



Privacy Act 1988

No. 119 of 1988

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AMENDMENTS OF OTHER ACTS

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



Privacy Act 1988

No. 119 of 1988

An Act to make provision to protect the privacy of individuals, and for related purposes

[Assented to 14 December 1988]

WHEREAS Australia is a party to the International Covenant on Civil and Political Rights, the English text of which is set out in Schedule 2 to the *Human Rights and Equal Opportunity Commission Act 1986*:

AND WHEREAS, by that Covenant, Australia has undertaken to adopt such legislative measures as may be necessary to give effect to the right of persons not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence:

AND WHEREAS Australia is a member of the Organisation for Economic Co-operation and Development:

AND WHEREAS the Council of that Organisation has recommended that member countries take into account in their domestic legislation the principles concerning the protection of privacy and individual liberties set forth in Guidelines annexed to the recommendation:

AND WHEREAS Australia has informed that Organisation that it will participate in the recommendation concerning those Guidelines:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Privacy Act 1988*.

Commencement

2. This Act commences on a day to be fixed by Proclamation.

Saving of certain State and Territory laws

3. It is the intention of the Parliament that this Act is not to affect the operation of a law of a State or of a Territory that makes provision with respect to interferences with the privacy of persons and is capable of operating concurrently with this Act.

Act to bind the Crown

4. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

(3) Nothing in this Act shall be taken to have the effect of making the Crown in right of a State, of the Northern Territory or of Norfolk Island an agency for the purposes of this Act.

Interpretation of Information Privacy Principles

5. For the purposes of the interpretation of the Information Privacy Principles, each Information Privacy Principle shall be treated as if it were a section of this Act.

PART II—INTERPRETATION

Interpretation

6. (1) In this Act, unless the contrary intention appears:

“agency” means:

- (a) a Minister;
- (b) a Department;
- (c) a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a Commonwealth enactment, not being:

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- (i) an incorporated company, society or association;
 - (ii) an organisation within the meaning of the *Conciliation and Arbitration Act 1904* or a branch of such an organisation; or
 - (iii) a body corporate constituted under subsection 6 (1) of the *Legal Practitioners Ordinance 1970* of the Australian Capital Territory;
- (d) a body established or appointed by the Governor-General, or by a Minister, otherwise than by or under a Commonwealth enactment;
- (e) a person holding or performing the duties of an office established by or under, or an appointment made under, a Commonwealth enactment, other than a person who, by virtue of holding that office, is the Secretary of a Department;
- (f) a person holding or performing the duties of an appointment, being an appointment made by the Governor-General, or by a Minister, otherwise than under a Commonwealth enactment;
- (g) a federal court and a court of the Australian Capital Territory; and
- (h) the Australian Federal Police;

“Commissioner” means the Privacy Commissioner;

“Commissioner of Police” means the Commissioner of Police appointed under the *Australian Federal Police Act 1979*;

“Commonwealth enactment” means:

- (a) an Act other than:
 - (i) the *Northern Territory (Self-Government) Act 1978*;
 - or
 - (ii) an Act providing for the administration or government of an external Territory;
- (b) an Ordinance of the Australian Capital Territory;
- (c) an instrument (including rules, regulations or by-laws) made under an Act to which paragraph (a) applies or under an Ordinance to which paragraph (b) applies; or
- (d) any other legislation that applies as a law of the Commonwealth (other than legislation in so far as it is applied by an Act referred to in subparagraph (a) (i) or (ii)) or as a law of the Australian Capital Territory, to the extent that it operates as such a law;

“Commonwealth officer” means a person who holds office under, or is employed by, the Commonwealth, and includes:

- (a) a person appointed or employed under the *Public Service Act 1922*;

(b) a person (other than a person referred to in paragraph (a)) permanently or temporarily employed by, or in the service of, an agency;

(c) a member of the Defence Force; and

(d) a member or special member of the Australian Federal Police;

but does not include a person permanently or temporarily employed in the Public Service of the Northern Territory or of Norfolk Island;

“consent” means express consent or implied consent;

“corporation” means a body corporate that:

(a) is a foreign corporation;

(b) is a trading corporation formed within the limits of Australia or is a financial corporation so formed; or

(c) is incorporated in a Territory, other than the Northern Territory;

“Defence Force” includes the Naval Reserve Cadets, the Australian Cadet Corps and the Air Training Corps;

“Department” means a Department within the meaning of the *Public Service Act 1922*, other than:

(a) the Department of the Senate;

(b) the Department of the House of Representatives;

(c) the Department of the Parliamentary Library;

(d) the Department of the Parliamentary Reporting Staff; and

(e) the Joint House Department;

“Federal Court” means the Federal Court of Australia;

“file number complaint” means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant:

(a) because it breached a guideline issued under section 17; or

(b) because it involved an unauthorised requirement or request for disclosure of a tax file number;

“financial corporation” means a financial corporation within the meaning of paragraph 51 (xx) of the Constitution, and includes a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned);

“foreign corporation” means a foreign corporation within the meaning of paragraph 51 (xx) of the Constitution;

“Freedom of Information Act” means the *Freedom of Information Act 1982*;

“generally available publication” means a magazine, book, newspaper or other publication that is or will be generally available to members of the public;

- “individual” means a natural person;
- “individual concerned”, in relation to personal information or a record of personal information, means the individual to whom the information relates;
- “Information Privacy Principle” means any of the Information Privacy Principles set out in section 14;
- “intelligence agency” means:
- (a) the Australian Security Intelligence Organization;
 - (b) the Australian Secret Intelligence Service; or
 - (c) the Office of National Assessments;
- “IPP complaint” means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because it breached an Information Privacy Principle;
- “medical research” includes epidemiological research;
- “Ombudsman” means the Commonwealth Ombudsman;
- “personal information” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- “record” means:
- (a) a document;
 - (b) a database (however kept); or
 - (c) a photograph or other pictorial representation of a person;
- but does not include:
- (d) a generally available publication;
 - (e) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition;
 - (f) Commonwealth records as defined by subsection 3 (1) of the *Archives Act 1983* that are in the open access period for the purposes of that Act;
 - (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;
- “representative complaint” means a complaint under subsection 36 (2);
- “Secretary”, in relation to a Department, has the same meaning as in the *Public Service Act 1922*;
- “solicit”, in relation to personal information, means request a person to provide that information, or a kind of information in which that information is included;
- “State” includes the Northern Territory;
- “tax file number” means a tax file number as defined in Part VA of the *Income Tax Assessment Act 1936*;

“tax file number information” means 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;

“trading corporation” means a trading corporation within the meaning of paragraph 51 (xx) of the Constitution;

“use”, in relation to information, does not include mere disclosure of the information, but does include the inclusion of the information in a publication.

(2) For the purposes of this Act, an act or practice breaches an Information Privacy Principle if, and only if, it is contrary to, or inconsistent with, that Information Privacy Principle.

(3) For the purposes of this Act, an act or practice breaches a guideline issued under section 17 if, and only if, it is contrary to, or inconsistent with, the guideline.

(4) The definition of “individual” in subsection (1) shall not be taken to imply that references to persons do not include persons other than natural persons.

(5) For the purposes of this Act, a person shall not be taken to be an agency merely because the person is the holder of, or performs the duties of:

- (a) a prescribed office;
- (b) an office prescribed by regulations made for the purposes of subparagraph 4 (3) (b) (i) of the *Freedom of Information Act 1982*;
- (c) an office established by or under a Commonwealth enactment for the purposes of an agency;
- (d) a judicial office or of an office of magistrate; or
- (e) an office of member of a tribunal that is established by or under a law of the Commonwealth and that is prescribed for the purposes of this paragraph.

(6) For the purposes of this Act, the Department of Defence shall be taken to include the Defence Force.

(7) Nothing in this Act prevents a complaint being both a file number complaint and an IPP complaint.

Acts and practices of agencies and file number recipients

7. (1) Except so far as the contrary intention appears, a reference in this Act (other than section 8) to an act or to a practice is a reference to:

- (a) an act done, or a practice engaged in, as the case may be, by an agency or a file number recipient other than:
 - (i) an agency specified in Schedule 1 or 2 to the *Freedom of Information Act 1982*;

- (ii) a federal court or a court of the Australian Capital Territory;
 - (iii) a Minister;
 - (iv) the National Crime Authority; or
 - (v) a Royal Commission;
- (b) an act done, or a practice engaged in, as the case may be, by a federal court, a court of the Australian Capital Territory or an agency specified in Schedule 1 to the *Freedom of Information Act 1982*, being an act done, or a practice engaged in, in respect of a matter of an administrative nature;
- (c) an act done, or a practice engaged in, as the case may be, by an agency specified in Part II of Schedule 2 to the *Freedom of Information Act 1982*, other than an act done, or a practice engaged in, in relation to a record in relation to which the agency is exempt from the operation of that Act;
- (d) an act done, or a practice engaged in, as the case may be, by a Minister in relation to the affairs of an agency, not being an act done, or a practice engaged in, in relation to an existing record; or
- (e) an act done, or a practice engaged in, as the case may be, by a Minister in relation to a record that is in the Minister's possession in his or her capacity as a Minister and relates to the affairs of an agency;

but does not include a reference to an act done, or a practice engaged in, in relation to a record that has originated with, or has been received from:

- (f) an intelligence agency;
- (g) the Defence Signals Directorate or the Joint Intelligence Organisation of the Department of Defence; or
- (h) the National Crime Authority.

(2) Except so far as the contrary intention appears, a reference in this Act (other than section 8) to an act or to a practice includes, in the application of this Act otherwise than in respect of the Information Privacy Principles and the performance of the Commissioner's functions under section 27, a reference to an act done, or a practice engaged in, as the case may be, by an agency specified in Schedule 2 to the *Freedom of Information Act 1982* other than:

- (a) an intelligence agency;
- (b) the Defence Signals Directorate or the Joint Intelligence Organisation of the Department of Defence; or
- (c) the National Crime Authority.

(3) Except so far as the contrary intention appears, a reference in this Act to doing an act includes a reference to:

- (a) doing an act in accordance with a practice; or
- (b) refusing or failing to do an act.

(4) For the purposes of paragraphs 27 (1) (b), (c), (d), (e), (g), (k), (m) and (n), of subsection 31 (2) and of Part VI, this section has effect as

if a reference in subsection (1) of this section to an act done, or to a practice engaged in, included a reference to an act that is proposed to be done, or to a practice that is proposed to be engaged in, as the case may be.

Acts and practices of, and disclosure of information to, staff of agency etc.

