



# **Data-matching Program (Assistance and Tax) Act 1990**

**No. 20 of 1991**

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**An Act to provide for the matching of data in relation to certain assistance and tax and to amend the *Privacy Act 1988***

*[Assented to 23 January 1991]*

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Data-matching Program (Assistance and Tax) Act 1990*.

### **Commencement**

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

### **Interpretation**

3. In this Act, unless the contrary intention appears:

“agency” means:

- (a) the matching agency; or
- (b) a source agency;

“assistance agency” means:

- (a) the Department of Community Services and Health; or
- (b) the Department of Employment, Education and Training; or

(c) the Department of Social Security; or

(d) the Department of Veterans' Affairs;

**“assisted person”** means a person:

(a) to whom personal assistance is being, or has been, given; or

(b) who is claiming personal assistance;

**“basic data”**, in relation to a person, means:

(a) the person's family identity data; or

(b) the person's income data; or

(c) the person's TFN data;

**“child”**, in relation to a person, includes anyone who is the person's child for the purposes of any personal assistance or any tax law;

**“data matching cycle”** means a cycle the steps in which are set out in section 7;

**“data matching program”** means the program referred to in section 6;

**“declared income”**, in relation to a person, means any income, or income of a particular kind, of the person for the purposes of any personal assistance or tax law;

**“family identity data”**, in relation to a person, means any of the following data about the person:

(a) surname;

(b) any other name;

(c) initial of any other name;

(d) any former surname;

(e) any other former name;

(f) the initial of any other former name;

(g) where the person is alive, current residential address or addresses and any other current address or addresses;

(h) an identification number for the purpose of personal assistance;

(j) sex;

(k) marital status;

(m) date of birth;

(n) where the person is dead, date of death;

(p) surname, any other name, initial of any other name and address or addresses of any living spouse of the person;

(q) surname, any other name, initial of any other name, date of birth and date of death of any deceased spouse of the person;

(r) surname, any other name, initial of any other name, sex and date of birth of any living child of the person;

(s) surname, any other name, initial of any other name, sex, date of birth and date of death of any deceased child of the person;

(t) surname, any other name, initial of any other name and address or addresses of any living parent of the person;

(u) surname, any other name, initial of any other name, last address and date of death of any deceased parent of the person;

(w) kind of personal assistance of the person;

**“income data”**, in relation to a person, means:

- (a) declared income of the person; or
- (b) declared income of a spouse of the person; or
- (c) declared income of a parent of the person; or
- (d) personal assistance of the person; or
- (e) spouse rebate of the person;

**“matching agency”** means the officers of the Department of Social Security who are referred to in section 4;

**“officer”**, in relation to a source agency, means a person with duties, powers or functions in relation to an Act matters under which are dealt with by the agency;

**“parent”**, in relation to a person, includes anyone who is the person’s parent for the purposes of any personal assistance or any tax law;

**“person”** means an individual whether alive or dead;

**“personal assistance”** means:

- (a) assistance under the *First Home Owners Act 1983*; or
- (b) any assistance dealt with by the Department of Employment, Education and Training and known as any of the following:
  - (i) assistance under the AUSTUDY Scheme;
  - (ii) assistance under the ABSTUDY Scheme;
  - (iii) assistance under the Assistance for Isolated Children Scheme;
  - (iv) assistance under the Aboriginal Overseas Study Assistance Scheme;
  - (v) assistance under the Scheme providing living allowances for English as a Second Language; or
- (c) any pension, allowance or benefit dealt with by the Department of Social Security and known as any of the following:
  - (i) age pension;
  - (ii) invalid pension;
  - (iii) wife’s pension;
  - (iv) carer’s pension;
  - (v) sole parent’s pension;
  - (vi) widowed person’s allowance;
  - (vii) widow’s pension class B;
  - (viii) sheltered employment allowance;
  - (ix) rehabilitation allowance;
  - (x) unemployment benefit;
  - (xi) job search allowance;

