

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

PRIVACY BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Honourable Lionel Bowen, Attorney-General)

PRIVACY BILL 1988

GENERAL OUTLINE

1. The Privacy Bill 1988 will establish the office of Privacy Commissioner within the Human Rights and Equal Opportunity Commission. The Commissioner will be empowered to take privacy protection measures in relation to Commonwealth departments and agencies and tax file number users and to encourage corporations to adopt privacy guidelines.

2. The Privacy Bill 1988 will establish rules of conduct, called Information Privacy Principles (IPPs), for the collection, retention, access to, correction, use and disclosure of personal information about individuals. The IPPs will apply to Commonwealth departments and agencies.

3. The IPPs are based on a recommendation of the Law Reform Commission in its Report No. 22 entitled "Privacy" (ALRC 22) and presented in December 1983. They elaborate the obligations accepted by Australia under Article 17 of the International Covenant on Civil and Political Rights. Enactment of the IPPs will also implement Australia's commitment as a member of the Organisation for Economic Co-operation and Development to take into account, in its domestic legislation, principles concerning the protection of privacy and individual liberties set forth in OECD Guidelines.

4. The Bill treats a breach of the IPPs as an interference with privacy. Commonwealth agencies are required to avoid doing things that amount to interferences with privacy.
5. An individual alleging an interference with privacy will be able to complain to the Privacy Commissioner.
6. The Privacy Commissioner will be authorised to investigate complaints against an agency and, through conciliation, attempt to reach a settlement. In the absence of a settlement, the Commission will be able to make determinations which would include a declaration that an agency has breached the IPPs and should not repeat such conduct and/or that an agency should pay damages by way of compensation for any loss or damage suffered by a complainant. The Commissioner will have power to advise, and issue guidelines to, agencies on compliance with the IPPs. On application by an agency, the Commissioner will have the power to determine that the public interest in compliance with the IPPs is outweighed by the public interest in the continuation of an act or practice that is inconsistent with the IPPs. In that event, the act or practice will not be regarded as an interference with privacy. These "public interest" determinations will be disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.
7. The Privacy Commissioner will be empowered to investigate complaints concerning misuse of tax file numbers (TFN) in the public and private sectors. The Commissioner will provide

- guidelines to tax file number record-keepers on measures that should be taken to protect personal privacy. The Commissioner will be able to investigate and conciliate privacy complaints concerning TFN users. If attempts at conciliation are unsuccessful, the Commissioner will be able to make determinations in relation to privacy interferences in relation to tax file numbers or records by public or private sector bodies. These determinations would be enforceable in the Federal Court by the Commissioner or by the complainant. Prior to the issuing of guidelines by the Privacy Commissioner, interim guidelines set out in Schedule 2 to the Privacy Bill, will apply.
8. A Privacy Advisory Committee will be established under the Privacy Bill 1988 to advise the Commissioner on matters relevant to his or her functions. Members of the Committee will represent a variety of community interest groups.
9. The Bill also provides for certain limited extensions of the law of confidentiality.
10. The Privacy Bill 1988 will make amendments to the Freedom of Information Act 1982 (FOI Act) to require that, where reasonably practicable, a person whose personal affairs are dealt with in a document is consulted before the document is disclosed. A person who objects to disclosure of information relating to his personal affairs will be entitled to appeal where an agency does not accept his or her objection.

11. The Bill will prevent agencies refusing a person access under the FOI Act to a document insofar as it deals with that person's personal affairs, merely on the ground that the document is a document to which a secrecy provision in other Commonwealth legislation applies.

12. The Bill will make amendments to the Ombudsman Act 1976, the Merit Protection (Australian Government Employees) Act 1984 and the Human Rights and Equal Opportunity Commission Act 1986 to require the Ombudsman, the Merit Protection and Review Agency (MPRA) and the Human Rights and Equal Opportunity Commission to refer complaints to the Privacy Commissioner where they conclude that the complaints are more appropriately dealt with by the Commissioner. Under the Privacy Bill, the Privacy Commissioner will also be empowered to transfer complaints to the Ombudsman, the Human Rights and Equal Opportunity Commissioner or the MPRA where the Privacy Commissioner considers it appropriate.

STATEMENT OF FINANCIAL IMPACT

13. The legislation is expected to come into operation during the current financial year.

14. The office of Privacy Commissioner, additional staff for the Human Rights and Equal Opportunity Commission and the Privacy Advisory Committee are expected to cost the Government in the order of \$972,000 in a full-year operation.

15. There may be some additional costs to agencies and authorities in responding to inquiries and investigations by the Commissioner and in the review by the Administrative Appeals Tribunal of the Commissioner's determinations under sub-clause 52(1)(b)(iii) and sub-clause 52(3) of the Bill. Costs may also be incurred in undertaking reviews of information collection and handling procedures. These costs are not expected to be significant, having regard to the fact that agencies already have adopted appropriate administrative procedures for providing access to and handling of personal records, under the Freedom of Information Act and Public Service Commission directions.

NOTES ON CLAUSES

PRIVACY BILL

Preamble

16. The preamble formally links the Bill to the obligations undertaken by Australia in adhering to the International Covenant on Civil and Political Rights, Article 17 of which provides -

"1. No-one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks."

17. The preamble also links the Bill to the Recommendation adopted by the Organisation for Economic Co-Operation and Development (OECD) on 23 September 1980, to which Australia has subscribed, that member countries take into account, in their domestic legislation, the Guidelines (OECD Guidelines) annexed to the Recommendation.

PART I - PRELIMINARY

Clause 1: Short title

18. This clause sets out the short title to the Bill.

Clause 2: Commencement

19. The Bill will come into operation on a day to be fixed by Proclamation.

Clause 3: Saving of certain State and Territory laws

20. This clause affirms the intention of the Parliament to preserve any State or Territory law which makes provision with respect to interferences with privacy and which is capable of operating concurrently with the legislation.

Clause 4: Act to bind The Crown

21. This clause provides that the legislation will bind the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

22. Sub-clause 4(2) provides that nothing in the legislation renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to prosecution for an offence.

23. Sub-clause 4(3) provides that nothing in the legislation makes the Crown in right of a State, of the Northern Territory or of Norfolk Island an agency for the purposes of the legislation.

Clause 5: Interpretation of Information Privacy Principles

24. Clause 5 requires the IPPs to be interpreted in the same way as other provisions in the Bill.

PART II - INTERPRETATION

Clause 6: Interpretation

25. Sub-clause 6(1) provides for the interpretation of a number of expressions used generally throughout the Bill. The more significant ones are explained below.

26. "Agency" defines the range of Commonwealth bodies and persons to whose "acts" and "practices" the Bill applies. Clause 16 forbids "agencies" to do acts or engage in practices that are interferences with privacy.

27. This definition includes Ministers, Departments, bodies and tribunals established under Commonwealth Acts, bodies established administratively by the Commonwealth Government, Commonwealth statutory office-holders, Commonwealth administrative appointees, Federal and ACT Courts, the Defence Force and the Australian Federal Police (AFP). Incorporated companies, societies and associations, trade unions and the ACT Law Society are specifically excluded.

28. For the purposes of the Bill, a person is not to be regarded as an "agency" where he or she collects personal information in his or her capacity as a judge or magistrate, as a member of a prescribed tribunal, as the holder or occupier of an office prescribed under the Bill or the FOI Act, or as the holder of an office established under a Commonwealth enactment for the purposes of an agency (see sub-clause 6(5)).

29. "Commonwealth officer" is defined to include persons permanently or temporarily employed by an "agency" (see paras 26-28 above), members of the Defence Force and members of the AFP. Northern Territory and Norfolk Island Public Service employees are specifically excluded.

30. "Corporation" is defined as a body corporate that is a foreign, financial or trading corporation or a body corporate incorporated in a Territory other than the Northern Territory.

31. "Department" is defined to exclude the Parliamentary Departments. As a consequence, "agency" excludes those Departments (para 26 above).

32. "Generally available publication" is defined to mean a magazine, book, newspaper or other publication that is or will be generally available to the public.

33. "Individual" is defined to mean a natural person.

34. "Medical research" is defined to include epidemiological research.

35. "Personal information" is defined to include any opinion or information - whether true or not - about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. The range of information/opinion coming within the definition is infinite and would include, for example, information relating to the person's physical description, residence, place of work, business and business activities, employment, occupation, investments and property holdings, relationship to other persons, recreational interests and political, philosophical or religious beliefs. The definition applies to such information or opinion whether recorded in a material form or not, including information held on databases. However, IPPs 4 to 11 are confined to the handling and use of personal information contained in a record. IPPs 1-3 are concerned with the collection of information for inclusion in a record (or in a generally available publication).

36. "Record" is defined as a document, a database, or a photograph or other pictorial representation, which would include a film, videotape, painting, drawing, &c., of a person. The definition specifically excludes -

- . generally available publications (see para 31 above);
- . the collections of libraries, art galleries and museums;
- . Commonwealth records in the open access period under the Archives Act 1983;
- . documents in the Australian War Memorial Collection other than those placed there by Commonwealth agencies; and
- . mail in the course of transmission by post.

37. "Tax file number" is as defined in section 202A of the Income Tax Assessment Act 1936.

38. "Tax file number information" is defined as information that records the tax file number of a person in a manner connecting it with the person's identity, whether compiled lawfully or unlawfully and whether or not recorded in a material form. It includes information held on a database.

39. "Use" is defined to exclude mere disclosure of information. It does, however, cover including it in a publication.

40. Sub-clause 6(2) provides that "breach" of an IPP means an act or practice contrary to or inconsistent with that IPP.

41. Sub-clause 6(3) confirms that a breach of a guideline in relation to tax file number information means an act or practice contrary to, or inconsistent with, that guideline.

42. Sub-clause 6(4) affirms that references to "person" in the Bill, other than when qualified by the word "natural", are references to persons as defined in the Acts Interpretation Act 1901, section 22(a), viz, a body politic or corporate as well as an individual.

