

EXPLANATORY STATEMENT

Data matching Program (Assistance and Tax) Act 1990

Data-matching Program (Assistance and Tax) Rules 2021

This Explanatory Statement relates to the legislative instrument titled the *Data-matching Program (Assistance and Tax) Rules 2021 (Rules)* - issued under section 12 of the *Data-matching Program (Assistance and Tax) Act 1990 (Cth) (Data-matching Act)*.

Introduction

The Data-matching Act regulates how the Australian Taxation Office (ATO) and assistance agencies (defined in section 3 of the Data-matching Act as the Education Department, the Social Services Department, the Veterans' Affairs Department, and the Human Services Department), use tax file numbers to compare personal information to detect incorrect payments. The names of the assistance agencies have changed since the enactment of the Data-matching Act such that the assistance agencies are now called the Department of Education, Skills and Training, the Department of Social Services, the Department of Veterans' Affairs, and Services Australia.

Data-matching can be used to detect where two inconsistent payments are made to a person by the same or more than one agency. It can also be used to detect where inconsistent income data about a person is held by two or more agencies, and to identify possible tax evasion.

Data-matching can be a privacy-intrusive technique. Section 12 of the Data-matching Act provides for the issuing of 'rules relating to privacy' for the matching of data under the Data-matching Act. Although the Department of Social Services is the agency with portfolio responsibility for the Data-matching Act, under section 12 of the Data-matching Act the Australian Information Commissioner (**Information Commissioner**) is responsible for making rules relating to privacy and for overseeing compliance with those rules.

Subsection 12(1) of the Data-matching Act accordingly requires the matching agency and source agencies to comply with rules the Information Commissioner may issue from time to time. Subsection 12(2) provides that the Information Commissioner may, by legislative instrument, issue rules relating to the matching of data under the Data-matching Act.

Purpose and Operation of the Instrument

The Rules support the Data-matching Act and provide privacy safeguards for the use of tax file numbers and other personal information in income compliance data matching programs, by setting out certain responsibilities that must be met by agencies that participate in regulated data matching programs.

The objective of the Rules is to ensure that the use of data-matching is based on clear and

publicly known standards. The Rules provide for monitoring by the Information Commissioner of technical standards for data-matching programs and for privacy safeguards for individuals affected by the outcomes of data-matching.

The impact of the Rules is to impose additional procedural and reporting obligations upon regulated agencies who conduct regulated data matching activities. The benefit of these regulations include continued lawful, accurate debt raising for regulated entities and ensuring that individuals are protected by appropriate safeguards in the design and implementation of data-matching programs under the Data-matching Act.

These Rules apply only to data-matching carried out under the Data-matching Act.

Consultation

The Office of the Australian Information Commissioner (OAIC) has consulted on the proposal to remake the current *Data-Matching Program (Assistance and Tax) Act 1990 - Guidelines (31/10/1994)* (Guidelines) in accordance with section 17 of the *Legislation Act 2003*.

The OAIC conducted preliminary consultation to determine whether data matching activities under the Data-matching Act and the Guidelines was occurring. The OAIC found that only the Department of Veterans Affairs (DVA) continue to conduct data matching activities under the Data-matching Act and the Guidelines. Services Australia, the ATO, and the Department of Education, Skills, and Employment currently leverage other legislation, such as the *Tax Administration Act 1953*, to authorise the collection, use and disclosure of tax file numbers for their data matching programs. Services Australia do, however, provide administrative and technical support to assist DVA to carry out its data matching programs. The Department of Social Services, as the agency responsible for the data matching policy, do not conduct any data matching programs.

Given the current Guidelines continue to be used, the Information Commissioner decided to remake the Guidelines into Rules to preserve current privacy protections. The remade Rules have been developed without significant technical amendments from the current requirements under the Guidelines.

Based on the outcome of this preliminary consultation, the Information Commissioner conducted targeted consultation with DVA and Services Australia (as they are ‘user agencies’) and the Department of Social Services (as responsible agency of the Data-matching Act). These agencies were invited to comment on an exposure draft of the Rules.

The OAIC also conducted public consultation using an exposure draft of the Rules.

All comments and suggestions from consultation participants were carefully considered and contributed substantially towards the finalisation of the Rules.

