

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

PRIVACY AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General

the Honourable Lionel Bowen, MP)

PRIVACY AMENDMENT BILL 1989

GENERAL OUTLINE

The provisions in this Bill will amend the Privacy Act 1988 to:

- . insert a new Part IIIA providing for regulation of the practices of credit reporting agencies and credit providers in relation to personal credit information;
- . provide the Privacy Commissioner with responsibilities for supervision of the consumer credit industry;
- . provide for the development of a Code of Conduct for the collection and handling of personal credit information by the Privacy Commissioner in consultation with the credit industry, government, consumer and privacy groups and other relevant bodies;
- . provide individuals with an enforceable right of access to, and correction of, their personal credit records;
- . limit the types of information which a credit reporting agency may hold;
- . provide that credit providers cannot disclose personal credit information about individuals without the express agreement of those individuals unless such a disclosure is necessary to prevent fraudulent practices by individuals to obtain credit;

- . limit access to a credit reporting agency database to those credit providers who, as a major part of their business, provide consumer credit;
- . provide the Privacy Commissioner with powers to determine that an individual's privacy has been breached by a credit reporting agency or credit provider and to determine that the individual be paid damages as compensation;
- . provide certain offences for the intentional misuse or unauthorised access to, and fraudulent practices relating to, credit information.

FINANCIAL IMPACT

The amendments will have a limited impact on Commonwealth expenditure. Additional staff for the Human Rights and Equal Opportunity Commission will be required. This is estimated to cost the Government in the order of \$365,000 in the first full year of operation. This figure contains an establishment component. It is expected that the figure would drop to around \$250,000 for a full year of operation in subsequent years.

There will be minimal direct cost impact on consumer credit reporting agencies and credit providers as the industry already finances a self regulatory scheme for the industry.

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PART I - PRELIMINARY

Clause 1: Short title

1. When enacted, the Bill will be cited as the Privacy Amendment Act 1989. The Principal Act is the Privacy Act 1988.

Clause 2: Commencement

2. The Bill will come into operation on a day to be fixed by Proclamation, sub-clause 2(1). If a provision of the Bill has not commenced within 6 months of the Bill receiving Royal Assent, the Act shall commence on the first day after the end of that period, sub-clause 2(2).

Clause 3: Saving of certain State and Territory laws

3. This clause affirms the intention of the Parliament to preserve any State or Territory law which makes provision with respect to interferences with privacy in relation to credit reporting or the use of information held in connection with credit reporting and which is capable of operating concurrently with this legislation.

Clause 4: Extension to external Territories

4. This clause extends the application of the Privacy Act to every external Territory.

Clause 5: Interpretation

5. Sub-clause 6(1) provides for the interpretation of a number of expressions used generally throughout the Principal Act. Section 6 is to be amended to include definitions relevant to the consumer credit reporting

industry. These definitions are explained below.

6. "Financial corporation" sets out what is a financial corporation for the purposed of paragraph 51(xx) of the Constitution.
7. "Bank" is defined to include the Reserve Bank of Australia, a bank within the meaning of the Banking Act 1959 or a person who carries on State banking under paragraph 51(xiii) of the Constitution.
8. "Building society" is defined as a society registered or incorporated under State or Territory legislation relating to such bodies.
9. "Code of Conduct" is defined to mean that Code which the Privacy Commissioner must publish in the Gazette concerning the collection of personal information for inclusion in individuals' credit information files and the storage of, security of, access to, correction of, use of and disclosure of personal information included in individuals' credit information files or in credit reports. The Commissioner is required to consult with various groups including the consumer credit reporting industry before issuing the Code; see new section 18A.
10. "Credit" means a loan sought or obtained by an individual from a credit provider body that is in the business of providing credit and which is to be used for domestic, family or household purposes. The Bill proposes to regulate the collection and handling of personal information concerning consumer credit records. It does not purport to regulate the provision of commercial credit.
11. "credit card" means a credit card, a charge card or any similar article used for obtaining cash, goods or services on credit. It includes any type of credit card issued by persons carrying on business for use in obtaining goods and services from those persons on credit.