Clause 7: Acts and practices of agencies and file number recipients

43. Clause 7 sets out those agencies, persons and bodies which the Bill makes subject to the Information Privacy Principles and/or the tax file number guidelines.

44. Sub-clause 7(1) refers to the acts and practices done or engaged in by a Commonwealth agency in the course of the collection and handling of personal information and acts and practices by any public or private sector body when collecting or handling tax file number information.

45. The effect of subclause 7(1) is that for the purposes of the Bill references to acts and practices are to those done or engaged in by:

- agencies;
- Federal and ACT Courts in respect of administrative matters;
- industrial tribunals referred to in Schedule 1 of the FOI Act in respect of administrative matters;
- agencies listed in Part II of Schedule 2 of the FOI Act, which are mostly Commonwealth agencies engaging in competitive commercial activities (e.g., Albury-Wodonga Development Corporation, Australian Apple and Pear Corporation, Australian Broadcasting Corporation), except in respect of records of their competitive commercial or other specified activities;
- Ministers - where the act or practice in relation to the information relates to the affairs of agencies or agency records in their possession in their official capacity.

46. The Bill will not apply the Information Privacy Principles to the following acts or practices, namely acts or practices of the bodies listed in Part I of Schedule 2 to the

FOI Act (e.g., Aboriginal Land Councils, Australian National Airlines Commission, Commonwealth Bank, National Labour Consultative Council, ASIO, ASIS, ONA), DSD and JIO in the Department of Defence, the National Crime Authority, Parliamentary Departments and Royal Commissions. However, for the purposes of adherence to the tax file number guidelines, all the above bodies are required to comply with those guidelines except for the security and intelligence agencies and the National Crime Authority (sub-clause 7(2)).

47. The Bill also applies to all tax file number recipients, i.e. Commonwealth Departments and agencies, State Government Departments and agencies and all private sector bodies receiving and recording tax file number information.

Clause 8: Acts and practices of and disclosure of information to staff of agency. &c

48. This clause complements clauses 9 and 10. Thus any act done or practice engaged in by, or information disclosed to, a person in the course of employment by or in the service of an agency (as defined in sub-clause 6(1)) shall be treated as having been done, engaged in by or disclosed to the agency. Clause 8 makes similar provision in relation to an act or practice of a person employed by a file number recipient. Corresponding provision is made in sub-clause 8(1)(c) with regard to the acts and practices of members of the AFP.

49. Sub-clause 8(2) provides that where the agency or the file number recipient, which is treated under sub-clause 8(1) as having done an act or engaged in a practice, is not the record-keeper under clause 10, the act or practice is to be treated as having been done or engaged in by the agency or the file number recipient which under clause 10 is to be regarded as the record-keeper in relation to that record. For example, if an officer of the Australian Archives does an act to a record in its custody, in contravention of the IPPs under sub-clause 8(1) that act would be deemed to have been done by the Archives. However under sub-clause 10(2) the agency that deposited the record in the Archives' custody is treated as the record-keeper. Accordingly, sub-clause 8(2) treats the depositing agency as having done the act in question.

Clause 9: Collectors

50. For the purposes of the Bill, the general rule is that an agency that collects personal information shall be taken to be the collector in relation to that information. Therefore, where an employee or member of an agency collects personal information in the course of employment or service with an agency, the agency shall be taken to be the collector in relation to that information. Where personal information is collected for the purposes of an unincorporated body that is regarded as being part of an agency for the purposes of s.4(2) of the FOI Act, the agency is to be taken to be the collector in relation to information collected for those purposes (sub-clause 9(3)).

Clause 10: Record-keepers

51. For the purposes of the Bill, the general rule is that an agency that is in possession or control of a record of personal information is the record-keeper in relation to that record. As with the definition of "collector" (para 50 above), where a person is in possession or control of a record in the course of employment or service with an agency, the agency is to be regarded as the record-keeper in relation to that record. Where the record of personal information is in the possession or under the control of a person on behalf of, or for the purposes of, an unincorporated body that is regarded as being part of an agency for the purposes of s.4(2) of the FOI Act, the agency is to be taken to be the record-keeper of that record (sub-clause 10(3)).

52. Where records of personal information are in the custody of the Australian Archives or in the custody or collection of the Australian War Memorial (not being administrative records of those bodies), the agency that placed those records there is to be regarded as the record-keeper of those records (sub-clause 10(5)).

Clause 11: File Number Recipients

53. For the purposes of the Bill, the general rule is that a person who is (whether lawfully or unlawfully) in possession or control of a record that contains tax file number information

is the file number recipient in relation to that information. As with clause 9 (definition of "collector") and clause 10 (definition of "record-keeper"), where a person has possession or control of a record containing tax file number information in the course of employment or service of an agency or a private sector body, the agency or the body is to be regarded as the file number recipient in relation to the tax file number information. Where the tax file number information is in the possession or under the control of a person on behalf of, or for the purposes of, an unincorporated body that is regarded as being part of an agency for the purposes of s.4(2) of the FOI Act, the agency is to be taken to be the file number recipient (sub-clause 11(3)).

Clause 12: Application of Information Privacy Principles to agency in possession

54. This clause will have the effect that an agency with possession of a record, which record is in the control of some other agency, is bound by the duties imposed by the IPPs on record-keepers only to the extent of the obligations owed by the agency as possessor of the record. Thus, in some circumstances there may be 2 record-keepers of a record where different agencies have control and possession respectively of a record.

PART III - INFORMATION PRIVACY

Clause 13: Interferences with Privacy

55. This clause establishes the elements of an interference with the privacy of an individual for the purposes of the Bill, namely:

- (i) the doing of an act or acting in accordance with a practice that breaches an IPP and relates to the individual;
- (ii) the doing of act or acting in accordance with a practice that breaches a guideline in relation to tax file number information relating to the individual; or
- (iii) the doing of an act or acting in accordance with a practice that involves an unauthorised requirement or request for disclosure of a tax file number.

Clause 14: Information Privacy Principles

56. This clause sets out the IPPs, which will regulate information collection and handling practices, that are required to be observed by Commonwealth agencies. The question whether acts or practices transgress the IPPs can be the subject of investigation and a determination by the Privacy Commissioner.

57. The IPPs are intended to be a self-contained code of conduct which speaks for itself, subject to the definitions of "agency", "record", "generally available publication", "individual concerned", "personal information", "use" (sub-clause 6(1)), "collector" (clause 9) and "record-keeper" (clause 10).

58. The IPPs do not override general secrecy provisions in Commonwealth legislation. In particular, the principles relating to the use and disclosure of information (IPPs 10 and 11) permitting the use and disclosure of personal information for "the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue" do not override specific secrecy provisions prohibiting the release of personal information such as section 16 of the Income Tax Assessment Act 1936.

Principle 1

Manner and purpose of collection of personal information

IPP 1 provides that personal information shall not be collected for inclusion in a record unless collected for a lawful purpose and where necessary for that purpose. IPP 1 also provides that information shall not be collected by unlawful or unfair means.

59. This principle applies to collection of information by whatever manner, viz solicitation from the individual

concerned, solicitation from another source or passive receipt of unsolicited information e.g. Ministerial letters, tip-offs by informers, etc. A lawful purpose is any purpose which is not prohibited by law.

Principle 2

Solicitation of personal information from individual concerned

IPP 2 provides that when collecting information from the individual concerned, a collector shall make that person aware of the purpose of the collection, the authority for the collection and the disclosure practices of the collector in relation to the information.

60. This principle only applies to solicitation of information by the collector from the individual concerned, i.e. it does not apply to collection by passive receipt from that individual or third parties or solicitation from third parties. The right of the individual concerned to be made aware of personal information supplied by a third party to an agency is catered for in IPPs 5 and 6 requiring information to be made available by agencies about records held by record-keepers and means of access to those records. Information which is provided by an individual in response to questions by an officer of an agency or information provided to an agency in the form of applications etc is information solicited by the record-keeper.

61. It is expected that there would be circumstances in which a collector would not need to take any steps to ensure that the individual concerned was aware of matters under para (c), (d) or (e) of IPP 2 when soliciting the personal information from that person. For instance when an agency responsible for paying welfare benefits has received a benefit application from that individual and asks he or she to provide personal details which are clearly relevant to that application, the agency would not normally need to take any steps to confirm that individual's awareness of the purpose of collection of the information (para (c) of the IPP).

62. Likewise, where for instance information is requested from time to time from the Commissioner of Taxation by another agency which is authorised by law to be able to seek disclosure of that information in certain circumstances, e.g. to investigate certain offences, under IPP(2)(e) the Commissioner of Taxation would not be required to make each and every taxpayer aware at the time of collection of such information that the information may be passed on to other requesting agencies in such circumstances. However, such a disclosure would be required to be notated on the individual's file (see IPP 11(2)).

Principle 3

Solicitation of personal information generally

IPP 3 provides that a collector shall only collect information which is relevant, up to date and which does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

63. This principle is confined to information solicited from the individual concerned and third parties, i.e. it does not extend to information received without solicitation by the collector. So far as unsolicited information is collected, IPPs 8, 9, 10 and 11 provide checks on the use and disclosure of such information.

Principle 4

Storage and security of personal information

IPP 4 provides that a record-keeper shall ensure the security of records of personal information.

64. This principle applies to all categories of personal information. One of the Commissioner's powers under the Bill is to prepare guidelines for the avoidance of breaches of the IPPs (clause 27) and it may be expected that the Commissioner will exercise that power to prescribe guidelines on limiting physical means of access to personal records, protecting them from destruction, physical security measures for safe keeping of paper records, etc.

65. IPP 4(b) will require agencies, who enter into contracts which entail the transfer of records of personal information into the possession or control of other agencies or private sector bodies, for example for the provisions of computer services, to take measures to prevent unauthorised use or disclosure of information contained in those records.

Principle 5

Information relating to records kept by record-keeper

IPP 5 requires agencies to provide information to the public as to what personal information they hold.

