

Introduced by Mr A A Tink, MP

First print



New South Wales

# Privacy and Data Protection Bill 1996

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are to provide for data protection safeguards as to the collection, use and disclosure of personal information held by State authorities and private sector bodies, to establish the office of Privacy Commissioner and to confer functions relating to privacy and data protection on the Commissioner, to establish a Privacy Advisory Committee and to repeal the *Privacy Committee Act 1975*.

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## Outline of provisions

### **Part 1 Preliminary**

This Part contains preliminary provisions setting out the name (also known as the short title) of the proposed Act (clause 1) and other matters. The proposed Act is to commence on a day or days to be proclaimed (clause 2). Expressions used in the proposed Act are defined (clause 3). The proposed Act will not apply to personal information about deceased persons (clause 4). The proposed Act is to bind the Crown but the Crown may not be prosecuted for an offence under the proposed Act (clause 5). Notes in the proposed Act do not form part of it (clause 6).

### **Part 2 Data protection safeguards**

#### **Division 1 Dealings with public sector information**

This Division contains offences relating to dealings with public sector information. It will be an offence for a public official or former public official to misuse or disclose personal information to which the employee or former employee has or had access in the performance of official functions (clause 7). However, it will not be an offence to use or disclose information in accordance with an applicable data protection code or with the informed consent of the person the subject of the information. It will also not be an offence to disclose information contained on a public register.

It will be an offence for a person to offer to supply, or to hold himself or herself out as being able to supply, information that the person knows, or ought reasonably to know, was disclosed in contravention of proposed section 7 (clause 8). The maximum penalty for each of these offences is to be 100 penalty units (currently \$10,000) or 2 years imprisonment, or both. The offences do not apply to a public official acting in good faith in the exercise of his or her official functions (clause 9).

#### **Division 2 Data protection codes**

This Division requires data protection codes to be prepared and adopted by heads of public authorities in relation to the collection, use and disclosure, and procedures for dealing with, personal information held by public authorities (clause 10).

Explanatory note

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The codes are to specify procedures for dealing with personal information and conditions to be imposed on the Archives Authority of New South Wales when dealing with records of the public authority, to conform, so far as is reasonably practicable, to the data protection principles (but may allow the transfer of information between public authorities) and are to be submitted for review by the Privacy Commissioner (clause 11). The codes may be amended (clause 12). The Commissioner may, if requested by a person or body that is not a public authority, prepare a data protection code (clause 13). Any such code is to specify procedures for dealing with personal information and to conform, so far as is reasonably practicable, to the data protection principles (clause 14). Any such code may be amended (clause 15). Persons and information and classes of persons and information may be exempted from all or part of public and private sector codes by the Commissioner (clause 16). The Commissioner may review data protection codes and, in so doing, is to have regard to whether the codes comply with the data protection principles, so far as is reasonably practicable, and other requirements for data protection codes (clause 17).

**Division 3 Public registers**

A public register is a register of information that is required by a law to be, or is made, publicly available and is prescribed by regulations to be a public register (clause 18). A record-keeper must not disclose personal information contained in a public register unless satisfied that it is to be used for a purpose related to the purpose of the register or Act under which it is kept (clause 19). A person may apply to have information removed from a public register or not placed on a register, as publicly available, or not disclosed to the public and this may be done if the record-keeper is satisfied that it would not unduly compromise the register and that the applicant's safety or that of the applicant's family may be at risk. A complaint about a record-keeper's decision about any such application may be made to the Privacy Commissioner (clause 20).

**Division 4 Data protection principles**

This Division sets out the data protection principles to which data protection codes must, so far as is reasonably practicable, conform (clause 21). The principles relate to various matters concerning the confidentiality of personal information, including restrictions on the collection of personal information, information to be given when information is obtained, requirements for the use, storage and security of information, information as to information kept, access to and disclosure of information and alteration of information.



### **Part 3 Privacy and data protection functions of the Privacy Commissioner**

#### **Division 1 Privacy Commissioner's privacy and data protection functions**

This Division confers functions on the Privacy Commissioner. The functions include promoting the adoption of data protection principles, monitoring compliance with data protection principles and privacy guidelines, conducting research into privacy matters, preparing and publishing data protection and privacy guidelines, providing assistance to public authorities in relation to data protection codes, advising on, and co-ordinating, consistency among public authorities' data protection codes, monitoring developments in technology which have an adverse impact on data protection or other matters related to privacy, and receiving, investigating and conciliating complaints about the use and disclosure of personal information and other breaches of privacy (clause 22).