12. "Credit information file" is defined as any record kept by a credit reporting agency that contains information relating to an individual and that is kept by a credit reporting agency in the course of carrying on a credit reporting business.
13. "credit provider" is defined in clause 11B.
14. "credit report" means any record or information whether in a written, oral or other form relating to credit that is prepared by a credit reporting agency and has a bearing on the provision of credit to an individual, and is used for establishing an individual's eligibility for credit. This information may concern the individual's eligibility, credit worthiness, credit standing, credit eligibility, credit history or capacity to repay credit.
15. "credit reporting agency" is defined in clause 11A.
16. "Credit reporting business" means a business or undertaking that involves preparing or maintaining records containing personal information relating to individuals for the sole or principal purpose of providing information to credit providers to assist those credit providers in assessing applications by individuals for credit.
17. "credit reporting 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 the Code of Conduct or breached a provision of Part IIIA.
18. "Credit reporting infringement" is defined as a breach of the Code of Conduct or a breach of the credit reporting provisions of this legislation - Part IIIA, Credit Reporting .

19. "Credit union" is defined as a society or other body of persons that is registered or incorporated as a credit union under State or Territory legislation.
20. "Eligible communications service" is defined as a postal, telegraphic, telephonic or other like service, within the meaning of paragraph 51(v) of the Constitution.
21. "Loan" means a contract or arrangement under which a person borrows money or is permitted to borrow money in the future and includes a contract, arrangement or understanding under which a person is permitted to delay payment of money or is permitted in the future to delay payment of money.
22. Subsection 6(3A) is inserted into the Principal Act to confirm that a breach of the Code of Conduct is an act or practice that is contrary to or inconsistent with the Code. Subsection 6(7) of the Principal Act is amended to provide that a complaint in relation to the misuse of a tax file number could also be a complaint about misuse of personal credit information.

Clause 6: Acts and Practices of agencies etc

23. This clause will amend s.7 of the Principal Act to provide that a reference in the Principal Act to an act or to a practice is a reference to an act done, or practice engaged in, by a credit reporting agency or a credit provider.
24. New subsection 7(3A) provides that an act in relation to an individual's credit record by a credit provider that is not a corporation is an act for the purposes of the Principal Act if it is done for the purposes of banking carried on by the credit provider. This is a technical drafting provision which is required so that the Commonwealth Banking Corporation which is excluded from the operation of the Information Privacy Principles is

not excluded from the operation of the credit reporting provisions.

Clause 7: Acts and practices of, and disclosure of information to, staff of agency etc.

25. This clause will amend section 8(1)(a) of the Principal Act to provide that any act done or engaged in by, or information disclosed to, a person in the course of employment by, or in the service of, a credit reporting agency or a credit provider will be treated as having been done, engaged in by, or disclosed to, the credit reporting agency or credit provider.

Clause 8: Insertion of new sections:

26. Clause 7 inserts new sections in the Principal Act which define a credit reporting agency and a credit provider.

Section 11A - Credit reporting agencies

27. New section 11A will provide that a body will be regarded as a credit reporting agency if the body is a corporation which carries on a credit reporting business. A credit reporting business is a business or undertaking that involves preparing or maintaining individuals' credit information files for the sole or principal purpose of allowing access to the credit information files, whether for profit or reward or otherwise, by credit providers, see clause 5.

Section 11B - Credit providers

28. It is considered that to protect individuals' privacy it is necessary to limit the bodies who have access to the records of personal information held by a credit reporting agency.
29. New section 11B will provide that a body will be regarded as a credit provider for the purposes of the Principal Act

if the body is either a bank or a corporation. A corporation is defined to be one of the following: a building society, a credit union, a retailer which issues credit cards or charge cards, or a body whose sole or principal business undertaking is the provision of consumer loans, including the issuing of credit cards or charge cards.

30. The Privacy Commissioner will be empowered to determine that a class of corporations whose sole or principal business is the provision of loans for domestic credit, including the issuing of credit cards or charge cards, are to be credit providers for the purposes of the Bill, new s. 11B(b)(v).
31. New s. 11B(2) provides that a body, which is a credit provider under the categories set out in that section, may, by regulation, be provided not to be credit provider for the purposes of the Act.
32. Determinations by the Privacy Commissioner relating to a class of corporations being deemed credit providers for the purposes of the Act under s. 11B(1)(b)(v)(B) are required to be published in the Gazette and are disallowable instruments for the purposes of s.46A of the Acts Interpretation Act 1901, new s. 11B(3) and s. 11B(4). The Gazettal notice will take effect on the first day on which it is no longer liable to be disallowed or a date the notice provides for commencement.
33. A Gazettal notice is required to be laid before each House of Parliament within 15 sitting days of their making. If it is not laid before each House, the notice will be void and of no effect. Each House may pass a resolution disallowing a notice.