Other details

The current Guidelines are due to sunset on 01 October 2021. It has been decided that these Guidelines will be remade into the Rules without significant amendment. The Rules will replace the current *Data-Matching Program (Assistance and Tax) Act 1990 - Guidelines (31/10/1994)*.

Details of the Rules are set out in **Attachment A**.

A Statement of Compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is at **Attachment B**.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Authority

Section 12 of the *Data-Matching Program (Assistance and Tax) Act 1990*.

ATTACHMENT A – Details of the *Data-matching Program (Assistance and Tax) Rules 2021*

Section 1 – Name

Section 1 provides that the name of the Rules is the *Data-matching Program (Assistance and Tax) Rules 2021*.

Section 2 – Commencement

Section 2 provides that the Rules commence on the first day on which they are no longer subject to disallowance. This provision accords with subsection 12(6) of the Data-Matching Act.

Section 3 – Authority

Section 3 provides that the Rules are made under section 12(2) of the *Data-matching Program (Assistance and Tax) Act 1990 (Cth)*.

Section 4 – Repeal

Section 4 provides that the *Data-Matching Program (Assistance and Tax) Act 1990 - Guidelines (31/10/1994)* is repealed.

Under subsection 33(3) of the Acts Interpretation Act 1901, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument.

Section 5 – Definitions

Subsection 5(1) provides that a number of expressions used in the Rules are defined in the Data-matching Act. Where a term is not defined in the Act but is defined in the *Privacy Act 1988 (Privacy Act)*, that definition applies.

Terms not defined in either of these Acts are defined in the Rules. Subsection 5(2) provides that in the Rules:

- **action** refers to the actions set out in section 10 of the Data-matching Act, and in the case of the tax agency includes requesting a taxpayer to lodge a return.
- **Data-matching Act** means the *Data-matching Program (Assistance and Tax) Act 1990*.
- **discrepancy** refers to a result of the program which warrants further action by any relevant source agency for the purposes of giving effect to the program.
- **dispute** refers to any situation where an individual disputes the accuracy of information which forms the basis of a discrepancy and continues to insist his or her view is correct.

- ***final completion of the action*** has the meaning given in section 17 of the Rules.
- ***Information Commissioner*** has the meaning given in the *Australian Information Commissioner Act 2010*.
- ***matches undertaken*** refers to the total number of records received by the matching agency from assistance agencies after they have been separated into individual records for individuals, partners, children, parents and other names used by those individuals.
- ***Privacy Act*** means the *Privacy Act 1988*.
- ***program*** refers to the process described in section 6 of the Data-matching Act.
- ***program protocol*** refers to the document described in section 7 of the Rules.
- ***Rules*** means these *Data-matching Program (Assistance and Tax) Rules 2021*
- ***technical standards report*** refers to the document described in section 11 of the Rules.

Section 6 – Scope of Operation

Section 6 provides that the Rules apply to, and only to, the matching program referred to in the Data-matching Act. The purpose of this section is to specify that the Rules apply only to data-matching under the Data-matching Act, and not to other data-matching programs.

Part 2 – Program protocols

Part 2 (sections 7-10) describe requirements in relation to data-matching program protocols. A data-matching program protocol is a document which sets out the essential features and governance structures of a data matching program. Program protocols are the primary mechanism for the Information Commissioner to determine whether agencies have developed data-matching programs that comply with the Rules, the Data-Matching Act and the Privacy Act.

Section 7 – Matching agency must maintain a program protocol

Subsection 7(1) provides that a matching agency must maintain a program protocol in relation to the program. Subsection 7(2) provides that the program protocol must be developed in consultation with the source agencies. The program protocol is a document that describes the data-matching program and explains the justification for the program, in accordance with subsections 7(3) and 7(4) of the Rules. The purpose of the program protocol is to

- inform the public and the Information Commissioner about the existence and nature of the data matching program;
- assist in ensuring that data-matching under the Data-matching Act is based on clear and publicly known standards; and

- ensure that data matching policies and procedures are documented for the purposes of accountability, transparency, and to preserve corporate knowledge.

