

# EXPOSURE DRAFT

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**EXPOSURE DRAFT**

## Australian Privacy Principles

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## **Part A—Australian Privacy Principles**

### **Division 1—Introduction**

#### **1 Guide to this Part**

##### *Overview*

This Part sets out the Australian Privacy Principles.

Division 2 sets out principles that require entities to consider the privacy of personal information, including ensuring that entities manage personal information in an open and transparent way.

Division 3 sets out principles that deal with the collection of personal information including unsolicited personal information.

Division 4 sets out principles about how entities deal with personal information. The Division includes principles about the use and disclosure of personal information.

Division 5 sets out principles about the integrity of personal information. The Division includes principles about the quality and security of personal information.

Division 6 sets out principles that deal with requests for access to, and the correction of, personal information.

##### *Australian Privacy Principles*

The Australian Privacy Principles are:

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

Australian Privacy Principle 2—anonymity and pseudonymity

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## Part A Australian Privacy Principles

### Division 1 Introduction

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Australian Privacy Principle 3—collection of solicited personal information

Australian Privacy Principle 4—receiving unsolicited personal information

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

Australian Privacy Principle 6—use or disclosure of personal information

Australian Privacy Principle 7—direct marketing

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

Australian Privacy Principle 10—quality of personal information

Australian Privacy Principle 11—security of personal information

Australian Privacy Principle 12—access to personal information

Australian Privacy Principle 13—correction of personal information

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## **Division 2—Consideration of personal information privacy**

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

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

*Compliance with the Australian Privacy Principles etc.*

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

*Privacy policy*

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

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## Part A Australian Privacy Principles

### Division 2 Consideration of personal information privacy

#### Section 3

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- (f) whether the entity is likely to disclose personal information to overseas recipients;
- (g) if the entity is likely to disclose personal information to overseas recipients—the countries in which such recipients are likely to be located if it is practicable to specify those countries in the privacy policy.

#### *Availability of privacy policy etc.*

- (5) An entity must take such steps as are reasonable in the circumstances to make its privacy policy available:
  - (a) free of charge; and
  - (b) in such form as is appropriate.
- (6) If an individual requests a copy of an entity's privacy policy in a particular form, the entity must take such steps as are reasonable in the circumstances to give the individual a copy in that form.

### **3 Australian Privacy Principle 2—anonymity and pseudonymity**

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

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## Division 3—Collection of personal information

### 4 Australian Privacy Principle 3—collection of solicited personal information

#### *Personal information other than sensitive information*

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

#### *Sensitive information*

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

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## Part A Australian Privacy Principles

### Division 3 Collection of personal information

#### Section 4

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- entity's functions or activities has been, is being or may be engaged in;
- (ii) the entity reasonably believes that the collection of the information is necessary in order for the entity to take appropriate action in relation to the matter; or
- (d) both of the following apply:
- (i) the entity is an enforcement body;
  - (ii) the entity reasonably believes that the collection of the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities; or
- (e) both of the following apply:
- (i) the entity is an agency;
  - (ii) the entity reasonably believes that the collection of the information is necessary for the entity's diplomatic or consular functions or activities; or
- (f) the entity is the Defence Force and the entity reasonably believes that the collection of the information is necessary for any of the following occurring outside Australia:
- (i) war or warlike operations;
  - (ii) peacekeeping or peace enforcement;
  - (iii) civil aid, humanitarian assistance, medical or civil emergency or disaster relief; or
- (g) both of the following apply:
- (i) the entity reasonably believes that the collection of the information is reasonably necessary to assist any entity, body or person to locate a person who has been reported as missing;
  - (ii) the collection complies with the Australian Privacy Rules made under paragraph 21(a); or
- (h) both of the following apply:
- (i) the information is collected by a non-profit organisation and relates to the activities of the non-profit organisation;
  - (ii) the information relates solely to the members of the non-profit organisation, or to individuals who have



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regular contact with the organisation in connection with its activities; or

- (i) the collection of the information is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim; or
- (j) the collection of the information is reasonably necessary for the purposes of a confidential alternative dispute resolution process.

