a simple means by which the individual may easily request not to receive direct marketing communications from the organisation; and
 - (d) in each direct marketing communication with the individual:

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

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- (ii) the organisation otherwise expressly and prominently draws the individual's attention to the fact that the individual may make such a request; and
- (e) the individual has not made such a request to the organisation.

Individual may request not to receive direct marketing communications etc.

- (4) If an organisation uses or discloses personal information about an individual for the purpose of direct marketing by the organisation, or for the purpose of facilitating direct marketing by other organisations, the individual may:
 - (a) if the organisation uses or discloses the information for the purpose of direct marketing by the organisation—request not to receive direct marketing communications from the organisation; and
 - (b) if the organisation uses or discloses the information for the purpose of facilitating direct marketing by other organisations—request the organisation not to use or disclose the information for that purpose; and
 - (c) request the organisation to provide the organisation's source of information.
- (5) If an individual makes a request of a kind referred to in subsection (4) to an organisation, the organisation:
 - (a) must not charge the individual for the making of, or to give effect to, the request; and
 - (b) if the request is of a kind referred to in paragraph (4)(a) or (b)—must give effect to the request within a reasonable period after the request is made; and
 - (c) if the request is of a kind referred to in paragraph (4)(c)—must, within a reasonable period after the request is made, notify the individual of the organisation's source. ▾

Interaction with other legislation

- (6) This principle does not apply to the extent that any of the following apply and their application is not consistent with this principle:

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- (a) the *Do Not Call Register Act 2006*;
- (b) the *Spam Act 2003*;

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

- (1) Before an entity discloses personal information about an individual to a person (the ***overseas recipient***):
- (a) who is not in Australia; and
 - (b) who is not the entity or the individual;
- the entity must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information.

- (2) Subsection (1) does not apply to the disclosure of personal information about an individual (the ***affected individual***) by an entity to the overseas recipient if:

- (a) both of the following apply:

- (i) the overseas recipient of the information is subject to a law, or binding scheme, that has the effect of protecting the information in a way that, overall, is at least substantially similar to the way in which the Australian Privacy Principles protect the information; and
- (ii) there are mechanisms that the affected individual can access to take action to enforce that protection of the law or binding scheme; or

- (b) each of the following apply:

- (i) the entity expressly informs the affected individual of the information specified in principle 1(4)(g) and that if he or she consents to the disclosure of the information, subsection (1) of this principle will not apply to the disclosure;
- (ii) after being so informed, the affected individual consents to the disclosure;

- (iii) after so consenting, the entity gives the individual written notice of the matters of which the individual was informed under (i), unless such written notice has already been given by the entity to the individual prior

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to the individual consenting under (ii); or

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

(e) both of the following apply:

- (i) the entity reasonably believes that the disclosure of the information is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety;
- (ii) it is unreasonable or impracticable to obtain the affected individual's consent to the disclosure; or

(f) both of the following apply:

- (i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in;
- (ii) the entity reasonably believes that the disclosure of the information is necessary for the entity to take appropriate action in relation to the matter; or

(g) each of the following applies:

- (i) the entity is an agency;
- (ii) the entity reasonably believes that the disclosure of the information is reasonably necessary for one or more enforcement related activities by, or on behalf of, an enforcement body;
- (iii) the overseas recipient is a body that performs functions, or exercises powers, that are similar to those performed or exercised by an enforcement body; or

(h) both of the following apply:

- (i) the entity is an agency;

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<#>the entity is an agency; -
<#>the disclosure of the information is required or authorised by or under an international agreement relating to information sharing; -
<#>Australia is a party to the international agreement; or -

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- (ii) the entity reasonably believes that the disclosure of the information is necessary for the entity's diplomatic or consular functions or activities; or
- (i) the entity is the Defence Force and the entity reasonably believes that the disclosure of the information is necessary for any of the following occurring outside Australia:
 - (i) war or warlike operations;
 - (ii) peacekeeping or peace enforcement;
 - (iii) civil aid, humanitarian assistance, medical or civil emergency or disaster relief.

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

Adoption of government related identifiers

- (1) An entity must not adopt a government related identifier of an individual as its own identifier of the individual unless:
- (a) the adoption of the government related identifier is required or authorised by or under an Australian law, or an order of a court or tribunal; or
 - (b) subsection (3) applies in relation to the adoption; or
 - (c) the entity is the first entity to assign the identifier to an individual.

Note: An act or practice of an agency may be treated as an act or practice of an organisation.