- (xii) sickness benefit;
- (xiii) special benefit;
- (xiv) family allowance;
- (xv) family allowance supplement;
- (xvi) child disability allowance;
- (xvii) double orphan's pension;
- (xviii) mobility allowance;
- (xix) remote area allowance;
- (xx) rent assistance;
- (xxi) incentive allowance;
- (xxii) pharmaceutical allowance;
- (xxiii) pharmaceutical supplement;
- (xxiv) advance pharmaceutical supplement;
- (xxv) disaster relief payment;
- (xxvi) formal training allowance; or

(d) any pension, allowance or other benefit or assistance given under the *Veterans' Entitlements Act 1986* or the *Seamen's War Pensions and Allowances Act 1940*;

and, in relation to a person, means personal assistance given to, or claimed by, the person;

**“personal identity data”**, in relation to a person, means any of the following data about the person:

- (a) surname;
- (b) first other name;
- (c) initial of second other name (if any);
- (d) current residential address;
- (e) sex;
- (f) date of birth;
- (g) in the case of identity data held by the Australian Electoral Office—the date on which the person's name was placed on a Roll of electors;
- (h) in the case of data held by the Health Insurance Commission:
  - (i) the date on which the person was last enrolled with the Commission;
  - (ii) the date (if any) on which the person last ceased to be so enrolled;
  - (iii) whether or not the person's Medicare card has been lost, revoked or otherwise removed from circulation;

**“source agency”** means:

- (a) an assistance agency; or
- (b) the tax agency;

“**spouse**”, in relation to a person, includes anyone who is a spouse of the person for the purposes of any personal assistance or tax law, and marital status has a corresponding meaning;

“**spouse rebate**”, in relation to a person, means the dependent spouse rebate of the person within the meaning of the Tax Act;

“**Tax Act**” means the *Income Tax Assessment Act 1936*;

“**tax agency**” means the Commissioner of Taxation;

“**tax data**” means:

- (a) tax family identity data; or
- (b) tax income data; or
- (c) tax TFN data;

“**tax family identity data**” means the family identity data of persons that is held by the tax agency for the purposes of a tax law;

“**tax file number**” has the same meaning as in Part VA of the Tax Act;

“**tax income data**” means the income data of persons that is held by the tax agency for the purposes of a tax law;

“**tax law**” means any law of the Commonwealth relating to taxation;

“**tax TFN data**” means the TFN data of persons that is held by the tax agency for the purposes of a tax law;

“**TFN data**”, in relation to a person, means:

- (a) the person’s tax file number; or
- (b) the tax file number of any spouse of the person; or
- (c) the tax file number of any parent of the person.

## **PART 2—DATA-MATCHING**

### **Matching agency**

4. The Secretary to the Department of Social Security is to ensure that there are officers of that Department who are responsible for the matching of data under this Act.

### **Effect of other Acts**

5. (1) This Act does not limit the application of other laws of the Commonwealth except to the extent (if any) that they are inconsistent with this Act.

(2) Guidelines in force under section 17 of the *Privacy Act 1988*, in relation to TFN data or tax-file number information are not breached where an agency has complied with the provisions of this Act.

(3) Any oath or declaration made by an officer of a source agency in relation to the recording or disclosure of information is not broken by the officer doing anything for the purposes of, and in the course of, carrying out functions or duties under this Act.

**Matching of data**

**6. (1)** Subject to subsections (2) and (3):

- (a) data about persons may be transferred between agencies; and
- (b) data about persons may be matched or otherwise dealt with by the matching agency or the tax agency; and
- (c) the results of the matching may be given to source agencies;

in accordance with the data matching program made up of data matching cycles the steps in which are set out in section 7.

**(2)** There are to be no more than 9 data matching cycles in any one year.

**(3)** Only one data matching cycle is to be in progress at any one time.

**Steps in data matching cycle**

**7.** The steps in a data matching cycle are as follows:

**STEP 1**

1. The assistance agencies give the matching agency the basic data about persons that is held by those agencies for the purposes of personal assistance.

2. The matching agency checks the validity of the TFN data given under paragraph 1 by using any algorithm given to it for the purposes of this Act by the tax agency.

