



Year 2000 Information Disclosure Act 1999

No. 2, 1999



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**An Act to encourage the voluntary disclosure and
exchange of information about year 2000 computer
problems and remediation efforts, and for other
purposes**

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[Assented to 26 February 1999]

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act may be cited as the *Year 2000 Information Disclosure Act 1999*.

2 Commencement

This Act commences on the day after the day on which it receives the Royal Assent.

3 Simplified outline

The following is a simplified outline of this Act:

- This Act provides a framework to encourage the voluntary disclosure and exchange of information about Year 2000 computer problems and remediation efforts.
- A person may make a Year 2000 disclosure statement for the purposes of this Act at any time after the commencement of this Act and before 1 July 2001.
- A person is protected from civil liability for a Year 2000 disclosure statement unless one of the exceptions set out in this Act applies.
- A Year 2000 disclosure statement does not amend a contract unless the parties otherwise agree.
- Arrangements for the disclosure of Year 2000 information are exempt from section 45 of the *Trade Practices Act 1974* (which deals with anti-competitive conduct).

4 Definitions

In this Act, unless the contrary intention appears:

acquire, in relation to goods or services, has the same meaning as in the *Trade Practices Act 1974*.

arrive at, in relation to an understanding, includes reach or enter into.

civil action means a civil action in a court, and includes a civil proceeding in a court.

consequences includes potential consequences.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

data storage device means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

electronic communication of speech means a communication of speech by means of guided and/or unguided electromagnetic energy (for example, a telephone call or a radio broadcast).

electronic communication of writing means a communication of writing by means of guided and/or unguided electromagnetic energy (for example, a facsimile transmission or electronic mail).

goods has the same meaning as in the *Trade Practices Act 1974*.

implications includes potential implications.

original Year 2000 disclosure statement has the meaning given by section 8.

prescribed self-governing Territory means a self-governing Territory specified in the regulations.

problems includes potential problems.

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republished Year 2000 disclosure statement has the meaning given by section 9.

self-governing Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory; or
- (c) Norfolk Island.

services has the same meaning as in the *Trade Practices Act 1974*.

statement includes:

- (a) a distinct part of a statement; and
- (b) a statement made to the public or a section of the public.

supply has the same meaning as in the *Trade Practices Act 1974*.

Year 2000 disclosure statement has the meaning given by section 7.

Year 2000 processing means the processing (including calculating, comparing, sequencing, displaying or storing), transmitting or receiving of date data (whether or not the date data relates to the year 2000).

5 Crown to be bound

This Act binds the Crown in each of its capacities.

6 External Territories

This Act extends to all the external Territories.

Part 2—Year 2000 disclosure statements

7 Year 2000 disclosure statements

For the purposes of this Act, a *Year 2000 disclosure statement* is:

- (a) an *original Year 2000 disclosure statement* (see section 8);
or
- (b) a *republished Year 2000 disclosure statement* (see section 9).

8 Original Year 2000 disclosure statements

- (1) For the purposes of this Act, an *original Year 2000 disclosure statement* is a statement that:
 - (a) relates solely to any or all of the following:
 - (i) Year 2000 processing;
 - (ii) the detection of problems relating to Year 2000 processing;
 - (iii) the prevention of problems relating to Year 2000 processing;
 - (iv) the remediation of problems relating to Year 2000 processing;
 - (v) the consequences or implications, for the supply of goods or services, of problems relating to Year 2000 processing;
 - (vi) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in subparagraph (v);
 - (vii) the consequences or implications, for the activities or capabilities of a person, of problems relating to Year 2000 processing;
 - (viii) contingency planning, risk management, remediation efforts or other arrangements for dealing with

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- consequences or implications referred to in subparagraph (vii); and
- (b) includes words to the effect that the statement is a Year 2000 disclosure statement for the purposes of this Act; and
 - (c) includes words to the effect that a person may be protected by this Act from liability for the statement in certain circumstances; and
 - (d) is made after the commencement of this section and before 1 July 2001; and
 - (e) identifies the person who authorised the statement; and
 - (f) satisfies one of the following conditions:
 - (i) the statement is made in writing;
 - (ii) the statement is made in a data storage device and is capable of being reproduced in writing from that device (with or without the aid of any other article or device);
 - (iii) the statement is made by way of an electronic communication of writing.
- (2) The subparagraphs of paragraph (1)(a) do not limit each other.
- (3) A statement is taken to comply with paragraphs (1)(b) and (c) if the statement includes the following words:
This statement is a Year 2000 disclosure statement for the purposes of the *Year 2000 Information Disclosure Act 1999*. A person may be protected by that Act from liability for this statement in certain circumstances.