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Use or disclosure of government related identifiers

- (2) An entity must not use or disclose a government related identifier of an individual (the *affected individual*) unless:
- (a) the use or disclosure of the government related identifier is reasonably necessary for the entity to verify the identity of the affected individual for the purposes of the entity's activities or functions; or
 - (b) the use or disclosure of the government related identifier is reasonably necessary for the entity to fulfil its obligations to an agency or a State or Territory authority; or
 - (c) the use or disclosure of the government related identifier is required or authorised by or under an Australian law, or an order of a court or tribunal; or

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(d) both of the following apply:

- (i) the entity reasonably believes that the use or disclosure of the government related identifier is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety;
- (ii) it is unreasonable or impracticable to obtain the affected individual's consent to the use or disclosure; or

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(e) both of the following apply:

- (i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in;
- (ii) the entity reasonably believes that the use or disclosure of the government related identifier is necessary for the entity to take appropriate action in relation to the matter; or

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

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(g) subsection (3) applies in relation to the use or disclosure; or

(h) the entity is the first entity to assign the identifier to an individual.

Note: An act or practice of an agency may be treated as an act or practice of an organisation.

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Regulations about adoption, use or disclosure

(3) This subsection applies in relation to the adoption, use or disclosure by an entity of a government related identifier of an individual if each of the following applies:

- (a) the government related identifier is prescribed by the regulations;
- (b) the organisation is prescribed by the regulations, or is included in a class of organisations prescribed by the regulations;
- (c) the adoption, use or disclosure occurs in the circumstances prescribed by the regulations.

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Australian Privacy Principles **Part A**
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Section 10

Note: There are prerequisites that must be satisfied before the matters mentioned in this subsection are prescribed, see subsections 22(2) and (3).

Government related identifier

- (4) A **government related identifier** of an individual is an identifier of the individual that has been assigned by:
- (a) an agency; or
 - (b) a State or Territory authority; or
 - (c) an agent of an agency, or a State or Territory authority, acting in its capacity as agent; or
 - (d) a contracted service provider for a Commonwealth contract, or a State contract, acting in its capacity as contracted service provider for that contract

Identifier

- (5) An **identifier** of an individual is a number, letter or symbol, or a combination of any or all of those things, that is used to identify the individual or to verify the identity of the individual.
- (6) Despite subsection (5), none of the following is an **identifier** of an individual:
- (a) the individual's name;
 - (b) the individual's ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*).

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Section 11

Division 5—Integrity of personal information

11 Australian Privacy Principle 10—quality of personal information
[OMITTED]

**12 Australian Privacy Principle 11—security of personal
information** [OMITTED]

Division 6—Access to, and correction of, personal information

[OMITTED]

Part B—Other relevant provisions

15 Definitions

In this Act:

agency: see section 16.

Australian law means:

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

Australian link: see subsection 19(3).

Australian Privacy Principle has a meaning affected by section 18.

Australian Privacy Rules means the rules made under section 21.

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

Commonwealth contract means a contract:

- (a) to which the Commonwealth or an agency is or was a party; and
- (b) under which services are to be or were to be provided to:
 - (i) an agency; or
 - (ii) another person in connection with the performance of the functions or activities of the agency.

Commonwealth enactment means:

- (a) an Act of the Commonwealth other than:
 - (i) the *Australian Capital Territory (Self-Government) Act 1988*; or
 - (ii) the *Northern Territory (Self-Government) Act 1978*; or

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- (iii) an Act of the Commonwealth providing for the administration or government of an external Territory; or
- (b) an Ordinance of the Australian Capital Territory; or
- (c) an instrument (including rules, regulations or by-laws) made under:
 - (i) an Act of the Commonwealth, other than an Act referred to in subparagraph (a)(i), (ii) or (iii); or
 - (ii) an Ordinance of the Australian Capital Territory; or
- (d) any other legislation to the extent that it applies:
 - (i) as a law of the Commonwealth, other than legislation in so far as it is applied by an Act referred to in subparagraph (a)(ii) or (iii); or
 - (ii) as a law of the Australian Capital Territory.

consent means express consent or implied consent, subject to each of the following:

- (a) consent must be unambiguous, and is not to be implied solely from the provision of an 'opt-out' facility;
- (b) where a person has no choice but to provide personal information to an entity in order to obtain a benefit, 'consent' in principle 7(1)(a) only refers to express consent; and
- (c) separate consents must be obtained for each purpose of use or disclosure under principle 7(1)(a).

contracted service provider, for a Commonwealth contract or a State contract, means:

- (a) an organisation:
 - (i) that is or was a party to the contract; and
 - (ii) that is or was responsible for the provision of services to an agency, or a State or Territory authority, under the contract; or
- (b) a subcontractor for the contract.

corporation means a body corporate that:

- (a) is a foreign corporation (within the meaning of paragraph 51(xx) of the Constitution); or
- (b) is a trading or financial corporation (within the meaning of that paragraph) formed within the limits of Australia; or
- (c) is incorporated in a Territory, other than the Northern

Territory.