8. (1) For the purposes of this Act:

- (a) an act done or practice engaged in by, or information disclosed to, a person employed by, or in the service of, an agency or file number recipient in the performance of the duties of the person's employment shall be treated as having been done or engaged in by, or disclosed to, the agency or recipient;
- (b) an act done or practice engaged in by, or information disclosed to, a person on behalf of, or for the purposes of the activities of, an unincorporated body, being a board, council, committee, sub-committee or other body established by or under a Commonwealth enactment for the purpose of assisting, or performing functions in connection with, an agency, shall be treated as having been done or engaged in by, or disclosed to, the agency; and
- (c) an act done or practice engaged in by, or information disclosed to, a member or special member of the Australian Federal Police in the performance of his or her duties as such a member or special member shall be treated as having been done or engaged in by, or disclosed to, the Australian Federal Police.

(2) Where:

- (a) an act done or a practice engaged in by a person, in relation to a record, is to be treated, under subsection (1), as having been done or engaged in by an agency; and
- (b) that agency is not the record-keeper in relation to that record;

that act or practice shall be treated as the act or the practice of the record-keeper in relation to that record.

Collectors

9. (1) An agency that collects personal information shall be treated, for the purposes of this Act, as a collector in relation to that information.

(2) Subject to subsection (3), where personal information is collected by a person:

- (a) in the course of the person's employment by, or in the service of, an agency other than the Australian Federal Police; or
- (b) as a member or special member of the Australian Federal Police in the performance of his or her duties as such a member or special member;

then, for the purposes of this Act:

- (c) if paragraph (a) applies—the agency first referred to in that paragraph; and
 - (d) if paragraph (b) applies—the Australian Federal Police;
- shall be treated as a collector in relation to that information.

(3) Where personal information is collected by a person for the purposes of the activities of, an unincorporated body, being a board, council, committee, sub-committee or other body established by or under a Commonwealth enactment for the purpose of assisting, or performing functions connected with, an agency, that agency shall be treated, for the purposes of this Act, as a collector in relation to that information.

Record-keepers

10. (1) Subject to subsections (4) and (5), an agency that is in possession or control of a record of personal information shall be regarded, for the purposes of this Act, as the record-keeper in relation to that record.

(2) Subject to subsections (3), (4) and (5), where a record of personal information is in the possession or under the control of a person:

- (a) in the course of the person's employment in the service of or by an agency other than the Australian Federal Police; or
- (b) as a member or special member of the Australian Federal Police in the performance of his or her duties as such a member or special member;

then, for the purposes of this Act, the record-keeper in relation to that record shall be taken to be:

- (c) if paragraph (a) applies—the agency first referred to in that paragraph; and
- (d) if paragraph (b) applies—the Australian Federal Police.

(3) Where a record of personal information is in the possession or under the control of a person for the purposes of the activities of, an unincorporated body, being a board, council, committee, sub-committee or other body established by or under a Commonwealth enactment for the purpose of assisting, or performing functions connected with, an agency, that agency shall be regarded, for the purposes of this Act, as the record-keeper in relation to that record.

(4) Where:

- (a) a record of personal information (not being a record relating to the administration of the Australian Archives) is in the custody of the Australian Archives; or
- (b) a record of personal information (not being a record relating to the administration of the Australian War Memorial) is in the custody of the Australian War Memorial;

the agency by or on behalf of which the record was placed in that custody or, if that agency no longer exists, the agency to whose functions the

contents of the record are most closely related, shall be regarded, for the purposes of this Act, as the record-keeper in relation to that record.

(5) Where a record of personal information was placed by or on behalf of an agency in the memorial collection within the meaning of the *Australian War Memorial Act 1980*, that agency or, if that agency no longer exists, the agency to whose functions the contents of the record are most closely related, shall be regarded, for the purposes of this Act, as the record-keeper in relation to that record.

File number recipients

11. (1) 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 this Act, as a file number recipient.

(2) Subject to subsection (3), where a record that contains tax file number information is in the possession or under the control of a person:

- (a) in the course of the person's employment in the service of or by a person or body other than an agency;
- (b) in the course of the person's employment in the service of or by an agency other than the Australian Federal Police; or
- (c) as a member or special member of the Australian Federal Police in the performance of his or her duties as such a member or special member;

then, for the purposes of this Act, the file number recipient in relation to that record shall be taken to be:

- (d) if paragraph (a) applies—the person's employer;
- (e) if paragraph (b) applies—the agency first referred to in that paragraph; and
- (f) if paragraph (c) applies—the Australian Federal Police.

(3) Where a record that contains tax file number information is in the possession or under the control of a person for the purposes of the activities of, an unincorporated body, being a board, council, committee, sub-committee or other body established by or under a Commonwealth enactment for the purpose of assisting, or performing functions connected with, an agency, that agency shall be treated, for the purposes of this Act, as the file number recipient in relation to that record.

Application of Information Privacy Principles to agency in possession

12. For the purposes of this Act, where an agency has possession but not control of a record of personal information, the Information Privacy Principles apply in relation to that agency to the extent only of the obligations or duties to which that agency is subject, otherwise than by virtue of the operation of this Act, because it is in possession of that particular record.

PART III—INFORMATION PRIVACY

Interferences with privacy

13. For the purposes of this Act, an act or practice is an interference with the privacy of an individual if, and only if, the act or practice:

- (a) in the case of an act or practice engaged in by an agency (whether or not the agency is also a file number recipient)—breaches an Information Privacy Principle in relation to personal information that relates to the individual;
- (b) in the case of an act or practice engaged in by a file number recipient (whether or not the file number recipient is also an agency)—breaches a guideline under section 17 in relation to tax file number information that relates to the individual; or
- (c) involves an unauthorised requirement or request for disclosure of the tax file number of the individual.

Information Privacy Principles

14. The Information Privacy Principles are as follows:

INFORMATION PRIVACY PRINCIPLES

Principle 1

Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:

- (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
- (b) the collection of the information is necessary for or directly related to that purpose.

2. Personal information shall not be collected by a collector by unlawful or unfair means.

Principle 2

Solicitation of personal information from individual concerned

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector from the individual concerned;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:

- (c) the purpose for which the information is being collected;

- (d) if the collection of the information is authorised or required by or under law—the fact that the collection of the information is so authorised or required; and
- (e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first-mentioned person, body or agency to pass on that information.

Principle 3

Solicitation of personal information generally

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

- (c) the information collected is relevant to that purpose and is up to date and complete; and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 4

Storage and security of personal information

A record-keeper who has possession or control of a record that contains personal information shall ensure:

- (a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- (b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information contained in the record.

Principle 5

Information relating to records kept by record-keeper

1. A record-keeper who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) whether the record-keeper has possession or control of any records that contain personal information; and

- (b) if the record-keeper has possession or control of a record that contains such information:
 - (i) the nature of that information;
 - (ii) the main purposes for which that information is used; and
 - (iii) the steps that the person should take if the person wishes to obtain access to the record.

2. A record-keeper is not required under clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

3. A record-keeper shall maintain a record setting out:

- (a) the nature of the records of personal information kept by or on behalf of the record-keeper;
- (b) the purpose for which each type of record is kept;
- (c) the classes of individuals about whom records are kept;
- (d) the period for which each type of record is kept;
- (e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
- (f) the steps that should be taken by persons wishing to obtain access to that information.

4. A record-keeper shall:

- (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and
- (b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

Principle 6

Access to records containing personal information

Where a record-keeper has possession or control of a record that contains personal information, the individual concerned shall be entitled to have access to that record, except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

Principle 7

Alteration of records containing personal information

1. A record-keeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:

- (a) is accurate; and

- (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.

2. The obligation imposed on a record-keeper by clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.

3. Where:

- (a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and
- (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth;

the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

Principle 8

Record-keeper to check accuracy etc. of personal information before use

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

Principle 9

Personal information to be used only for relevant purposes

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

Principle 10

Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:

- (a) the individual concerned has consented to use of the information for that other purpose;
- (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;

- (c) use of the information for that other purpose is required or authorised by or under law;
 - (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
 - (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.
2. Where personal 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 record-keeper shall include in the record containing that information a note of that use.

Principle 11

Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:

- (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
- (b) the individual concerned has consented to the disclosure;
- (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
- (d) the disclosure is required or authorised by or under law; or
- (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.

3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle 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.

Application of Information Privacy Principles

15. (1) Information Privacy Principles 1, 2, 3, 10 and 11 apply only in relation to information collected after the commencement of this Act.

(2) Information Privacy Principles 4 to 9, inclusive, apply in relation to information contained in a record in the possession or under the control of

an agency, whether the information was collected before, or is collected after, the commencement of this Act.

Agencies to comply with Information Privacy Principles

16. An agency shall not do an act, or engage in a practice, that breaches an Information Privacy Principle.

Guidelines relating to tax file number information

17. (1) The Commissioner shall, by notice in writing, issue guidelines concerning the collection, storage, use and security of tax file number information.

(2) A guideline issued under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3) Section 48 of the *Acts Interpretation Act 1901* applies to guidelines issued under subsection (1) as if paragraph (1) (b) of section 48 were omitted and the following paragraph substituted:

“(b) shall, subject to this section, take effect:

- (i) on the first day on which the guidelines are no longer liable to be disallowed, or to be deemed to be disallowed, under this section; or
- (ii) if the guidelines make provision for their commencement after the day referred to in subparagraph (i), in accordance with that provision; and”.

(4) Until the first guidelines take effect for the purposes of subsection (1), the interim guidelines set out in Schedule 2 have effect, for the purposes of any provision of this Act other than subsection (1), (2) or (3), as if they were guidelines issued under subsection (1).

File number recipients to comply with guidelines

18. A file number recipient shall not do an act, or engage in a practice, that breaches a guideline issued under section 17.

PART IV—PRIVACY COMMISSIONER

Division 1—Privacy Commissioner

Privacy Commissioner

19. There shall be a Privacy Commissioner, who shall be appointed by the Governor-General.

Terms and conditions of appointment

20. (1) Subject to this section, the Commissioner holds office for such period, not exceeding 7 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment.

(2) A person who has reached 65 years shall not be appointed as the Commissioner, and a person shall not be appointed as the Commissioner for a period extending beyond the day on which the person will reach 65 years.

(3) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

Remuneration of Commissioner

21. (1) The Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the Commissioner shall be paid such remuneration as is prescribed.

(2) The Commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

22. The Minister may grant leave of absence from duty to the Commissioner on such terms and conditions as to remuneration or otherwise as the Minister determines.

Outside employment

23. Except with the approval of the Minister, the Commissioner shall not engage in paid employment outside the duties of the office of Commissioner.

Resignation

24. The Commissioner may resign from the office of Commissioner by delivering to the Governor-General a signed notice of resignation.

Termination of appointment

25. (1) The Governor-General may terminate the appointment of the Commissioner by reason of misbehaviour or physical or mental incapacity.

(2) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (b) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or
- (c) contravenes section 23.