66. IPP 5 applies to all categories of personal information. Clause 1 of this Principle is intended to give effect to the "openness principle" stated in the OECD Guidelines. This provides that "There should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the 'data controller'".

67. The main Commonwealth law providing for access to documents and to which clause 2 of IPP 5 refers is the FOI Act. Commonwealth agencies are obliged by the FOI Act to publish information concerning their organisation, their functions and the categories of documents they hold.

68. Commonwealth agencies will be required to maintain a record for public inspection setting out certain factual information about their "personal record" holdings. This record will show the nature of the information held, the purpose for which it is kept, the classes of individuals about whom records are kept, the period for which each type of record

is kept, the persons entitled to have access and procedures for obtaining access. The Commissioner will be required to collate this information and publish an annual digest of personal information (see sub-clause 27(g)).

Principle 6

Access to records containing personal information

IPP 6 provides that an individual shall have access to his/her record of information held by an agency.

69. This principle applies to all categories of personal information. The main Commonwealth law providing for rights of access to Government records is the FOI Act.

Principle 7

Alteration of records containing personal information

IPP 7 provides that an individual shall be able to correct his/her record of personal information held by an agency.

70. This principle applies to all categories of personal information. Para (b) of clause 1 recognises that information held about a person, e.g., for the purpose of dealing with a compensation claim for a work-related injury, might be up to date as regards that purpose without being up to date for other

purposes, e.g., as regards subsequent non work-related disabilities. Thus relevance, up to dateness, &c. is determined by reference to the purpose of collection (as to which, see IPP 1).

Principle 8

Record-keeper to check accuracy, &c. of personal information before use

IPP 8 provides that an agency shall check the accuracy of records of personal information before taking decisions on the basis of that information.

71. This principle applies to all categories of personal information.

Principle 9

Personal information to be used only for relevant purposes

IPP 9 provides that an agency shall only use records of personal information for relevant purposes.

72. This principle applies to all categories of personal information. It imposes an unqualified obligation to ensure the relevance of the information to the purpose for which it is used.

Principle 10

Limits on use of personal information

IPP 10 provides that a record-keeper shall not use a record for a purpose other than the purpose of collection.

73. This principle applies to all categories of personal information. IPP 2 requires the collector to take any reasonable steps to see that the individual concerned is aware of the purpose of collection at the time of collection of information. IPP 10 requires that that individual's consent must be obtained for use for a different purpose, unless one of the exceptions in paras IPP 10(1)(b) to (e) applies. Where information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the individual's record must be notated (IPP 10(2)).

Principle 11

Limits on disclosure of personal information

IPP 11 provides that a record-keeper should not disclose records of personal information without the consent of the individual concerned.

74. This principle applies to all categories of personal information. At the time of collection of solicited information, IPP 2 requires the collector to take reasonable

steps to see that the individual concerned is aware of the disclosure practices of the collector and those practices of any person/body usually given such information if they are known to the collector. Accordingly, disclosure to anyone other than in accordance with those practices is not permitted without that individual's consent unless one of the exceptions in paras IPP 11(1)(c) to (e) applies. Again, the record-keeper is required to notate the record of an individual if it is released to another agency or body for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue (IPP 11(2)). A person, body or agency to whom personal information is disclosed under clause 1 of IPP 11 shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency (IPP 11(3)).

Clause 15: Application of Information Privacy Principles

75. IPPs 5, 6 and 7 governing information about, access to and correction of personal information records will apply to records of information collected before and after the Act comes into operation. These IPPs are consistent with the existing obligations of agencies under the FOI Act. IPPs 4, 8 and 9, governing storage of personal information records, the accuracy of records and the use of information only for relevant purposes, will also apply to information collected before and after the commencement of the Act. The collection principles (IPPs 1, 2 and 3) and the main use and disclosure principles (IPPs 10 and 11) apply only in relation to information collected after the commencement of the Act.

Clause 16: Agencies to comply with Information Privacy Principles

76. Commonwealth agencies are required to avoid doing acts and practices that are interferences with privacy. What amounts to an interference with privacy is laid down in clause 13.

Clause 17: Guidelines relating to tax file number information

77. This clause provides the Commissioner shall issue guidelines for the collection, storage, use and security of tax file number information. A guideline issued is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901. The guidelines will be directed to file number recipients to assist them to comply with their obligations under the provisions relating to tax file numbers in the Taxation Administration Act 1953. That Act sets out the precise purposes for which tax file information can be obtained and used. A breach of those provisions is a serious criminal offence. The guidelines will provide practical assistance to file number recipients to ensure that breaches of the offence provisions do not occur. Where it is alleged that a tax file number recipient does not comply with the guidelines the Privacy Commissioner will be able to investigate that allegation.

78. Sub-clause 17(3) provides that section 48 of the Acts Interpretation Act 1901 applies to the guidelines issued under sub-clause 17(1). The Guidelines are required to be notified in the Gazette and they are to take effect on the first day on which they are no longer liable to be disallowed or a date the Guidelines provide for commencement. These Guidelines are required to be laid before each House of Parliament within 15 sitting days of their making. If they are not laid before each House, they shall be void and of no effect. Each House may pass a resolution disallowing any of the Guidelines. However, there is a variation from the normal disallowance provision in that the Guidelines cannot come into effect until the time for disallowance has elapsed. This ensures complete Parliamentary control. Where a disallowed guideline was proposed to replace an earlier guideline, the disallowance has the effect of reviving the earlier guideline.

79. Sub-clause 17(4) provides that until the first guidelines are issued under sub-clause 17(1), the Interim Guidelines set out in Schedule 2 shall take effect and all tax file number recipients are obliged to comply with the Interim Guidelines until they are displaced by new guidelines issued under sub-clause 17(1).

Clause 18: File number recipients to comply with guidelines

80. This clause provides that a file number recipient shall not do an act or engage in a practice that breaches a guideline relating to tax file number information.

PART IV - PRIVACY COMMISSIONER

DIVISION 1 - PRIVACY COMMISSIONER

Clause 19: Privacy Commissioner

81. Clause 19 establishes the position of the Privacy Commissioner who is appointed by the Governor-General.

Clause 20: Terms and conditions of appointment

82. Clause 20 details the terms and conditions of appointment of the Privacy Commissioner. While the Commissioner is eligible for re-appointment, initially the Commissioner holds office for the period (not exceeding 7 years) specified in the instrument of appointment: sub-clause 20(1). A person who has reached 65 years of age cannot be appointed or re-appointed as Commissioner. In addition, a person cannot be appointed or re-appointed as Commissioner for a period which extends beyond the day on which the person reaches 65 years of age: sub-clause 20(2).

83. Sub-clause 20(3) provides that in respect of matters not dealt with by the Act the terms and conditions of appointment of the Commissioner are as determined by the Governor-General.

Clause 21: Remuneration of the Commissioner

84. Clause 21 has effect subject to the Remuneration Tribunals Act 1973: sub-clause 21(3). The Remuneration Tribunal may determine the remuneration for the Commissioner. However, if it does not do so then such remuneration shall be as is prescribed: sub-clause 21(1). In addition, the Commissioner is to be paid such allowances as are prescribed.

Clause 22: Leave of absence

85. Clause 22 provides that leave of absence from duty may be granted to the Commissioner by the Minister on such terms and conditions as to remuneration or otherwise as are determined by the Minister.

Clause 23: Outside employment

86. The Commissioner is not allowed to engage in paid employment outside the duties of his or her office without the approval of the Minister.

Clause 24: Resignation

87. This clause entitles the Commissioner to resign at any time during his or her period of office by delivering to the Governor-General a signed notice of resignation.

Clause 25: Termination of appointment

88. Sub-clause 25(1) provides that the appointment of the Commissioner may be terminated by the Governor-General for reasons of misbehaviour or physical or mental incapacity.

89. In addition, sub-clause 25(2) requires the Governor-General to terminate the Commissioner's appointment if he or she becomes bankrupt, is absent from duty for 14 consecutive days or for 28 days in any period of 12 months without the granting of such leave by the Minister, or if he or she contravenes clause 23 relating to outside employment.

Clause 26: Acting Commissioner

90. Subject to the proviso that a person appointed to act during a vacancy shall not do so for a period greater than 12 months, clause 26 provides for the appointment by the Minister of a person to act as Commissioner where the office of Commissioner is vacant or during any period when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the functions of the office of Commissioner.

DIVISION 2 - FUNCTIONS OF COMMISSIONER

Clause 27: Functions of Commissioner in relation to interferences with privacy

91. Clause 27 sets out the functions of the Commissioner in relation to privacy. The functions other than reporting are -

- . to investigate acts and practices of agencies that may breach an IPP and, where he/she thinks appropriate, to try through conciliation to settle the matter;
- . where requested by the Minister, to examine proposed legislation that would require or authorise acts or practices which, if done by agencies, might amount to interferences with privacy;
- . to undertake research into, and to monitor, developments in data processing and computer technology to ensure that any adverse effects of such developments on the privacy of individuals are minimised;
- . to promote understanding and acceptance of the IPPs and their objects;

- . to prepare and publish guidelines for agencies for the avoidance of acts and practices that are interferences with privacy;
- . to maintain and publish annually a record, from publicly available sources, (to be known as the Personal Information Digest) of the matters set out in records maintained by record-keepers in accordance with clause 3 of IPP 5;
- . to conduct audits of records of personal information maintained by agencies to see whether the records are maintained according to the IPPs;
- . to examine proposals for data-matching or data-linkage that may involve an interference with the privacy of individuals;
- . to undertake educational programs to promote personal privacy;
- . to encourage corporations to develop programs for the handling of records of personal information that are consistent with the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data;;
- . to provide advice to the Minister and agencies on any matter under the Bill.

92. Sub-clause 27(2) provides that the Commissioner has the power to do all things that are necessary or convenient to be done in connection with the performance of his or her functions under sub-clause 27(1).

Clause 28: Functions of Commissioner in relation to tax file numbers

93. In addition to the general privacy functions set out in clause 27, the Commissioner has specific functions in relation to tax file numbers.