3. Where the check identifies TFN data that is invalid, the matching agency checks that data using any personal identity data given to it for the purposes of this Act by the Australian Electoral Office or the Health Insurance Commission, not being data relating to a person's use of Medicare or the Pharmaceutical Benefits Scheme.

4. Where either of the checks identifies TFN data that appears to be incorrect, the matching agency gives particulars of the data to the source agency that gave it.

**STEP 2**

5. The matching agency extracts from data given to it in Step 1 the TFN data, and any identification numbers for the purposes of personal assistance, of assisted persons.

6. The matching agency gives the tax agency the data extracted under paragraph 5.

**STEP 3**

7. The tax agency uses tax data and data given to it under Step 2 to find out the following available and current data in respect of each person who has a tax file number:

- (a) tax file number;
- (b) personal identity data;
- (c) declared income;
- (d) spouse rebate.

8. The tax agency gives the matching agency the data found out under paragraph 7 and any identification numbers for the purposes of personal assistance of the person.

#### **STEP 4**

9. The matching agency carries out **identity matching** by matching the personal identity data given under paragraph 8 with the family identity data given to it.

10. Where the matching shows a discrepancy in the family identity data or personal identity data of a person, the matching agency matches that data with the personal identity data referred to in paragraph 3.

11. Where, after matching under paragraph 10, there is an unresolved discrepancy in data given to the matching agency by a source agency, the matching agency gives the source agency particulars of the discrepancy.

#### **STEP 5**

12. The matching agency carries out **payment matching** by matching family identity data given by assistance agencies in Step 1 to find out if personal assistance is being, or has been, given to, or is being claimed by, persons who might not be entitled to it.

13. Where the matching of family identity data given by assistance agencies in Step 1 cannot identify a person for the purposes of paragraph 12, the matching agency matches TFN data given to it in Step 1 with the data being matched under that paragraph.

14. The matching agency carries out **income matching** of persons by using any identification number for the purposes of personal assistance of a person to match:

- (a) income data of the person given to it by assistance agencies (other than the Department of Community Services and Health); and
- (b) except where the matching agency has, under paragraph 11, given particulars of a discrepancy in data about the person to a source agency, the tax income data of the person given to the matching agency in earlier steps;

to find out if there are any inconsistencies in the income data of the person.

## **STEP 6**

15. The matching agency gives to each source agency the results of matching under earlier steps that are of concern to that other agency and have not been given to the other agency in an earlier step, being results that indicate:

- (a) in the case of an assistance agency—that personal assistance is being, or has been, given to, or is being claimed by, persons who might not be entitled to it; or
- (b) in the case of the tax agency—that a person might be evading, or might have evaded, tax.

16. Information exchanged in paragraph 15 must not include the return of TFN data from the matching agency to an assistance agency.

### **Data not to be sent on-line**

8. Data is not to be transferred between agencies in the data matching program by on-line computer connections.

### **Length of data matching cycle**

9. (1) A data matching cycle is to be completed no later than 2 months after it began.

(2) Step 5 in a data matching cycle is to be completed no later than:

- (a) subject to paragraph (b), 24 hours after it began; or
- (b) where the cycle is interrupted by a computer malfunction or industrial action—a period after it began equal to 24 hours and the period or periods of interruption.

(3) Step 6 in a data matching cycle is to be completed within 7 days after the completion of Step 5.

### **Source agencies may use results of data program**

10. (1) Subject to subsection (2) and section 11, a source agency may take action on the basis of information received by it under Step 1, 4 or 6 of a data matching cycle to:

- (a) in the case of a source agency:
  - (i) cancel or suspend personal assistance being given to a person; or
  - (ii) reject a claim for personal assistance; or
  - (iii) change the rate or amount of personal assistance being given to, or claimed by, a person; or
  - (iv) recover an overpayment of personal assistance; or
- (b) in the case of the tax agency—issue an assessment or an amended assessment of tax; or
- (c) investigate the possible commission of an offence.



(2) Where a source agency receives particular information under Step 1, 4 or 6 of a data matching cycle, the agency must destroy that particular information within 90 days of its receipt unless, within those days, the agency has considered that particular information and made a decision to take, or to carry out an investigation of the need to take, action allowed by subsection (1) on the basis of that particular information.