Acting Commissioner

26. The Minister may appoint a person to act as Commissioner:

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of Commissioner;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

Division 2—Functions of Commissioner

Functions of Commissioner in relation to interferences with privacy

27. (1) Subject to this Part, the Commissioner has the following functions:

- (a) to investigate an act or practice of an agency that may breach an Information Privacy Principle and, where the Commissioner considers it appropriate to do so, to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the investigation;
- (b) when requested to do so by a Minister, to examine a proposed enactment that would require or authorise acts or practices of an agency that might, in the absence of the enactment, be interferences with the privacy of individuals;
- (c) to undertake research into, and to monitor developments in, data processing and computer technology (including data-matching and data-linkage) to ensure that any adverse effects of such developments on the privacy of individuals are minimised, and to report to the Minister the results of such research and monitoring;
- (d) to promote an understanding and acceptance of the Information Privacy Principles and of the objects of those Principles;
- (e) to prepare, and to publish in such manner as the Commissioner considers appropriate, guidelines for the avoidance of acts or practices of an agency that may or might be interferences with the privacy of individuals;
- (f) to provide advice (with or without a request) to a Minister or an agency on any matter relevant to the operation of this Act;
- (g) to maintain, and to publish annually, a record (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 Information Privacy Principle 5;
- (h) to conduct audits of records of personal information maintained by agencies for the purpose of ascertaining whether the records are maintained according to the Information Privacy Principles;
- (j) whenever the Commissioner thinks it necessary, to inform the Minister of action that needs to be taken by an agency in order to

achieve compliance by the agency with the Information Privacy Principles;

- (k) on request by a Minister or agency, to examine a proposal for data-matching or data-linkage that may involve an interference with the privacy of individuals;
- (m) for the purpose of promoting the protection of individual privacy, to undertake educational programs on the Commissioner's own behalf or in co-operation with other persons or authorities acting on behalf of the Commissioner;
- (n) to encourage corporations to develop programs for the handling of records of personal information that are consistent with the Guidelines on the Protection of Privacy and Transborder Flows of Personal Data issued by the Organisation for Economic Co-operation and Development;
- (o) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).

Functions of Commissioner in relation to tax file numbers

28. (1) In addition to the functions under section 27, the Commissioner has the following functions in relation to tax file numbers:

- (a) to issue guidelines under section 17;
- (b) to investigate acts or practices of file number recipients that may breach guidelines issued under section 17;
- (c) to investigate acts or practices that may involve unauthorised requests or requirements for the disclosure of tax file numbers;
- (d) to examine the records of the Commissioner of Taxation to ensure that:
 - (i) he or she is not using tax file number information for purposes beyond his or her powers; and
 - (ii) he or she is taking adequate measures to prevent the unlawful disclosure of the tax file number information that he or she holds;
- (e) to conduct audits of records of tax file number information maintained by file number recipients for the purpose of ascertaining whether the records are maintained according to any relevant guidelines issued under section 17;
- (f) to evaluate compliance with guidelines issued under section 17;
- (g) to provide advice (with or without a request) to file number recipients on their obligations under the *Taxation Administration Act 1953* with regard to the confidentiality of tax file number information and on any matter relevant to the operation of this Act;

- (h) to monitor the security and accuracy of tax file number information kept by file number recipients;
- (j) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).

Commissioner to have regard to certain matters

29. In the performance of his or her functions, and the exercise of his or her powers, under this Act, the Commissioner shall:

- (a) have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way;
- (b) take account of:
 - (i) international obligations accepted by Australia, including those concerning the international technology of communications; and
 - (ii) developing general international guidelines relevant to the better protection of individual privacy;
- (c) ensure that his or her recommendations and guidelines are, within the limitations of the powers of the Commonwealth, capable of acceptance, adaptation and extension throughout Australia; and
- (d) ensure that his or her directions and guidelines are consistent with the Information Privacy Principles.

Division 3—Reports by Commissioner

Reports following investigation of act or practice

30. (1) Where the Commissioner has investigated an act or practice without a complaint having been made under section 36, the Commissioner may report to the Minister about the act or practice, and shall do so:

- (a) if so directed by the Minister; or
- (b) if the Commissioner:
 - (i) thinks that the act or practice is an interference with the privacy of an individual; and
 - (ii) has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the investigation or has endeavoured without success to effect such a settlement.

(2) Where the Commissioner reports under subsection (1) about an act done in accordance with a practice, the Commissioner shall also report to the Minister about the practice.

(3) Where, after an investigation under paragraph 27 (1) (a) or 28 (1) (b) or (c) of an act or practice of an agency or file number recipient, the Commissioner is required by virtue of paragraph (1) (b) of this section to report to the Minister about the act or practice, the Commissioner:

- (a) shall set out in the report his or her findings and the reasons for those findings;
- (b) may include in the report any recommendations by the Commissioner for preventing a repetition of the act or a continuation of the practice;
- (c) may include in the report any recommendation by the Commissioner for either or both of the following:
 - (i) the payment of compensation in respect of a person who has suffered loss or damage as a result of the act or practice;
 - (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;
- (d) shall serve a copy of the report on the agency or file number recipient concerned and the Minister (if any) responsible for the agency or recipient; and
- (e) may serve a copy of the report on any person affected by the act or practice.

(4) Where, at the end of 60 days after a copy of a report about an act or practice of an agency or file number recipient was served under subsection (3), the Commissioner:

- (a) still thinks that the act or practice is an interference with the privacy of an individual; and
- (b) is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice;

the Commissioner shall give to the Minister a further report that:

- (c) incorporates the first-mentioned report and any document that the Commissioner has received, in response to the first-mentioned report, from the agency or file number recipient;
- (d) states whether, to the knowledge of the Commissioner, any action has been taken as a result of the findings, and recommendations (if any), set out in the first-mentioned report and, if so, the nature of that action; and
- (e) states why the Commissioner is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice;

and shall serve a copy of the report on the Minister (if any) responsible for the agency or recipient.

(5) The Minister shall cause a copy of a report given to the Minister under subsection (4) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Report following examination of proposed enactment

31. (1) Where the Commissioner has examined a proposed enactment under paragraph 27 (1) (b), subsections (2) and (3) of this section have effect.

(2) If the Commissioner thinks that the proposed enactment would require or authorise acts or practices of an agency that would be interferences with the privacy of individuals, the Commissioner shall:

- (a)** report to the Minister about the proposed enactment; and
- (b)** include in the report any recommendations he or she wishes to make for amendment of the proposed enactment to ensure that it would not require or authorise such acts or practices.

(3) Otherwise, the Commissioner may report to the Minister about the proposed enactment, and shall do so if so directed by the Minister.

Report following monitoring of certain activities

32. Where the Commissioner, in the performance of the function referred to in paragraph 27 (1) (c), (j), (k) or (m) or 28 (1) (e) or (f), has monitored an activity or conducted an audit, the Commissioner may report to the Minister about that activity or audit, and shall do so if so directed by the Minister.

Exclusion of certain matters from reports

33. (1) In setting out findings, opinions and reasons in a report to be given under section 30, 31 or 32, the Commissioner may exclude a matter if the Commissioner considers it desirable to do so having regard to the obligations of the Commissioner under subsections (2) and (3).

(2) In deciding under subsection (1) whether or not to exclude matter from a report, the Commissioner shall have regard to the need to prevent:

- (a)** prejudice to the security, defence or international relations of Australia;
- (b)** prejudice to relations between the Commonwealth Government and the Government of a State or between the Government of a State and the Government of another State;
- (c)** the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State;
- (d)** the disclosure of deliberations or advice of the Federal Executive Council or the Executive Council of a State;
- (e)** the disclosure, or the ascertaining by a person, of the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
- (f)** the endangering of the life or safety of any person;
- (g)** prejudice to the proper enforcement of the law or the protection of public safety;

- (h) the disclosure of information the disclosure of which is prohibited, absolutely or subject to qualifications, by or under another enactment;
- (j) the unreasonable disclosure of the personal affairs of any person; and
- (k) the unreasonable disclosure of confidential commercial information.

(3) The Commissioner shall try to achieve an appropriate balance between meeting the need referred to in subsection (2) and the desirability of ensuring that interested persons are sufficiently informed of the results of the Commissioner's investigation, examination or monitoring.

(4) Where the Commissioner excludes a matter from a report, he or she shall give to the Minister a report setting out the excluded matter and his or her reasons for excluding the matter.

Division 4—Miscellaneous

Provisions relating to documents exempt under the *Freedom of Information Act 1982*

34. (1) The Commissioner shall not, in connection with the performance of the functions referred to in section 27, give to a person information as to the existence or non-existence of a document where information as to the existence or non-existence of that document would, if included in a document of an agency, cause the last-mentioned document to be an exempt document by virtue of section 33 or 33A, or subsection 37 (1), of the *Freedom of Information Act 1982*.

(2) The Commissioner shall not, in connection with the performance of the functions referred to in section 27, give to a person information:

- (a) about the contents of a document of an agency, or the contents of an official document of a Minister, being a document that is an exempt document; or
- (b) about exempt matter contained in a document of an agency or in an official document of a Minister.

(3) An expression used in this section and in the *Freedom of Information Act 1982* has the same meaning in this section as in that Act.

Direction where refusal or failure to amend exempt document

35. (1) Where:

- (a) an application made under subsection 55 (1) of the *Freedom of Information Act 1982* for review of a decision under that Act refusing access to a document has been finally determined or otherwise disposed of;
- (b) the period within which an appeal may be made to the Federal Court has expired or, if such an appeal has been instituted, the appeal has been determined;
- (c) the effect of the review and any appeal is that access is not to be given to the document;

- (d) the applicant has requested the agency concerned to amend the document;
- (e) the applicant has complained to the Commissioner under this Act about the refusal or failure of the agency to amend the document;
- (f) the Commissioner has, as a result of the complaint, recommended under subsection 30 (3) of this Act that the agency amend the document, or amend a part of the document, to which the applicant has been refused access; and
- (g) as at the end of 60 days after a copy of the report containing the recommendation was served on the agency, the Commissioner:
 - (i) still thinks that the agency should amend the document in a particular manner; and
 - (ii) is not satisfied that the agency has amended the document in that manner;

the Commissioner may direct the agency to add to the document an appropriate notation setting out particulars of the amendments of the document that the Commissioner thinks should be made.

(2) An agency shall comply with a direction given in accordance with subsection (1).

(3) In subsection (1), “amend”, in relation to a document, means amend by making a correction, deletion or addition.

(4) An expression used in this section and in the *Freedom of Information Act 1982* has the same meaning in this section as in that Act.

PART V—INVESTIGATIONS

Division 1—Investigation of complaints and investigations on the Commissioner’s initiative

Complaints

36. (1) An individual may complain to the Privacy Commissioner about an act or practice that may be an interference with the privacy of the individual.

(2) In the case of an act or practice that may be an interference with the privacy of 2 or more individuals, any one of those individuals may make a complaint under subsection (1) on behalf of all of the individuals.

(3) A complaint shall be in writing.

(4) It is the duty of members of the staff of the Human Rights and Equal Opportunity Commission to provide appropriate assistance to a person who wishes to make a complaint and requires assistance to formulate the complaint.

