

**澳洲《1998年私穩法》(Privacy Act 1998)
的條目及有關摘錄**

**The table of provision of and relevant extracts form the
consolidated Australian Privacy Act 1998**



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PRIVACY ACT 1988 SECT 6

Part II-Interpretation 6 Interpretation

(1) In [this Act](#), unless the contrary intention appears:

ACT enactment has the same meaning as *enactment* has in the [Australian Capital Territory \(Self-Government\) Act 1988](#).

agency means:

- (a) a Minister; or
- (b) a Department; or
- (c) a body (whether incorporated or not), or a tribunal, established or appointed for a public purpose by or under a Commonwealth enactment, not being:
 - (i) an incorporated company, society or association; or
 - (ii) an organisation within the meaning of the [Conciliation and Arbitration Act 1904](#) or a branch of such an organisation; or
- (d) a body established or appointed by the Governor-General, or by a Minister, otherwise than by or under a Commonwealth enactment; or
- (e) a person holding or performing the duties of an office established by or under, or an appointment made under, a Commonwealth enactment, other than a person who, by virtue of holding that office, is the Secretary of a Department; or
- (f) a person holding or performing the duties of an appointment, being an appointment made by the Governor-General, or by a Minister, otherwise than under a Commonwealth enactment; or
- (g) a federal court; or
- (h) the Australian Federal Police; or
- (i) an eligible case manager; or
- (j) the nominated AGHS company; or
- (k) an eligible hearing service provider.

annual turnover of a business has the meaning given by [section 6DA](#).

approved privacy code means:

- (a) a privacy code approved by the Commissioner under [section 18BB](#); or
- (b) a privacy code approved by the Commissioner under [section 18BB](#) with variations approved by the Commissioner under [section 18BD](#).

bank means:

- (a) the Reserve Bank of Australia; or
- (b) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the [Banking Act 1959](#); or
- (c) a person who carries on State banking within the meaning of [paragraph 51](#) (xiii) of the Constitution.

breach an approved privacy code has the meaning given by [section 6B](#).

breach an Information Privacy Principle has a meaning affected by [subsection 6\(2\)](#).

breach a National Privacy Principle has the meaning given by [section 6A](#).

class member, in relation to a representative complaint, means any of the persons on whose behalf the complaint was lodged, but does not include a person who has withdrawn under [section 38B](#).

code complaint means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because it breached an approved privacy code.

Code of Conduct means the Code of Conduct issued under [section 18A](#).

commercial credit means a loan sought or obtained by a person, other than a loan of a kind referred to in the definition of *credit* in this subsection.

Commissioner means the Privacy Commissioner.

Commissioner of Police means the Commissioner of Police appointed under the [Australian Federal Police Act 1979](#).

Commonwealth contract means a contract, to which the Commonwealth or an agency is or was a party, under which services are to be, or were to be, provided to an agency.

Note: See also subsection (9) about provision of services to an agency.

Commonwealth enactment means:

- (a) an Act other than:
 - (i) the [Northern Territory \(Self-Government\) Act 1978](#); or
 - (ii) an Act providing for the administration or government of an external Territory; or
 - (iii) the [Australian Capital Territory \(Self-Government\) Act 1988](#);
- (b) an Ordinance of the Australian Capital Territory;
- (c) an instrument (including rules, regulations or by-laws) made under an Act to which paragraph (a) applies or under an Ordinance to which paragraph (b) applies; or
- (d) any other legislation that applies as a law of the Commonwealth (other than legislation in so far as it is applied by an Act referred to in subparagraph (a)(i) or (ii)) or as a law of the Australian Capital Territory, to the extent that it operates as such a law.

Commonwealth officer means a person who holds office under, or is employed by, the Commonwealth, and includes:

- (a) a person appointed or engaged under the [Public Service Act 1999](#);
- (b) a person (other than a person referred to in paragraph (a)) permanently or temporarily employed by, or in the service of, an agency;
- (c) a member of the Defence Force; and
- (d) a member, staff member or special member of the Australian Federal Police;

but does not include a person permanently or temporarily employed in the Australian Capital Territory Government Service or in the Public Service of the Northern Territory or of Norfolk Island.

consent means express consent or implied consent.

contracted service provider, for a government contract, means:

- (a) an organisation that is or was a party to the government contract and that is or was responsible for the provision of services to an agency or a State or Territory authority under the government contract; or
- (b) a subcontractor for the government contract.