### *Means of collection*

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

### *Solicited personal information*

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

## **5 Australian Privacy Principle 4—receiving unsolicited personal information**

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

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### Division 3 Collection of personal information

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

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

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

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

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## Part A Australian Privacy Principles

### Division 4 Dealing with personal information

#### Section 7

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### Division 4—Dealing with personal information

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

##### *Use or disclosure*

- (1) If an entity holds personal information about an individual that was collected for a particular purpose (the *primary purpose*), the entity must not use or disclose the information for another purpose (the *secondary purpose*) unless:
  - (a) the individual has consented to the use or disclosure of the information; or
  - (b) subsection (2) applies in relation to the use or disclosure of the information.

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

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

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- (d) both of the following apply:
  - (i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in;
  - (ii) the entity reasonably believes that the use or disclosure of the information is necessary for the entity to take appropriate action in relation to the matter; or
- (e) the entity reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities by, or on behalf of, an enforcement body; or
- (f) both of the following apply:
  - (i) the entity is an agency;
  - (ii) the entity reasonably believes that the use or disclosure of the information is necessary for the entity's diplomatic or consular functions or activities; or
- (g) both of the following apply:
  - (i) the entity reasonably believes that the use or disclosure of the information is reasonably necessary to assist any entity, body or person to locate a person who has been reported as missing;
  - (ii) the use or disclosure complies with the Australian Privacy Rules made under paragraph 21(b); or
- (h) the use or disclosure of the information is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim; or
- (i) the use or disclosure of the information is reasonably necessary for the purposes of a confidential alternative dispute resolution process.

*Written note of use or disclosure*

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

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## Part A Australian Privacy Principles

### Division 4 Dealing with personal information

#### Section 8

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##### *Related bodies corporate*

- (4) If:
- (a) an entity is a body corporate; and
  - (b) the entity collects personal information from a related body corporate;
- this principle applies as if the entity's primary purpose for the collection of the information were the primary purpose for which the related body corporate collected the information.

##### *Exceptions*

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

## 8 Australian Privacy Principle 7—direct marketing

##### *Direct marketing*

- (1) If an organisation holds personal information about an individual, the organisation must not use or disclose the information for the purpose of direct marketing unless:
- (a) if the information is sensitive information and paragraph (c) does not apply—the individual has consented to the use or disclosure of the information for that purpose; or
  - (b) if the information is not sensitive information and paragraph (c) does not apply—subsection (2) or (3) applies in relation to the use or disclosure of the information for that purpose; or
  - (c) if:
    - (i) the organisation is a contracted service provider for a Commonwealth contract; and
    - (ii) the organisation collected the information for the purpose of meeting (directly or indirectly) an obligation under the contract;the use or disclosure is necessary to meet (directly or indirectly) an obligation under the contract.
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Note: An act or practice of an agency may be treated as an act or practice of an organisation.

*Personal information collected from the individual*

- (2) This subsection applies in relation to the use or disclosure by an organisation of personal information about an individual for the purpose of direct marketing if:
- (a) the organisation collected the information from the individual; and
  - (b) the individual would reasonably expect the organisation to use or disclose the information for that purpose; and
  - (c) the organisation provides a simple means by which the individual may easily request not to receive direct marketing communications from the organisation; and
  - (d) the individual has not made such a request to the organisation.

*Personal information collected from another person etc.*

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

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## Part A Australian Privacy Principles

### Division 4 Dealing with personal information

#### Section 8

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

*Individual may request not to receive direct marketing communications etc.*

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

*Interaction with other legislation*

- (6) This principle does not apply to the extent that any of the following apply:
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- (a) the *Do Not Call Register Act 2006*;
- (b) the *Spam Act 2003*;
- (c) any other Act of the Commonwealth prescribed by the regulations.