(5) The complaint shall specify the respondent to the complaint.

- (6) In the case of a complaint about an act or practice of an agency:
- (a) if the agency is an individual or a body corporate, the agency shall be the respondent; and
 - (b) if the agency is an unincorporated body, the principal executive of the agency shall be the respondent.

(7) In the case of a complaint about an act or practice of a person other than an agency, that person shall be the respondent.

Principal executive of agency

37. For the purposes of this Part, the principal executive of an agency of a kind specified in column 1 of an item in the following table is the person specified in column 2 of the item:

Item	Column 1 Agency	Column 2 Principal executive
1	Department	The Secretary of the Department
2	An unincorporated body, or a tribunal, referred to in paragraph (c) of the definition of "agency" in subsection 6 (1)	The chief executive officer of the body or tribunal
3	A body referred to in paragraph (d) of the definition of "agency" in subsection 6 (1)	The chief executive officer of the body
4	A federal court or a court of the Australian Capital Territory	The registrar or principal registrar of the court or the person occupying an equivalent office
5	The Australian Federal Police	The Commissioner of Police

Matters to be considered in determination of representative complaints

38. (1) The Commissioner shall not deal with a complaint made under subsection 36 (2) unless he or she is satisfied that the complaint was made in good faith on behalf of persons other than the complainant.

(2) In order to be satisfied that a complaint was made in good faith on behalf of persons other than the complainant, the Commissioner must be satisfied:

(a) that:

- (i) the complainant is a member of a class of persons, the members of which class have been affected, or are reasonably likely to have been affected, by the act or practice complained of;
- (ii) the complainant has in fact been affected by that act or practice;
- (iii) the class is so numerous that joinder of all its members is impracticable;

- (iv) there are questions of law or fact common to the claims of all members of the class;
 - (v) the claims of the complainant are typical of the claims of the class;
 - (vi) multiple complaints would be likely to produce varying determinations that could have incompatible or inconsistent results for the individual members of the class; and
 - (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or
- (b) that, although that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

Individual complaints not precluded by representative complaints

39. Nothing in this Part prevents a person from making a complaint under subsection 36 (1) about an act or practice about which a representative complaint has been made.

Investigations

40. (1) The Commissioner shall investigate an act or practice if:
- (a) the act or practice may be an interference with the privacy of an individual; and
 - (b) a complaint about the act or practice has been made under section 36.
- (2) The Commissioner may investigate an act or practice if:
- (a) the act or practice may be an interference with the privacy of an individual; and
 - (b) the Commissioner thinks it is desirable that the act or practice be investigated.

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

41. (1) The Commissioner may decide not to investigate, or not to investigate further, an act or practice about which a complaint has been made under section 36 if the Commissioner is satisfied that:

- (a) the act or practice is not an interference with the privacy of an individual;
- (b) although a complaint has been made to the Commissioner about the act or practice, the complainant has not complained to the respondent;
- (c) the complaint was made more than 12 months after the complainant became aware of the act or practice;

- (d) the complaint is frivolous, vexatious, misconceived or lacking in substance;
- (e) the act or practice is the subject of an application under another Commonwealth enactment and the subject-matter of the complaint has been, or is being, dealt with adequately under that enactment; or
- (f) the act or practice could be made the subject of an application under another Commonwealth enactment for a more appropriate remedy.

(2) The Commissioner may decide not to investigate, or not to investigate further, an act or practice about which a complaint has been made under section 36 if the Commissioner is satisfied that the complainant has complained to the respondent about the act or practice and either:

- (a) the respondent has dealt, or is dealing, adequately with the complaint; or
- (b) the respondent has not yet had an adequate opportunity to deal with the complaint.

(3) The Commissioner may defer the investigation or further investigation of an act or practice about which a complaint has been made under section 36 if:

- (a) an application has been made by the respondent for a determination under section 72 in relation to the act or practice; and
- (b) the Commissioner is satisfied that the interests of persons affected by the act or practice would not be unreasonably prejudiced if the investigation or further investigation were deferred until the application had been disposed of.

(4) Where an act or practice may be an interference with the privacy of an individual solely because it may breach Information Privacy Principle 7, the Commissioner shall not investigate the act or practice except to the extent that it is an interference with the privacy of a person who is, or persons each of whom 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.

Preliminary inquiries

42. Where a complaint has been made to the Commissioner, the Commissioner may, for the purpose of determining:

- (a) whether the Commissioner has power to investigate the matter to which the complaint relates; or
- (b) whether the Commissioner may, in his or her discretion, decide not to investigate the matter;

make inquiries of the respondent.

Conduct of investigations

43. (1) Before commencing an investigation of a matter to which a complaint relates, the Commissioner shall inform the respondent that the matter is to be investigated.

(2) An investigation under this Division shall be conducted in private but otherwise in such manner as the Commissioner thinks fit.

(3) The Commissioner may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as he or she thinks fit.

(4) Subject to subsection (5), it is not necessary for a complainant or respondent to be afforded an opportunity to appear before the Commissioner in connection with an investigation under this Division.

(5) The Commissioner shall not make a finding under section 52 that is adverse to a complainant or respondent unless the Commissioner has afforded the complainant or respondent an opportunity to appear before the Commissioner and to make submissions, orally, in writing or both, in relation to the matter to which the investigation relates.

(6) Where the Commissioner affords an agency or person an opportunity to appear before the Commissioner under subsection (5), the agency or person may, with the approval of the Commissioner, be represented by another person.

(7) Where, in connection with an investigation of a matter under this Division, the Commissioner proposes to afford the complainant or respondent an opportunity to appear before the Commissioner and to make submissions under subsection (5), or proposes to make a requirement of a person under section 44, the Commissioner shall, if he or she has not previously informed the responsible Minister (if any) that the matter is being investigated, inform that Minister accordingly.

(8) The Commissioner may, either before or after the completion of an investigation under this Division, discuss any matter that is relevant to the investigation with a Minister concerned with the matter.

(9) Where the Commissioner forms the opinion, either before or after completing an investigation under this Division, that there is evidence that an officer of an agency has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify the Commissioner doing so, the Commissioner shall bring the evidence to the notice of:

- (a)** an appropriate officer of an agency; or
- (b)** if the Commissioner thinks that there is no officer of an agency to whose notice the evidence may appropriately be drawn—an appropriate Minister.

Power to obtain information and documents

44. (1) If the Commissioner has reason to believe that a person has information or a document relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person:

- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
- (b) to produce the document to the Commissioner.

(2) A notice given by the Commissioner under subsection (1) shall state:

- (a) the place at which the information or document is to be given or produced to the Commissioner; and
- (b) the time at which, or the period within which, the information or document is to be given or produced.

(3) If the Commissioner has reason to believe that a person has information relevant to an investigation under this Division, the Commissioner may give to the person a written notice requiring the person to attend before the Commissioner at a time and place specified in the notice to answer questions relevant to the investigation.

(4) This section is subject to sections 69 and 70 but it has effect regardless of any other enactment.

(5) A person is not liable to a penalty under the provisions of any other enactment because he or she gives information, produces a document or answers a question when required to do so under this Division.

Power to examine witnesses

45. (1) The Commissioner may administer an oath or affirmation to a person required under section 44 to attend before the Commissioner and may examine such a person on oath or affirmation.

(2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

Directions to persons to attend compulsory conference

46. (1) For the purposes of performing the Commissioner's functions in relation to a complaint, the Commissioner may, by written notice, direct:

- (a) the complainant;
- (b) the respondent; and
- (c) any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the matter to which the complaint relates or whose presence at the conference is, in the opinion of the Commissioner, likely to assist in connection with the performance of the Commissioner's functions in relation to the complaint;

to attend, at a time and place specified in the notice, a conference presided over by the Commissioner.

(2) A person who has been directed to attend a conference and, without reasonable excuse:

- (a) fails to attend as required by the direction; or
- (b) fails to attend from day to day unless excused, or released from further attendance, by the Commissioner;

is guilty of an offence punishable on conviction:

- (c) in the case of an individual—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or
- (d) in the case of a body corporate—by a fine not exceeding \$5,000.

(3) A person who has been directed under subsection (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference.

(4) The Commissioner may, in a notice given to a person under subsection (1), require the person to produce such documents at the conference as are specified in the notice.

Conduct of compulsory conference

47. (1) The Commissioner may require a person attending a conference under this Division to produce a document.

(2) A conference under this Division shall be held in private and shall be conducted in such manner as the Commissioner thinks fit.

(3) A body of persons, whether corporate or unincorporate, that is directed under section 46 to attend a conference shall be deemed to attend if a member, officer or employee of that body attends on behalf of that body.

(4) Except with the consent of the Commissioner:

- (a) an individual is not entitled to be represented at the conference by another person; and
- (b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than a member, officer or employee of that body.

Complainant and certain other persons to be informed of various matters

48. Where the Commissioner decides not to investigate, or not to investigate further, a matter to which a complaint relates, the Commissioner shall, as soon as practicable and in such manner as the Commissioner thinks fit, inform the complainant and the respondent of the decision and of the reasons for the decision.

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

49. (1) Where, in the course of an investigation under section 40, the Commissioner forms the opinion that a tax file number offence may have been committed, the Commissioner shall:

- (a) inform the Commissioner of Police or the Director of Public Prosecutions of that opinion;
- (b) in the case of an investigation under subsection 40 (1), give a copy of the complaint to the Commissioner of Police or the Director of Public Prosecutions, as the case may be; and
- (c) subject to subsection (3), discontinue the investigation except to the extent that it concerns matters unconnected with the offence that the Commissioner believes may have been committed.

(2) If, after having been informed of the Commissioner's opinion under paragraph (1) (a), the Commissioner of Police or the Director of Public Prosecutions, as the case may be, decides that the matter will not be, or will no longer be, the subject of proceedings for an offence, he or she shall give a written notice to that effect to the Commissioner.

(3) Upon receiving such a notice the Commissioner may continue the investigation discontinued under paragraph (1) (c).

(4) A reference in subsection (1) to a tax file number offence is a reference to:

- (a) an offence against section 8WA or 8WB of the *Taxation Administration Act 1953*; or
- (b) an offence against section 6, 7 or 7A, or paragraph 86 (1) (a), of the *Crimes Act 1914*, being an offence that relates to an offence referred to in paragraph (a) of this subsection.

Reference of matters to other authorities

50. (1) In this section:

“Human Rights and Equal Opportunity Commission” includes a person performing functions of that Commission;

“Merit Protection Act” means the *Merit Protection (Australian Government Employees) Act 1984*;

“Merit Protection Agency” means the Merit Protection and Review Agency established by the Merit Protection Act;

“Ombudsman” means the Commonwealth Ombudsman.

