

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 270

Issued by the authority of the Minister for Privacy and Freedom of Information

Freedom of Information Act 1982, the Australian Citizenship Act 2007, the Defence Act 1903, the Fisheries Management Act 1991, the Migration Act 1958, the Privacy Act 1988, the Public Service Act 1999 and the Torres Strait Fisheries Act 1984

Freedom of Information (Miscellaneous Amendments) Regulations 2010 (No. 1)

Section 54 of the *Australian Citizenship Act 2007*, section 124 of the *Defence Act 1903*, section 168 of the *Fisheries Management Act 1991*, section 504 of the *Migration Act 1958*, section 100 of the *Privacy Act 1988*, section 79 of the *Public Service Act 1999*, section 60 of the *Torres Strait Fisheries Act 1984* and subsection 94(1) of the *Freedom of Information Act 1982* (the Act) provide, in part, that the Governor-General may make regulations prescribing all matters that are required or permitted by those Acts to be prescribed, or are necessary or convenient for the carrying out or giving effect to those Acts.

The purpose of the *Freedom of Information (Miscellaneous Amendment) Regulations 2010 (No. 1)* is to amend seven sets of Principal Regulations to change the references therein from the “Privacy Commissioner” to “Australian Information Commissioner” (AIC), effective from 1 November 2010.

The AIC is principally vested with all the functions of the Information Commissioners (which are the information, FOI and privacy functions [see sections 7 to 10 *Australian Information Commissioner Act 2010*]). The AIC is supported by the Freedom of Information Commissioner and by the Privacy Commissioner.

In line with this governance structure, the *Freedom of Information Amendment (Reform) Act 2010* amends various acts to replace references to the Privacy Commissioner with the AIC. The *Freedom of Information Amendment (Reform) Act 2010* also makes transitional provisions so that anything done by the Privacy Commissioner is taken to have been done by the AIC (see item 5 Schedule 7) and so that an instrument that contains a reference to the Privacy Commissioner has effect as if a reference is made to the Information Commissioner (see item 16 Schedule 7).

While it may not be strictly necessary, for transparency, the Regulations give effect to these purposes.

Details of the proposed Regulations are set out in the [Attachment](#).

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*

The Regulations commence on 1 November 2010.

ATTACHMENT

Details of the *Freedom of Information (Miscellaneous Amendments) Regulations 2010 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Freedom of Information (Miscellaneous Amendments) Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 November 2010.

Regulation 3 – Definition

This regulation provides that in these Regulations “privacy functions” has the same meaning given by section 9 of the *Australian Information Commissioner Act 2010*.

Regulation 4 – Amendment of the *Australian Citizenship Regulations 2007*

This regulation provides that Schedule 1 of these Regulations amends the *Australian Citizenship Regulations 2007*.

Regulation 5 – Amendment of *Defence Force Regulations 1952*

This regulation provides that Schedule 1 of these Regulations amends the *Defence Force Regulations 1952*.

Regulation 6 – Amendment of *Fisheries Management Regulations 1992*

This regulation provides that Schedule 1 of these Regulations amends the *Fisheries Management Regulations 1992*.

Regulation 7 – Amendment of *Migration Regulations 1994*

This regulation provides that Schedule 1 of these Regulations amends the *Migration Regulations 1994*.

Regulation 8 – Amendment of *Privacy (Private Sector) Regulations 2001*

This regulation provides that Schedule 1 of these Regulations amends the *Privacy (Private Sector) Regulations 2001*.

Regulation 9 – Amendment of *Public Service Regulations 1999*

This regulation provides that Schedule 1 of these Regulations amends the *Public Service Regulations 1999*.

Regulation 10 – Amendment of *Torres Strait Fisheries Regulations 1985*

This regulation provides that Schedule 1 of these Regulations amends the *Torres Strait Fisheries Regulations 1985*.

Schedule 1 – Amendments (Regulations 4 to 10)

Part 1 – *Australian Citizenship Regulations 2007*

Item [1] – Paragraph 11 (f)

Provides for the omission of the term “Privacy Commissioner” and the insertion, in its place, of the term “Australian Information Commissioner”.

Part 2 – *Defence Force Regulations 1952*

Item [2] – Paragraph 74 (c) (iii)

Provides for the current text to be substituted by the words “the Australian Information Commissioner performing the privacy function; or”.

Part 3 – *Fisheries Management Regulations 1992*

Item [3] – Paragraph 19E (2) (b)

Provides for the omission of the term “Privacy Commissioner” and the insertion, in its place, of the term “Australian Information Commissioner”.

Part 4 – *Migration Regulations 1994*

Item [4] – Paragraph 3.20 (1) (f)

Provides for the omission of the term “Privacy Commissioner” and the insertion, in its place, of the term “Australian Information Commissioner”.

Item [5] – Paragraph 3.21 (1) (f)

Provides for the omission of the term “Privacy Commissioner” and the insertion, in its place, of the term “Australian Information Commissioner”.

Part 5 – *Privacy (Private Sector) Regulations 2001*

Item [6] – Schedule 1, clause 1.2, definition of independent adjudicator, note.

Provides for the omission of the term “Privacy Commissioner” and the insertion, in its place, of the term “Australian Information Commissioner”.

Part 6 – *Public Service Regulations 1999*

Item [7] – Regulation 5.23, example 2

Provides for the omission of the term “Privacy Commissioner” and the insertion, in its place, of the term “Australian Information Commissioner”.

Item [8] – Subregulation 9.2 (3)

Provides for the omission of the term “Privacy Commissioner” and the insertion, in its place, of the term “Australian Information Commissioner”.

Part 7 – *Torres Strait Fisheries Regulations 1985*

Item 9 – Paragraph 19 (2) (b)

Provides for the omission of the term “Privacy Commissioner” and the insertion, in its place, of the term “Australian Information Commissioner”.