Department of the Commonwealth means an Agency within the meaning of the *Public Service Act 1999*.

eligible hearing service provider means an entity (within the meaning of the *Hearing Services Administration Act 1997*):

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- (a) that is, or has at any time been, engaged under Part 3 of that Act to provide hearing services; and
- (b) that is not covered by a paragraph of subsection 16(1) of this Act other than paragraph (i) of that subsection.

enforcement body means:

- (a) the Australian Federal Police; or
- (b) the Australian Commission for Law Enforcement Integrity; or
- (c) the Australian Crime Commission; or
- (d) Customs; or
- (e) the Australian Prudential Regulation Authority; or
- (f) the Australian Securities and Investments Commission; or
- (g) the Office of the Director of Public Prosecutions, or a similar body established under a law of a State or Territory; or
- (h) the police force or police service of a State or Territory; or
- (i) the Independent Commission Against Corruption of New South Wales; or
- (j) the New South Wales Crime Commission; or
- (l) the Police Integrity Commission of New South Wales; or
- (m) the Office of Police Integrity of Victoria; or
- (n) the Crime and Misconduct Commission of Queensland; or
- (o) the Corruption and Crime Commission of Western Australia; or
- (p) another agency, or State or Territory authority, to the extent that it is responsible for:
 - (i) administering, or performing a function under, a law that imposes a penalty or sanction, or a law prescribed by the regulations; or
 - (ii) administering a law relating to the protection of the public revenue; or
- (q) another authority or body prescribed by the regulations that is established under a law of a State or Territory to conduct criminal investigations or inquiries.

enforcement related activity means:

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- (a) the prevention, detection, investigation, prosecution or punishment of:
 - (i) criminal offences; or
 - (ii) breaches of a law imposing a penalty or sanction; or
- (b) the conduct of surveillance activities, intelligence gathering activities or monitoring activities; or
- (c) the enforcement of laws relating to the confiscation of the proceeds of crime; or
- (d) the protection of the public revenue; or
- (e) the prevention, detection, investigation or remedying of misconduct of a serious nature; or
- (f) the preparation for, or conduct of, proceedings before any court or tribunal, or the implementation of orders made by a court or tribunal.

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entity means an agency or organisation.

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, electronic or any other form; and
- (b) whether or not it is available on the payment of a fee.

government related identifier: see subsection 10(4).

hearing services has the same meaning as in the *Hearing Services Administration Act 1997*.

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

identifier: see subsections 10(5) and (6).

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

nominated AGHS company means a company that:

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- (a) is the nominated company (within the meaning of Part 2 of the *Hearing Services and AGHS Reform Act 1997*); and
- (b) is either:
 - (i) Commonwealth-owned (within the meaning of that Part); or
 - (ii) a corporation.

non-profit organisation means an organisation:

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

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

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

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

organisation: see section 17.

overseas recipient in relation to personal information: see subsection 9(1).

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

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

privacy policy: see subsection 2(3).

record includes:

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- (a) a document; or
 - (b) an electronic or other device;
- but does not include:
- (c) a generally available publication; or
 - (d) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
 - (e) Commonwealth records (within the meaning of the *Archives Act 1983*) that are in the open access period for the purposes of that Act; or
 - (f) records (within the meaning of the *Archives Act 1983*) in the care (within the meaning of that Act) of the National Archives of Australia (the *Archives*) in relation to which:
 - (i) the Archives has entered into arrangements with a person other than a Commonwealth institution (within the meaning of that Act); and
 - (ii) those arrangements provide for the extent to which the Archives or other persons are to have access to those records; or
 - (g) documents placed by or on behalf of a person (other than an agency) in the memorial collection (within the meaning of the *Australian War Memorial Act 1980*); or
 - (h) letters or other articles in the course of transmission by post.

Note: For *document*, see section 25 of the *Acts Interpretation Act 1901*.

registered political party means a political party registered under Part XI of the *Commonwealth Electoral Act 1918*.

related body corporate has the meaning given by the *Corporations Act 2001*.

