#

# Privacy (Persons Reported as Missing) Rule 2014

I, Timothy Pilgrim, Privacy Commissioner, make the following rule under the *Privacy Act 1988*.

Dated: 3 March 2014

Signed

Timothy Pilgrim

Privacy Commissioner

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##

## Part 1 — Preliminary

### 1 Name of Rule

 This rule is the *Privacy (Persons Reported as Missing) Rule 2014*.

### 2 Commencement

 This rule commences on 12 March 2014.

### 3 Purpose

(1) The rule applies for the purposes of item 3 of the table in s 16A(1) of the *Privacy Act 1988*, which subject to conditions specified in the item in column 3 of the table, permits an APP entity to collect sensitive information, and use and disclose personal information for the purpose of locating a person reported as missing.

(2) The rule does not permit an organisation to use or disclose government related identifiers.

### 4 Definitions

(1) Unless this rule states otherwise, any word or expression used in this rule which is defined in the Privacy Act has the same meaning as in that Act.

(2) In this rule:

***child*:** without limiting who is a child of a person, someone is a *child* of a person if he or she isa child of a person within the meaning of the *Family Law Act 1975*.

***family*** includes the following (without limitation):

1. a de facto partner of the individual
2. someone who is the child of the individual, or of whom the individual is the child
3. anyone else who would be a member of the individual’s family if someone mentioned in paragraph (a) or (b) is taken to be a member of the individual’s family.

***locating body*** means:

1. the Australian Federal Police
2. a police force or service of a State or Territory
3. the Salvation Army Family Tracing Service
4. the Australian Red Cross Tracing Service
5. International Social Service Australia
6. a Link-Up Service of a State or Territory, or
7. the Department of Foreign Affairs and Trade.

***Office of the Australian Information Commissioner*** means the agency established under section 5 of the *Australian Information Commissioner Act 2010*.

***person reported as missing*** means an individual:

1. who has been reported as missing to a locating body
2. whose whereabouts are unknown to the locating body, and
3. who is being sought by the locating body because there are serious concerns for their safety and/or welfare or for the purpose of re-uniting them with their family

but does not include an individual who is being sought:

1. in relation to legal matters, including but not limited to, debt, maintenance, support proceedings, wills, child custody, divorce or investigations into suspected criminal activity of the individual, or
2. for the purpose of genealogical research.

***Privacy Act*** means the *Privacy Act 1988*.

***Rule***means the *Privacy (Persons Reported as Missing) Rule 2014*.

*Note* The following expressions have the same meaning as in subsection 6(1) of the Privacy Act:

* APP entity
* collects
* consent
* individual
* organisation
* personal information
* sensitive information.

##

## Part 2 — Handling of personal information

### 5 Collection of sensitive information by a locating body

1. An APP entity may collect sensitive information under item 3 of the table in s 16A(1) about a person reported as missing if:
2. the APP entity is a locating body
3. the APP entity reasonably believes that the collection is reasonably necessary to assist the entity to locate the person reported as missing
4. the information that is collected is limited to the extent reasonably necessary to make contact with, or to offer proof of life of, the person reported as missing, and
5. section 7 does not apply in relation to the collection.

### 6 Use or disclosure of personal information without the consent of the person reported as missing

(1) An APP entity may use or disclose personal information under item 3 of the table in subsection 16A(1) about a person reported as missing if:

1. the use or disclosure of the information is in response to a request from a locating body
2. the APP entity reasonably believes that the use or disclosure is reasonably necessary to assist the locating body to locate a person reported as missing
3. in the case of a disclosure, the recipient of the information is a locating body
4. it is unreasonable or impracticable to obtain the consent of the person reported as missing to the use or disclosure of the information
5. the information that is used or disclosed is limited to the extent reasonably necessary to make contact with, or to offer proof of life of, the person reported as missing
6. the use or disclosure is not contrary to any wish expressed by the person reported as missing of which the APP entity is aware, and
7. section 7 does not apply in relation to the use or disclosure.

(2) If an APP entity discloses personal information in accordance with subsection (1), the entity must make a written note of the disclosure.

### 7 Collection, use or disclosure must not pose a serious threat to an individual

An APP entity must not collect, use or disclose personal information about an individual under item 3 of the table in subsection 16A(1) if the APP entity reasonably believes that the collection, use or disclosure of the information would pose a serious threat to the life, health or safety of any individual.

### 8 Operation of this rule

(1) It is not the intention of this rule to affect the operation of other laws that make provision with respect to the collection, use and disclosure of the personal information of a person reported as missing.

*Note:* This includes Part VIA of the Privacy Act(Dealing with personal information in emergencies and disasters)

1. Nothing in this rule is to be taken to require an APP entity to collect, use or disclose personal information.