9 Republished Year 2000 disclosure statements

For the purposes of this Act, a **republished Year 2000 disclosure statement** is a statement that:

- (a) consists of the republication, retransmission, reproduction, recital or reading aloud of the whole of an original Year 2000 disclosure statement; and
 - (b) is made after the commencement of this section and before 1 July 2001; and
 - (c) is made:
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- (i) orally; or
- (ii) in writing; or
- (iii) in a data storage device; or
- (iv) by way of an electronic communication of writing; or
- (v) by way of an electronic communication of speech.

Part 3—Protection from civil liability

10 Protection from civil actions

- (1) No civil action lies against a person for or in relation to any matter or thing arising out of, or incidental to, the making of a Year 2000 disclosure statement.
- (2) A Year 2000 disclosure statement is not admissible as evidence against a person in a civil action to which the person is a party.

11 Exceptions

False statements and pre-contractual statements

- (1) The rules in section 10 do not apply to a person (the *first person*) if:
 - (a) the Year 2000 disclosure statement is false or misleading in a material particular and the first person:
 - (i) knew that the statement was false or misleading in a material particular; or
 - (ii) was reckless as to whether the statement was false or misleading in a material particular; or
 - (b) all of the following conditions are satisfied:
 - (i) the Year 2000 disclosure statement was made to another person (otherwise than in the other person's capacity as a member of the public or of a section of the public) in connection with the formation of a contract;
 - (ii) the other person, or a representative of the other person, is a party to the civil action;
 - (iii) the civil action relates to the contract.

Statements made in fulfilment of an obligation

- (2) The rules in section 10 do not apply to a Year 2000 disclosure statement if:
- (a) the Year 2000 disclosure statement was made in fulfilment of an obligation imposed under a contract; or
 - (b) the Year 2000 disclosure statement was made in fulfilment of an obligation imposed under a law of the Commonwealth, a State or a Territory.

Statements made to induce consumers to acquire goods or services

- (3) The rules in section 10 do not apply to a civil action if:
- (a) all of the following conditions are satisfied:
 - (i) the Year 2000 disclosure statement was made for the sole or dominant purpose of inducing persons to acquire goods or services identified in the statement;
 - (ii) any of those persons acquired the goods or services as a consumer;
 - (iii) the consumer concerned, or a representative of the consumer concerned, is a party to the civil action;
 - (iv) the civil action relates to the goods or services acquired by the consumer; or
 - (b) all of the following conditions are satisfied:
 - (i) the Year 2000 disclosure statement was made for the sole or dominant purpose of inducing a particular consumer to acquire goods or services identified in the statement;
 - (ii) the consumer acquired the goods or services;
 - (iii) the consumer, or a representative of the consumer, is a party to the civil action;
 - (iv) the civil action relates to the goods or services acquired by the consumer.

Note: For the definition of *consumer*, see subsections (6), (7) and (8).

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Injunctions, declarations, regulatory or enforcement proceedings, intellectual property rights

- (4) The rules in section 10 do not apply to a civil action to the extent to which:
- (a) the civil action consists of proceedings for a restraining injunction or for declaratory relief; or
 - (b) the civil action consists of proceedings instituted by a person or body under a law of the Commonwealth, a State or a Territory:
 - (i) in the performance of a regulatory or enforcement function conferred on the person or body by such a law; or
 - (ii) in the exercise of a regulatory or enforcement power conferred on the person or body by such a law; or
 - (c) the civil action is an action for infringement of copyright, a trade mark, a design or a patent.

Paragraphs not limited

- (5) The paragraphs of subsections (1), (2), (3) and (4) do not limit each other.

Consumers—goods and non-financial services

- (6) Section 4B of the *Trade Practices Act 1974* applies for the purposes of paragraphs (3)(a) and (b) of this section in a corresponding way to the way in which it applies for the purposes of the *Trade Practices Act 1974*.
- (7) For the purposes of subsection (6), it is to be assumed that a reference in section 4B of the *Trade Practices Act 1974* to services does not include a reference to financial services (within the meaning of that Act).

Consumers—financial services

- (8) Section 12BC of the *Australian Securities and Investments Commission Act 1989* applies for the purposes of paragraphs (3)(a)
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and (b) of this section in a corresponding way to the way in which it applies for the purposes of Division 2 of Part 2 of that Act.