94. Clause 28 sets out the following functions of the Commissioner in relation to tax file numbers:

- . to issue guidelines concerning the collection, storage, use and security of tax file information;
- . to investigate acts and practices of file number recipients that may breach the Commissioner's guidelines;
- . to investigate acts or practices that may involve unauthorised requests for the disclosure of tax file numbers;
- . to examine the records of the Commissioner of Taxation to ensure that:
 - (i) it is not using tax file information for unauthorised purposes;

(ii) it is taking adequate measures to prevent the unlawful disclosure of the tax file number information that it holds;

to audit tax file number information contained in tax file number recipients' data-bases; and

to provide advice, whether requested or not, to tax file number recipients as to their obligations under the tax file number legislation and on any matter relevant to the operation of the Privacy Bill.

95. Sub-clause 28(7) provides that the Commissioner has the power to do all things that are necessary or convenient to be done in connection with the performance of his or her functions under sub-clause 28(1).

Clause 29: Commissioner to have regard to certain matters

96. In making decisions, handling complaints, issuing guidelines and performing other functions, the Commissioner is required under this clause to balance the need to ensure proper protection from interferences of privacy against the requirements of government and private sector bodies to achieve their objectives in an efficient manner.

DIVISION 3 - REPORTS BY COMMISSIONER

Clause 30: Reports following investigation of act or practice

97. Following an investigation of an act or practice the Commissioner is required to report to the Minister if -

the Minister has so directed; or

the Commissioner concludes that the act or practice was an interference with privacy but conciliation has failed or was inappropriate.

98. A report to the Minister must include reasons for the Commissioner's findings. It may include recommendations for prevention of repetition of the interference, a recommendation for compensation and/or recommendations for the taking of any other remedial action. A copy of the report is to go to the agency and the complainant - if the complainant was not affected by the interference, provision of the report is discretionary. Other affected persons may also be given copies.

99. If after 60 days from giving the agency or the file number recipient a copy of such a report the Commissioner thinks that proper remedial action has not been taken, sub-clause 30(4) requires a further report to be given to the Minister on the action taken by the agency or the file number recipient and stating why the Commissioner is dissatisfied with the action taken by the agency or file number recipient.

100. Sub-clause 30(5) provides that a report by the Privacy Commissioner to the Minister concerning a recalcitrant agency or file number recipient under sub-clause 30(4) shall be tabled in Parliament within 15 sitting days.

Clause 31: Report following examination of proposed enactment

101. Where the Commissioner has examined a proposed enactment pursuant to sub-clause 27(b) and has found that it would require or authorise interferences with privacy, he/she shall report to the Minister and make any remedial recommendations. The Commissioner shall report on other examinations of proposed legislation if the Minister asks, and may do so in any other case.

Clause 32: Report following monitoring of certain activities

102. The Commissioner may report on his/her monitoring of activities and shall do so if the Minister directs.

Clause 33: Exclusion of certain matters from reports

103. In reports under clauses 30, 31 and 32 the Commissioner may exclude a matter if it is considered desirable, having regard to the need to prevent such things as -

- . prejudice to security, defence or international relations;

- . prejudice to Commonwealth/State or inter-State relations;
- . disclosure of Cabinet deliberations;
- . disclosure of a confidential source of criminal law enforcement information;
- . unreasonable disclosure of personal affairs of a person;

but must balance against those matters the desirability of informing interested persons of the results of the Commissioner's investigations, etc.

104. Where a matter is excluded from a report the Commissioner shall give the Minister a separate report and reasons for so doing.

DIVISION 4 - MISCELLANEOUS

Clause 34: Provisions relating to documents exempt under the Freedom of Information Act 1982

105. In carrying out the functions under the legislation the Commissioner is to be prevented from giving to any person information about any document that is exempt under the FOI

Act. That prohibition extends to giving information as to the existence of a document if, in the event that such information were in a document, that hypothetical document would be so exempt. The Commissioner is empowered by clause 44 to have access to records of personal information held by agencies.

Clause 35: Direction where refusal or failure to amend exempt document.

106. This clause provides for the circumstances in which the Commissioner may direct an agency to add to a record of personal information a notation of the Commissioner's views on correction of that record. The power can only be exercised where the individual concerned has exhausted his or her rights of appeal under the FOI Act in relation to access to the record. In response to a complaint the Commissioner may examine the record and if he/she considers it desirable to recommend an amendment to the agency. If, after 60 days, the agency has refused to make the amendment, the Commissioner may direct that a notation be placed on the record.

PART V - INVESTIGATIONS

DIVISION 1 - INVESTIGATION OF COMPLAINTS AND INVESTIGATIONS
ON THE COMMISSIONER'S INITIATIVE

Clause 36: Complaints

107. Sub-clause 36(1) provides that an individual may complain to the Commissioner about an act or practice that may be an interference with his/her privacy. In the case of an act or practice that may be an inference with the privacy of 2 or more individuals, any one of those individuals may make a complaint under sub-clause 36(1) on behalf of all the individuals. The complaint is required to be in writing. However, the staff of the Human Rights and Equal Opportunity Commission are required to assist a person in formulating a complaint; see sub-clauses 36(3) and (4). Sub-clauses 36(6) and (7) set out those agencies, persons or bodies who are to be the parties to the investigation.

Clause 37: Principal executive of agency

108. This provision sets out who is to be regarded as the principal executive of an agency or body for the purposes of the investigation of complaints.

Clause 38: Matters to be considered in determination of representative complaints

109. This provision states that the Commissioner is not required to deal with a representative complaint unless he or she is satisfied that the complaint was made on behalf of persons other than the complainant in good faith.

Sub-clause 38(2) provides that in order to be satisfied that a complaint was made in good faith, the Commissioner must be satisfied:

- (a) that the complainant is a member of a class of persons affected by the act or practice complained of;
- (b) that the complainant is affected by that act or practice;
- (c) the class is so numerous that joinder of its members is impracticable;
- (d) there are questions of law common to all members of the class;
- (e) the claims of the complainant are typical of the claims of the class;

- (f) multiple complaints would be likely to produce varying determinations that could have inconsistent results for the individuals; and
- (g) the respondent has acted on grounds apparently applying to the class as a whole.

110. Sub-clause 38(2)(b) provides that notwithstanding the above criteria not being met, if the justice of the case demands, the matters may be dealt with and a remedy provided by means of a representative complaint.

Clause 39: Individual complaints not precluded by representative complaints

111. A person may make a complaint about an act or practice although a representative complaint has been made. It should be noted that a declaration providing that compensation should be paid is limited to individual complaints, see sub-para 52(1)(b)(iii).

Clause 40: Investigations

112. The Commissioner is required to investigate acts and practices of agencies and file number recipients that may be interferences with privacy on complaint or if it is considered desirable.

Clause 41: Circumstances in which Commissioner may decide
not to investigate or may defer investigation

113. The command to the Commissioner to investigate an act or practice in the circumstances referred to is qualified by clause 41 which authorises the Commissioner to decide not to investigate or further investigate an act or practice if the Commissioner is satisfied that -

- . the act or practice is not an interference with privacy;
- . no person aggrieved by the act or practice wants the investigation;
- . the complainant has not complained to the agency concerned about the act or practice;
- . the agency that did or engaged in the act or practice has dealt or is dealing adequately with the complaint or has not had an adequate opportunity to do so;
- . the complaint initiating the inquiry was made more than 12 months after the matter came to the attention of the complainant;
- . the complaint is frivolous, vexatious, &c;

. the complaint is being dealt with under another Commonwealth Act;

. another remedy has been or is being sought for the complaint that has adequately disposed of it or is doing so; or

. another more appropriate remedy for the complaint is reasonably available.

114. Where an act or practice under investigation or about to be investigated by the Commissioner is also the subject of an application under Part VI for a determination that it is in the public interest, the Commissioner has the discretion to defer investigation or further investigation if the interests of persons affected would not be unreasonably prejudiced.

115. Sub-clause 41(4) prevents the Commissioner from investigating an act or practice breaching IPP 7, which deals with correction of personal information records, insofar as the act or practice affects only persons who are not Australian citizens or permanent residents. This is consistent with the FOI Act.

Clause 42: Preliminary inquiries

116. Sub-clause 42(1) empowers the Privacy Commissioner to make preliminary inquiries of an agency or a file number recipient to determine whether it has power to investigate the complaint or whether it should proceed with the investigation.

Clause 43: Conduct of investigations

117. This clause deals with the manner in which the Commissioner will be required to conduct investigations on receipt of a complaint concerning the action of an agency or a file number recipient. The essence of the procedure is that it be flexible and informal, that proper notice be given to an agency or file number recipient to be investigated, and that the agency and file number recipient put their cases to the Commissioner.

118. Sub-clause 43(1) provides that before commencing an investigation, the Commissioner is to inform the agency or file number recipient of the investigation.

119. Sub-clauses 43(2) and (3) require that investigations are to be conducted in private, and, subject to the other provisions of the Bill, in such a manner as the Commissioner thinks fit according to the particular circumstances of the case. The Commissioner may obtain such information and make

such enquiries as he/she thinks fit. The Commissioner will ordinarily proceed by informal and personal inquiry into a complaint, and by discussions or correspondence with departments or other sources as necessary.

120. Sub-clause 43(4) provides that in keeping with the flexible character of the Commissioner's operations, it is not bound to conduct a hearing. Where the Commissioner proposes to make an adverse finding in relation to some person (whether an official or the complainant or any other person), or of an agency or file number recipient the report shall not be made unless, before the completion of the investigation, the Commissioner gives the agency or file number recipient concerned an opportunity to put its case - sub-clause 43(5).

121. Sub-clause 43(6) enables a representative subject to the Commissioner's approval to represent an agency or a file number recipient before the Commissioner.

122. Sub-clause 43(7) requires that, where the Commissioner requires a person to appear or uses powers to obtain information or documents, where appropriate, the responsible Minister be informed.