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PRIVACY ACT 1988 SECT 14

DIVISION 2 Information Privacy Principles 14 Information Privacy Principles

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PRIVACY ACT 1988 SECT 14.1

Principle 1 Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:

- (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
- (b) the collection of the information is necessary for or directly related to that purpose.

2. Personal information shall not be collected by a collector by unlawful or unfair means.

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PRIVACY ACT 1988 SECT 14.2

Principle 2 Solicitation of personal information from individual concerned

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector from the individual concerned;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:

- (c) the purpose for which the information is being collected;
- (d) if the collection of the information is authorised or required by or under law-the fact that the collection of the information is so authorised or required; and
- (e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first-mentioned person, body or agency to pass on that information.

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PRIVACY ACT 1988 SECT 14.3

Principle 3 Solicitation of personal information generally

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

- (c) the information collected is relevant to that purpose and is up to date and complete; and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

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PRIVACY ACT 1988 SECT 14.4

Principle 4 Storage and security of personal information

A record-keeper who has possession or control of a record that contains personal information shall ensure:

- (a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- (b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information contained in the record.

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PRIVACY ACT 1988 SECT 14.5

Principle 5 Information relating to records kept by record-keeper

1. A record-keeper who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- (a) whether the record-keeper has possession or control of any records that contain personal information; and
- (b) if the record-keeper has possession or control of a record that contains such information:
 - (i) the nature of that information;
 - (ii) the main purposes for which that information is used; and
 - (iii) the steps that the person should take if the person wishes to obtain access to the record.

2. A record-keeper is not required under clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

3. A record-keeper shall maintain a record setting out:

- (a) the nature of the records of personal information kept by or on behalf of the record-keeper;
- (b) the purpose for which each type of record is kept;
- (c) the classes of individuals about whom records are kept;
- (d) the period for which each type of record is kept;
- (e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
- (f) the steps that should be taken by persons wishing to obtain access to that information.

4. A record-keeper shall:

- (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and
- (b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

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PRIVACY ACT 1988 SECT 14.6

Principle 6 Access to records containing personal information

Where a record-keeper has possession or control of a record that contains personal information, the individual concerned shall be entitled to have access to that record, except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

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PRIVACY ACT 1988 SECT 14.7

Principle 7 Alteration of records containing personal information

1. A record-keeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:

- (a) is accurate; and
- (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.

2. The obligation imposed on a record-keeper by clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.

3. Where:

- (a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and
- (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth;

the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

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PRIVACY ACT 1988 SECT 14.8

Principle 8 Record-keeper to check accuracy etc. of personal information before use

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

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PRIVACY ACT 1988 SECT 14.9

Principle 9 Personal information to be used only for relevant purposes

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

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PRIVACY ACT 1988 SECT 14.10

Principle 10 Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:

- (a) the individual concerned has consented to use of the information for that other purpose;
- (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
- (c) use of the information for that other purpose is required or authorised by or under law;
- (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
- (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.

2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

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PRIVACY ACT 1988 SECT 14.11

Principle 11 Limits on disclosure of personal information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
 - (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
 - (b) the individual concerned has consented to the disclosure;
 - (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
 - (d) the disclosure is required or authorised by or under law; or
 - (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.

3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

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PRIVACY ACT 1988 SECT 15

15 Application of Information Privacy Principles

- (1) Information Privacy Principles 1, 2, 3, 10 and 11 apply only in relation to information collected after the commencement of [this Act](#).
- (2) Information Privacy Principles 4 to 9, inclusive, apply in relation to information contained in a record in the possession or under the control of an agency, whether the information was collected before, or is collected after, the commencement of [this Act](#).

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PRIVACY ACT 1988 SECT 16

16 Agencies to comply with Information Privacy Principles

An agency shall not do an act, or engage in a practice, that breaches an Information Privacy Principle.