- (3) (a) Any action commenced in accordance with subsection (1) must be commenced within 12 months from the date that the information was received from the matching agency;
- (b) an agency may from time to time apply to the Secretary of its Department or the Commissioner of Taxation (as the case may be) who shall be empowered to grant an extension of time for up to 12 months on such terms or conditions as the Secretary or the Commissioner of Taxation thinks fit;
- (c) notwithstanding any other law or provision to the contrary, the power referred in paragraph (b) shall not be capable of delegation.

(4) After the completion of action taken in accordance with subsection (1), a source agency must not retain any information obtained in the course of such action in a separate permanent register of individuals.

#### **Notice of proposed action**

11. (1) Subject to subsection (4), where, solely or partly because of information given in Step 6 of a data matching cycle, an assistance agency considers taking action:

- (a) to cancel or suspend any personal assistance to; or
- (b) to reject a claim for personal assistance to; or
- (c) to reduce the rate or amount of personal assistance to; or
- (d) to recover an overpayment of personal assistance made to;
- a person, the agency:
- (e) must not take that action unless it had given the person written notice:
- (i) giving particulars of the information and the proposed action; and
- (ii) stating that the person has 21 days from the receipt of the notice in which to show cause in writing why the action should not be taken; and
- (f) must not take that action until the expiration of those 21 days.

(2) Subject to subsection (5), where, solely or partly because of information given in Step 6 of a data matching cycle, the tax agency considers taking action to issue an assessment or an amended assessment of tax to a person, the agency:

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- (a) must not take that action unless it has given the person written notice:
  - (i) giving particulars of the information and the proposed action; and
  - (ii) stating that the person has 21 days from the receipt of the notice in which to show cause in writing why the action should not be taken; and
- (b) must not take that action until the end of those 21 days.

(3) Notice under subsection (1) or (2) is to be given by post addressed to the person at the most recent address of the person known to the agency.

(4) The assistance agency may take action described in subsection (1) without complying with paragraphs (1) (e) and (f) if compliance would prejudice the effectiveness of an investigation into the possible commission of an offence.

(5) The tax agency may take action described in subsection (2) without complying with paragraphs (2) (a) and (b) if compliance would prejudice the effectiveness of an investigation into the possible commission of an offence.

(6) Where:

- (a) an assistance agency gives a person notice under subsection (1) of proposed action to cancel or suspend, or reduce the rate or amount, of any personal assistance; and
- (b) the person does not show cause why the action should not be taken;

any personal assistance of that kind given, or any personal assistance of that kind given above the reduced rate or amount, as the case may be, to the person during the period specified in subparagraph (1) (e) (ii) is a debt due to the Commonwealth.

**Guidelines relating to privacy**

12. (1) The matching agency and the source agencies are to comply with the interim guidelines set out in the Schedule until guidelines under subsection (2) come into force and, when those guidelines come into force, those agencies are to comply with those guidelines.

(2) The Privacy Commissioner must, by notice in writing, issue guidelines relating to the matching of data under this Act on or before 30 September 1991 and thereafter may, from time to time, issue further guidelines to replace any existing guidelines.

(3) The Privacy Commissioner must report to the Parliament any failure to issue guidelines in accordance with subsection (2) within 15 sitting days of 30 September 1991.

(4) Guidelines under subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(5) Section 46A of the *Acts Interpretation Act 1901* applies to guidelines issued under subsection (2) as if the following paragraph were inserted after paragraph (1) (a) of that section:

“(aa) section 48 applies as if paragraph 48 (1) (b) were omitted and the following paragraph substituted:

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

- (i) the first day on which the guidelines are no longer liable to be disallowed; or
- (ii) if the guidelines make provision for their commencement after that day—in accordance with that provision.”.

### **Investigations of breaches of privacy**

**13. (1)** In this section:

“**Commissioner**” means the Privacy Commissioner.

(2) The Commissioner may investigate any act or practice which might be a breach of this Act or the guidelines in the Schedule.