123. Sub-clause 43(8) enables the Commissioner to discuss an investigation with a Minister concerned with the matter.

124. Sub-clause 43(9) requires that if the Commissioner considers that the investigation would reveal some misconduct or breach of duty, the Commissioner may bring the matter to the notice of an appropriate officer in the agency or an appropriate Minister.

Clause 44: Power to obtain information and documents

125. This clause empowers the Commissioner, for the purposes of his/her enquiries, to require persons who may be able to give relevant information to answer questions and produce documents.

126. Sub-clause 44(1) empowers the Commissioner to give a notice in writing to the person from whom information is required, specifying the relevant information or documents required to be provided or produced and the period within which the person must comply.

127. Sub-clause 44(2) provides that a notice given by the Commissioner shall set out the time and place where the information is to be given or the document is to be presented.

128. Sub-clause 44(3) empowers the Commissioner to require a person to attend a meeting to answer questions relevant to an investigation. The Commissioner's powers in this regard are subject to clause 69 and clause 70.

Clause 45: Power to examine witnesses

129. Where, under clause 45, the Commissioner requires a person to attend in order to provide information or answer questions relevant to the inquiries, the Commissioner may administer an oath or affirmation to that person. The Commissioner may then examine the person on oath or affirmation.

Clause 46: Directions to persons to attend compulsory conference

130. This clause empowers the Commissioner to direct persons to attend a compulsory conference in order to attempt a settlement of a complaint. Sub-clause 46(1) empowers the Commissioner to direct all parties to attend a conference.

131. Sub-clause 46(2) makes it an offence to fail to attend a conference without reasonable excuse. A person directed to attend a conference is entitled to be reimbursed under sub-clause 46(3) and the Commissioner may require the person directed to attend a conference to produce specified documents: sub-clause 46(4).

Clause 47: Conduct of compulsory conference

132. This is a procedural provision covering the way in which the Commissioner conducts a compulsory conference.

Sub-clause (2) provides that a conference is to be held in private and the Commissioner can determine the manner in which the conference can be held. Sub-clauses 47(3) and (4) describe arrangements for representation of parties.

Clause 48: Complainant and certain other persons to be informed of various matters

133. This is another procedural provision requiring the Commissioner to notify the complainant and the respondent where the complaint is not to be investigated.

Clause 49: Investigation under section 40 to cease if certain offences may have been committed

134. This provision provides that where, during the course of an investigation of a complaint, the Commissioner forms the opinion that a tax file number offence may have been committed, the investigation is to cease and the Commissioner of Police or the Director of Public Prosecutions (DPP) is to be informed of the matter. Sub-clause 49(3) enables the Commissioner to re-commence an investigation once written notice is received from the Commissioner of Police or the DPP that the matter is not subject to proceedings for an offence. A tax file number offence is defined in sub-clause 49(4).

Clause 50: Reference of matters to other authorities

145. This is a procedural provision which enables the Commissioner to transfer complaints to the Human Rights and Equal Opportunity Commission, the Merit Protection and Review Agency and the Commonwealth Ombudsman where those complaints would be more conveniently and effectively dealt with by those bodies.

Clause 51: Effect of investigation by Auditor-General

136. This clause provides that where the Commissioner becomes aware that a matter which is the subject of an investigation is also being investigated by the Auditor-General, then the Commissioner, unless the Commissioner and Auditor-General both agree otherwise, shall cease to perform functions or exercise powers in relation to that matter until the completion of the Auditor-General's investigation.

DIVISION 2 - DETERMINATIONS FOLLOWING INVESTIGATION OF COMPLAINTS

Clause 52: Determination of the Commissioner

137. Following the investigation of a complaint, the Commissioner may make a determination:

- . dismissing the complaint;

- . declaring that the agency or file number recipient has breached an individual's privacy and should not repeat or continue such conduct;
- . declaring that the agency or file number recipient should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
- . declaring that the complainant is entitled to a specified amount by way of compensation for any loss or damage suffered (except where the complainant was dealt with as a representative complaint); or
- . declaring that it would be inappropriate for any further action to be taken.

138. Sub-clause 52(2) requires the Commissioner to state any findings of fact upon which the determination is based.

139. Sub-clause 52(3) provides that when making a determination under sub-clause 52(1) other than on a representative complaint the Commissioner may include a declaration that the complainant is entitled to be paid a specified amount for expenses reasonably incurred during the investigation of the complaint.

Clause 53: Service of determination

140. A copy of a determination is required to be served on the complainant and the agency or the file number recipient: sub-clause 53(1). The determination does not become effective until a copy of the determination is given to the complainant and the agency or file number recipient: sub-clause 53(2).

DIVISION 3 - REVIEW AND ENFORCEMENT OF DETERMINATIONS
RELATING TO ALLEGED BREACHES OF INFORMATION
PRIVACY PRINCIPLES

Clause 54: Application of Division

141. This is a procedural provision providing that the following clauses apply to determinations by the Commissioner in relation to complaints about an agency breaching the IPPs.

Clause 55: Obligations of respondent agency

142. An agency is required to adhere to, and carry out, the Commissioner's determination concerning breaches of the IPPs.

Clause 56: Obligations of principal executive of agency

143. Where the respondent to the complaint is the principal executive of an agency, that person is required to take steps to ensure that his/her staff adhere to, and carry out, the Commissioner's determinations in relation to the IPPs.

Clause 57: Compensation and expenses

144. A complainant is entitled to be paid compensation and expenses by the Commonwealth where the Commissioner so determines: sub-clause 57(1).

145. Where the respondent to the determination is an agency that has the capacity to sue and be sued, the amount will be recoverable as a debt due by that agency to the complainant: sub-clause 57(2). In any other case, the amount is to be recoverable as a debt due by the Commonwealth to the complainant: sub-clause 57(3).

Clause 58: Review of Determinations

146. Sub-clauses 58(1) and (2) provide that an agency or the principal executive of an agency may, with the leave of the Minister, make an application to the Administrative Appeals Tribunal for a review of the Commissioner's determination in relation to the award of compensation and/or costs under sub-paragraph 52(1)(b)(iii) and sub-clause 52(3). For this purpose, the Administrative Appeals Tribunal is to be constituted by a Judge and 2 other members who are not Judges: sub-clause 58(3).

Clause 59: Enforcement of determination against agency

147. This clause provides that the complainant or the Commissioner can make an application to the Federal Court for an order directing the agency to comply with a determination made by the Commissioner.

148. The Federal Court may make such other orders, as it thinks fit, to enforce compliance by the agency with the Commissioner's determinations: sub-clause 59(3). Sub-clause 59(4) provides that an application for enforcement cannot be made until the Administrative Appeals Tribunal has considered an application for review of the determination awarding compensation and/or costs.

DIVISION 4 - ENFORCEMENT OF DETERMINATIONS RELATING
TO TAX FILE NUMBERS

Clause 60: Application of Division

149. This is a procedural provision providing that the following clauses apply to determinations made by the Commissioner in relation to complaints about breaches of tax file number information guidelines or complaints about an unauthorised requirement or request for disclosure of a tax file number.

Clause 61: Compensation and expenses

150. A complainant is entitled to be paid compensation and for costs by the agency or file number recipient where the Commissioner so determines. Where the party who has breached the guidelines is an agency that does not have the capacity to sue or be sued, the debt is due by the Commonwealth. In all other cases the debt is payable by that party.

Clause 62: Proceedings in the Federal Court

151. The Commissioner or the complainant can institute a proceeding in the Federal Court for an order to enforce a Commissioner's determination in relation to a file number recipient made under clause 52. The Federal Court may make such orders as it sees fit to give effect to the Commissioner's determinations.

Clause 63: Legal assistance

152. Where the Commissioner has dismissed a tax file number complaint and the respondent is not an agency, the respondent may apply to the Attorney-General for legal assistance: sub-clause 63(1). If the Attorney-General is satisfied that it is reasonable in all the circumstances to grant such an application he or she may authorise the provision of such financial assistance as the Attorney-General determines: sub-clause 63(2). The Attorney-General shall have regard to any hardship to the applicant that would be involved in refusing such an application: sub-clause 63(4).

DIVISION 5 - MISCELLANEOUS

Clause 64: Commissioner not to be sued

153. This provision protects the Commissioner and staff from legal proceedings arising from an act done under this legislation and performed in good faith.

Clause 65: Failure to attend, etc. before Commissioner

154. The clause makes it an offence to refuse to comply with a direction by the Commissioner to attend a hearing, take an oath or affirmation or to provide information. Sub-clauses 65(2) and (3) make it an offence to obstruct the Commissioner or provide false information.

Clause 66: Offences

155. The offences set out in this clause are to be prosecuted in the usual way, i.e. before the relevant courts.

156. Sub-clauses 66(1) and (3) set out the general rule that it is a reasonable excuse for an individual to refuse to give information or produce a document if that disclosure or production would tend to incriminate the individual or make the individual liable to a forfeiture or penalty. This provision is subject to sub-clauses 66(4), (7) and (10).

157. Sub-clause 66(4) provides that the general rule does not apply if the Director of Public Prosecutions has given the individual a written undertaking that the information or document will not be used in evidence in any proceedings for an offence under a Commonwealth law.

158. Sub-clause 66(5) provides that the Commissioner may recommend to the Director of Public Prosecutions that an individual be given an undertaking.

159. Sub-clauses 66(7) and (8) provide for similar undertakings to be given by the Attorney-General of a State or the Northern Territory for an offence under a State or Northern Territory law.

160. Sub-clause 66(11) provides that if proceedings against an individual in respect of which the information or document might tend to incriminate the individual have commenced and have not been finally dealt with or otherwise finally disposed of the indemnity provisions do not apply.

Clause 67: Protection from civil actions

161. This provision precludes a person from being sued for lodging a complaint with the Commissioner or providing him/her with information where those acts are done in good faith.