Subsection 7(3) sets out requirements for certain information to be included in a program protocol. This includes:

- Information about the program, such as an overview of what the program is, the program's objectives, how long it will run, and which agencies will participate in the program and what action may be taken as a result of the program (including what notices will be given to individuals affected by outputs of the program). These outputs may include debt owed to the agency on the basis of their data matching activities.
- Information about the handling of data, such as the nature of the planned data matching activities, quality assurance mechanisms, the legal authority for collection, use or disclosure of personal information, data security measures and how participating agencies intend to notify individuals whose privacy is affected by the program. Specification of these governance structures are intended to promote agency compliance with the Australian Privacy Principles (APP) set out in the Privacy Act.

Subsection 7(4) requires that a program protocol include information which sets out the matching agency's justification for opting to conduct a given data matching program. Noting the potential risk to privacy, it is expected that matching agencies consider alternatives to data matching which would otherwise pose a reduced risk to privacy. As part of the justification for engaging in data matching, the matching agency must demonstrate that there are benefits which outweigh the costs of conducting the program.

Section 8 – Public inspection of program protocols

Section 8 enables oversight by the Information Commissioner of the data-matching program, particularly in relation to Program Protocols, and ensures, subject to a public interest test, that the basis of the program is to be publicly available.

Subsection 8(1) provides that the matching agency must provide a copy of the program protocol to the Information Commissioner. This is to allow the Commissioners the opportunity to inspect the program protocols compliance with the Data-Matching Act, and the Rules.

Subsection 8(2) provides that program protocol must appear in the Gazette unless the Information Commissioner believes that public availability is likely to be contrary to public interest. This is the primary mechanism by which the public may inspect program protocols developed by assistance agencies and the ATO.

Section 9 – Compliance with program protocol

Section 9 provides that agencies must comply with the program protocol. This means agencies must operate their data matching programs in accordance with the governance structures described in the program protocol. If an agency does not comply with the program

protocol the Information Commissioner may investigate the agency for a breach of the Rules pursuant to subsection 13(2) of the Data-matching Act.

Section 10 – Amendments to program protocol

Section 10 further describes the Information Commissioner’s oversight role in relation to a matching agency who amends a program protocol that was previously reviewed and approved by the Information Commissioner.

Subsection 10(1) provides that any amendments made to the program protocol need to be approved by the Information Commissioner and be available for public inspection. Subsection 10(2) requires that assistance agencies inform individuals about how they can access the program protocol. This could be done by publishing the protocol on the agency’s website.

Part 3 – Technical standards

Part 3 (sections 11-13) details requirements in relation to technical standards reports. Technical standards reports provide information regarding the technical procedures, operations or computations agencies employ to match data in a secure, privacy protective manner. The technical standards reports must also be submitted to, and may be varied by the Information Commissioner.

Section 11 – Matching agency must maintain a technical standards report

Subsection 11(1) provides that the matching agency must prepare a technical standards report prior to commencing a program. The technical standards report is a subsection of the program protocol. The technical standards report is intended to provide detailed procedural information regarding the mechanisms underpinning the operation of the data-matching program.

Subsection 11(2) sets out that the technical standards report must include information on the nature and quality of data supplied by source agencies, the data-matching algorithm, the security features of the program and techniques to ensure data validity and data quality.

The requirement to include this information supports compliance with the APPs, such as:

- APP 11 which requires that agencies take reasonable steps in the circumstances to protect information they hold from misuse, interference, loss and unauthorised use, modification or disclosure.
- APP 10 and APP 13, which require that agencies take reasonable steps in the circumstances to ensure the accuracy of the personal information they hold.

Subsection 11(3) provides for oversight of the data-matching program by the Information

Commissioner by requiring that the matching agency must:

- a. maintain a copy of the technical standards report;
- b. provide a copy of the technical standards report to the Information Commissioner; and
- c. provide copies of the technical standards report to the source agencies.

Section 12 – Compliance with technical standards report

Section 12 provides that agencies must comply with the technical standards report. This means agencies must operate their data matching programs in accordance with the procedures described in the technical standards report. If an agency does not comply with the technical standards report the Information Commissioner may investigate the agency for a breach of the Rules pursuant to subsection 13(2) of the Data-matching Act.

Section 13 – Variation of the technical standards report

Subsection 13(1) provides the Information Commissioner with the ability to require a variation to the contents of a technical standards report.

Subsection 13(2) provides that agencies must comply with a variation to the technical standards report. Subsection 13(3) provides that failure to comply with a technical standards report as varied will be taken to be a contravention of the Rules and may be investigated by the Information Commissioner pursuant to subsection 13(2) of the Data-matching Act.