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

- (1) Before an entity discloses personal information about an individual to a person (the *overseas recipient*):
  - (a) who is not in Australia; and
  - (b) who is not the entity or the individual;the entity must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information.
- (2) Subsection (1) does not apply to the disclosure of personal information about an individual (the *affected individual*) by an entity to the overseas recipient if:
  - (a) the entity reasonably believes that:
    - (i) the overseas recipient of the information is subject to a law, or binding scheme, that has the effect of protecting the information in a way that, overall, is at least substantially similar to the way in which the Australian Privacy Principles protect the information; and
    - (ii) there are mechanisms that the affected individual can access to take action to enforce that protection of the law or binding scheme; or
  - (b) both of the following apply:
    - (i) the entity expressly informs the affected individual that if he or she consents to the disclosure of the information, subsection (1) will not apply to the disclosure;
    - (ii) after being so informed, the affected individual consents to the disclosure; or

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## Part A Australian Privacy Principles

### Division 4 Dealing with personal information

#### Section 9

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- (c) the disclosure of the information is required or authorised by or under an Australian law, or an order of a court or tribunal; or
- (d) each of the following applies:
  - (i) the entity is an agency;
  - (ii) the disclosure of the information is required or authorised by or under an international agreement relating to information sharing;
  - (iii) Australia is a party to the international agreement; or
- (e) both of the following apply:
  - (i) the entity reasonably believes that the disclosure of the information is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety;
  - (ii) it is unreasonable or impracticable to obtain the affected individual's consent to the disclosure; or
- (f) both of the following apply:
  - (i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in;
  - (ii) the entity reasonably believes that the disclosure of the information is necessary for the entity to take appropriate action in relation to the matter; or
- (g) each of the following applies:
  - (i) the entity is an agency;
  - (ii) the entity reasonably believes that the disclosure of the information is reasonably necessary for one or more enforcement related activities by, or on behalf of, an enforcement body;
  - (iii) the overseas recipient is a body that performs functions, or exercises powers, that are similar to those performed or exercised by an enforcement body; or
- (h) both of the following apply:
  - (i) the entity is an agency;

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

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

### *Adoption of government related identifiers*

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

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

### *Use or disclosure of government related identifiers*

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

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### Division 4 Dealing with personal information

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- (d) both of the following apply:
  - (i) the organisation reasonably believes that the use or disclosure of the government related identifier is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety;
  - (ii) it is unreasonable or impracticable to obtain the affected individual's consent to the use or disclosure; or
- (e) both of the following apply:
  - (i) the organisation has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the organisation's functions or activities has been, is being or may be engaged in;
  - (ii) the organisation reasonably believes that the use or disclosure of the government related identifier is necessary for the organisation to take appropriate action in relation to the matter; or
- (f) the organisation reasonably believes that the use or disclosure of the government related identifier is reasonably necessary for one or more enforcement related activities by, or on behalf of, an enforcement body; or
- (g) subsection (3) applies in relation to the use or disclosure.

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

#### *Regulations about adoption, use or disclosure*

- (3) This subsection applies in relation to the adoption, use or disclosure by an organisation of a government related identifier of an individual if each of the following applies:
  - (a) the government related identifier is prescribed by the regulations;
  - (b) the organisation is prescribed by the regulations, or is included in a class of organisations prescribed by the regulations;
  - (c) the adoption, use or disclosure occurs in the circumstances prescribed by the regulations.

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

*Government related identifier*

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

*Identifier*

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

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## Part A Australian Privacy Principles

### Division 5 Integrity of personal information

#### Section 11

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### **Division 5—Integrity of personal information**

#### **11 Australian Privacy Principle 10—quality of personal information**

- (1) An entity must take such steps (if any) as are reasonable in the circumstances to ensure that the personal information the entity collects is accurate, up-to-date and complete.
- (2) An entity must take such steps (if any) as are reasonable in the circumstances to ensure that the personal information the entity uses or discloses is accurate, up-to-date, complete and relevant.