Clause 68: Power to enter premises

162. Sub-clause 68(1) provides that subject to sub-clause 68(3) a person authorised by the Commissioner may enter premises of agencies and file number recipients and inspect documents for the purpose of the performance of the Commissioner's functions under the Bill. This power does not apply to documents included in a certificate of the Attorney-General under clause 70. Sub-clause 68(2) requires the occupier of the premises entered by an authorised person to provide that person with reasonable assistance to facilitate the exercise of the person's powers.

163. Sub-clause 68(3) prohibits an authorised person from entering premises not occupied by the Commonwealth or by a Commonwealth authority, unless the occupier consents or the person is authorised to enter the premises by a warrant issued under sub-clause 68(4) by a Magistrate.

164. Sub-clause 68(5) provides that the warrant shall specify the hours during which entry may be made and shall set a date after which the warrant will cease to have effect.

Clause 69: Restrictions on Commissioner obtaining personal information and documents

165. Sub-clause 69(1) requires that personal information relating to a complaint shall not be provided in a way which reveals a person's identity unless the person consents or has made the complaint.

166. Sub-clause 69(2) restricts the Commissioner in obtaining access to a document containing information concerning a person which reveals that person's identity, unless the person has consented to production of the document, or the document is a copy of another document and the information which would have disclosed the person's identity has been deleted.

167. For the purposes of sub-clauses 69(3) to (9), prescribed information and prescribed documents means information and documents that a person furnishing the information or document has acquired as an employee under or for the purposes of a taxation law of a law of the Commonwealth relating to census and statistics. Sub-clause 69(3) requires a person not to provide prescribed information concerning a complaint which relates to a person other than a complainant; and sub-clause 69(4) also prohibits a person from providing prescribed information to the Commissioner concerning a complaint which relates both to the complainant and another person unless the information can be disclosed without revealing the other person's identity.

168. Sub-clause 69(5) requires a person not to provide a prescribed document concerning a complaint which contains information relating to a person other than the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it; and sub-clause 69(6) also prohibits a person from providing a

prescribed document concerning a complaint which relates both to the complainant and another person, unless the document is a copy of another prescribed document and has had deleted from it information which reveals the identity of the other person.

169. Sub-clause 69(7) provides that this clause has effect notwithstanding any other provision of this Part.

170. Sub-clause 69(8) explains that a reference in this clause to furnishing information or producing a document in connection with an application or a complaint means providing the information or document to the Commissioner in connection with the performance of his/her functions or exercise of powers in relation to that complaint.

171. Sub-clause 69(9) defines a number of terms used in this clause, including "document", "prescribed document", "prescribed information" and "relevant law".

Clause 70: Certain documents and information not required to be disclosed

172. Certain information or documents may be withheld from the Commissioner on a certificate by the Attorney-General that disclosure to the Commissioner would be contrary to the public interest.

173. Sub-clause 70(1) requires that the documents that are so withheld relate to:

- . defence, security, international relations;
- . communications between Commonwealth and State Ministers;
- . Cabinet or Executive Council deliberations; or
- . criminal investigation and confidential sources of information, or documents the disclosure of which could endanger the life or physical safety of a person.

174. Sub-clause 70(2) enables the Attorney-General to certify that the giving of information to the Commissioner about the existence of documents relating to security, defence, international relations or the National Crime Authority would be contrary to the public interest.

PART VI - PUBLIC INTEREST DETERMINATIONS ABOUT CERTAIN
ACTS AND PRACTICES

175. This part provides a mechanism for agencies to seek a determination by the Commissioner that an act or practice or proposed act or proposed practice which is in breach or may be

in breach of the IPPs is not to be regarded as an interference with privacy because of the overriding public interest in the agency being able to do that act or practice.

Clause 71: Interpretation

176. A person will only have standing as an "interested person" in relation to an application for a determination where the Commissioner is of the opinion that that person has a real and substantial interest in the matter.

Clause 72: Power to make, and effect of, determinations

177. This clause empowers the Commissioner to make a determination that the public interest in an act or practice of an agency, which breaches or may breach an IPP, outweighs the public interest in ensuring compliance with the IPP. The breach is then not an interference with privacy. This determination applies only to acts and practices that occur while it is in force, i.e. it does not retrospectively validate breaches of the IPPs which occurred prior to its commencement.

Clause 73: Application by agency

178. Where an agency proposes to do an act or engage in a practice that may breach an IPP, it may apply to the Commissioner in writing for a determination under clause 72. Sub-clause 73(2) provides that the National Health and Medical

Research Council may make an application on behalf of other agencies concerned with medical research or the provision of health care.

Clause 74: Publication of application

179. The Commissioner is required to publicly notify any application by an agency for a clearance determination. Sub-clause 74(2) protects the confidentiality of a document provided to the Commissioner in support of an application by requiring that the Commissioner not permit the disclosure of such document where the Commissioner is informed in writing by the agency that the information or document is an exempt document under the FOI Act.

Clause 75: Draft determination

180. This provision requires the Commissioner to prepare a draft determination in relation to an application and to distribute that draft determination to the applicant agency and all persons interested in the application. The Commissioner is required to provide the agency and interested persons with a written invitation to notify him/her within a specified period, whether a conference should be held about the draft determination: sub-clause 75(2).

Clause 76: Conference

181. The Commissioner is required to hold a conference where he/she is notified by a person or the applicant agency that a conference is requested and to inform the agency and all persons who received an invitation under clause 75 of the time and place of the conference. The conference must be held not later than 30 days after the period for receipt of requests for a conference under clause 75 has expired.

Clause 77: Conduct of conference

182. This clause specifies those parties who are entitled to appear before the Commissioner at a conference. Those parties are the applicant agency, any person to whom an invitation was sent under clause 75 and any other interested person whose presence the Commissioner considers to be appropriate. The agency may be represented by an officer or employee, and a body corporate may be represented by a director, officer or employee.

183. Sub-clause 77(3) provides that the Commissioner may exclude from the conference a person who is not entitled to appear or represent a person at the conference, who uses insulting language or who disturbs the conference.

Clause 78: Determination of application

184. This provision requires the Commissioner, after complying with the procedure set out in this Part, to make a determination as he/she considers appropriate or to dismiss the application.

Clause 79: Making of determination

185. The Commissioner is required to take account of all matters raised at the conference and all submissions that have been made about the application before making a written determination setting out the reasons for his/her determination.

Clause 80: Review of determination under section 79

186. This clause provides that a public interest determination by the Privacy Commissioner is a disallowable instrument, i.e. it can be disallowed by either House of Parliament within 15 days of tabling.

PART VII - PRIVACY ADVISORY COMMITTEE

Clause 81: Interpretation

187. This clause defines the terms used in this Part.

Clause 82: Establishment and Membership

188. This clause establishes the Privacy Advisory Committee which consists of a Convenor who is the Privacy Commissioner and not more than 6 other members. Sub-clauses 82(3) and (4) require that members be appointed by the Governor-General as part-time office-holders and specify that the period of appointment be no longer than 5 years, although members are eligible for re-appointment.

189. Sub-clause 82(6) places a limitation on the appointment of persons to ensure that Commonwealth employees are never in the majority on the Committee.

190. Sub-clause 82(7) specifies that the membership include persons:

- . with 5 or more years of experience at a high level in industry, commerce, public administration or government service;
- . with at least five years' experience in the trade union movement;
- . with extensive experience in electronic data-processing;
- . representing general community interests including social welfare community interests; and
- . a person with extensive experience in the promotion of civil liberties.

191. Sub-clauses 82(8) and (9) preclude persons over the age of 65 years from being members of the Advisory Committee.

192. Terms and conditions of appointment of a member may be determined by the Governor-General under sub-clause 82(10).

193. Sub-clause 82(11) enables the Committee to operate with vacant positions.

Clause 83: Functions

194. The Advisory Committee's functions are:

- . to advise the Commissioner (whether requested or not) on matters relevant to the Commissioner's functions;
- . to recommend material for inclusion in the guidelines to be issued by the Commissioner; and
- . to engage in and promote community education and community consultation for the protection of individual privacy subject to any direction given by the Commissioner.

Clause 84: Leave of Absence

195. The Convenor may grant leave of absence to members of the Committee.

Clause 85: Removal and resignation of members

196. The Governor-General may terminate the appointment of a member of the Advisory Committee in the following circumstances:

- . misbehaviour;
- . physical or mental incapacity;
- . bankruptcy;
- . failure to disclose a conflict of interest under clause 86; or
- . absence from 3 consecutive meetings of the Advisory Committee without approved leave.

197. Sub-clause 85(3) enables a member to resign from office.

Clause 86: Disclosure of Interests of Members

198. A member is to disclose a direct or indirect pecuniary interest in any issue under consideration by the Committee which may bring the member into conflict with his or her proper functions in respect of that matter. Disclosures of interest are required to be recorded in the minutes of the meeting.

Clause 87: Meetings of Advisory Committee

199. Meetings of the Advisory Committee are to be convened and presided over by the Privacy Commissioner. In the absence of the Commissioner, the members present may elect one of their members to preside at the meeting. A quorum is constituted by 3 members. Questions can be decided on a majority of votes and the presiding member has a deliberative as well as a casting vote. The Committee is required to keep a record of its proceedings.

Clause 88: Travel Allowance

200. A member is entitled to be paid travelling allowance in accordance with the regulations.

PART VIII - OBLIGATIONS OF CONFIDENCE

201. Part VIII gives effect to certain recommendations made by the Law Reform Commission. In its report on "Privacy" (para 828), the ALRC summarised the action for breach of confidence as providing "a civil remedy for use or disclosure of information which is not publicly known and which has been entrusted to a person in circumstances imposing an obligation not to use or disclose that information without the authority of the person from whom it has directly or indirectly been obtained".

Clause 89: Obligations of confidence to which Part applies

202. Clause 89 provides that Part VIII applies to those obligations of confidence that arise under the law of the Australian Capital Territory or those to which agencies (as defined in sub-clause 6(1)) and Commonwealth officers (as defined in sub-clause 6(1)) in their official capacity are subject. The obligations to which Commonwealth agencies and officers are subject include those arising under State laws.