Part 4 – Safeguards for affected individuals

Part 4 (sections 14-18) set out requirements designed to minimise any impact on individuals affected by data-matching programs under the Data-matching Act.

Section 14 – Confirming validity of matches

Section 14 provides that reasonable procedures for validating results must be followed before relying on those results as a basis for administrative action against an individual. This section has the effect that agencies are required to take steps to confirm the validity of a match before using the results of a match to commence action against an individual. These steps must correspond to the data quality assurance mechanisms and procedures set out in the program protocol and accompanying technical standards report.

Section 15 – Notifying individuals

It is possible that the reasonable procedures provided for in section 14 may include checking an apparent data match with the individual concerned. Section 15 provides that where a source agency confirms the validity of a data match only by checking the data with an individual, the agency must give the individual notice of relevant matters and a

reasonable opportunity to respond.

The purpose of section 15 is to ensure that in circumstances where an agency proposes to confirm the validity of a data match by only checking the match with the individual concerned (as opposed to checking against the source data), there are sufficient safeguards for individuals, including that the individual is aware of prescribed matters and has a reasonable opportunity to respond.

Subsection 15(1)(a) provides that in these circumstances the individual must be provided reasonable notice of:

- (i) the match;
- (ii) the initial conclusions the agency has drawn based on the match;
- (iii) an explanation of the techniques used to examine a discrepancy;
- (iv) the administrative action that the agency proposes to take in response to the match;
- (v) that no check against source data has been performed.

Subsection 15(1)(b) has been included to provide the recipient of a notice with reasonable time in which to respond. Individuals must also be informed of their right to make a complaint under the Privacy Act.

Section 16 – Destruction of data where no discrepancy produced

Section 16 requires the destruction of personal information if it is used in data matching cycles and does not produce a discrepancy, as soon as practicable after the agency commences Step 5 in the data matching cycle as set out in section 7 of the Data-matching Act.

Subsection 16(2) provides that the personal information must be destroyed no later than 24 hours after the completion of Step 5 of the data matching cycle unless additional time is required because of a computer malfunction or industrial action.

The effect of this section is to prevent agencies from retaining personal information which does not produce a discrepancy through the data-matching process. This complies with the principle of data minimisation.

Section 17 – Management and destruction of data where discrepancy produced

Section 17 sets out requirements for dealing with information giving rise to a discrepancy in the data-matching cycle. The purpose of this section is to place controls on the use, disclosure, and retention of information that produces a discrepancy through the data-matching process.

Subsection 17(1) provides that 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.

Subsection 17(2) provides that source agencies must then deal with the results in accordance with section 10 of the Data-matching Act. Subsection 17(4) provides that in the case of a discrepancy the source agency may refer the discrepancy to another source agency for action, which must commence within 12 months from receiving the data. If the source agency decides to take no further action in relation to the discrepancy, subsection 17(3) provides that the information must be destroyed within 14 days where it is reasonably practicable to do so.

Subsection 17(5) provides that if a source agency receives information from the matching agency or another source agency giving rise to an action within the meaning of subsection 10(1) of the Data-matching Act, the source agency who received the information must destroy the information on final completion of the action. The term ‘final completion of the action’ is defined in subsection 17(6) of the Rules. This definition is designed to ensure the information can be retained until it is not needed for the action.

Section 18 – No new registers, data sets or databases to be created

Section 18 prevents the personal information of individuals being used in a way that creates a new, separate register or database to protect against so-called ‘function creep’. The effect of this section is that the personal information of individuals subject to a data-matching program may not be stored or used in ways that are not for the original purposes of the data-matching program itself. This aligns and promotes compliance with APP 6 which requires that entities only use personal information for the purpose it was collected unless an exception applies.

Subsection 18(1) provides that 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 database) is created about any individual subject to the data-matching program. However, subsection 18(2) provides that subsection 18(1) does not prevent a source agency from maintaining a register of individuals in respect of whom further inquiries are warranted following a decision made under section 10 of the Data-matching Act. Subsection 18(3) provides that if action is taken in relation to an individual in accordance with section 10 of the Data-matching Act, after completing the action the source agency must delete any information that relates to that action from any register described in subsection 18(2).