#### **Division 2 Complaints and investigations**

This Division confers a right on an individual who is detrimentally affected by a breach of a data protection principle, or a violation of the individual's privacy, to complain to the Commissioner (clause 23). The Commissioner is to make a preliminary assessment of a complaint (clause 24). The Commissioner may investigate a complaint or may choose not to do so (clause 25) and has power to conciliate a complaint, whether or not the Commissioner investigates the complaint (clause 26). Reasons for refusing to investigate a complaint or discontinuing an investigation must be given in writing to the complainant (clause 27). The Commissioner must give written notice of an investigation to the complainant and to the person complained about (clause 28).

The Division also confers powers on the Commissioner in relation to investigations and inquiries, including the power to require a public authority or public official to give information or a copy of a document or to produce any document or other thing (clause 29). The Commissioner is to have certain of the powers, authorities, protections and immunities of a commissioner under the *Royal Commissions Act 1923* for the purpose of



making or holding inquiries in the course of an investigation (clause 30). A requirement by the Commissioner for the purpose of an investigation is to be set aside by the Commissioner if it might be resisted on a ground of privilege in a court of law (clause 31). The Commissioner may not make requirements relating to information or a document relating to confidential proceedings of Cabinet or any committee of Cabinet (clause 32). The Commissioner must give a person who has been given notice of an investigation an opportunity to make submissions to the Commissioner about the complaint (clause 33).

A person may only be represented at an inquiry by another person with the leave of the Commissioner (clause 34). The Commissioner may determine procedures for exercising his or her functions, including inquiry procedures and is to act in an informal manner, is not bound by the rules of evidence and is to act according to the substantial merits of the case without undue regard to technicalities (clause 35). The Commissioner also has power to refer complaints for investigation or other action to any other person or body considered appropriate by the Commissioner (clause 36).

### **Division 3     Reports**

This Division sets out the kinds of reports which the Privacy Commissioner may make under the proposed Act. Reports on or in relation to any complaint may be made to the Minister (clause 37). The Commissioner must make an annual report to the Minister, who is to lay it before each House of Parliament as soon as practicable (clause 38). A special report may be made by the Commissioner at any time on any matter arising in connection with the discharge of the Commissioner's functions to the Presiding Officer of each House of Parliament for presentation to Parliament (clause 39).

### **Part 4     Privacy Commissioner**

This Part enables the Privacy Commissioner to be appointed by the Governor (clause 40). Staff may be employed (clause 41). The functions of the Commissioner are those conferred by the proposed Act and any other Act (clause 42) and the functions, other than the power of delegation, may be delegated to a staff member or a person prescribed by the regulations or approved by the Minister (clause 43).

## **Part 5 Privacy Advisory Committee**

This Part establishes the Privacy Advisory Committee (clause 44). Its functions are to advise the Privacy Commissioner on matters relevant to his or her functions and to recommend material for inclusion in guidelines issued by the Commissioner (clause 45).

## **Part 6 Miscellaneous**

This Part contains miscellaneous provisions, including proceedings for offences under the proposed Act (clause 46), a provision exempting the Privacy Commissioner and persons under his or her control or direction or members of the Privacy Advisory Committee from personal liability for things done in good faith for the purposes of the proposed Act (clause 47), a provision prohibiting the Commissioner or a member of staff from disclosing information except in exercising his or her functions (clause 48), offences relating to obstructing the Commissioner and other related matters (clause 49), a general power to make regulations (clause 50) and a provision making it clear that the proposed Act is not to affect the operation of the *Freedom of Information Act 1989* (clause 51). The Part also contains formal provisions giving effect to Schedule 3 which amends certain Acts consequentially on the enactment of the proposed Act (clause 52) and Schedule 4 which contains savings and transitional provisions (clause 54). The *Privacy Committee Act 1975* is repealed (clause 53). The proposed Act is to be reviewed by the Minister 5 years after the date of assent (clause 55).

### **Schedule 1 Provisions relating to the Privacy Commissioner**

This Schedule contains provisions relating to the appointment, remuneration and vacation of office of the Privacy Commissioner.

### **Schedule 2 Provisions relating to members of the Privacy Advisory Committee**

This Schedule contains provisions relating to deputies for, and the appointment, remuneration and vacation of office of, members of the Privacy Advisory Committee.