Clause 9: Insertion of new section

Section 12A - Act not to apply in relation to State banking or insurance within that State.

34. New section 12A is a constitutional provision. It provides that the Bill does not purport to regulate intra State banking or insurance activities.

Clause 10: Interferences with privacy

35. This clause will amend section 13 of the Principal Act to provide that an act or practice is an interference with the privacy of an individual, if and only if, the act or practice engaged in by a credit reporting agency or a credit provider constitutes a credit reporting infringement in relation to personal information that relates to the individual, new s. 13(c) and 13(d). A credit reporting infringement is a breach of the Code of Conduct or a breach of the statutory provisions for credit reporting set out in Part IIIA.

Clause 11: Guidelines relating to tax file number information

36. This provision is a formal drafting provision which clarifies the operation of s. 17(3) of the Principal Act. It is not relevant to consumer credit reporting.

Clause 12: Insertion of new sections

Section 18A - Code of Conduct relating to credit information files or credit reports.

37. New section 18A requires the Privacy Commissioner to issue a Code of Conduct for the collection of personal information for inclusion in individuals' credit information files, and the storage of, security of, access to, correction of, use of, and disclosure of personal information included in individuals' credit information

files or in credit reports. The Code will also set out procedure for the manner in which disputes between individuals and credit providers and credit reporting agencies (including their initial resolution) are to be handled by the industry. The Code is required to be published in the Gazette, new s. 18A(1).

38. The Commissioner is required in formulating the Code to consult with the credit industry, government, consumer, privacy groups and other relevant bodies to the extent that it is appropriate and practicable to do so, new s. 18A(2).
39. The Commissioner is required to have regard to the Information Privacy Principles set out in s 14 of the Principal Act and the provisions of new Part IIIA of the Principal Act in preparing the Code of Conduct, s. 18A(3). The Code of Conduct will be a disallowable instrument; new s. 18A(4). The Commissioner must publish notice of the Code of Conduct in the Gazette and it will take effect on the first day on which it is no longer liable to be disallowed or a date the Code provides for commencement. The Code will be required to be laid before each House of Parliament within 15 sitting days of their making. If it is not laid before each House, it will be void and of no effect. Each House may pass a resolution disallowing any part of the Code.

Section 18B - Credit reporting agencies and credit providers to comply with Code of Conduct.

40. New section 18B requires a credit reporting agency or a credit provider not to do an act or engage in a practice that breaches the Code of Conduct. A breach of the Code of Conduct is an interference with an individual's privacy, s. 13 of the Principal Act.
41. A credit reporting agency or credit provider could be prosecuted for an offence or be liable to pay damages as compensation for an infringement of an individual's privacy

through the breach of the Code, s. 52. of the Principal Act.

Clause 13: Insertion of new Part

Part IIIA - Credit Reporting

Section 18C - Certain credit reporting only to be undertaken by corporations

42. This provision defines which persons may operate as credit reporting agencies.
43. New section 18C(1) will provide that a person must not in the course of carrying on a credit reporting business use an eligible communications service unless that person is a corporation.
44. New section 18C(2) is a constitutional provision.
45. New section 18C(3) will provide that a person must not in the course of carrying on a credit reporting business act on a corporation's behalf unless the person is a corporation. A person will be undertaking a credit reporting business where it is a corporation and is in the business of preparing or maintaining files containing personal credit information for the sole or principal purpose of allowing access to credit providers for profit, reward or otherwise in order to assist credit providers in assessing applications by individuals for credit.
46. A person who knowingly or recklessly contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding \$30,000, see new s. 18C(4).

Section 18D - Personal information not to be given to certain persons carrying on credit reporting agencies.