#### **12 Australian Privacy Principle 11—security of personal information**

- (1) If an entity holds personal information, the entity must take such steps as are reasonable in the circumstances to protect the information:
  - (a) from misuse, interference and loss; and
  - (b) from unauthorised access, modification or disclosure.
- (2) If:
  - (a) an entity holds personal information about an individual; and
  - (b) the entity no longer needs the information for any purpose for which the information may be used or disclosed by the entity under this Division; and
  - (c) the entity is not required by or under an Australian law, or an order of a court or tribunal, to retain the information;the entity must take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is no longer personal information.

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

### **13 Australian Privacy Principle 12—access to personal information**

#### *Access*

- (1) If an entity holds personal information about an individual, the entity must, on request by the individual, give the individual access to the information.

#### *Exception to access—agency*

- (2) If:
- (a) the entity is an agency; and
  - (b) the entity is required or authorised to refuse to give the individual access to the personal information by or under:
    - (i) the *Freedom of Information Act 1982*; or
    - (ii) any other Act of the Commonwealth that provides for access by persons to documents;
- then, despite subsection (1), the entity is not required to give access to the extent that the entity is so required or authorised.

#### *Exception to access—organisation*

- (3) If the entity is an organisation then, despite subsection (1), the entity is not required to give the individual access to the personal information to the extent that:
- (a) the entity reasonably believes that giving access would pose a serious threat to the life, health, or safety of any individual, or to public health or public safety; or
  - (b) giving access would have an unreasonable impact on the privacy of other individuals; or
  - (c) the request for access is frivolous or vexatious; or
  - (d) the information:
    - (i) relates to existing or anticipated legal proceedings between the entity and the individual; and

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- (ii) would not be accessible by the process of discovery in those proceedings; or
- (e) giving access would reveal the intentions of the entity in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
- (f) giving access would be unlawful; or
- (g) denying access is required or authorised by or under an Australian law, or an order of a court or tribunal; or
- (h) both of the following apply:
  - (i) the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in;
  - (ii) giving access would be likely to prejudice the taking of appropriate action in relation to the matter; or
- (i) giving access would be likely to prejudice one or more enforcement related activities by or on behalf of an enforcement body; or
- (j) giving access would reveal evaluative information generated within the entity in connection with a commercially sensitive decision-making process.

#### *Dealing with requests for access*

- (4) If an individual requests an entity to give access to personal information about the individual, the entity must:
  - (a) respond to the request:
    - (i) if the entity is an agency—within 30 days after the request is made; or
    - (ii) if the entity is an organisation—within a reasonable period after the request is made; and
  - (b) give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so.

#### *Other means of access*

- (5) If:



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- (a) an individual requests an entity to give access to personal information about the individual; and
- (b) the entity refuses:
  - (i) to give the individual access to the information because of subsection (2) or (3); or
  - (ii) to give access to the information in the manner requested by the individual;

the entity must take such steps (if any) as are reasonable in the circumstances to give access to the information in a way that meets the needs of the entity and the individual.

- (6) Without limiting subsection (5), access may be given through the use of a mutually agreed intermediary.

#### *Access charges*

- (7) If:
  - (a) an entity is an agency; and
  - (b) an individual requests the entity to give access to personal information about the individual;

the entity must not charge the individual for the making of the request or for giving access to the information.

- (8) If:
  - (a) an entity is an organisation; and
  - (b) an individual requests the entity to give access to personal information about the individual; and
  - (c) the entity charges the individual for giving access to the information;

the charge must not be excessive and must not apply to the making of the request.

#### *Refusal to provide access*

- (9) If:
  - (a) an individual requests the entity to give access to personal information about the individual; and
  - (b) the entity refuses:

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- (i) to give the individual access to the information because of subsection (2) or (3); or
- (ii) to give access to the information in the manner requested by the individual;

the entity must, in writing:

- (c) give reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and
- (d) notify the individual of the mechanisms available to complain about the refusal; and
- (e) inform the individual of any other matter prescribed by the regulations.