(2) Where, before the Commissioner commences, or after the Commissioner has commenced, to investigate a matter to which a complaint relates, the Commissioner forms the opinion that:

- (a) a complaint relating to that matter has been, or could have been, made by the complainant:

- (i) to the Human Rights and Equal Opportunity Commission under Division 3 of Part II of the *Human Rights and Equal Opportunity Commission Act 1986*; or
 - (ii) to the Ombudsman under the *Ombudsman Act 1976*; or
- (b) an application with respect to that matter has been, or could have been, made by the complainant to the Merit Protection Agency under section 47 of the Merit Protection Act;

and that that matter could be more conveniently or effectively dealt with by the Human Rights and Equal Opportunity Commission, the Ombudsman, or the Merit Protection Agency, as the case may be, the Commissioner may decide not to investigate the matter, or not to investigate the matter further, as the case may be, and, if the Commissioner so decides, he or she shall:

- (c) transfer the complaint to the Human Rights and Equal Opportunity Commission, the Ombudsman or the Merit Protection Agency;
- (d) give notice in writing to the complainant stating that the complaint has been so transferred; and
- (e) give to the Human Rights and Equal Opportunity Commission, the Ombudsman or the Merit Protection Agency any information or documents that relate to the complaint and are in the possession, or under the control, of the Commissioner.

(3) A complaint transferred under subsection (2) shall be taken to be:

(a) a complaint made:

- (i) to the Human Rights and Equal Opportunity Commission under Division 3 of Part II of the Human Rights and Equal Opportunity Commission Act 1986; or
- (ii) to the Ombudsman under the *Ombudsman Act 1976*; or

(b) an application made to the Merit Protection Agency under section 47 of the Merit Protection Act;

as the case requires.

Effect of investigation by Auditor-General

51. Where the Commissioner becomes aware that a matter being investigated by the Commissioner is, or is related to, a matter that is under investigation by the Auditor-General, the Commissioner shall not, unless the Commissioner and Auditor-General agree to the contrary, continue to investigate the matter until the investigation by the Auditor-General has been completed.

Division 2—Determinations following investigation of complaints

Determination of the Commissioner

52. (1) After investigating a complaint, the Commissioner may:

- (a) make a determination dismissing the complaint; or
- (b) find the complaint substantiated and make a determination that includes one or more of the following:

- (i) a declaration:
 - (A) where the principal executive of an agency is the respondent—that the agency has engaged in conduct constituting an interference with the privacy of an individual and should not repeat or continue such conduct; or
 - (B) in any other case—that the respondent has engaged in conduct constituting an interference with the privacy of an individual and should not repeat or continue such conduct;
- (ii) a declaration that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
- (iii) except where the complaint was dealt with as a representative complaint—a declaration that the complainant is entitled to a specified amount by way of compensation for any loss or damage suffered by reason of the act or practice the subject of the complaint;
- (iv) a declaration that it would be inappropriate for any further action to be taken in the matter.

(2) The Commissioner shall, in a determination, state any findings of fact upon which the determination is based.

(3) In a determination under paragraph (1) (a) or (b) (other than a determination made on a representative complaint), the Commissioner may include a declaration that the complainant is entitled to a specified amount to reimburse the complainant for expenses reasonably incurred by the complainant in connection with the making of the complaint and the investigation of the complaint.

(4) In this section:

“complainant”, in relation to a representative complaint, includes all of the persons on whose behalf the complaint is made.

Service of determination

53. (1) The Commissioner shall cause a copy of a determination to be served on the complainant and on the respondent.

(2) A determination does not become effective for the purposes of Division 3 or 4 until a copy of the determination has been served on the complainant and on the respondent.

Division 3—Review and enforcement of determinations relating to alleged breaches of Information Privacy Principles

Application of Division

54. This Division applies to a determination under section 52 that:

- (a) dismisses an IPP complaint; or

- (b) includes a declaration that the respondent has engaged in conduct that constitutes an interference with the privacy of the complainant because it breaches an Information Privacy Principle.

Obligations of respondent agency

55. Where a determination to which this Division applies is made on a complaint to which an agency is the respondent:

- (a) the agency shall not repeat or continue the conduct the subject of a declaration included in the determination under subparagraph 52 (1) (b) (i); and
- (b) the agency shall, in accordance with the determination, perform the act or course of conduct the subject of a declaration included in the determination under subparagraph 52 (1) (b) (ii).

Obligations of principal executive of agency

56. Where a determination to which this Division applies is made on a complaint to which the principal executive of an agency is the respondent, the respondent shall take all such steps as are reasonably within his or her power to ensure that:

- (a) the terms of the determination are brought to the notice of all members, officers and employees of the agency whose duties are such that they may engage in conduct of the kind to which the determination relates;
- (b) conduct the subject of a declaration included in the determination under subparagraph 52 (1) (b) (i) is not repeated or continued by any member, officer or employee of the agency; and
- (c) any act or course of conduct the subject of a declaration included in the determination under subparagraph 52 (1) (b) (ii) is performed in accordance with the determination.

Compensation and expenses

57. (1) Where a determination to which this Division applies includes a declaration of the kind referred to in subparagraph 52 (1) (b) (iii) or subsection 52 (3), the complainant is entitled to be paid the amount specified in the declaration.

(2) Where the respondent to the determination is an agency that has the capacity to sue and be sued, an amount referred to in subsection (1) is recoverable as a debt due by the agency to the complainant.

(3) In any other case, the amount is recoverable as a debt due by the Commonwealth to the complainant.

Review of determinations

58. (1) Application may be made to the Administrative Appeals Tribunal for review of:

- (a) a declaration of the kind referred to in subparagraph 52 (1) (b) (iii) or subsection 52 (3) that is included in a determination to which this Division applies; or

(b) a decision of the Commissioner refusing to include such a declaration in a determination to which this Division applies.

(2) An agency or the principal executive of an agency may not apply under subsection (1) except with the leave of the Minister.

(3) Subject to subsection 21 (1A) of the *Administrative Appeals Tribunal Act 1975*, for the purpose of the exercise of its powers in relation to an application under subsection (1) of this section, the Tribunal shall be constituted by a presidential member who is a Judge and 2 other members who are not Judges.

(4) An expression used in subsection (3) that is also used in the *Administrative Appeals Tribunal Act 1975* has the same meaning as in that Act.

Enforcement of determination against agency

59. (1) Where an agency fails to comply with section 55, the person on whose complaint the determination was made or the Commissioner may apply to the Federal Court for an order directing the agency to comply with that section.

(2) Where the principal executive of an agency fails to comply with section 56, the person on whose complaint the determination was made or the Commissioner may apply to the Federal Court for an order directing the principal executive to comply with that section.

(3) On an application under this section, the Federal Court may make such other orders as it thinks fit with a view to securing compliance by the respondent with section 55 or 56, as the case may be.

(4) An application may not be made under this section until:

(a) the time within which an application may be made under section 58 in respect of the relevant determination has expired; or

(b) if such an application is made, the decision of the Administrative Appeals Tribunal on the application has come into operation.

Division 4—Enforcement of determinations relating to tax file numbers

Application of Division

60. This Division applies to a determination under section 52 that includes a declaration that an agency or the respondent has engaged in conduct that constitutes an interference with the privacy of the complainant because:

(a) it breaches a guideline issued under section 17; or

(b) it involves an unauthorised requirement or request for disclosure of a tax file number.

Compensation and expenses

61. Where a determination to which this Division applies includes a declaration of a kind referred to in subparagraph 52 (1) (b) (iii) or subsection 52 (3), the declaration has effect as a declaration that the complainant is entitled to receive the specified amount:

- (a) if the respondent is an agency that does not have the capacity to sue or be sued or is the principal executive of an agency—from the Commonwealth; and
- (b) in any other case—from the respondent.

Proceedings in Federal Court

62. (1) The Commissioner or complainant may institute a proceeding in the Federal Court for an order to enforce a determination to which this Division applies.

(2) If the Federal Court is satisfied that the respondent or, where the principal executive of an agency is the respondent, the agency has engaged in conduct or committed an act constituting an interference with the privacy of an individual, the court may make such orders (including a declaration of right) as the court thinks fit.

(3) Orders made by the Federal Court under subsection (2) may give effect to a determination of the Commissioner.

Legal assistance

63. (1) Where:

- (a) the Commissioner has dismissed a file number complaint; and
- (b) the respondent is not an agency or the principal executive of an agency;

the respondent may apply to the Attorney-General for assistance under this section.

(2) If the Attorney-General is satisfied that in all the circumstances it is reasonable to grant an application made under this section, he or she may authorise the provision by the Commonwealth to the applicant of such financial assistance in connection with the investigation of the complaint as the Attorney-General determines.

(3) An authorisation under subsection (2) may be made subject to such conditions (if any) as the Attorney-General determines.

(4) In considering an application made under this section, the Attorney-General shall have regard to any hardship to the applicant that refusal of the application would involve.

Division 5—Miscellaneous

Commissioner not to be sued

64. Neither the Commissioner nor a person acting under his or her direction or authority is liable to an action, suit or proceeding in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred by this Act.

Failure to attend etc. before Commissioner

65. (1) A person shall not, without reasonable excuse:

- (a) refuse or fail to attend before the Commissioner; or
- (b) refuse or fail to be sworn or make an affirmation;

when so required under this Act.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(2) A person shall not, without reasonable excuse, wilfully obstruct, hinder or resist the Commissioner in the performance of his or her functions under this Act.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(3) A person shall not furnish information or make a statement to the Commissioner knowing that it is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Failure to give information etc.

66. (1) A person shall not refuse or fail, without reasonable excuse:

- (a) to give information; or
- (b) to answer a question or produce a document or record;

when so required under this Act.

Penalty:

- (a) in the case of an individual—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

(2) For the purposes of subsections (3) to (11) (inclusive):

“document” includes a record;

“information” includes an answer to a question.

(3) Subject to subsections (4), (7) and (10), it is a reasonable excuse for the purposes of subsection (1) for an individual:

- (a) to refuse or fail to give information when so required under this Act; or
- (b) to refuse or fail to produce a document when so required under this Act;

that giving the information, or producing the document, as the case may be, might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(4) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the individual a written undertaking under subsection (5).

(5) An undertaking by the Director of Public Prosecutions shall:

(a) be an undertaking that:

- (i) information given, or a document produced, by the individual; or**
- (ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;**

will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

- (b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and**
- (c) state the general nature of those reasons.**

(6) The Commissioner may recommend to the Director of Public Prosecutions that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (5).

(7) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the individual a written undertaking under subsection (8).

(8) An undertaking by the Attorney-General of the State, or authorised person, shall:

(a) be an undertaking that:

- (i) information given, or a document produced, by the individual; or**
- (ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;**

will not be used in evidence in any proceedings for an offence against a law of the State, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;

- (b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and**
- (c) state the general nature of those reasons.**

(9) The Commissioner may recommend to the Attorney-General of a State that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (8).

(10) For the purposes of subsection (1):

- (a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and
- (b) it is not a reasonable excuse for an individual to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the individual in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.