47. New section 18D provides that a person must not use an eligible communications service to give to a person carrying on a credit reporting business (a credit reporting agency) personal information for the purpose of that agency creating an individual's credit information file or including information in an individual's credit information file that is maintained by the agency unless the agency is a corporation.
48. New section 18D(2) is a constitutional provision.
49. A corporation is prohibited from giving personal information to a credit reporting agency for the purpose of the agency creating an individual's credit information file or the agency including the information in an individual's credit information file unless the credit reporting agency is a corporation; new s. 18D(3).
50. A person who knowingly or recklessly contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding \$12,000, new s. 18D(4).
51. For the purpose of this section, personal information will be taken to be given to a person if the person receiving the information is likely to use the information in the course of carrying on a credit reporting business; s. 18D(5).

Section 18E - Permitted contents of credit information files.

52. New section 18E sets out the type of personal credit information which a credit reference agency can include in an individual's credit information file.
53. A credit reporting agency is prohibited from holding personal information which is not classified by the Principal Act as personal credit information.
54. The information which can be held on a credit information file is:

- . information which is reasonably necessary in order to identify the individual;
 - . a record of a credit provider who has sought a credit report in relation to the individual who has made an application for consumer credit to that credit provider and the amount of consumer credit sought in that application;
 - . a record of credit provided by a credit provider to an individual, being credit in respect of which the individual is at least 90 days overdue in making a payment and the credit provider has taken steps to recover the total amount of credit outstanding;
 - . a record of court judgements against the individual;
 - . a record of bankruptcy orders made against the individual;
 - . the information is included in a statement provided by the individual for a correction, deletion or addition to the individual's file under s. 18J(2).
55. New s.18E(2) will provide that a credit reporting agency is prohibited from including in an individual's credit information file personal information recording the individual's:
- . political, social or religious beliefs;
 - . criminal record;
 - . medical history or physical handicaps;
 - . race, ethnic origins or national origins;
 - . sexual attitudes or practices;
 - . lifestyle, character or reputation;

56. The Privacy Commissioner is empowered to determine in writing the kinds of information that are reasonably necessary to be included in the individual's credit information file in order to identify the individual; new s. 18E(3) and 18E(4). This determination is required to be published in the Gazette and is a disallowable instrument; new s. 18D(5) and (6).
57. New s. 18E(7) will prohibit a credit reporting agency from opening or maintaining credit information files in relation to an individual unless it has information concerning the individual to include in the file which is prescribed by s. 18E(1)(b).
58. A credit reporting agency that ceases to keep or maintain a credit information file will be required to delete information in the file from any records that are in its possession or under its control, new s. 18(E)8.
59. A credit provider will be prohibited from giving to a credit reporting agency information which the agency is prohibited from including in an individual's credit information file and information which the credit provider did not, at the time of, or before acquiring the information, inform the individual that it might be disclosed to a credit reporting agency, new s. 18E(9).

Section 18F - Deletion of information from credit information files.

60. New section 18F(1) provides that a credit reporting agency must delete from an individual's credit information file any personal information which it is prohibited to hold. A period on or before the maximum permissible period of time in which the deletions must occur is set out in new s. 18F(2).

61. The maximum permissible periods within which the deletions must occur are:

- (a) 5 years for information concerning an application for consumer credit made by the individual. The 5 year period will run from the day the agency was given the information;
- (b) 5 years for information concerning a credit provider who sought a credit report in relation to the individual. The 5 year period will run from the day on which the credit report concerned was sought;
- (c) 5 years for information concerning credit provided by a credit provider to an individual, being credit in respect of which the individual is at least 90 days overdue in making a payment and the credit provider has taken steps to recover the total amount of credit outstanding. The 5 year period will run from the day on which the overdue payment concerned became 90 days overdue;
- (d) 5 years for information concerning court judgements made against the individual. The 5 year period will run from the day on which the court judgement was made;
- (e) 7 years for information concerning the bankruptcy order made against the individual. The 7 year period will run from the day on which the bankruptcy order was made.

62. Currently, individuals are being denied credit because the records of the credit reference agency concerning an individual are incorrect as credit providers have failed to notify the agency of the satisfaction of overdue debts. New s. 18E(3) will remedy this situation by

imposing an obligation on a credit provider to inform a credit reporting agency that the individual about whom it has been given information previously by the credit provider is no longer overdue as full satisfaction has been made of the debt.