(3) Where the Commissioner finds that an investigated act or investigated practice of the matching agency or a source agency was in breach of this Act or the guidelines, the Commissioner and the agency must endeavour to make arrangements satisfactory to the Commissioner in relation to the act or practice.

(4) Where the Commissioner finds that an act, or practice, investigated was in breach of this Act or the guidelines and arrangements have not been made under subsection (3) or the Commissioner considers a report under this subsection appropriate in all the circumstances, the Commissioner:

- (a) must make a report to the Minister about the act or practice; and
- (b) must set out in the report the Commissioner’s findings and the reasons for those findings; and
- (c) may include in the report any recommendations by the Commissioner for preventing repetition of the act or a continuation of the practice; and
- (d) 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; or
  - (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; and

- (e) must serve a copy of the report on the matching agency, any source agency concerned in the act or practice and the Minister responsible for such a source agency; and
- (f) may serve a copy of the report on any person affected by the act or practice.

(5) Where, at the end of 60 days after a copy of a report about an act or practice was served under subsection (4), the Commissioner is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice, the Commissioner must give to the Minister a further report that:

- (a) incorporates the earlier report and any background information that the Commissioner has received from an agency in response to the earlier report; and
- (b) 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 earlier report, and if so, the nature of that action; and
- (c) 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, where the second report relates to an agency other than an agency administered by the Minister, must give a copy of the report to the Minister responsible for the agency.

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

(7) In conducting an investigation under this section, the Commissioner has all the powers of investigation that he or she has under Part 5 and section 99 of the *Privacy Act 1988*.

(8) Nothing in this section or in any other provision of this Act limits the rights of persons under the *Privacy Act 1988* to complain to the Commissioner about interference with privacy.

**14. (1)** A breach of Part 2 of this Act or a breach of the guidelines referred to in section 12 constitutes an act or practice involving interference with the privacy of an individual for the purposes of section 13 of the *Privacy Act 1988*.

(2) An individual may complain to the Privacy Commissioner about an act or practice in relation to the operation of this Act which may be an interference with the privacy of the individual.

(3) In the event of a complaint being made by an individual, it shall be dealt with in accordance with the provisions of Part V of the *Privacy Act 1988*, which shall apply *mutatis mutandis* to this Act.

**Confidentiality**

15. (1) An officer of an agency who has information only because of performing functions or duties under this Act, must not make a record of, or disclose, any of the information except:

- (a) in the course of carrying out functions and duties under this Act; or
- (b) with the consent of the person to whom the information relates.

Penalty: Imprisonment for 2 years.

(2) Where:

- (a) an officer of a source agency has information because of Step 1, 4 or 6 in a data matching cycle; and
- (b) there is a law that relates to the recording or disclosure by the officer of information obtained by the officer (however the law is expressed);

that law applies to the information referred to in paragraph (a).

(3) A law referred to in subsection (2) does not prevent the giving of a notice under section 11.

(4) For the purposes of this section, the Commissioner of Taxation is an officer of the tax agency.

**PART 3—AMENDMENTS OF THE PRIVACY ACT 1988**

**Principal Act**

16. In this Part, “Principal Act” means the *Privacy Act 1988*.

**Interferences with privacy**

17. Section 13 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

“(ba) constitutes a breach of Part 2 of the *Data-matching Program (Assistance and Tax) Act 1990* or the guidelines in force under this Act.”.

**Functions of Commissioner in relation to interferences with privacy**

18. Section 27 of the Principal Act is amended:

- (a) by omitting paragraph (1)(b) and substituting the following paragraph:

“(b) to examine (with or without a request from a Minister) 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 or which may otherwise have any adverse effects on the privacy of individuals and to ensure that any adverse effects of such proposed enactment on the privacy of individuals are minimised,”;

(b) by omitting paragraph (1)(k) and substituting the following paragraph:

“(k) to examine (with or without a request from a Minister) a proposal for data matching or data linkage that may involve an interference with the privacy of individuals or which may otherwise have any adverse effects on the privacy of individuals and to ensure that any adverse effects of such proposal on the privacy of individuals are minimised,”;

(c) by adding at the end of paragraph (1)(e), the words “or which may otherwise have any adverse effects on the privacy of individuals”;

(d) by adding at the end of subsection (1) the following paragraphs:

“(p) to issue guidelines under the *Data-matching Program (Assistance and Tax) Act 1990*;

(q) to monitor and report on the adequacy of equipment and user safeguards;

(r) may, and if requested to do so, shall make reports and recommendations to the Minister in relation to any matter that concerns the need for or the desirability of legislative or administrative action in the interests of the privacy of individuals.”.