(11) Subsections (4), (7) and (10) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate an individual or make an individual liable to forfeiture or a penalty, have been commenced against the individual and have not been finally dealt with by a court or otherwise disposed of.

Protection from civil actions

67. Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

- (a) the making of a complaint under this Act;
- (b) the making of a statement to, or the giving of a document or information to, the Commissioner, whether or not pursuant to a requirement under section 44.

Power to enter premises

68. (1) Subject to subsection (3), for the purposes of the performance by the Commissioner of his or her functions under this Act, a person authorised by the Commissioner for the purposes of this section may, at any reasonable time of the day, enter premises occupied by an agency or a file number recipient and inspect any documents that are kept at those premises and that are relevant to the performance of those functions, other than documents in respect of which the Attorney-General has furnished a certificate under subsection 70 (1) or (2).

(2) The occupier or person in charge of the premises shall provide the authorised person with all reasonable facilities and assistance for the effective exercise of the authorised person's powers under subsection (1).

(3) A person shall not enter under subsection (1) premises other than premises that are occupied by an agency unless:

- (a) the occupier of the premises has consented to the person entering the premises; or
- (b) the person is authorised, pursuant to a warrant issued under subsection (4), to enter the premises.

(4) If, on an application made by a person authorised by the Commissioner under subsection (1), a Magistrate is satisfied, by information on oath, that it is reasonably necessary, for the purposes of the performance by the Commissioner of his or her functions under this Act, that the person be empowered to enter the premises, the Magistrate may issue a warrant authorising the person, with such assistance as the person thinks necessary, to enter the premises, if necessary by force, for the purpose of exercising those powers.

(5) A warrant issued under subsection (4) shall state:

- (a) whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (b) a day, not being later than one month after the day on which the warrant was issued, at the end of which the warrant ceases to have effect.

(6) Nothing in subsection (1) restricts the operation of any other provision of this Part.

Restrictions on Commissioner obtaining personal information and documents

69. (1) Information relating to an individual shall not be furnished, in connection with a complaint, in such a manner as to reveal the individual's identity, unless the individual has made the complaint or has consented to the information being so furnished.

(2) A document that contains information relating to an individual and that reveals the individual's identity shall not be produced, in connection with a complaint, unless:

- (a) the person has made the complaint or has consented to the document being so produced; or
- (b) the document is a copy of another document and has had deleted from it such information as reveals the identity of the person.

(3) A person shall not furnish, in connection with a complaint, prescribed information that relates to an individual other than the complainant and does not also relate to the complainant.

(4) A person shall not furnish, in connection with a complaint, prescribed information that relates both to the complainant and to another individual, unless the information is so furnished in such a manner as not to reveal the identity of the other person.

(5) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates to an individual other than the complainant and does not also relate to the complainant, unless the document is a copy of another prescribed document and has had that information deleted from it.

(6) A person shall not produce, in connection with a complaint, a prescribed document containing information that relates both to the complainant and to another individual, unless the document is a copy of another prescribed document and has had deleted from it such information as reveals the identity of the other individual.

(7) This section has effect notwithstanding any other provision of this Part.

(8) A reference in this section to furnishing information, or to producing a document, in connection with a complaint is a reference to furnishing the information, or to producing the document, as the case may be, to the Commissioner in connection with the performance or exercise by the Commissioner, in relation to that complaint, of the Commissioner's functions or powers.

(9) In this section:

“complaint” means a complaint under section 36;

“document” includes any other record;

“prescribed document” means a document that was furnished or obtained under or for the purposes of a relevant law or a copy of such a document;

“prescribed information” means information that the person furnishing the information acquired by reason of holding or having held an office, or being or having been employed, under or for the purposes of a relevant law;

“relevant law” means a taxation law or a law of the Commonwealth relating to census and statistics;

“taxation law” means:

- (a) an Act of which the Commissioner of Taxation has the general administration (other than an Act prescribed for the purposes of paragraph (b) of the definition of “taxation law” in section 2 of the *Taxation Administration Act 1953*); or
- (b) regulations under an Act referred to in paragraph (a) of this definition.

Certain documents and information not required to be disclosed

70. (1) Where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information concerning a specified matter (including the giving of information in answer to a question), or the production to the Commissioner of a specified

document or other record, would be contrary to the public interest because it would:

- (a) prejudice the security, defence or international relations of Australia;
- (b) involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State;
- (c) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
- (d) involve the disclosure of deliberations or advice of the Executive Council;
- (e) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person;
- (f) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
- (g) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
- (h) endanger the life or physical safety of any person;

the Commissioner is not entitled to require a person to give any information concerning the matter or to produce the document or other record.

(2) Without limiting the operation of subsection (1), where the Attorney-General furnishes to the Commissioner a certificate certifying that the giving to the Commissioner of information as to the existence or non-existence of information concerning a specified matter (including the giving of information in answer to a question) or as to the existence or non-existence of any document or other record required to be produced to the Commissioner would be contrary to the public interest:

- (a) by reason that it would prejudice the security, defence or international relations of Australia; or
- (b) by reason that it would prejudice the proper performance of the functions of the National Crime Authority;

the Commissioner is not entitled, pursuant to this Act, to require a person to give any information as to the existence or non-existence of information concerning that matter or as to the existence of that document or other record.

PART VI—PUBLIC INTEREST DETERMINATIONS ABOUT CERTAIN ACTS AND PRACTICES

Interpretation

71. For the purposes of this Part, a person is interested in an application made under section 73 if, and only if, the Commissioner is of the opinion that the person has a real and substantial interest in the application.

Power to make, and effect of, determinations

72. Subject to this Part, where the Commissioner is satisfied that:

- (a) an act or practice of an agency breaches, or may breach, an Information Privacy Principle; and
- (b) the public interest in the agency doing the act, or engaging in the practice, outweighs to a substantial degree the public interest in adhering to that Information Privacy Principle;

the Commissioner may make a written determination to that effect and, if the Commissioner does so, the fact that the act or practice breaches that Information Privacy Principle shall:

- (c) if the agency does the act while the determination is in force; or
- (d) in so far as the agency engages in the practice while the determination is in force;

as the case may be, be disregarded for the purpose of section 16.

Application by agency

73. (1) An agency may apply in accordance with the regulations for a determination under section 72 about an act or practice.

(2) The National Health and Medical Research Council may make an application under subsection (1) on behalf of other agencies concerned with medical research or the provision of health care.

(3) Where an application is made by virtue of subsection (2), a reference in the succeeding provisions of this Part to the agency is a reference to the National Health and Medical Research Council.

(4) Where the Commissioner makes a determination under section 72 on an application made by virtue of subsection (2), that section has effect, in relation to each of the agencies on whose behalf the application was made as if the determination had been made on an application by that agency.

Publication of application

74. (1) Subject to subsection (2), the Commissioner shall publish, in such manner as he or she thinks fit, notice of the receipt by the Commissioner of an application.

(2) The Commissioner shall not, except with the consent of the agency, permit the disclosure to another body or person of information contained in a document provided by an agency as part of, or in support of, an application if the agency has informed the Commissioner in writing that the agency claims that the document is an exempt document within the meaning of Part IV of the *Freedom of Information Act 1982*.

Draft determination

75. (1) The Commissioner shall prepare a draft of his or her proposed determination in relation to the application.

(2) The Commissioner shall send to the agency, and to each person (if any) other than the agency who is interested in the application, a written invitation to notify the Commissioner, within the period specified in the invitation, whether or not the agency or other person wishes the Commissioner to hold a conference about the draft determination.

(3) An invitation under subsection (2) shall specify a period that begins on the day on which the invitation is sent and is not shorter than the prescribed period.

Conference

76. (1) If an agency or person notifies the Commissioner, within the period specified in an invitation sent to the agency or person, that the agency or person wishes a conference to be held about the draft determination, the Commissioner shall hold such a conference.

(2) The Commissioner shall fix a day, time and place for the holding of the conference.

(3) The day fixed shall not be more than 30 days after the latest day on which a period specified in any of the invitations sent in relation to the draft determination expires.

(4) The Commissioner shall give notice of the day, time and place of the conference to the agency and to each person to whom an invitation was sent.

Conduct of conference

77. (1) At the conference, the agency is entitled to be represented by a person who is, or persons each of whom is, an officer or employee of the agency.

(2) At the conference, a person to whom an invitation was sent, or any other person who is interested in the application and whose presence at the conference is considered by the Commissioner to be appropriate, is entitled to attend and participate personally or, in the case of a body corporate, to be represented by a person who is, or persons each of whom is, a director, officer or employee of the body corporate.

- (3) The Commissioner may exclude from the conference a person who;
- (a) is entitled neither to participate in the conference nor to represent a person who is entitled to be represented at the conference;
 - (b) uses insulting language at the conference;
 - (c) creates, or takes part in creating or continuing, a disturbance at the conference; or
 - (d) repeatedly disturbs the conference.

Determination of application

78. The Commissioner shall, after complying with this Part in relation to the application, make:

- (a) such determination under section 72 as he or she considers appropriate; or
- (b) a written determination dismissing the application.

Making of determination

79. (1) The Commissioner shall, in making a determination, take account of all matters raised at the conference.

(2) The Commissioner shall, in making a determination, take account of all submissions about the application that have been made, whether at a conference or not, by the agency or any person.

(3) The Commissioner shall include in a determination a statement of the reasons for the determination.

Determinations disallowable

80. (1) A determination referred to in paragraph 78 (a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(2) Section 48 of the *Acts Interpretation Act 1901* applies to a determination referred to in paragraph 78 (a) as if paragraph (1) (b) of section 48 were omitted and the following paragraph substituted:

- “(b) subject to this section, shall take effect on the first day on which the determination is no longer liable to be disallowed, or to be deemed to be disallowed, under this section; and”.

PART VII—PRIVACY ADVISORY COMMITTEE

Interpretation

81. In this Part, unless the contrary intention appears:

“Advisory Committee” means the Privacy Advisory Committee established by subsection 82 (1);

“member” means a member of the Advisory Committee.

Establishment and membership

82. (1) A Privacy Advisory Committee is established.

(2) The Advisory Committee shall consist of:

- (a) the Commissioner; and
- (b) not more than 6 other members.

(3) A member other than the Commissioner:

- (a) shall be appointed by the Governor-General; and
- (b) shall be appointed as a part-time member.

(4) An appointed member holds office, subject to this Act, for such period, not exceeding 5 years, as is specified in the instrument of the member's appointment, but is eligible for re-appointment.

(5) The Commissioner shall be convenor of the Committee.

(6) The Governor-General shall so exercise the power of appointment conferred by subsection (3) that a majority of the appointed members are persons who are neither officers nor employees, nor members of the staff of an authority or instrumentality, of the Commonwealth.