63. The credit reporting agency will be required, on notification of the satisfaction of a debt, to note the individual's credit information file to that effect and, in addition to note any disputed debts notified to it by the credit provider; new s. 18E(4).
64. Where a credit reporting agency deletes information from an individual's credit information file, it will be required to delete the information from any records that are in its possession or control; new s. 18E(5)

Section 18G - Accuracy and security of credit information files and credit reports.

65. Incorrect credit information can have a profound effect on the lives of individuals. New section 18G provides that a credit reporting agency and a credit provider will be required to take steps to ensure that the personal information contained in a credit report is accurate, up to date and complete and that reasonable security measures are taken to safeguard the information from loss, unauthorised access or disclosure. Where there are disagreements between an individual and a credit reporting agency or credit provider as to the accuracy of a credit record, the individual will be able to request the record-holder to include a statement or note in the credit file or report; see new s. 18J.
66. A credit reporting agency and credit provider will be required to ensure that where a credit file or report is given to a person in authorised circumstances, everything reasonably within the power of the agency or credit provider is done to prevent the unauthorised use of disclosure of the personal information contained in the file or report; new s. 18G(c).

Section 18H - Access to credit information files and credit reports.

67. It is a basic privacy right that individuals should have a right of access to their personal information held by others in the community.
68. New section 18H provides an enforceable right of access for individuals to their credit information files or credit files which are in the control or possession of a credit reporting agency or a credit provider. A credit provider or credit reporting agency will be required to take all reasonable steps to ensure that the individual can obtain access to their files or reports.

Section 18J - Alteration of credit information files and credit reports.

69. New section 18J(1) will require a credit reporting agency or a credit provider who have in their possession a credit file or a credit report to take responsible steps by making corrections etc. to that information to ensure the information is accurate, up-to-date, complete and not misleading.
70. A credit reporting agency or a credit provider must within 30 days take reasonable steps to include any statement provided by the individual of a correction, deletion or addition sought to the file or report concerning the individual; new s. 18J(2).

Section 18K - Limits on disclosure of personal information by credit reporting agencies.

71. New section 18K will impose strict limits on the disclosure of personal information by credit reporting agencies. As a means of protecting individuals privacy, credit reporting agencies will only be able to disclose an individuals' personal credit information in authorised circumstances.

72. A credit reporting agency will be prohibited from disclosing information from an individual's credit information file unless -

- (i) it is provided in a credit report given to a credit provider who requested the report in relation to an application for credit by the individual; or
- (ii) the disclosure is required or authorised by law; or
- (iii) the credit reporting agency believes on reasonable grounds that the individual has attempted to obtain credit by fraudulent means and the information is to be given to a credit provider or a law enforcement authority, new s. 18K(1).

73. It is a serious offence for a credit reporting agency to knowingly or recklessly disclose personal information in unauthorised circumstances. On conviction, a fine not exceeding \$150,000 could be imposed by a court; new s. 18K(2).

74. A credit reporting agency is required to include a note in an individual's credit information file when that person's information is disclosed; new s. 18K(3).⁷⁶ It is reported that some individuals such as small businessmen and sole traders have been unfairly denied credit for domestic purposes on the basis of their commercial credit records. This will be remedied by prohibiting a credit reporting agency from including in a consumer credit report given to a credit provider any information relating to the individual's commercial activities, new s. 18K(4).

75. New section 18K(5) enables certain credit providers which are not corporations to receive credit reports from credit reporting agencies. The Privacy Commissioner will be able to determine that an unincorporated body is a credit provider subject to such conditions as the Commissioner considers fit, s. 18K(6). That determination will be subject to Parliamentary review as it is a disallowable instrument; new s. 18K(7) and 18K(8).

Section 18L - Limits on use by credit providers of personal information contained in credit reports etc.

76. New section 18L will impose strict limits on how a credit provider can use information which is obtained from a credit reporting agency.
77. A credit provider will be prohibited from using the information contained in a credit report for a purpose other than the assessing of a credit application made to the credit provider by the individual concerned unless the use of the information for another purpose is required or authorised by or under law; new s. 18L(1).
78. It is a serious offence for a credit provider to knowingly or recklessly use personal information contained in a credit report for an unauthorised purpose. On conviction, a fine not exceeding \$150,000 could be imposed by a court; new s. 18L(2).
79. A credit provider will be prohibited from using information concerning the individual's commercial activities or commercial credit worthiness obtained from a commercial credit reporting agency when assessing a credit application made to the credit provider by the individual; new s. 18L(3).