Clause 90: Application of Part

203. Sub-clause 90(1) indicates that the reforms to be introduced by Part VIII concerning the obligation of confidence will apply where a person owes an obligation, enforceable under the existing law, to another person not to disclose personal information he has about either that other person or a third person. The person owing the obligation is in Part VIII termed the "confidant" and the person to whom it is owed the "confider".

Examples:

- (1) A gives information about himself to B in circumstances in which an obligation of confidence is imposed on B. A is the confider, B is the confidant.

(2) A gives personal information about B to C, in circumstances in which an obligation of confidence is imposed on C. A is the confider, C is the confidant.

204. By virtue of sub-clause 90(1) Part VIII only applies where the obligation of confidence relates to personal information as defined in sub-clause 6(1).

205. Sub-clause 90(2) restricts the Part to obligations of confidence that are legally enforceable by civil proceedings, e.g. damages or injunctions, and excludes obligations enforceable only by criminal proceedings.

Clause 91: Effect of Part on other laws

206. Clause 91 affirms that, except to the extent that it expressly or by necessary implication does so, Part VIII is not intended to limit or restrict the common law (including equity) relating to the existence of the obligation of confidence or otherwise restricting or imposing civil or criminal liability for the disclosure or use of information.

Clause 92: Extension of certain obligations of confidence.

207. Clause 92 provides that an obligation of confidence continues to protect personal information even after the information has been passed on to third parties who knew or ought reasonably to know that the person from whom the information was obtained was bound by the obligation of confidence.

Example: A holds personal information about B and is under an obligation of confidence in respect of it (whether to B or to another confider). A passes that information on to C. C will hold the information subject to the obligation of confidence as soon as he knows or ought reasonably to know that A was subject to an obligation of confidence. The obligation of confidence may be enforced even though C is not in the Australian Capital Territory.

Clause 93: Relief for breach &c. of certain obligations of confidence

208. Sub-clauses 93(1) and (2) clarify and rationalise the remedies that are now available to a confider (as defined in clause 90) for a breach of confidence by a confidant (as defined in clause 90). Under present law, in some cases the only remedy available is an injunction to restrain future breaches of the duty of confidence. In other cases, damages are also available in respect of past disclosures in breach of confidence. Sub-clauses 93(1) and (2) provide that damages will be available for a breach of any confidence referred to in clause 89.

209. Sub-clause 93(3) ensures that the subject of personal information in respect of which the duty of confidence exists has a right to enforce the duty, even when he/she is not the confider.

Examples:

- (1) A gives personal information about himself to B in such circumstances that B is under an obligation of confidence in relation to the information. A can enforce the obligation to prevent unauthorised disclosures of the information in breach of the obligation.

- (2) A gives personal information about B to C. Under present law, A can enforce the obligation of confidence but B, the individual concerned, cannot. Sub-clause 93(3) gives B the right to enforce the obligation to the same extent that A can. This will mean that B will be able to claim damages for unauthorised disclosure in the same way as A can. However, the assessment of damages will be based on B's loss, not A's (which might be negligible).

Clause 94: Jurisdiction of courts

210. Clause 94 provides that ACT courts have jurisdiction in respect of matters arising under this Part to the extent that they do not already have jurisdiction. Jurisdiction of other courts remains unaffected.

PART IX - MISCELLANEOUS

Clause 95: Medical research guidelines

211. This clause authorises the National Health and Medical Research Council (NHMRC) to issue guidelines, with the approval of the Commissioner, by notice in the Gazette, for the protection of privacy in the conduct of medical research. The definition of "medical research" in sub-clause 6(1) makes it clear that epidemiological research is included.

Sub-clause 95(3) provides that an act done in the course of medical research and in accordance with guidelines approved by the Privacy Commissioner shall not be regarded as a breach of the IPPs.

212. Sub-clause 95(2) provides that the Privacy Commissioner when deciding whether to approve the guidelines for the protection of privacy in relation to medical research developed by the NHMRC shall decide whether the public interest in the conduct of medical research outweighs to a substantial degree the public interest in adhering to the Information Privacy Principles.

213. Sub-clause 95(5) provides that an appeal may be made to the Administrative Appeals Tribunal for review of the Commissioner's decision to refuse to approve the issue of guidelines under subsection (1).

214. Sub-clause 95(4) provides that, where the Commissioner refuses to approve the guidelines, an application can be made to the Administrative Appeals Tribunal for review of the Commissioner's decision.

Clause 96: Non-disclosure of private information

215. This is a standard provision for the protection of information in the possession of the Privacy Commissioner and staff.

216. Sub-clause 96(1) provides that the Commissioner, or any person acting on his/her behalf, shall not, either directly or indirectly, divulge information to any person except in the performance of his/her duties under the Privacy Act.

Clause 97: Annual Report

217. This clause requires the Commissioner to provide the Minister with an annual report on the operation of the Act. This report is required to be tabled in Parliament: sub-clause 97(2).

218. Sub-clause 97(2) requires the report to include:

- (i) a statement in relation to the Commissioner's functions under sub-clause 27(n) concerning the encouragement of corporations to comply with the Guidelines on Protection of Privacy and Transborder Flows of Personal Data issued by the Organisation for Economic Co-Operation and Development;
- (ii) the guidelines relating to tax file number information;
- (iii) a statement evaluating compliance with the guidelines issued in relation to tax file number information.

Clause 98: Injunctions

219. This clause provides that the Federal Court of Australia may grant an injunction to prevent a person from commencing or continuing conduct which amounts to a breach of the IPPs or the tax file number guidelines.

220. Sub-clause 98(3) provides for the making of interim injunctions.

Clause 99: Delegations

221. The Commissioner may delegate to a member of the staff of the Human Rights and Equal Opportunity Commission any of his/her powers under the Act except in relation to the issuing of tax file number guidelines, and the making of determinations under clause 52.

Clause 100: Regulations

222. Clause 99 enables the Governor-General to make regulations for the purposes of the legislation.

PART X - AMENDMENTS OF OTHER ACTS

Clause 101: Amendments of other Acts

223. The Schedule sets out the consequential amendments needed to other legislation.

SCHEDULE

AMENDMENTS OF THE FREEDOM OF INFORMATION ACT 1982

Amendment to section 19(4): Time within which formal requests to be decided

224. Section 19 of the FOI Act requires an agency or Minister to make a decision on access to a document within 45 days if a written request for access is received before 1 December 1986 and in any other case within 30 days of the request. However, where the request is for access to documents relating to, inter

alia, the business or professional affairs of a person or organisation, the agency/Minister may extend this period of time by 15 days where it is appropriate in order to comply with the requirements of the "reverse-FOI" rights conferred on that person or organisation.

225. The amendment to s.19(4) of the FOI Act will provide for the extension of time to be available for dealing with requests relating to documents about the personal affairs of a person other than the applicant. The amendment is consequential upon the amendment to include new section 27A.

New Section 27A: Procedure on request in respect of document relating to personal affairs

226. Where an FOI request is made for access to a document containing information about the personal affairs of a person other than the applicant, new s.27A will require, where reasonably practicable, that the individual concerned be given a reasonable opportunity to argue that the document should be exempt from disclosure under s.41 and for any submissions to that effect to be considered before any decision is made to grant access. Before the obligation to provide that opportunity arises, it must appear to the person dealing with the FOI request, including the person dealing with a request to review a refusal of an original request, that the individual concerned could reasonably seek to argue that the document is exempt. The new section will apply when the individual concerned has died: in that case, the opportunity is to be afforded to the legal personal representative of the deceased.

227. Where, contrary to submissions received from the individual concerned, it is decided that the document is not exempt under s.41, the that individual and the applicant for access are both to be notified of the decision, but access is not to be given to the document until the individual concerned has had the required opportunity to seek a review of the decision under the proposed new s.59A and, if the that individual has applied to the Administrative Appeals Tribunal, the Tribunal has upheld the decision. Where a document contains personal information relating to 2 or more persons, the right to be given to each person to argue that the document is exempt is confined to that part of the document containing information referring to that person.

228. New s.27A will apply not only to requests received after commencement of the Privacy Bill, but also to requests received before that commencement where decisions on the requests had not been made by the officer or Minister dealing with that request or by a person reviewing a decision refusing that request.

Amendment to Section 38: Documents to which secrecy provisions of enactments apply

229. Section 38 exempts from access under the FOI Act documents to which secrecy provisions in other Commonwealth laws apply, whether the prohibition on disclosure is absolute or is subject to exceptions or qualifications. Section 38 of

the FOI Act is amended to add a provision to the effect that the section does not apply in respect of a request for access to information about personal affairs by the individual concerned.

230. The amendment will not affect the availability of other grounds of exemption under the FOI Act where applicable, e.g. s.37 (documents affecting enforcement of the law and protection of public safety) and s.45 (documents containing material obtained in confidence).

Amendment to Section 48: Persons may make application for amendment of record

231. This amendment will correct a formal, drafting error in s.48, and will remove the restriction on the right of application to documents to which access has been given under the FOI Act, i.e., the right to apply for correction will extend to any document to which the claimant has been lawfully provided with access - whether under the FOI Act or otherwise.

New Section 59A: Review of certain decisions in respect of documents relating to personal affairs

232. A new s.59A is to be inserted into the FOI Act to provide that where a person is informed under new s.27A that a document relating to his/her personal affairs is not to be exempted from access by another person on the grounds that its disclosure

would be an unreasonable disclosure of information relating to his/her personal affairs, that individual may apply to the Administrative Appeals Tribunal for a review of that decision.

233. New s.59A(2) provides that where the individual concerned makes an application to the Administrative Appeals Tribunal, Part VI of the FOI Act governing review of decisions (except for ss.55 and 56) applies, and the applicant for access to the document is to be informed.

234. New s.59A(3) provides that where, after hearing from the individual concerned under new s.27A, the decision is made to refuse access and the applicant for access applies to the Administrative Appeals Tribunal, the individual concerned is to be informed of the Tribunal's application.