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PRIVACY ACT 1988 SECT 27

DIVISION 2 Functions of Commissioner 27 Functions of Commissioner in relation to interferences with privacy

- (1) Subject to this Part, the Commissioner has the following functions:
- (a) to investigate an act or practice of an agency that may breach an Information Privacy Principle and, where the Commissioner considers it appropriate to do so, to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the investigation;
 - (aa) to approve privacy codes and variations of approved privacy codes and to revoke those approvals;
 - (ab) subject to [Part V](#)-to investigate an act or practice of an organisation that may be an interference with the privacy of an individual because of [section 13A](#) and, if the Commissioner considers it appropriate to do so, to attempt, by conciliation, to effect a settlement of the matters that gave rise to the investigation;
 - (ac) to perform functions, and exercise powers, conferred on an adjudicator by an approved privacy code under which the Commissioner has been appointed as an independent adjudicator to whom complaints may be made;
 - (ad) to review the operation of approved privacy codes under [section 18BH](#);
 - (ae) on application under [section 18BI](#) for review of the determination of an adjudicator (other than the Commissioner) in relation to a complaint-to deal with the complaint in accordance with that section;
 - (b) to examine (with or without a request from a Minister) a proposed enactment that would require or authorise acts or practices of an agency or organisation that might, in the absence of the enactment, be interferences with the privacy of individuals or which may otherwise have any adverse effects on the privacy of individuals and to ensure that any adverse effects of such proposed enactment on the privacy of individuals are minimised;
 - (c) to undertake research into, and to monitor developments in, data processing and computer technology (including data-matching and data-linkage) to ensure that any adverse effects of such developments on the privacy of individuals are minimised, and to report to the Minister the results of such research and monitoring;
 - (d) to promote an understanding and acceptance of the Information Privacy Principles and of the objects of those Principles and of the National Privacy Principles;
 - (e) to prepare, and to publish in such manner as the Commissioner considers appropriate, guidelines for the avoidance of acts or practices of an agency or an organisation that may or might be interferences with the privacy of individuals or which may otherwise have any adverse effects on the privacy of individuals;
 - (ea) to prepare, and to publish in the way that the Commissioner considers appropriate, guidelines:
 - (i) to assist organisations to develop privacy codes or to apply approved privacy codes; or
 - (ii) relating to making and dealing with complaints under approved privacy codes; or
 - (iii) about matters the Commissioner may consider in deciding whether to approve a privacy code or a variation of an approved privacy code;
 - (f) to provide (on request or on the Commissioner's own initiative) advice to a Minister, agency or organisation on any matter relevant to the operation of [this Act](#);
 - (fa) to provide advice to an adjudicator for an approved privacy code on any matter relevant to the operation of [this Act](#) or the code, on request by the adjudicator;
 - (g) to maintain, and to publish annually, a record (to be known as the Personal Information Digest) of the matters set out in records maintained by record-keepers in accordance with clause 3 of Information

Privacy Principle 5;

- (h) to conduct audits of records of personal information maintained by agencies for the purpose of ascertaining whether the records are maintained according to the Information Privacy Principles;
- (j) whenever the Commissioner thinks it necessary, to inform the Minister of action that needs to be taken by an agency in order to achieve compliance by the agency with the Information Privacy Principles;
- (k) to examine (with or without a request from a Minister) a proposal for data matching or data linkage that may involve an interference with the privacy of individuals or which may otherwise have any adverse effects on the privacy of individuals and to ensure that any adverse effects of such proposal on the privacy of individuals are minimised;
- (m) for the purpose of promoting the protection of individual privacy, to undertake educational programs on the Commissioner's own behalf or in co-operation with other persons or authorities acting on behalf of the Commissioner;
- (p) to issue guidelines under the *Data-matching Program (Assistance and Tax) Act 1990*;
- (pa) to issue guidelines under [section 135AA](#) of the *National Health Act 1953*;
- (q) to monitor and report on the adequacy of equipment and user safeguards;
- (r) may, and if requested to do so, shall make reports and recommendations to the Minister in relation to any matter that concerns the need for or the desirability of legislative or administrative action in the interests of the privacy of individuals;
- (s) to do anything incidental or conducive to the performance of any of the Commissioner's other functions.

- (1A) To avoid doubt, the Commissioner is not subject to [Part V](#) in performing functions, and exercising powers, conferred on an adjudicator by an approved privacy code under which the Commissioner has been appointed as an independent adjudicator to whom complaints may be made.
- (2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).
- (3) Without limiting subsection (2), the Commissioner may, at the request of an organisation, examine the records of personal information maintained by the organisation, for the purpose of ascertaining whether the records are maintained according to:
 - (a) an approved privacy code that binds the organisation; or
 - (b) to the extent (if any) that the organisation is not bound by an approved privacy code-the National Privacy Principles.

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