Section 18M - Information to be given if an individual's application for credit is refused.

80. A credit provider will be required to give a written notice to an individual where that person has been refused credit on the basis of information contained in a credit report provided by a credit reporting agency for the purpose of assessing an application for credit by the individual; new s. 18M.

81. The written notice shall state that:

- . the application has been refused;
- . the refusal was based on wholly or partly on the credit report provided by a credit reporting agency;
- . the name and address of the agency; and
- . the fact that the individual has an enforceable right of access to his/her credit information file maintained by the credit reporting agency.

Section 18N - Limits on disclosure by credit providers of personal information contained in reports relating to credit worthiness etc.

82. New section 18N will prohibit a credit provider from disclosing personal information contained in a credit report to another person unless the disclosure is authorised by the Principal Act. Authorised disclosures are:

- . where the information is disclosed to a credit reporting agency to create or to be included in a credit information file in relation to the individual concerned;
- . where the individual concerned has specifically agreed in writing to the disclosure of the information to another credit provider;

. where the disclosure is required or authorised by or under law; and

. where the credit provider believes on reasonable grounds that the individual concerned has attempted to obtain credit by fraudulent means and the information is given to another credit provider or a law enforcement authority.

83. A credit provider that knowingly or recklessly contravenes this provision is guilty of an offence punishable on conviction by a fine not exceeding \$150,000; new s. 18N(2).

84. The Commissioner will be empowered to determine in writing the manner in which personal information contained in a report will be disclosed. This will include the manner in which an individual's agreement is obtained for a disclosure; new s. 18(N)(3). Such a determination will be published in the Gazette and will be a disallowable instrument; new s. 18N(5) and (6).

85. Information which is disclosed contrary to the manner provided for by the Privacy Commissioner will be taken to be in breach of the provision, new s. 18N(4).

86. For the purpose of this provision, a credit report means any record or any other information whether in written, oral or other form that has any bearing on an individual's credit worthiness, credit standing, credit history or credit capacity; new s. 18N(7).

Section 18P - False or misleading credit reports.

87. It will be an offence for a credit reporting agency or a credit provider to give a credit report, that the credit reporting agency or credit provider knows to contain false or misleading information, to any person or body; new s. 18P(1).

88. A conviction for this offence will carry a penalty of a fine not exceeding \$75,000; new s.18P(2).

Section 18Q - Unauthorised access to credit information files or credit reports.

89. It will be an offence where a person knowingly or recklessly obtains authorised access to an individual's credit information file that is in the possession of a credit reporting agency; new s. 18Q(1).

90. It will be an offence where a person knowingly or recklessly obtains access to an individual's credit report that is in the possession of a credit provider or credit reporting agency unless the access is authorised by the Principal Act. A penalty of a fine not exceeding \$30,000 is prescribed for this offence; new s. 18Q(2).

Section 18R - Obtaining access to credit information files or credit reports by false pretences.

91. It will be an offence for a person by a false pretence, to obtain access to an individual's credit information file that is in the possession or control of a credit reporting agency. A penalty of a fine not exceeding \$30,000 is prescribed for the offence; new s. 18R(1).

92. It will be an offence for a person, by a false pretence, to obtain access to a credit report that is in the possession or control of a credit provider or credit reporting agency. A penalty of a fine not exceeding \$30,000 is prescribed for this offence; new s. 18R(2).

Section 18S- Application of section 4B of Crimes Act.

93. New section 18S provides that subsection 4B(3) of the Crimes Act 1914 does not apply in relation to the credit reporting offences set out in the Bill.

Section 18T Application of this Part.

94. New section 18T will provide that Part IIIA - Credit Reporting, applies in relation to any credit information file or report that is in existence on or after the commencement of this section, whether or not it was in existence before that commencement. The exceptions to this general rule are:

. the rules in relation to what are the permitted contents of credit information files set out in new s.18E do not apply in relation to credit information file that were in existence immediately before the commencement of the Act until 12 months after that commencement, new s. 18T(2);

. new section 18F which requires certain information to be deleted from credit information files after a prescribed period will come into operation on the date of the commencement of the Act; new s. 18T(3).