#### **Report following examination of proposed enactment**

19. Section 31 of the Principal Act is amended by adding the following subsections:

“(4) Where the Privacy Commissioner is of the belief that it is in the public interest that the proposed enactment should be the subject of a further report, the Commissioner may give to the Minister a further report setting out the Commissioner’s reasons for so doing.

“(5) The Minister shall cause a copy of a report given under subsection (4) to be laid before each House of the Parliament as soon as practicable, and no later than 15 sitting days of that House, after the report is received by the Minister.”.

#### **Report following the monitoring of certain activities**

20. Section 32 of the Principal Act is amended:

(a) by omitting “(j), (k) or (m)” from subsection (1) and substituting “, (h), (j), (k), (m) or (r)”;

(b) by adding the following subsections:

“(2) Where the Privacy Commissioner is of the belief that it is in the public interest that the activity should be the subject of a further report, the Commissioner may give to the Minister a further report setting out the Commissioner’s reasons for so doing.

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“(3) The Minister shall cause a copy of a report given under subsection (2) to be laid before each House of the Parliament as soon as practicable, and no later than 15 sitting days of that House, after the report is received by the Minister.”.

**Cessation of operation of Act**

**21.** Parts 1 and 2 of this Act, unless sooner repealed, shall cease to be in force at the expiration of 2 years after the date of commencement of this Act.

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**SCHEDULE**

Section 12

**DATA-MATCHING PROGRAM (ASSISTANCE AND TAX)  
GUIDELINES**

*Scope of Operation*

1. These Guidelines apply to, and only to, the matching program referred to in the *Data-matching Program (Assistance and Tax) Act 1990* (“the Act”).

*Definitions*

- 2.1 Any term used in these Guidelines has:
  - (i) where it is defined in the Act, that meaning; or
  - (ii) where it is not defined in the Act but is defined in the *Privacy Act 1988*, that meaning.
- 2.2 In addition the following terms used in these Guidelines have the following meanings:
  - (a) “Program” refers to the data matching program as defined in the Act;
  - (b) “Discrepancy” refers to a result of the program which warrants further action by any relevant data agency for the purposes of giving effect to the program;
  - (c) “action” refers to the actions set out in section 10 of the Act.

*Basis of Program*

- 3.1 A program protocol must be prepared by the matching agency in consultation with the source agencies before 1 April 1991 and must—
  - (i) identify the matching agency and the source agencies;
  - (ii) in the case of each data agency, set out the legal basis for any collection, use or disclosure of personal information involved in the program;
  - (iii) outline the objectives of the program, the procedures to be employed, the nature and frequency of the matching covered by the program, and the justifications for the program;
  - (iv) explain what methods other than data-matching were available and why they were rejected;
  - (v) detail any cost/benefit analysis or other measures of effectiveness which were taken into account in deciding to initiate the program;
  - (vi) outline the technical controls proposed to ensure data quality, integrity and security in the conduct of the program;
  - (vii) provide an explanation for any use of identification numbers and, in particular, the tax file numbers;



**SCHEDULE—continued**

- (viii) outline the nature of the action proposed to be taken in relation to the results of the program including the pro formas of any letters to be used by source agencies when providing notice under section 11 of the Act;
- (ix) indicate what form of notice, if any, of the proposed activities in relation to their personal information has been given or is intended to be given to affected individuals; and
- (x) specify any time-limits on the conduct of the program.