#### **14 Australian Privacy Principle 13—correction of personal information**

##### *Correction*

- (1) If:
  - (a) an entity holds personal information about an individual; and
  - (b) either:
    - (i) the entity is satisfied that, having regard to a purpose for which the information is held, the information is inaccurate, out-of-date, incomplete or irrelevant; or
    - (ii) the individual requests the entity to correct the information;

the entity must take such steps (if any) as are reasonable in the circumstances to correct that information to ensure that, having regard to the purpose for which it is held, the information is accurate, up-to-date, complete and relevant.

##### *Dealing with requests for correction*

- (2) If an individual requests an entity to correct personal information about the individual, the entity:
  - (a) must respond to the request:
    - (i) if the entity is an agency—within 30 days after the request is made; or

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- (ii) if the entity is an organisation—within a reasonable period after the request is made; and
- (b) must not charge the individual for the making of the request or for correcting the information.

*Notification of correction to third parties*

- (3) If:
  - (a) an entity corrects personal information about an individual that the entity previously disclosed to another entity; and
  - (b) the individual requests the entity to notify the other entity of the correction;

the entity must take such steps (if any) as are reasonable in the circumstances to give that notification unless it is impracticable or unlawful to do so.

*Refusal to correct information*

- (4) If:
  - (a) an individual requests an entity to correct personal information about the individual; and
  - (b) the entity refuses to correct the information;the entity must, in writing:
  - (c) give reasons for the refusal except to the extent that it would be unreasonable to do so; and
  - (d) notify the individual of the mechanisms available to complain about the refusal; and
  - (e) inform the individual of any other matter prescribed by the regulations.

*Request to associate a statement*

- (5) If:
  - (a) an individual requests an entity to correct personal information about the individual; and
  - (b) the entity refuses to correct the information; and
  - (c) the individual requests the entity to associate with the information a statement that the information is inaccurate, out-of-date, incomplete or irrelevant;

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

- (6) If an individual requests an entity to associate a statement with personal information about the individual, the entity:
  - (a) must respond to the request:
    - (i) if the entity is an agency—within 30 days after the request is made; or
    - (ii) if the entity is an organisation—within a reasonable period after the request is made; and
  - (b) must not charge the individual for the making of the request or for associating the statement with the information.

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## Part B—Other relevant provisions

### 15 Definitions

In this Act:

*agency*: see section 16.

*Australian law* means:

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

*Australian link*: see subsection 19(3).

*Australian Privacy Principle* has a meaning affected by section 18.

*Australian Privacy Rules* means the rules made under section 21.

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

*Commonwealth contract* means a contract:

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

*Commonwealth enactment* means:

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

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

**consent** means express consent or implied consent.

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

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

**corporation** means a body corporate that:

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

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

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

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

***enforcement body*** means:

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

***enforcement related activity*** means:

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

**entity** means an agency or organisation.

**generally available publication** means a magazine, book, article, newspaper or other publication that is or will be generally available to members of the public:

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

**government related identifier**: see subsection 10(4).

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

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

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

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

**nominated AGHS company** means a company that:

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

**non-profit organisation** means an organisation:

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

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

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

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

**organisation**: see section 17.

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

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

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

**privacy policy**: see subsection 2(3).

**record** includes:

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## Part B Other relevant provisions

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- (a) a document; or
- (b) an electronic or other device;

but does not include:

- (c) a generally available publication; or
- (d) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
- (e) Commonwealth records (within the meaning of the *Archives Act 1983*) that are in the open access period for the purposes of that Act; or
- (f) records (within the meaning of the *Archives Act 1983*) in the care (within the meaning of that Act) of the National Archives of Australia (the *Archives*) in relation to which:
  - (i) the Archives has entered into arrangements with a person other than a Commonwealth institution (within the meaning of that Act); and
  - (ii) those arrangements provide for the extent to which the Archives or other persons are to have access to those records; or
- (g) documents placed by or on behalf of a person (other than an agency) in the memorial collection (within the meaning of the *Australian War Memorial Act 1980*); or
- (h) letters or other articles in the course of transmission by post.