Clause 14 Functions of Commissioner in relation to tax file numbers

95. Clause 14 inserts a new provision section 28A after section 27 of the Principal Act.

Section 28A Functions of Commissioner in relation to credit reporting.

96. New section 28A will provide functions for the Privacy Commissioner in relation to credit reporting.

97. The functions are -

- . to develop a Code of Conduct for the credit reporting industry following consultations with government, commercial, consumer and other relevant bodies; new s. 28A(a);
- . to investigate an act or practice of a credit reporting agency or a credit provider that may constitute a breach of the Code or Part IIIA of the Act and where the Commissioner thinks appropriate to try through conciliation to settle the matter; new s. 28A(b);
- . to promote understanding and acceptance of the Code and Part IIIA of the Act and their objects; new s. 28A(c);
- . to make such determinations relating to credit reporting as the Commissioner is empowered to make under Part IIIA; new s. 28A(d);
- . to prepare and publish guidelines for credit reporting agencies and credit providers for the avoidance of acts and practices that are interferences with privacy; new s. 28A(e);
- . to provide advice to the Minister and to credit reporting agencies and credit providers on any matter under the legislation; new s. 28A(f);
- . to conduct audits of credit information files maintained by credit reporting agencies and credit reports maintained by credit providers or credit reporting agencies for the purpose of ascertaining whether the files or reports are

maintained in accordance with Part IIIA and the Code of Conduct; new s. 28A(g);

- . to monitor the security and accuracy of personal information contained in credit information files maintained by credit reporting agencies and in credit reports in the possession, or under the control, of credit providers or credit reporting agencies; new s. 28A(h);
- . to examine the records of credit reporting agencies and credit providers to ensure that they are not using personal credit information for unauthorised purposes and that they are taking adequate measures to prevent unlawful disclosures of personal credit information; new s. 28A(j); and
- . to undertake educational programs to promote personal privacy; new s. 28A(k).

98. New section 28A(2) provides that the Commissioner will have the power to do all things that are necessary or convenient to be done in connection with the performance of his functions under new section 28A(1).

Clause 16: Commissioner to have regard to certain matters.

99. This clause will amend section 29(d) of the Principal Act to require the Privacy Commissioner to ensure that his or her directions and guidelines are consistent with the Information Privacy Principles set out in s. 14 of the Principal Act and the credit reporting provisions set out in the Code of Conduct and in new Part IIIA.

Clause 17: Reports following investigation of act or practice

100. Clause 17 makes a number of amendments to s. 30 of the Principal Act. Following an investigation of an act or practice of a credit reporting agency or credit provider the Commissioner will be required to report to the Minister if -

- . the Minister has so directed; or
- . the Commissioner concludes that the act or practice was an interference with privacy but conciliation has failed or was inappropriate.

101. A report to the Minister must include reasons for the Commissioner's findings. It may include recommendations for prevention of repetition of the interference, a recommendation for compensation and/or recommendations for the taking of any other remedial action. A copy of the report is to go to the credit reporting agency or credit provider and the complainant - if the complainant was not affected by the interference, provision of the report is discretionary. Other affected persons may also be given copies.

102. If after 60 days from giving a credit reporting agency or the credit provider a copy of such a report the Commissioner thinks that proper remedial action has not been taken, s.30(4) of the Principal Act requires a further report to be given to the Minister on the action taken by the credit reporting agency or the credit provider and stating why the Commissioner is dissatisfied with the action taken by the credit reporting agency or the credit provider.

Clause 18 Report following monitoring of certain activities

103. The Commissioner may report on his activities and on any audits conducted and can be required to do so by the Minister.

Clause 19 Investigation under section 40 to cease if
certain offences may have been committed

104. This provision provides that where, during the course of an investigation of a complaint, the Privacy Commissioner forms the opinion that a credit reporting offence may have been committed, the investigation is to cease and the Commissioner of Police or the Director of Public Prosecutions (DPP) is to be informed of the matter; new s. 49(1) Subsection 49(3) enables the Commissioner to re-commence an investigation once written notice is received from the Commissioner of Police or the DPP that the matter is not subject to proceedings for an offence. A credit reporting offence is defined in new s. 49(4).

