

EXPLANATORY STATEMENT

Select Legislative Instrument No. , 2016

Issued by the authority of the Attorney-General

Privacy Act 1988

Privacy Amendment (Australian Government Solicitor and Energy and Water Utilities) Regulation 2016

The *Privacy Act 1988* (Cth) (Privacy Act) establishes, among other things, the Australian Privacy Principles (APPs), which regulate the collection, use, disclosure and storage of personal information by APP entities.

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

The *Privacy Amendment (Australian Government Solicitor and Energy and Water Utilities) Regulation 2016* (the Regulation) repeals the prescription of the Australian Government Solicitor (AGS) as an organisation for the purposes of the Privacy Act. Furthermore, the regulation extends, for 12 months, the permission for energy and water utilities in the Australian Capital Territory and the Northern Territory to disclose credit information.

Repeal of the prescription of the Australian Government Solicitor as an organisation

The Regulation repeals the prescription of the Australian Government Solicitor for the purposes of the Privacy Act.

The Australian Government Solicitor was prescribed in regulation 13 of the *Privacy Regulation 2013* (the Privacy Regulation) for the purposes of subsection 7A(2) of the Privacy Act, which provides that acts and practices of an agency specified in Part I of Schedule 2 of the *Freedom of Information Act 1982* (the FOI Act) may be prescribed as acts and practices of an organisation for the purposes of the Privacy Act. This prescription of the Australian Government Solicitor in the Privacy Regulation 2013 was nugatory as a result of amendment of the FOI Act by the *Judiciary Amendment Act 2015*, which removed reference to the AGS from Part I of Schedule 2 of the FOI Act as part of the Australian Government Solicitor's consolidation with the Attorney General's Department.

External dispute resolution membership obligation for credit reporting

Pursuant to subparagraph 21D(2)(a)(i) of the Privacy Act, credit providers are required to be members of an external dispute resolution (EDR) scheme recognised by the Australian Information Commissioner, or prescribed in the regulation, in order to disclose credit information about an individual to a credit reporting body and thereby participate in the credit reporting system. The purpose of this requirement is to ensure that consumers have access to a convenient, speedy and independent avenue of redress for complaints or other issues that might arise between the

individual and the organisation on credit reporting matters. Utilities (water, gas and electricity providers) are considered credit providers under the Privacy Act.

Permission for utilities to disclose credit information

The Regulation extends permission for energy and water utilities in the Australian Capital Territory and the Northern Territory to disclose credit information until 1 January 2018. This will allow energy and water utilities in the Australian Capital Territory and the Northern Territory to continue to access the credit reporting system without the requirement to be a member of an EDR scheme recognised by the Australian Information Commissioner.

All Australian jurisdictions require utilities in that jurisdiction to participate in EDR arrangements. To minimise the compliance burden, the simplest solution for utilities is if existing EDR schemes are also recognised as EDR schemes by the Australian Information Commissioner for credit reporting purposes. Legislative amendments or other arrangements are required to enable the recognition of EDR schemes in the Australian Capital Territory and the Northern Territory. The permission for energy and water utilities in the Australian Capital Territory and the Northern Territory to disclose credit information until 1 January 2018 will enable those utilities to continue to access the credit reporting system whilst necessary legislative changes or other arrangements are made.

Details of the Regulations 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*.

Consistent with the requirements of the *Legislation Act 2003* the Office of the Australian Information Commissioner was consulted on the proposal related to the Australian Government Solicitor and the Department of Treasury, the Office of the Australian Information Commissioner, the Northern Territory Department of Treasury and Finance and the ACT Justice and Community Safety Directorate were consulted on the proposal related to energy or water utilities in the ACT and the Northern Territory.

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

The repeal of the prescription of the Australian Government Solicitor as an organisation commenced the day after registration. The extension of the permission for energy and water utilities in the Australian Capital Territory and the Northern Territory to disclose credit information commenced on 2 January 2017.

ATTACHMENT A**Privacy Amendment (Australian Government Solicitor and Energy and Water Utilities) Regulation 2016****Preliminary****Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Privacy Amendment (Australian Government Solicitor and Energy and Water Utilities) Regulation 2016*.

Section 2 – Commencement

This section provides that sections 1 to 4 of the proposed Regulation commence on the day after registration.

This section provides that item 1 of Schedule 1 of the proposed Regulation commences the day after registration.

This section provides that items 2 and 3 of Schedule 1 commence on 2 January 2017.

Section 3 – Authority

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

Section 4 – Schedule(s)

This section provides that amendments or repeals have effect according to the terms set out in the Schedule(s).

Schedule 1 – Amendments**Section 13 – Agencies to be treated as organisations**

This section repeals the prescription of the Australian Government Solicitor as an organisation for the purposes of section 7A(2) of the *Privacy Act 1988*.

Section 14A – Permitted disclosure of credit information by energy and water utilities

Subsection 14A(1) provides that subparagraph 21D(2)(a)(i) of the *Privacy Act 1988* does not apply in relation to a disclosure of credit information by a credit provider that is an energy or water utility operating in the Australian Capital Territory or the Northern Territory.

Subsection 14A(2) provides that section 14A is repealed at the end of 1 January 2018.

ATTACHMENT B**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 (Australian Government Solicitor and Energy and Water Utilities) Regulation 2016* (the Regulation) amends the *Privacy Regulation 2013* to repeal the prescription of the Australian Government Solicitor as an organisation for the purposes of the *Privacy Act 1988*. Furthermore, the proposed regulation extends the permission of energy and water utilities in the Australian Capital Territory and the Northern Territory to disclose credit information until 1 January 2018. This will allow energy and water utilities in the Australian Capital Territory and the Northern Territory to continue to access the credit reporting system without the requirement to be a member of an external dispute resolution (EDR) scheme recognised by the Australian Information Commissioner.

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 engages with the use and disclosure of credit information, which is personal information. The Regulation ensures that consumers are not disadvantaged simply because of their jurisdiction of residence by time limiting, to 1 January 2018, the permitted disclosure of credit information by utilities without being subject to the EDR membership obligation, and by limiting the permission to disclose credit information to only those utilities operating in the Australian Capital Territory and the Northern Territory. The measures are time limited, reasonable, necessary and proportionate as they ensure that a discrete subset of personal data is used for the purpose of providing essential services to Australians. 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 data, and does so in a reasonable and proportionate way.