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

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

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

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

**sensitive information** means personal information that is:

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

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- (iv) religious beliefs or affiliations; or
- (v) philosophical beliefs; or
- (vi) membership of a professional or trade association; or
- (vii) membership of a trade union; or
- (viii) sexual orientation or practices; or
- (ix) criminal record; or
- (b) health information about an individual; or
- (c) genetic information about an individual that is not otherwise health information; or
- (d) biometric information that is to be used for the purpose of automated biometric verification or biometric identification; or
- (e) biometric templates.

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

***State contract*** means a contract:

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

***State or Territory authority*** means:

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

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## Part B Other relevant provisions

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

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

- (a) that is or was a party to a contract (the **subcontract**):
    - (i) with a contracted service provider for the Commonwealth contract or State contract (within the meaning of paragraph (a) of the definition of **contracted service provider**); or
    - (ii) with a subcontractor for the Commonwealth contract or State contract (because of a previous application of this definition); and
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## Section 16

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

### 16 Meaning of *agency*

- (1) An *agency* is:
  - (a) a Minister of the Commonwealth; or
  - (b) a Department of the Commonwealth; or
  - (c) a body or tribunal, whether incorporated or unincorporated, established or appointed for a public purpose by or under a Commonwealth enactment, other than:
    - (i) an incorporated company, society or association; or
    - (ii) an organisation that is registered under the *Fair Work (Registered Organisations) Act 2009* or a branch of such an organisation; or
  - (d) a body, whether incorporated or unincorporated, established or appointed by the Governor-General, or by a Minister of the Commonwealth, otherwise than under a Commonwealth enactment; or
  - (e) a person who holds or performs the duties of:
    - (i) an office established by or under a Commonwealth enactment; or
    - (ii) an appointment made under a Commonwealth enactment; or
    - (iii) an appointment made by the Governor-General, or by a Minister of the Commonwealth, otherwise than under a Commonwealth enactment;other than the Secretary of a Department of the Commonwealth; or
  - (f) a federal court; or
  - (g) the Australian Federal Police; or
  - (h) the nominated AGHS company; or

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- (i) an eligible hearing service provider.
- (2) Despite subsection (1), a person is not an **agency** merely because the person is the holder of, or performs the duties of:
  - (a) an office prescribed by the regulations; or
  - (b) an office prescribed by regulations made for the purposes of subparagraph 4(3)(b)(i) of the *Freedom of Information Act 1982*; or
  - (c) an office established by or under a Commonwealth enactment for the purposes of an agency; or
  - (d) a judicial office; or
  - (e) an office of magistrate; or
  - (f) an office of member of a tribunal:
    - (i) that is established by or under a law of the Commonwealth; and
    - (ii) that is prescribed by the regulations for the purposes of this paragraph.
- (3) For the purposes of paragraph (1)(b), the Department of Defence includes:
  - (a) the Defence Force; and
  - (b) the Australian Army Cadets; and
  - (c) the Australian Navy Cadets; and
  - (d) the Australian Air Force Cadets.

### 17 Meaning of *organisation*

- (1) An **organisation** is:
    - (a) an individual; or
    - (b) a body corporate; or
    - (c) a partnership; or
    - (d) any other unincorporated association; or
    - (e) a trust.
  - (2) Despite subsection (1), each of the following is not an **organisation**:
    - (a) an agency;
    - (b) a small business operator;
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## Section 18

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- (c) a registered political party;
- (d) a State or Territory authority;
- (e) a prescribed instrumentality of a State or Territory.

Note 1: There are prerequisites that must be satisfied before an instrumentality of a State or Territory is prescribed, see subsection 22(4).

Note 2: The regulations may prescribe an instrumentality of a State or Territory by reference to a class or classes of such instrumentalities, see subsection 33(3A) of the *Acts Interpretation Act 1901*.

### *Legal person treated as different organisations in different capacities*

- (3) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different **organisation**.

Example: In addition to his or her personal capacity, an individual may be the trustee of one or more trusts. In his or her personal capacity, he or she is one organisation. As a trustee of each trust, he or she is a different organisation.