Clause 20 Determination of the Commissioner

105. Section 52 of the Principal Act will apply to credit reporting complaints, see definition of a credit reporting complaint in cl 5b and what is an interference with privacy in cl 10. Section 52 provides that following the investigation of a complaint, the Commissioner may make a determination:

- . dismissing the complaint;
- . declaring that the credit reference agency or credit provider has breached an individual's privacy and should not repeat or continue such conduct;
- . declaring that the credit reference agency or credit provider should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
- . declaring that the complainant is entitled to a specified amount by way of compensation for any

loss or damage suffered (except where the complainant was dealt with as a representative complaint); or

declaring that it would be inappropriate for any further action to be taken.

106. Section 52(2) requires the Commissioner to state any findings of fact upon which the determination is based.
107. Section 52(3) provides that when making a determination under s.52(1) other than on a representative complaint the Commissioner may include a declaration that the complainant is entitled to be paid a specified amount for expenses reasonably incurred during the investigation of the complaint.
108. New section 52(3A)(a) will provide that the Privacy Commissioner may determine that an agency in relation to a record of personal information or a credit reporting agency or a credit provider in relation to a credit record shall make appropriate corrections, deletions or additions to a record. The Privacy Commissioner will also be able to determine that an agency, credit reporting agency or credit provider attach to a record, file or report a statement provided by the complainant of the correction, deletion or addition sought; new s. 52(3A)(b).

Clause 21 Heading to Division 4

109. The heading of the Division 4 of Part V of the Principal Act will be amended to read "Enforcement of determinations relating to tax file numbers or credit reporting".

Clause 22 Application of Division

110. Section 60 of the Principal Act, which is a procedural provision, is amended.

111. New section 60(c) will provide that the Principal Act will apply to determinations made by the Privacy Commissioner in relation to complaints about interferences with privacy which constitute a credit reporting infringement. A credit reporting infringement is a breach of the Code of Conduct or a breach of the credit reporting provisions in new Part IIIA of the Principal Act, see cl. 5(b).

Clause 23: Power to enter premises

112. Section 68 of the Principal Act will be amended to apply to credit reporting agencies and credit providers. New s. 68(1) will provide that subject to new s. 68(3) a person authorised by the Commissioner may enter premises of credit reporting agencies and credit providers and inspect documents for the purpose of the performance of the Commissioner's functions under the Act. Section 68(2) requires the occupier of the premises entered by an authorised person to provide that person with reasonable assistance to facilitate the exercise of the person's powers.
113. Section 68(3) will prohibit an authorised person from entering premises not occupied by the Commonwealth or by a Commonwealth authority, unless the occupier consents or the person is authorised to enter the premises by a warrant issued under s. 68(4) by a Magistrate.
114. Section 68(5) provides that the warrant shall specify the hours during which entry may be made and shall set a date after which the warrant will cease to have effect.

Clause 24: Insertion of new section:

Section 99A Conduct of directors, servants and agents

115. This provision is a standard provision in Commonwealth law which provides that for the purposes of prosecuting a body corporate for an offence it is sufficient to establish that the unlawful conduct engaged in by the director, servant or agent of the body corporate was within the scope of his or her actual or apparent authority and the person had the knowledge, intention or purpose to undertake the conduct; new s. 99A(1).
116. Also, any unlawful conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate which is within that persons authority is to be taken to have been engaged in by the body corporate unless the body corporate can establish that they took reasonable precautions and exercised due diligence to avoid the conduct, new s. 99A(2).
117. A reference to an offence in this section is an offence created by the regulations and certain offences created by the Crimes Act 1914, new s. 99A(9).
118. New s. 99A(3) provides that in proceedings for an offence where it is necessary to establish the state of mind of a person other than the body corporate, it is sufficient to show that the conduct was engaged in by a servant or an agent within the scope of his or her actual or apparent authority and that that person had the knowledge or and intention to undertake the unlawful conduct.
119. A person who is convicted of a credit reporting offence is not liable to be punished by imprisonment for that offence, new s. 99A(5).

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