The Program Protocol must be filed with the Privacy Commissioner and available for public inspection unless the Privacy Commissioner is satisfied that to do so would be or would be likely to be contrary to the public interest (e.g. by prejudicing the integrity of legitimate investigative methods).

3.2 Agencies must comply with the Program Protocol.

3.3 Source agencies must take all reasonable steps to ensure that their clients are informed that a Program Protocol which outlines the nature and purposes of the data matching program is available from the Privacy Commissioner.

*Technical Standards in relation to data quality, integrity and security*

4.1 *Technical Standards Report*: Detailed technical standards must be established by the matching agency to govern the conduct of the program. They should deal with the following matters:

- (i) integrity of data supplied by source agencies, referring in particular to: key terms and their definition, relevance, timeliness and completeness;
- (ii) matching techniques, referring in particular to: the matching algorithm, any use of identification numbers especially tax file numbers, the nature of the matters being sought to be identified by the matching process, the relevant data definitions and the procedure for recognising matches;
- (iii) controls being employed to ensure the continued integrity of the program including the procedures that have been established to confirm the validity of matching results;
- (iv) security features included within the program to minimise and audit access to personal information.

4.2 These matters should be dealt with in a Technical Standards Report to be held by the matching agency and copies held by the source agencies. A draft Report must be finalised before 1 April 1991 and the final report before 1 July 1991, taking account of initial experience of the operation of the program. Any subsequent variations to the technical standards should be the subject of a Variation Report appended to the original Report.

**SCHEDULE—continued**

- 4.3 The Privacy Commissioner has the power to require that the content of the draft and final Technical Standards Reports be varied. Non-compliance with the variations will be taken as a breach of the Guidelines and be subject to investigation in accordance with section 13 of the Act.
- 4.4 Agencies must comply with the Technical Standards Report.

*Safeguards for individuals affected by the results of programs*  
*Fairness*

- 5.1 The source agencies must establish reasonable procedures for confirming the validity of results before relying on them as a basis for administrative action against an individual, unless there are reasonable grounds to believe that such results are not likely to be in error. In forming that view, regard is to be had to the consistency in content and context of data being matched.
- 5.2 Where such confirmation procedures do not take the form of checking the results against the source data but instead involve direct communication with the affected individual, the source agency shall notify the affected individual that no check has been made against the records which formed the basis for the data supplied for the program. The notification must include (either in the letter or by way of an attachment) an explanation of the procedures that are involved in the examination of a discrepancy as well as the rights of complaint under the *Privacy Act 1988*.
- 5.3 If there is a dispute as to the accuracy of the data or the proposed action which the source agency does not concede, it must inform the individual of the rights of complaint conferred by the *Privacy Act 1988*. Any further action taken by the agency must, unless otherwise provided by law, not interfere with an individual's opportunity to exercise any rights of appeal or review.
- 5.4 Wherever data supplied by a person prior to 1 January 1991, is to be used, or is likely to be used, in a data matching program, the person who has supplied the data shall be notified in writing either before the data is first used or as soon as practicable thereafter that the data is likely to be used for this purpose.

*Record Controls*

- 6.1 *No Discrepancy*: Personal information used in a matching cycle that does not lead to a discrepancy must be destroyed by the matching agency as soon as is practicable after the beginning of Step 5 in the cycle. In any case, destruction of the information must not occur later than 24 hours after the beginning of Step 5 of the cycle unless additional time is required because of a computer malfunction or industrial action.

**SCHEDULE—continued**

- 6.2 *Discrepancy*: In cases where a discrepancy occurs as a result of Steps 1, 4 and 5 in a data matching cycle, the results must be supplied to the relevant source agency within 7 days of completion of the relevant step. Source agencies must deal with the results in accordance with section 10 of the Act. If, during the period referred to in that section or at any later time, a decision not to take further action is made, wherever practicable the information must be destroyed within 14 days.
- 6.3 On final completion of the action commenced in accordance with section 10 (1) of the Act, all information which gave rise to such action is to be destroyed.