Subsection 18(4) further provides that subsection 18(1) does not prevent the creation of a register for the purpose of excluding individuals from being selected for investigation, although any such register must only include the minimum information required for that purpose.

Part 5 – Compliance and reporting

Part 5 (sections 19-21) establishes the Information Commissioner’s oversight role in relation to monitoring agency compliance with the Rules. They also set out requirements for agencies to report on their data matching programs to the Information Commissioner and to Parliament for the purposes of accountability and transparency.

Section 19 – Information Commissioner to monitor compliance

Section 19 sets out the responsibilities of the Information Commissioner in relation to monitoring compliance with the Rules. The Information Commissioner may exercise any of the powers as to investigation and audit contained in the Privacy Act for the purposes of monitoring compliance with the Rules.

Subsection 19(1) provides that the Information Commissioner is to monitor compliance with the Rules and to provide advice to the relevant matching and source agencies in relation to their responsibilities. Subsection 19(2) provides that the Information Commissioner’s annual report must include an assessment of the program’s compliance with the Data-matching Act, the Rules, and the Privacy Act. The Information Commissioner may use their investigation and audit powers in the Privacy Act to gather this information.

Section 20 – Agencies to report to Information Commissioner

Section 20 requires that the matching and source agencies must report to the Information Commissioner on a periodic basis, as agreed with the Information Commissioner. The primary purpose of this section is to facilitate the Information Commissioner’s assessment of the data-matching program’s compliance with the Data-matching Act, the Rules, and the Privacy Act.

Subsection 20(1) provides that the Information Commissioner may require agencies to report on any relevant matter, including the following matters:

- a. the actual costs and benefits flowing from the program;
- b. any non-financial factors relevant to the program;
- c. any difficulties in the operation of the program and the steps the agency has taken to overcome these difficulties;
- d. any internal audits or other forms of assessment of the program undertaken by the agency, and their outcome;
- e. examples of circumstances in which notice under section 11 of the Data-matching Act would prejudice the effectiveness of an investigation into the possible commission of an offence;
- f. the number of matches produced;

- g. the number and proportion of matches that resulted in discrepancies;
- h. the number and proportion of discrepancies that resulted in the agency giving notice under section 11 of the Data-matching Act;
- i. the number and proportion of discrepancies that resulted in action being taken;
- j. the number of cases where an overpayment was identified;
- k. the number of cases in which action proceeded despite a challenge to accuracy of the data;
- l. the number of cases not proceeded with after contacting the individual who is the subject of the match;
- m. the number of cases where recovery action was initiated; and
- n. the number of cases where a debt was fully recovered.

Section 21 – Agencies to report to Parliament

Section 21 specifies the types of information that must be included in reports prepared for the purposes of subsection 12(4) (reports prepared for Parliament) and subsection 12(5) (reports prepared for the relevant Minister) of the Data-matching Act.

Subsection 21(1) provides that reports prepared for the purposes of subsection 12(4) and subsection 12(5) of the Data-matching Act must deal with all of the following matters:

- a. the actual costs and benefits flowing from the program;
- b. any non-financial but quantifiable factors relevant to the program;
- c. any difficulties in the operation of the program and the steps the agency has taken to overcome these difficulties;
- d. any internal audits or other forms of assessment of the program undertaken by the agency, and their outcome;
- e. the number of matches produced;
- f. the number and proportion of matches that result in discrepancies;
- g. the number and proportion of discrepancies that resulted in the agency giving notice under section 11 of the Data-matching Act;
- h. the number and proportion of discrepancies that resulted in action being taken;
- i. the number of cases where an overpayment was identified;
- j. the number of cases in which action proceeded despite a challenge to accuracy of the data;
- k. the number of cases not proceeded with after contacting the individual who is the subject of the match;
- l. the number of cases where recovery action was initiated; and

m. the number of cases where the debt was fully recovered.

Part 6 – Miscellaneous

Section 22 – Operation of this instrument

Section 22 provides that nothing in the rules is intended to affect the operation of the Privacy Act or the APPs.