235. New s.59A mirrors the scheme of s.59 providing for reverse-FOI in respect of business affairs.

AMENDMENTS OF THE HUMAN RIGHTS AND EQUAL
OPPORTUNITY COMMISSION ACT 1986

New Definition in sub-section 3(1)

236. A new definition of "Privacy Commissioner" is to be inserted in sub-section 3(1).

237. Section 8 is to be amended to include the Privacy Commissioner as a member of the Commission.

Amendment to sub-section 20(4)

238. Where HREOC decides not to inquire or to continue to inquire into a complaint because it considers that the subject matter of the complaint could be more effectively or conveniently dealt with by the Privacy Commissioner, HREOC is required to transfer such complaints to the Commissioner (proposed new sub-section 20(4A)).

239. When transferring the complaint, HREOC is also required to give notice to the complainant of the transfer and to give to the Commissioner any information or document that relates to the complaint that is in its possession.

Amendment to sub-section 49(4)

240. Section 49 of the HREOC Act is designed to protect private information that comes into the hands of an authorised person, a member or a member of the staff of HREOC. Such persons are not permitted, except in the performance of their duties or the exercise of their powers under the legislation, to record, divulge, communicate or use any such information. This clause amends s.49 of the HREOC Act to permit persons to give information and documents to the Privacy Commissioner where HREOC has transferred a complaint to the Commissioner.

AMENDMENTS OF THE MERIT PROTECTION
(AUSTRALIAN GOVERNMENT EMPLOYEES) ACT 1984

241. Provision is made for the transfer of privacy complaints, made to the Merit Protection and Review Agency (MPRA) by Commonwealth employees, to the Privacy Commissioner.

Amendment to sub-section 49(1)

242. S.49(1) of the MP(AGE) Act already enables MPRA to decide not to investigate (or continue investigating) a complaint by a Commonwealth employee because, inter alia, it concludes that the employee has a right to take the complaint to another body and that it is more appropriate for the other body to deal with the complaint. New s.49(1A) provides that where MPRA makes a decision under s.49(1) on the ground that it is more appropriate that Privacy Commissioner should deal with the complaint as a privacy-type complaint, MPRA is required to transfer the application to the Commissioner and forthwith notify the applicant.

243. New s.49(1B) requires MPRA to give to the Commissioner all the information and documents it has relating to a complaint transferred to the Commissioner under new s.49(1A).

Amendment to sub-section 84(4)

244. A new s.84(4A) is to be inserted in the Act to enable information and documents in the possession of MPRA relating to an application transferred by MPRA to the Privacy Commissioner under new s.49(1A) to be forwarded to the Commissioner without violating s.84(2) of the Act which requires MPRA officers to observe secrecy.

AMENDMENTS OF THE OMBUDSMAN ACT 1976

245. Provision is made for the transfer to the Privacy Commissioner of privacy-related complaints made to the Ombudsman.

Amendment to section 6

246. A new s.6(4A) is to be inserted in the Ombudsman Act to enable the Ombudsman to decide not to (continue to) investigate a complaint if he/she concludes that it is a privacy-related complaint that could more conveniently or effectively be dealt with by the Privacy Commissioner. Where the Ombudsman so decides, he/she is required to transfer the application to the Privacy Commissioner and forthwith notify the applicant. New s.6(4A)(e) requires the Ombudsman to give to the Commissioner all the information and documents he/she has relating to a complaint transferred to the Commissioner under new s.6(4A).

Amendment to section 35

247. A new s.35(6A) is to be inserted in the Ombudsman Act to enable information and documents in the possession of the Ombudsman relating to an application transferred by the Ombudsman to the Privacy Commissioner under new s.6(4A) to be forwarded to the Commissioner without violating s.35(2), which requires the Ombudsman and his/her staff to observe secrecy.

SCHEDULE 2

INTERIM GUIDELINES CONCERNING THE COLLECTION, STORAGE,
USE AND SECURITY OF TAX FILE NUMBER INFORMATION

INTRODUCTION

248. The Privacy Commissioner is required, by notice in writing, to issue guidelines concerning the collection, storage, use and security of tax file number information: clause 17.

249. Clause 17(4) provides that, in effect, until the Commissioner issues Guidelines which are approved by the Parliament the Interim Guidelines set out in Schedule 2 apply as the Guidelines for tax file number information for the purposes of the Bill.

250. The object of these Guidelines is to protect the right to privacy of individuals in relation to their tax file numbers. The Guidelines do this by providing guidance to tax file number recipients as to what are authorised uses of tax file numbers as to how they should handle tax file number information and how they should provide safe storage and security for tax file number information.

251. The Taxation Laws Amendment (Tax File Numbers) Bill 1988 sets out the general prohibitions on unauthorised demands for or unauthorised uses of tax file numbers, see clause 26 Taxation Laws Amendment (Tax File Numbers) Bill 1988. A breach of these provisions is an offence punishable by a fine of up to \$10,000 and/or imprisonment for two years. In addition, a tax file number recipient is required to comply with guidelines relating to tax file number information: see clause 18 Privacy Bill. A breach of these guidelines amounts to an interference with the privacy of an individual, see clause 13.

1. GENERAL

252. The guidelines state the Parliament's clear intention that the tax file number should not become the basis of a national identification scheme, Guideline 1.1.

253. Guideline 1.2 reinforces the prohibition on unauthorised cross-matching of tax file numbers with records of personal information concerning individuals.

254. Guideline 1.3 provides for the Commissioner of Taxation to play a major role in publicising matters relating to the tax file number program. It is considered that through, for example, general public awareness of the persons who are authorised to require or request tax file number information that individuals will be able to take steps to protect their privacy and this will assist in preventing the use of tax file numbers for unauthorised purposes.

2. COLLECTION OF TAX FILE NUMBER INFORMATION

255. Guideline 2.1 requires tax file number recipients to make staff aware of the right to privacy of an individual compulsorily supplying a tax file number and of the recognition given by the Parliament to those rights as set out in the Privacy Bill 1988 and the Taxation Laws Amendment (Tax File Numbers) Bill 1988.

256. Guideline 2.2 provides that the manner of collection of tax file number information should take account of the individual's basic privacy right to control the dissemination of their personal information. The collection of tax file number information should be carried out in a way to minimise the opportunity for unlawful recording of tax file numbers. What would be regarded as reasonable steps to be taken by the file number recipient during the collection process would depend, to some extent, on the nature of the business activity of the file number recipient.

3. STORAGE AND SECURITY OF TAX FILE NUMBER INFORMATION

257. Guideline 3.1 requires that tax file number recipients take measures in relation to the handling of tax file number information by their staff which will protect the privacy of individuals in relation to their tax file numbers.

258. Guideline 3.2 requires that tax file number recipients ensure that appropriate security safeguards and procedures are in place to prevent, amongst other things, unauthorised access or unauthorised use of tax file numbers. What are appropriate security safeguards would depend to some extent on the nature of the tax file number recipient's business or activity and whether the records are held in hard copy or are stored in an electronic form.

259. Guideline 3.3 provides that tax file number recipients undertake measures to ensure that access to tax file number information is restricted to persons requiring access to the information for the carrying out of tax-related functions of the tax file number recipient. For instance, as well as the staff of the tax file number recipient, the Commissioner of Taxation would require access to tax file number information. This will ensure that access is confined to those with a need to know and it is not available to all staff of an employer or a financial institution.

4. USE AND DISCLOSURE OF TAX FILE NUMBER INFORMATION

260. Guideline 4.1 requires that tax file number recipients take measures to ensure that staff handling tax file number information are aware of the prohibitions on use and disclosure

of tax file number information and the penalties set out in the Taxation Laws Amendment (Tax File Numbers) Bill 1988 and the provisions providing for damages under the Privacy Bill 1988 for breaches of the TFN Guidelines.

261. Guideline 4.2 set out the basic prohibition against unauthorised use of tax file number information.

262. Guideline 4.3 sets out examples relating to employers or investment bodies, in relation to the use and disclosure of tax file number information, in order to make it clear that the building up of a database or cross-matching of tax file number information is prohibited. Similar prohibitions apply to all other users of tax file numbers. Guideline 4.3(c) makes it clear that Government agencies are prohibited from disclosing or using tax file number information or from cross-matching such information unless they are authorised to do so.

5. PUBLICITY

263. Guideline 5 provides that the Commissioner of Taxation is to publicise the matters set out in Guideline 1.3 so that individuals and tax file number recipients are aware of their obligations and duties in relation to tax file numbers before any obligation to quote a tax file number under the Taxation Laws Amendment (Tax File Numbers) Act comes into operation.

6. CESSATION OF EMPLOYMENT AND INVESTMENT

264. Guideline 6 requires that tax file number recipients shall, subject to their other legal obligations, destroy tax

file number information about former employees or former investors in accordance with guidelines issued by the Privacy Commissioner. These guidelines will take account of the number of provisions in Commonwealth and State law which require the retention of financial records for certain periods, e.g. Income Tax Assessment Act 1936, s.262A; Proceeds of Crime Act 1987, s.77; Companies Act s.267.

7. MEANING OF TERMS IN INTERIM GUIDELINES

265. For the purposes of these Guidelines a tax file number recipient means a file number recipient as defined in clause 11 of the Privacy Bill, i.e. a person who is (whether lawfully or unlawfully) in possession or control of a record that contains tax file number information shall be regarded for the purposes of the Privacy Act as a file number recipient. Tax file number information is defined in clause 6 of the Privacy Bill to mean information (including information forming part of a database) whether compiled lawfully or unlawfully and whether recorded in a material form or not that records the tax file number of a person in a manner connecting it with the person's identity. A tax file number means a tax file number as defined in Part VA of the Income Tax Assessment Act 1936.

266. "Investment body" is defined as a body to whom a person is required to quote a tax file number in relation to their investment. "An employer" means an employer to whom a person is required to quote a tax file number in relation to their employment.