For the purposes of this guideline “final completion of the action” means:

- (i) in the situation where, at the expiration of twelve months from the commencement of action in accordance with section 10 (1), the case is under the control of the Australian Federal Police and is proceeding to the satisfaction of the source agency—when all investigation action, legal proceedings and repayment of debts due to the Commonwealth is finalised;
- (ii) in the situation where, at the expiration of twelve months from the commencement of action in accordance with section 10 (1), the case is under the control of the Director of Public Prosecutions and is proceeding to the satisfaction of the source agency—when all legal proceedings and repayment of debts due to the Commonwealth are finalised;
- (iii) in the situation where, at the expiration of twelve months from commencement of action in accordance with section 10 (1), a debt due to the Commonwealth remains outstanding and action is being taken to recover it—when the debt is fully recovered, waived or written off; and
- (iv) in all other situations, within twelve months from the date of commencement of action in accordance with section 10 (1).

*No New Databank*

- 7.1 Subject to paragraph 7.2 below, source agencies must not permit the information used in the program to be linked or merged in such a way that a new separate permanent register (or databank) of information is created about any, or all of the individuals whose information has been subject to the program.
- 7.2 Paragraph 7.1 does not prevent a source agency from maintaining a register of individuals in respect of whom further inquiries are warranted following the decision required by section 10 of the Act.

**SCHEDULE—continued**

- 7.3 After the completion of action in relation to an individual that is taken in accordance with clause 10, the source agency must delete any information that relates to that action from any register of the type described in paragraph 7.2.

*Reports and Monitoring by the Privacy Commissioner*

8. The Privacy Commissioner is to be responsible for monitoring the compliance with these Guidelines and giving advice to the relevant matching and source agencies as to their responsibilities under the Guidelines.
9. The matching and source agencies must report to the Privacy Commissioner on a periodic basis as agreed with the Privacy Commissioner. The Commissioner may require an agency to report on any relevant matter, including any of the following matters:
- (i) actual costs and benefits flowing from the program;
  - (ii) any non-financial factors that are considered relevant;
  - (iii) difficulties in the operation of the program and how these have been overcome;
  - (iv) the extent to which internal audits or other forms of assessment have been undertaken by agencies and their outcome;
  - (v) examples of circumstances in which the giving of notice under section 11 would prejudice the effectiveness of an investigation into the possible Commission of an offence; and
  - (vi) such other matters as: the total number of matches undertaken, the proportion of matches that result in discrepancies, the number of discrepancies, proportion of discrepancies which resulted in action being taken, the number of instances of subsequent action being taken, the number of cases in which action proceeded despite a challenge as to the accuracy of the data, the proportion of discrepancies which did not proceed to action after the individual was contacted; and the number of cases where successful recovery action occurred.
- 10.1 The Privacy Commissioner must include in his annual report an assessment of the extent of the program's compliance with the Act, these Guidelines and the *Privacy Act 1988*; and to that end, may exercise any of the powers as to investigation and audit contained in the *Privacy Act 1988*.
- 10.2 Agencies must report their data matching activities under this Act in their annual entry for the Personal Information Digest of the Privacy Commissioner.
11. These Guidelines are additional to provisions of the *Privacy Act 1988* including the Information Privacy Principles.

**SCHEDULE—continued**

12. The matching agency and each source agency must table a comprehensive report in both Houses of Parliament six months after the commencement of the first data matching cycle. These reports are to include all of the following details:
- (i) actual cost and benefits flowing from the program;
  - (ii) any non-financial factors that are considered relevant;
  - (iii) difficulties in the operation of the program and how these have been overcome;
  - (iv) the extent to which internal audits or other forms of assessment have been undertaken by agencies and their outcome; and
  - (v) such other matters as: the total number of matches undertaken, the proportion of matches that result in discrepancies, the number of discrepancies, the proportion of discrepancies which resulted in action being taken, the number of instances of subsequent action being taken, the number of cases in which action proceeded despite a challenge as to the accuracy of the data, the proportion of discrepancies which did not proceed to action after the individual was contacted; and the number of cases where successful recovery action occurred.
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*[Minister's second reading speech made in—  
Senate on 6 December 1990  
House of Representatives on 20 December 1990]*