(7) Of the appointed members:

- (a) at least one shall be a person who has had at least 5 years' experience at a high level in industry, commerce, public administration or the service of a government or an authority of a government;
- (b) at least one shall be a person who has had at least 5 years' experience in the trade union movement;
- (c) at least one shall be a person who has had extensive experience in electronic data-processing;
- (d) at least one shall be appointed to represent general community interests, including interests relating to social welfare; and
- (e) at least one shall be a person who has had extensive experience in the promotion of civil liberties.

(8) A person who has reached 65 years shall not be appointed as a member.

(9) A person shall not be appointed as a member for a period that extends beyond the time at which the person will reach 65 years.

(10) An appointed member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined, in writing, by the Governor-General.

(11) The performance of a function of the Advisory Committee is not affected because of a vacancy or vacancies in the membership of the Advisory Committee.

Functions

83. The functions of the Advisory Committee are:

- (a) on its own initiative, or when requested by the Commission, to advise the Commissioner on matters relevant to his or her functions;
- (b) to recommend material to the Commissioner for inclusion in guidelines to be issued by the Commissioner pursuant to his or her functions; and
- (c) subject to any direction given by the Commissioner, to engage in and promote community education, and community consultation, in relation to the protection of individual privacy.

Leave of absence

84. The convenor may, on such terms and conditions as the convenor thinks fit, grant to another member leave to be absent from a meeting of the Advisory Committee.

Removal and resignation of members

85. (1) The Governor-General may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(2) The Governor-General shall terminate the appointment of an appointed member if the member:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit;
- (b) fails, without reasonable excuse, to comply with the member's obligations under section 86; or
- (c) is absent, without the leave of the convenor, from 3 consecutive meetings of the Advisory Committee.

(3) An appointed member may resign from office by delivering a signed notice of resignation to the Governor-General.

Disclosure of interests of members

86. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Advisory Committee, being an interest that could conflict with the proper performance of that member's functions in relation to the consideration of the matter, shall, as soon as practicable after the relevant facts have come to the knowledge of that member, disclose the nature of that interest at a meeting of the Advisory Committee.

(2) A disclosure under subsection (1) at a meeting of the Advisory Committee shall be recorded in the minutes of the meeting.

Meetings of Advisory Committee

87. (1) The convenor may convene such meetings of the Advisory Committee as the convenor considers necessary for the performance of the Committee's functions.

(2) Meetings of the Advisory Committee shall be held at such places and at such times as the convenor determines.

(3) The convenor shall preside at all meetings of the Advisory Committee at which the convenor is present.

(4) If, at a meeting of the Advisory Committee, the convenor is not present, the members who are present shall elect one of their number to preside at the meeting.

- (5) At a meeting of the Advisory Committee:
 - (a) 3 members constitute a quorum;
 - (b) all questions shall be decided by a majority of votes of the members present and voting; and
 - (c) the person presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (6) The Advisory Committee shall keep a record of its proceedings.

Travel allowance

88. An appointed member is entitled to be paid travelling allowance in accordance with the regulations.

PART VIII—OBLIGATIONS OF CONFIDENCE

Obligations of confidence to which Part applies

89. Unless the contrary intention appears, a reference in this Part to an obligation of confidence is a reference to an obligation of confidence:

- (a) to which an agency or a Commonwealth officer is subject, however the obligation arose; or
- (b) that arises under or by virtue of the law in force in the Australian Capital Territory.

Application of Part

90. (1) This Part applies where a person (in this Part called a “confidant”) is subject to an obligation of confidence to another person (in this Part called a “confider”) in respect of personal information, whether the information relates to the confider or to a third person, being an obligation in respect of a breach of which relief may be obtained (whether in the exercise of a discretion or not) in legal proceedings.

(2) This Part does not apply where a criminal penalty only may be imposed in respect of the breach.

Effect of Part on other laws

91. This Part does not, except to the extent that it does so expressly or by necessary implication, limit or restrict the operation of any other law or of any principle or rule of the common law or of equity, being a law, principle or rule:

- (a) under or by virtue of which an obligation of confidence exists; or
- (b) that has the effect of restricting or prohibiting, or imposing a liability (including a criminal liability) on a person in respect of, a disclosure or use of information.

Extension of certain obligations of confidence

92. Where a person has acquired personal information about another person and the first-mentioned person knows or ought reasonably to know that the person from whom he or she acquired the information was subject

to an obligation of confidence with respect to the information, the first-mentioned person, whether he or she is in the Australian Capital Territory or not, is subject to a like obligation.

Relief for breach etc. of certain obligations of confidence

93. (1) A confider may recover damages from a confidant in respect of a breach of an obligation of confidence with respect to personal information.

(2) Subsection (1) does not limit or restrict any other right that the confider has to relief in respect of the breach.

(3) Where an obligation of confidence exists with respect to personal information about a person other than the confider, whether the obligation arose under a contract or otherwise, the person to whom the information relates has the same rights against the confidant in respect of a breach or threatened breach of the obligation as the confider has.

Jurisdiction of courts

94. (1) The jurisdiction of the courts of the Australian Capital Territory extends to matters arising under this Part.

(2) Subsection (1) does not deprive a court of a State or of another Territory of any jurisdiction that it has.

PART IX—MISCELLANEOUS

Medical research guidelines

95. (1) The National Health and Medical Research Council may, with the approval of the Commissioner, issue guidelines for the protection of privacy in the conduct of medical research.

(2) The Commissioner shall not approve the issue of guidelines unless he or she is satisfied that the public interest in the promotion of research of the kind to which the guidelines relate outweighs to a substantial degree the public interest in maintaining adherence to the Information Privacy Principles.

(3) Guidelines shall be issued by being published in the *Gazette*.

(4) Where:

(a) but for this subsection, an act done by an agency would breach an Information Privacy Principle; and

(b) the act is done in the course of medical research and in accordance with guidelines under subsection (1);

the act shall be regarded as not breaching that Information Privacy Principle.

(5) Where the Commissioner refuses to approve the issue of guidelines under subsection (1), an application may be made to the Administrative Appeals Tribunal for review of the Commissioner's decision.

Non-disclosure of private information

96. (1) A person who is, or has at any time been, the Commissioner or a member of the staff referred to in section 43 of the *Human Rights and Equal Opportunity Commission Act 1986* or is acting, or has at any time acted, on behalf of the Commissioner shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the course of acting on behalf of the Commissioner:

- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person because of that person's office or employment under or for the purposes of this Act or because of that person acting, or having acted, on behalf of the Commissioner;
- (b) make use of any such information; or
- (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) A person who is, or has at any time been, the Commissioner, or a member of the staff referred to in section 43 of the *Human Rights and Equal Opportunity Commission Act 1986* or is acting, or has at any time acted, on behalf of the Commissioner shall not be required:

- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person because of that person's office or employment under or for the purposes of this Act or because of that person acting, or having acted, on behalf of the Commissioner; or
- (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, because of that person's office or employment under or for the purposes of this Act or because of that person acting, or having acted, on behalf of the Commissioner;

except where it is necessary to do so for the purposes of this Act.

(3) Nothing in this section prohibits a person from:

- (a) making a record of information that is, or is included in a class of information that is, required or permitted by an Act to be recorded, if the record is made for the purposes of or pursuant to that Act; or
- (b) divulging or communicating information, or producing a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by an Act to be divulged, communicated or produced, as the case may be, if the information is divulged or communicated, or the document is produced, for the purposes of or under that Act.

(4) Nothing in subsection (2) prevents a person being required, for the purposes of or under an Act, to divulge or communicate information, or to

produce a document, that is, or is included in a class of information that is, or class of documents that are, required or permitted by that Act to be divulged, communicated or produced.

(5) In this section:

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

Annual report

97. (1) The Commissioner shall, as soon as practicable after 30 June in each year, give to the Minister a report of the operation of this Act during that year.

(2) Without limiting the generality of subsection (1), the report shall include a statement of the performance of the Commissioner’s functions under paragraphs 27 (1) (n) and 28 (1) (a) and (f).

(3) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

Injunctions

98. (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted or would constitute a contravention of this Act, the Federal Court may, on the application of the Commissioner or any other person, grant an injunction restraining the person from engaging in the conduct and, if in the court’s opinion it is desirable to do so, requiring the person to do any act or thing.

(2) Where:

(a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and

(b) the refusal or failure was, is, or would be a contravention of this Act;

the Federal Court may, on the application of the Commissioner or any other person, grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the court for an injunction under this section, the court may, if in the court’s opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

(4) The court may discharge or vary an injunction granted under this section.

(5) The power of the court to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:

- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) The power of the court to grant an injunction requiring a person to do a particular act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) Where the Commissioner makes an application to the court for the grant of an injunction under this section, the court shall not require the Commissioner or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.
- (8) The powers conferred on the court under this section are in addition to, and not in derogation of, any powers of the court, whether conferred by this Act or otherwise.

Delegation

99. The Commissioner may delegate to a member of the staff of the Human Rights and Equal Opportunity Commission all or any of the powers conferred on the Commissioner by this Act, other than a power conferred by section 52 or a power in connection with the performance of the function of the Commissioner set out in paragraph 28 (1) (a).

Regulations

100. The Governor-General may make regulations, not inconsistent with this Act, 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.

PART X—AMENDMENTS OF OTHER ACTS

Amendments of other Acts

101. (1) The Acts specified in Schedule 1 are amended as set out in Schedule 1.

(2) Section 27A of the *Freedom of Information Act 1982* as amended by this Act applies in relation to:

- (a)** a request that is received after the commencement of this Act; and
 - (b)** a request that was received before that commencement if a decision to grant access under the *Freedom of Information Act 1982* to the document to which the request related had not been made before that commencement by the officer or Minister dealing with the request or a person reviewing, under section 54 of that Act, a decision refusing to grant that access.
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SCHEDULE 1

Section 101

AMENDMENTS OF OTHER ACTS

Freedom of Information Act 1982

Subsection 19 (4):

Omit "or 27", substitute ", 27 or 27A".

After section 27:

Insert the following section:

Procedure on request in respect of document relating to personal affairs

"27A. (1) Where:

- (a) a request has been received by an agency or Minister in respect of a document containing information relating to the personal affairs of a person (including a deceased person); and
- (b) it appears to the officer or Minister dealing with the request, or to a person reviewing under section 54 a decision refusing the request, that the person referred to in paragraph (a), or, if that person is deceased, the legal personal representative of that person, might reasonably wish to contend that the document, so far as it contains that information, is an exempt document under section 41;

a decision to grant access under this Act to the document, so far as it contains that information, shall not be made unless, where it is reasonably practicable to do so having regard to all the circumstances, including the application of section 19:

- (c) the agency or Minister has given to that person or to the legal personal representative of that person, as the case may be, a reasonable opportunity of making submissions in support of a contention that the document, so far as it contains that information, is an exempt document under section 41; and
- (d) the person making the decision has had regard to any submissions so made.