Attachment B

Statement of Compatibility with Human Rights

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

Data-matching Program (Assistance and Tax) Rules 2021

This Disallowable Legislative Instrument (**Rules**) 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 Disallowable Legislative Instrument

The Data-matching Act

The *Data-matching Program (Assistance and Tax) Act 1990* (**Data-matching Act**) regulates how the Australian Taxation Office (ATO) and assistance agencies (defined in the Data-matching Act as the Education Department, the Social Services Department, the Veterans' Affairs Department, and the Human Services Department) use tax file numbers to compare personal information so they can detect incorrect payments.

Data-matching can be used to detect where two inconsistent payments are made to a person by the same or more than one agency. It can also be used to detect where inconsistent income data about a person is held by two or more agencies, and to identify possible tax evasion.

The authority to make rules under the Data-matching Act

Section 12 of the Data-matching Act provides for the issuing of 'rules relating to privacy' for the matching of data under the Data-matching Act. Although the Department of Social Services is the agency with portfolio responsibility for the Data-matching Act, the Australian Information Commissioner (**Information Commissioner**) is responsible for making rules relating to privacy and for overseeing compliance with those rules.

Section 12 of the Data-matching Act requires the matching agency and source agencies to comply with rules the Information Commissioner may issue from time to time. Subsection 12(2) provides that the Information Commissioner may, by legislative instrument, issue rules relating to the matching of data under the Data-matching Act.

The purpose of the Rules

Data-matching can be a privacy-intrusive technique. The purpose of the Rules is to ensure that the use of data-matching is based on clear and publicly known standards, and that individuals are protected by appropriate safeguards in the design and implementation of the data-matching program. The Rules ensure that there are reasonable limits on the use of personal information in the data-matching process.

The Rules provide for monitoring of technical standards for data-matching programs by the Information Commissioner and for safeguards for individuals affected by the outcomes of data-matching, in order to promote best privacy practice among agencies using data-matching programs.

Scope and application of the Rules

The Rules apply only to data-matching carried out under the Data-matching Act. There are other forms of data-matching undertaken by Australian Government agencies, but these do not always attract the operation of the Data-matching Act or the Rules. Only data-matching that involves the use of tax file numbers undertaken for the purposes of the Data-matching Act will be subject to the operation of the Rules.

Human rights implications

The Rules engage the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (**ICCPR**), in so far as that article includes the right to the protection of the law against unlawful or arbitrary interferences with an individual's privacy.

Article 17 of the ICCPR contains the right to protection from arbitrary or unlawful interference with privacy, in the following terms:

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

The UN Human Rights Committee has not defined 'privacy' but it is generally understood to comprise of a freedom from unwanted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The collection, use and disclosure of personal information for the purposes data-matching (public or otherwise) may be considered to engage and limit the right to privacy.

The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of 'reasonableness' to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The Rules ensure that any limitation on the right to privacy imposed by a data-matching program is reasonable. This is because the Rules provide protections and standards for how matching agencies use information for data-matching purposes under the Data-matching Act. The Rules provide that the matching agency must maintain a program protocol that describes the data-matching program and explains the justification for the program. The Rules also require the matching agency to maintain a technical standards report in relation to the data-matching program that describes, among other things, the specification for each matching algorithm and the security features included in the program to control and minimise access to

personal information.

Importantly, the Rules contain safeguards for individuals who may be affected by a data-matching program. The Rules require source agencies to notify affected individuals in certain circumstances relating to a match, and provides for a reasonable period (at least 28 days) in which the affected individual may respond. The Rules also require the destruction of certain data and prohibit the creation of new data-sets or data-bases except in limited circumstances. The Rules also create reporting obligations for agencies maintaining a data-matching program.

Accordingly, to the extent that the Data-matching Act limits the right to privacy by allowing for personal information to be collected for data-matching, the Rules ensure that this interference with privacy is proportionate to the objectives sought. The Rules prescribe protocols and safeguards to ensure data-matching is appropriately planned, reported and disclosed. To the extent that the data-matching process engages the right to privacy, the Rules are intended to ensure that data-matching is based on clear and publicly known standards, and that individuals are protected by appropriate safeguards in the design and implementation of the data-matching program. The Rules promote the right to privacy by requiring regulated entities to maintain privacy best practice with respect to governance, processes and documentation.

Conclusion

The Rules are compatible with human rights because they mitigate the extent to which the process of data-matching under the Data-matching Act may limit the right to privacy.

Angelene Falk

Australian Information Commissioner and Privacy Commissioner