12 Provisions to attract Commonwealth legislative power

- (1) The rules in section 10 do not apply to a person (the *first person*) unless:
 - (a) the first person is:
 - (i) a constitutional corporation; or
 - (ii) the Commonwealth; or
 - (iii) an authority of the Commonwealth; or
 - (b) the Year 2000 disclosure statement is an original Year 2000 disclosure statement that was authorised by:
 - (i) a constitutional corporation; or
 - (ii) the Commonwealth; or
 - (iii) an authority of the Commonwealth; or
 - (c) all of the following conditions are satisfied:
 - (i) the Year 2000 disclosure statement is a republished Year 2000 disclosure statement that relates to an original Year 2000 disclosure statement;
 - (ii) the original Year 2000 disclosure statement was authorised by a constitutional corporation;
 - (iii) the making of the republished Year 2000 disclosure statement has significance for the activities, functions, relationships, reputation or business of the constitutional corporation; or
 - (d) all of the following conditions are satisfied:
 - (i) the Year 2000 disclosure statement is a republished Year 2000 disclosure statement that relates to an original Year 2000 disclosure statement;
 - (ii) the original Year 2000 disclosure statement was authorised by the Commonwealth or an authority of the Commonwealth;
 - (iii) the making of the republished Year 2000 disclosure statement has significance for the activities, functions or

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relationships of the Commonwealth or the authority of the Commonwealth, as the case may be; or

- (e) the Year 2000 disclosure statement was made in a Territory; or
- (f) the Year 2000 disclosure statement was made in the course of, or in relation to, trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
 - (iv) by way of the supply of goods or services to the Commonwealth or an authority of the Commonwealth; or
- (g) the Year 2000 disclosure statement was:
 - (i) sent by post or other like service; or
 - (ii) made by way of an electronic communication of writing; or
 - (iii) by way of an electronic communication of speech; or
- (h) the civil action is an action under a law of the Commonwealth or of a Territory; or
- (i) all of the following conditions are satisfied:
 - (i) a constitutional corporation, the Commonwealth or an authority of the Commonwealth is a party to the civil action;
 - (ii) that party has made a claim in the civil action;
 - (iii) the grounds for that party's claim are based on the Year 2000 disclosure statement.

(2) In this section:

State includes a prescribed self-governing Territory.

Territory does not include a prescribed self-governing Territory.

13 False or misleading statement exception—explanatory statement to be given

- (1) If a civil action is instituted against a person (the *first person*) by another person (the *second person*), the first person is not entitled to plead or otherwise rely on the rule in subsection 10(1) unless:
 - (a) the first person gives the second person a statement (the *explanatory statement*) to the effect that the first person believes that the exception set out in paragraph 11(1)(a) is not applicable; and
 - (b) the explanatory statement sets out the grounds for that belief; and
 - (c) the explanatory statement satisfies one of the following conditions:
 - (i) the explanatory statement is made in writing;
 - (ii) the explanatory statement is made in a data storage device and is capable of being reproduced in writing from that device (with or without the aid of any other article or device);
 - (iii) the explanatory statement is made by way of an electronic communication of writing.
- (2) If the first person gives the second person an explanatory statement as mentioned in subsection (1), the explanatory statement is not admissible in any civil action except for the purposes of determining whether subsection (1) has been complied with.
- (3) The second person may waive compliance with subsection (1).

14 False or misleading statement exception—imputed knowledge*Corporations*

- (1) If, in any proceedings arising out of paragraph 11(1)(a), it is necessary to establish:
 - (a) whether a corporation knew that a Year 2000 disclosure statement was false or misleading in a material particular; or

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- (b) whether a corporation was reckless as to whether a Year 2000 disclosure statement was false or misleading in a material particular;

it is sufficient to show that:

- (c) a director, employee or agent of the corporation engaged in conduct in relation to the Year 2000 disclosure statement; and
 - (d) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
 - (e) the director, employee or agent:
 - (i) knew that the Year 2000 disclosure statement was false or misleading in a material particular; or
 - (ii) was reckless as to whether the Year 2000 disclosure statement was false or misleading in a material particular;
- as the case may be.

Persons other than corporations

- (2) If, in any proceedings arising out of paragraph 11(1)(a), it is necessary to establish:
 - (a) whether a person other than a corporation knew that a Year 2000 disclosure statement was false or misleading in a material particular; or
 - (b) whether a person other than a corporation was reckless as to whether a Year 2000 disclosure statement was false or misleading in a material particular;

it is sufficient to show that:

- (c) an employee or agent of the person engaged in conduct in relation to the Year 2000 disclosure statement; and
- (d) the employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
- (e) the employee or agent:

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- (i) knew that the Year 2000 disclosure statement was false or misleading in a material particular; or
 - (ii) was reckless as to whether the Year 2000 disclosure statement was false or misleading in a material particular;
- as the case may be.