"(2) Where, after any submissions have been made in accordance with subsection (1), a decision is made that the document, so far as it contains the information referred to in paragraph (1) (a), is not an exempt document under section 41:

- (a) the agency or Minister shall cause notice in writing of the decision to be given to the person who made the submissions, as well as to the person who made the request; and
- (b) access shall not be given to the document, so far as it contains the information referred to in paragraph (1) (a), unless:

SCHEDULE 1—continued

- (i) the time for an application to the Tribunal in accordance with section 59A by the person who made the submissions has expired and such an application has not been made; or
- (ii) such an application has been made and the Tribunal has confirmed the decision.”.

Section 38:

Add at the end the following subsection:

“(2) Where a person requests access to a document, this section does not apply in relation to the document so far as it contains information relating to the person’s personal affairs.”.

Section 48:

- (a) Omit “section”, substitute “Part”.
- (b) Omit “provided to the claimant under this Act”, substitute “lawfully provided to the claimant, whether under this Act or otherwise,”.

After section 59:

Insert the following section:

Review of certain decisions in respect of documents relating to personal affairs

“59A. (1) Where notice of a decision that a document, so far as it contains certain information, is not an exempt document under section 41 has been given, in accordance with subsection 27A (2), to a person who made submissions in accordance with that section, that person may apply to the Tribunal for a review of that decision.

“(2) Where an application is made in accordance with subsection (1):

- (a) the provisions of this Part (other than sections 55 and 61) apply in like manner as they apply in relation to an application for review of a decision refusing to grant access to a document; and
- (b) the agency or Minister concerned shall forthwith inform the person who made the request of the application.

“(3) Where:

- (a) upon a request referred to in subsection 27A (1), a decision is made, after the making of submissions by a person in accordance with that subsection, not to grant access to the document to which the request relates, so far as it contains the information referred to in paragraph 27A (1) (a); and
- (b) an application is made to the Tribunal for a review of the decision; the agency or Minister concerned shall forthwith inform the person who made the submissions of the application.”.

SCHEDULE 1—continued

Human Rights and Equal Opportunity Commission Act 1986

Subsection 3 (1):

Insert the following definition:

“‘Privacy Commissioner’ means the Privacy Commissioner appointed under the *Privacy Act 1988*;”.

Paragraph 8 (1) (c):

Omit “and”.

Paragraph 8 (1) (d):

Omit the paragraph, substitute the following paragraphs:

“(d) the Sex Discrimination Commissioner; and

(e) the Privacy Commissioner.”.

Subsection 8 (7):

Omit “or Sex Discrimination Commissioner”, substitute “, Sex Discrimination Commissioner or Privacy Commissioner”.

Subsection 20 (4):

After “shall” insert “, unless the complaint has been transferred under subsection (4A),”.

After subsection 20 (4):

Insert the following subsections:

“(4A) Where:

- (a) a complaint has been made to the Commission in relation to an act or practice; and
- (b) because the Commission is of the opinion that the subject-matter of the complaint could be more effectively or conveniently dealt with by the Privacy Commissioner in the performance of the functions referred to in paragraph 27 (1) (a) or 28 (1) (b) or (c) of the *Privacy Act 1988*, the Commission decides not to inquire, or not to continue to inquire, into that act or practice;

the Commission shall:

- (c) transfer the complaint to the Privacy Commissioner;
- (d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and
- (e) give to the Privacy Commissioner any information or documents that relate to the complaint and are in the possession, or under the control, of the Commission.

“(4B) A complaint transferred under subsection (4A) shall be taken to be a complaint made to the Privacy Commissioner under Part V of the *Privacy Act 1988*.”.

SCHEDULE 1—continued

After subsection 49 (4):

Insert the following subsection:

“(4A) Subsection (1) does not prevent the Commission, or a person acting on behalf of the Commission, from giving information or documents in accordance with paragraph 20 (4A) (e).”.

Merit Protection (Australian Government Employees) Act 1984

After subsection 49 (1):

Insert the following subsections:

“(1A) Where:

- (a) an application has been made to the Agency with respect to particular action; and
- (b) because the Agency is of the opinion that it is more appropriate that the action be dealt with by the Privacy Commissioner in the performance of the functions referred to in paragraph 27 (1) (a) or 28 (1) (b) or (c) of the *Privacy Act 1988*, the Agency decides, under subparagraph (1) (b) (ii) of this section, not to investigate the action, or not to investigate the action further;

the Agency shall:

- (c) transfer the application to the Privacy Commissioner;
- (d) forthwith give notice in writing to the applicant stating that the application has been so transferred; and
- (e) give to the Privacy Commissioner any information or documents that relate to the application and are in the possession, or under the control, of the Agency.

“(1B) An application transferred under subsection (1A) shall be deemed to be a complaint made in writing to the Privacy Commissioner under Part V of the *Privacy Act 1988*.

“(1C) In subsections (1A) and (1B), ‘Privacy Commissioner’ means the Privacy Commissioner within the meaning of the *Privacy Act 1988*.”.

Paragraph 49 (3) (a):

After “further” insert “, and subsection (1A) does not require the Agency to transfer the application”.

After subsection 84 (4):

Insert the following subsection:

“(4A) Subsection (2) does not prevent the Agency, or an officer acting on behalf of the Agency, from giving information or documents under paragraph 49 (1A) (e).”.

SCHEDULE 1—continued

Ombudsman Act 1976

After subsection 6 (4):

Insert the following subsections:

“(4A) Where, before the Ombudsman commences, or after the Ombudsman has commenced, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint, the Ombudsman becomes of the opinion that:

- (a) a complaint with respect to the action has been, or could have been, made by the complainant to the Privacy Commissioner under Part V of the *Privacy Act 1988*; and
- (b) the action could be more conveniently or effectively dealt with by the Privacy Commissioner;

the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and, if the Ombudsman so decides, the Ombudsman shall:

- (c) transfer the complaint to the Privacy Commissioner;
- (d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and
- (e) give to the Privacy Commissioner any information or documents that relate to the complaint and are in the possession, or under the control, of the Ombudsman.

“(4B) A complaint transferred under subsection (4A) shall be deemed to be a complaint made to the Privacy Commissioner under Part V of the *Privacy Act 1988*.

“(4C) In subsections (4A) and (4B), ‘Privacy Commissioner’ means the Privacy Commissioner within the meaning of the *Privacy Act 1988*.”.

After subsection 35 (6):

Insert the following subsection:

“(6A) Subsection (2) does not prevent the Ombudsman, or an officer acting on behalf of the Ombudsman, from giving information or documents under paragraph 6 (4A) (e).”.

SCHEDULE 2

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

INTRODUCTION

A breach of these guidelines amounts to an interference with the privacy of an individual giving rise to a right to complain to the Privacy Commissioner and a right to seek compensation.

1. GENERAL

- 1.1 The tax file number is not to be used as a national identification system by whatever means.
- 1.2 Tax file number recipients shall not collect, record, use or disclose tax file number information in an unauthorised manner and, in particular, shall not act in an unauthorised manner to use tax file number information as a means of matching personal information about a person.
- 1.3 The Commissioner of Taxation shall publicise in a generally available publication information relating to:
 - (a) the persons or bodies who are authorised by law to require or request another person to quote that person's tax file number;
 - (b) the specific purposes for which such a requirement or request may be made;
 - (c) the prohibitions on the use and disclosure of tax file number information; and
 - (d) the penalties that apply to unauthorised acts and practices in relation to tax file number information;

together with information as to where detailed particulars relating to these matters can be obtained.

2. COLLECTION OF TAX FILE NUMBER INFORMATION

- 2.1 Tax file number recipients shall take all reasonable steps in the circumstances to ensure that staff whose duties include collecting tax file number information are informed of:
 - (a) the circumstances in which tax file number information may be collected;
 - (b) the need to protect the privacy of the person to whom that information relates; and
 - (c) the penalties that apply to unauthorised acts and practices in relation to tax file number information.

SCHEDULE 2—continued

2.2 Tax file number recipients collecting tax file number information shall take all reasonable steps in the circumstances to ensure that the manner of collection takes account of the rights of persons to control the accumulation and dissemination of information relating to themselves.

3. STORAGE AND SECURITY OF TAX FILE NUMBER INFORMATION

3.1 Tax file number recipients shall take all reasonable steps in the circumstances to:

- (a) introduce information handling procedures to protect the privacy of individuals in relation to their tax file number information;
- (b) make staff aware of the rights of individuals to privacy in relation to their tax file number information; and
- (c) make staff aware of the penalties relating to unauthorised acts and practices in relation to such information.

3.2 Tax file number recipients holding tax file number information shall take all reasonable steps in the circumstances to ensure that security safeguards and procedures are in place to prevent unauthorised access to, modification or disclosure of, and loss of, such information, whether that information is stored in physical or electronic form.

3.3 Tax file number recipients shall take all reasonable steps in the circumstances to ensure that access to records which contain tax file number information for authorised purposes is confined to persons who have a need for access to such information for the purpose of carrying out tax-related functions of the tax file number recipient.

4. USE AND DISCLOSURE OF TAX FILE NUMBER INFORMATION

4.1 Tax file number recipients shall take all reasonable steps in the circumstances to ensure that staff with access to tax file number information are informed of the prohibitions on the use and disclosure of such information and of the penalties that apply to breach of those prohibitions.

4.2 Tax file number recipients shall not use tax file number information for other than authorised purposes.

4.3 Without limiting the application of 4.2 to any other circumstances:

- (a) an employer or investment body shall not use a tax file number for the purposes of building up a database on individuals for its own purposes;
- (b) an employer or investment body shall not cross-match tax file number information with other information held about a person to carry out activities which do not relate to obligations under a taxation law; and

SCHEDULE 2—continued

- (c) Government agencies, including the Commissioner of Taxation, shall not directly or indirectly disclose tax file number information or use tax file number information to cross-match information about a person, except in authorised circumstances, for example, disclosure to an agency or person in specified cases expressly approved by the Parliament under sections 16 and 16A of the *Income Tax Assessment Act 1936* or otherwise.

5. PUBLICITY

- 5.1 Publication by the Commissioner of Taxation pursuant to guideline 1.3 shall be made prior to any obligation to quote a tax file number arising as a result of the *Taxation Laws Amendment (Tax File Numbers) Act 1988*.

6. CESSATION OF EMPLOYMENT AND INVESTMENT

- 6.1 Tax file number recipients shall destroy tax file number information held by them as employers or as investment bodies in relation to their former employees/investors in accordance with guidelines issued by the Privacy Commissioner.

7. MEANING OF TERMS IN INTERIM GUIDELINES

- 7.1 “Tax file number recipient” means file number recipient.
- 7.2 “Investment body” means a person who is an investment body for the purposes of Part VA of the *Income Tax Assessment Act 1936*.
- 7.3 “Employer” means an employer to whom a person may quote a tax file number in relation to their employment.

[*Minister's second reading speech made in—
House of Representatives on 1 November 1988
Senate on 4 November 1988*]