## **18 References to the Australian Privacy Principles**

- (1) A reference in this Act to an Australian Privacy Principle is a reference to a provision set out in Part A.
- (2) A reference in this Act to an Australian Privacy Principle by a number is a reference to the Australian Privacy Principle with that number.

## **19 Extra-territorial operation of this Act etc.**

### *Agencies*

- (1) This Act extends to an act done, or practice engaged in, outside Australia by an agency.

### *Organisations*

- (2) This Act and an approved privacy code extend to an act done, or practice engaged in, outside Australia by an organisation that has an Australian link.

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Note: The act or practice will not breach an Australian Privacy Principle or an approved privacy code, or be an interference with the privacy of the individual, if the act or practice is required by an applicable foreign law.

- (3) An organisation has an *Australian link* if the organisation is:
- (a) an Australian citizen; or
  - (b) a person whose continued presence in Australia is not subject to a limitation as to time imposed by law; or
  - (c) a partnership formed in Australia; or
  - (d) a trust created in Australia; or
  - (e) a body corporate incorporated in Australia; or
  - (f) an unincorporated association that has its central management and control in Australia; or
  - (g) both of the following apply:
    - (i) the organisation carries on business in Australia;
    - (ii) the organisation collects or holds personal information in Australia whether before or at the time the act is done or the practice is engaged in.

### **20 Acts and practices of overseas recipients of personal information**

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



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

## 21 Commissioner may make rules relating to certain matters

The Commissioner may, by legislative instrument, make rules relating to:

- (a) the collection of personal information that apply for the purposes of subparagraph 4(3)(g)(ii); or
- (b) the use or disclosure of personal information that apply for the purposes of subparagraph 7(2)(g)(ii).

## 22 Regulations

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*Prescribing government related identifiers etc.*

- (2) Before the Governor-General makes regulations for the purposes of subsection 10(3) prescribing a government related identifier, an organisation or a class of organisations, and circumstances, the Minister must be satisfied that:
  - (a) the relevant agency or State or Territory authority or, if the relevant agency or State or Territory authority has a principal executive, the principal executive:
    - (i) has agreed that the adoption, use or disclosure of the government related identifier by the organisation, or the class of organisations, in the circumstances is appropriate; and
    - (ii) has consulted the Commissioner about that adoption, use or disclosure; and
  - (b) the adoption, use or disclosure of the government related identifier by the organisation, or the class of organisations, in the circumstances can only be for the benefit of the individual to whom the government related identifier relates.

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### Section 22

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- (3) Subsection (2) does not apply to the making of regulations for the purposes of subsection 10(3) that relate to the use or disclosure of a government related identifier by an organisation, or a class of organisations, in particular circumstances if:
- (a) the government related identifier is a kind commonly used in the processing of pay, or deductions from pay, of Commonwealth officers, or a class of Commonwealth officers; and
  - (b) the circumstances of the use or disclosure of the government related identifier relate to the provision by:
    - (i) the organisation; or
    - (ii) the class of organisations;  
of superannuation services (including the management, processing, allocation and transfer of superannuation contributions) for the benefit of Commonwealth officers or the class of Commonwealth officers; and
  - (c) before the regulations are made, the Minister consults the Commissioner about the proposed regulations.

#### *Prescribing instrumentalities of a State or Territory*

- (4) Before the Governor-General makes regulations for the purposes of paragraph 17(2)(e) prescribing an instrumentality of a State or Territory, the Minister must:
- (a) be satisfied that the State or Territory has requested that the instrumentality be prescribed for those purposes; and
  - (b) consider:
    - (i) whether treating the instrumentality as an organisation for the purposes of this Act adversely affects the government of the State or Territory; and
    - (ii) the desirability of regulating under this Act the collection, holding, use, disclosure, access, and correction of personal information by the instrumentality; and
    - (iii) whether the law of the State or Territory regulates the collection, holding, use, disclosure, access, and correction of personal information to a standard that is

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- at least equivalent to the standard that would otherwise apply to the instrumentality under this Act; and
- (c) consult the Commissioner about the matters mentioned in subparagraphs (b)(ii) and (iii).