Secretary means an Agency Head within the meaning of the *Public Service Act 1999*.

sensitive information means personal information that is:

- (a) information or an opinion about an individual's:
 - (i) racial or ethnic origin; or
 - (ii) political opinions; or
 - (iii) membership of a political association; or

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- (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
- (viii) sexual orientation or practices; or
- (ix) criminal record; or
- (b) health information about an individual; or
- (c) genetic information about an individual that is not otherwise health information; or
- (d) biometric information that is to be used for the purpose of automated biometric verification or biometric identification; or
- (e) biometric templates.

solicits: an entity **solicits** personal information if the entity requests a person to provide the personal information, or to provide a kind of information in which that personal information is included, or makes a facility available expressly for the receipt of a kind of information in which personal information is included.

State contract means a contract:

- (a) to which a State, a Territory or a State or Territory authority is or was a party; and
- (b) under which services are to be or were to be provided to:
 - (i) a State or Territory authority; or
 - (ii) another person in connection with the performance of the functions or activities of the State or Territory authority.

State or Territory authority means:

- (a) a Minister of a State or Territory; or
- (b) a Department of a State or Territory; or
- (c) a body or tribunal, whether incorporated or unincorporated, established or appointed for a public purpose by or under a law of a State or Territory, other than:
 - (i) an incorporated company, society or association; or
 - (ii) an association of employers or employees that is registered or recognised under such a law that deals with the resolution of industrial disputes; or

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- (d) a body, whether incorporated or unincorporated, established or appointed, otherwise than under a law of a State or Territory, by:
 - (i) a Governor of a State; or
 - (ii) the Australian Capital Territory Executive; or
 - (iii) the Administrator of the Northern Territory; or
 - (iv) the Administrator of Norfolk Island; or
 - (v) a Minister of a State or Territory; or
 - (vi) a person holding an executive office mentioned in section 12 of the *Norfolk Island Act 1979*; or
- (e) a person who holds or performs the duties of:
 - (i) an office established by or under a law of a State or Territory; or
 - (ii) an appointment made under such a law; other than the head of a Department of a State or Territory (however described); or
- (f) a person who holds or performs the duties of an appointment made, otherwise than under a law of a State or Territory, by:
 - (i) a Governor of a State; or
 - (ii) the Australian Capital Territory Executive; or
 - (iii) the Administrator of the Northern Territory; or
 - (iv) the Administrator of Norfolk Island; or
 - (v) a Minister of a State or Territory; or
 - (vi) a person holding an executive office mentioned in section 12 of the *Norfolk Island Act 1979*; or
- (g) a court of a State or Territory.

subcontractor, for a Commonwealth contract or a State contract, means an organisation:

- (a) that is or was a party to a contract (the **subcontract**):
 - (i) with a contracted service provider for the Commonwealth contract or State contract (within the meaning of paragraph (a) of the definition of **contracted service provider**); or
 - (ii) with a subcontractor for the Commonwealth contract or State contract (because of a previous application of this definition); and
-

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- (b) that is or was responsible under the subcontract for the provision of services to:
 - (i) an agency; or
 - (ii) a State or Territory authority; or
 - (iii) a contracted service provider for the Commonwealth contract or State contract;for the purposes (whether direct or indirect) of that contract.

16 Meaning of *agency* **[OMITTED]**

17 Meaning of *organisation* **[OMITTED]**

18 References to the Australian Privacy Principles **[OMITTED]**

19 Extra-territorial operation of this Act etc. **[OMITTED]**

20 Acts and practices of overseas recipients of personal information

- (1) This section applies if:
 - (a) an entity discloses personal information about an individual to an overseas recipient; and
 - (b) subsection 9(1) applies to the disclosure of the information; and
 - (c) the Australian Privacy Principles do not apply, under this Act, to an act done, or a practice engaged in, by the overseas recipient in relation to the information; and
 - (d) the overseas recipient does an act, or engages in a practice, in relation to the information that would be a breach of the Australian Privacy Principles (other than Australian Privacy Principle 1) if those Australian Privacy Principles so applied to that act or practice.
- (2) The act done, or the practice engaged in, by the overseas recipient is taken, for the purposes of this Act:
 - (a) to have been done, or engaged in, by the entity; and

-
- (b) to be an interference with the privacy of the individual.

(3) Sub-section (1)(d) of this section is taken, for the purposes of this Act, to apply if all of the circumstances concerning the personal information and the disclosure of the information give rise to a reasonable presumption that there has occurred a breach of the Australian Privacy Principles (other than Australian Privacy Principle 1) by the overseas recipient, if those Australian Privacy Principles so applied to that act or practice, and the entity disclosing the personal information

does not rebut that presumption.

21 Commissioner may make rules relating to certain matters

[OMITTED]

22 Regulations [OMITTED]