Definition

- (3) A reference in this section to a **director** includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Part 4—Presumption against amendment of contracts

15 Presumption against amendment of contracts

- (1) The making of a Year 2000 disclosure statement is taken not to amend, alter or vary a contract unless:
 - (a) both:
 - (i) the parties to the contract have expressly agreed to the amendment, alteration or variation; and
 - (ii) that agreement satisfies one of the conditions set out in subsection (2); or
 - (b) the contract expressly provides for the amendment, alteration or variation by way of the making of a Year 2000 disclosure statement.
- (2) The conditions referred to in subparagraph (1)(a)(ii) are as follows:
 - (a) the agreement is made in writing;
 - (b) the agreement is embodied in a data storage device and is capable of being reproduced in writing from that device (with or without the aid of any other article or device);
 - (c) the agreement is made by way of one or more electronic communications of writing.

16 Provisions to attract Commonwealth legislative power

- (1) The rule in section 15 does not apply to a contract unless:
 - (a) a party to the contract is:
 - (i) a constitutional corporation; or
 - (ii) the Commonwealth; or
 - (iii) an authority of the Commonwealth; or
 - (b) the contract was made in the course of, or in relation to, trade or commerce:

- (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
 - (iv) by way of the supply of goods or services to the Commonwealth or an authority of the Commonwealth; or
 - (c) the contract was made in a Territory; or
 - (d) the contract was:
 - (i) made by post or other like service; or
 - (ii) made by way of one or more electronic communications of writing.
- (2) In this section:

State includes a prescribed self-governing Territory.

Territory does not include a prescribed self-governing Territory.

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Part 5—Exemption from section 45 of the Trade Practices Act 1974

17 Exemption from section 45 of the *Trade Practices Act 1974*

Contracts, arrangements and understandings

(1) Section 45 of the *Trade Practices Act 1974* does not apply to or in relation to:

- (a) a contract or arrangement made:
 - (i) after the commencement of this section; and
 - (ii) before 1 July 2001; or
- (b) an understanding arrived at:
 - (i) after the commencement of this section; and
 - (ii) before 1 July 2001;

to the extent to which the contract, arrangement or understanding provides for the disclosure and/or exchange of information, by any or all of the parties to the contract, arrangement or understanding, for the sole purpose of facilitating any or all of the following:

- (c) the detection of problems relating to Year 2000 processing;
- (d) the prevention of problems relating to Year 2000 processing;
- (e) the remediation of problems relating to Year 2000 processing;
- (f) awareness of the consequences or implications, for the supply of goods or services, of problems relating to Year 2000 processing;
- (g) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in paragraph (f);
- (h) awareness of the consequences or implications, for the activities or capabilities of a person, of problems relating to Year 2000 processing;

- (i) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in paragraph (h).

Proposed contracts, arrangements and understandings

- (2) Section 45 of the *Trade Practices Act 1974* does not apply to or in relation to:
 - (a) a contract or arrangement proposed to be made:
 - (i) after the commencement of this section; and
 - (ii) before 1 July 2001; or
 - (b) an understanding proposed to be arrived at:
 - (i) after the commencement of this section; and
 - (ii) before 1 July 2001;

to the extent to which the proposed contract, arrangement or understanding would provide for the disclosure and/or exchange of information, by any or all of the parties to the proposed contract, arrangement or understanding, for the sole purpose of facilitating any or all of the following:

- (c) the detection of problems relating to Year 2000 processing;
- (d) the prevention of problems relating to Year 2000 processing;
- (e) the remediation of problems relating to Year 2000 processing;
- (f) awareness of the consequences or implications, for the supply of goods or services, of problems relating to Year 2000 processing;
- (g) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in paragraph (f);
- (h) awareness of the consequences or implications, for the activities or capabilities of a person, of problems relating to Year 2000 processing;
- (i) contingency planning, risk management, remediation efforts or other arrangements for dealing with consequences or implications referred to in paragraph (h).

Part 6—Miscellaneous

18 Concurrent operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

19 This Act does not apply to State banking and State insurance

This Act does not apply with respect to:

- (a) State banking that does not extend beyond the limits of the State concerned; or
- (b) State insurance that does not so extend.

20 Quarterly reports about Year 2000 processing issues relating to Commonwealth agencies

- (1) At least once each quarter, the Minister must cause to be laid before each House of the Parliament a report about the progress of Commonwealth agencies in detecting, preventing and remedying problems relating to Year 2000 processing.
- (2) If the report has already been made available to the public, the Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report was made available to the public.
- (3) In this section:

Commonwealth agency means:

- (a) a Department; or
- (b) an authority or instrumentality of the Commonwealth, except where the functions of the authority or instrumentality are wholly or primarily commercial functions.

quarter means:

- (a) the period of 3 months beginning on the date of commencement of this section; and
- (b) each subsequent period of 3 months, being a period that begins before 1 July 2001.

21 Regulations

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.

*[Minister's second reading speech made in—
House of Representatives on 11 February 1999
Senate on 18 February 1999]*

(6/99)