

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 180, 2015**

**Issued by the authority of the Attorney-General**

*Privacy Act 1988  
Privacy Amendment (2015 Measures No.3) Regulation 2015*

The *Privacy Act 1988* (Privacy Act), among other things, regulates the privacy of information relating to credit reporting. These credit reporting provisions primarily regulate the handling and maintenance of certain kinds of personal information concerning consumer credit.

Subsection 100(1) of the Privacy Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Privacy Act.

#### *Prescription of the Export Finance and Insurance Corporation as a credit provider*

The Privacy Act generally restricts the collection, use and disclosure of consumer credit information to credit providers and credit reporting bodies. Subparagraph 6G(1)(d)(ii) of the Privacy Act permits agencies to be prescribed by regulations as a credit provider. The Export Finance and Insurance Corporation is an agency.

The Regulation prescribes the Export Finance and Insurance Corporation as a credit provider for the purposes of subparagraph 6G(1)(d)(ii) of the Privacy Act enabling it to collect, use and disclose credit information under the credit reporting provisions of the Privacy Act. This will enable the Export Finance and Insurance Corporation to efficiently deliver its credit facilities to small and medium export enterprises.

#### *Prescription of Indigenous Business Australia to collect repayment history information*

Under paragraph 20E(4)(a) of the Privacy Act credit reporting bodies can disclose repayment history information, a class of consumer credit information, to a credit provider that is a licensee under the *National Consumer Credit Protection Act 2009* (NCCP Act) or is prescribed in the regulations. Licensees hold an Australian Credit Licence under the NCCP Act and are subject to responsible lending obligations. Repayment history information assists licensees meet these obligations. IBA is exempt from holding an Australian Credit Licence under subregulation 20(7) of the *National Consumer Credit Protection Regulation 2010*.

The Regulation prescribes Indigenous Business Australia so that credit reporting bodies can disclose repayment history information to it without Indigenous Business Australia needing to be a licensee under the NCCP Act. This aligns with Indigenous Business Australia's prescription under section 14 of the *Privacy Regulation 2013* to disclose repayment history information without needing to be a licensee under the NCCP Act.

Consistent with the requirements of the *Legislative Instruments Act 2003* the following were consulted in making the proposed Regulation: the Department of Treasury, the Office of the

Australian Information Commissioner, the Export Finance and Insurance Corporation and Indigenous Business Australia.

The Office of Best Practice Regulation was consulted on this Regulation and advised that no Regulation Impact Statement was required.

Details of the Regulation are set out in Attachment A.

A Statement of Compatibility with Human Rights is set out in Attachment B prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny Act) 2011*.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on the day after it was registered.

**Details of the *Privacy Amendment (2015 Measures No. 3) Regulation 2015***

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Privacy Amendment (2015 Measures No. 3) Regulation 2015*.

**Section 2 – Commencement**

This section provides that the Regulation commences on the day after it is registered.

**Section 3 – Authority**

This section provides that the proposed Regulation is made under the *Privacy Act 1988* (Privacy Act).

**Section 4 – Schedule(s)**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item [1] – subsection 10(1)**

Existing subsection 10(1) prescribes credit providers for the purposes of subparagraph 6(G)(1)(d)(ii) of the Privacy Act. This item substitutes subsection 10(1) incorporating the Export Finance and Insurance Corporation as a credit provider.

The prescription of the Export Finance and Insurance Corporation as a credit provider enables it to collect, use and disclose various types of credit information under the credit reporting provisions of the Privacy Act.

**Item [2] – section 13AA**

Section 13AA prescribes Indigenous Business Australia for the purposes of paragraph 20E(4)(a) of the Privacy Act. This prescription enables credit reporting bodies to disclose repayment history information, a class of credit information, to Indigenous Business Australia.

**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

***Privacy Regulation 2013***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The *Privacy Amendment (2015 Measures No.3) Regulation 2015* amends Part 1 of the *Privacy Regulation 2013* by prescribing the Export Finance and Insurance Corporation and Indigenous Business Australia to enable them to access, use and disclose various types of credit information under the credit reporting provisions of the *Privacy Act 1988* (Privacy Act).

**Human rights implications**

This Legislative Instrument engages the right to the protection against arbitrary interference with privacy, protected in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). The right to privacy in Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. In order for an interference with a right not to be 'arbitrary', the interference must be for a reason consistent with the relevant Convention and reasonable in the particular circumstances.

The Regulation deals with the collection, use and disclosure of credit information under the Privacy Act. Under section 6N of the Privacy Act credit information contains various types of personal information. The Regulation specifically prescribes the agencies that may collect, use and disclose the credit information and maintains the clearly defined and limited uses and disclosures of credit information available to those agencies. These are legitimate objectives consistent with the Privacy Act.

**Conclusion**

This Legislative Instrument engages with the right to privacy, through the use and disclosure of personal information, and does so in a reasonable and proportionate way.