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Explanatory note

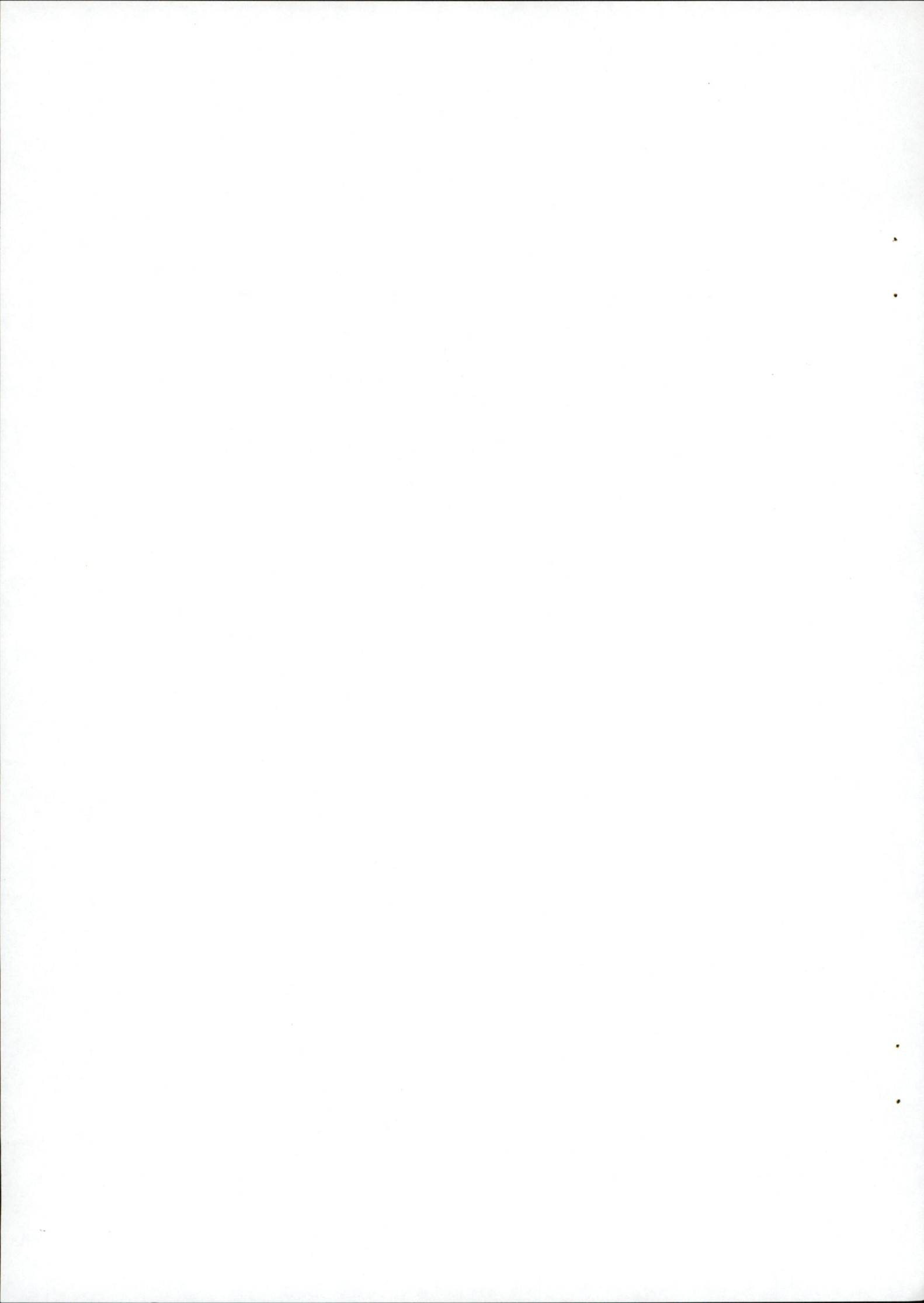
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**Schedule 3      Amendment of other Acts**

This Schedule makes consequential amendments to the *Defamation Act 1974*, the *Freedom of Information Act 1989*, the *Ombudsman Act 1974* and the *Statutory and Other Offices Remuneration Act 1975*.

**Schedule 4      Savings, transitional and other provisions**

This Schedule contains savings, transitional and other provisions.





Introduced by Mr A A Tink, MP

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New South Wales

# Privacy and Data Protection Bill 1996

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New South Wales

# Privacy and Data Protection Bill 1996

No , 1996

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## **A Bill for**

An Act to provide for data protection safeguards in connection with records containing personal information; to establish the office of Privacy Commissioner and to confer functions relating to data protection and other privacy matters on the Commissioner; to repeal the *Privacy Committee Act 1975*; and for other purposes.

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Clause 1 Privacy and Data Protection 1996

Part 1 Preliminary

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Privacy and Data Protection Act 1996*.

### 2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

*collector* of personal information means the public authority or other person or body that collects the information, or on whose behalf or for whose purposes, the information is collected. 10

*Department Head* has the same meaning as in the *Public Sector Management Act 1988*.

*exercise* a function includes perform a duty. 15

*function* includes a power, authority or duty.

*head of a public authority* means:

- (a) in relation to a Government Department—the Department Head, or
- (b) in relation to the Education Teaching Service—the Director-General of the Department of School Education, or 20
- (c) in relation to the Police Service—the Commissioner of Police, or
- (d) in relation to a local government authority—the general manager of the authority or the administrator of the authority, or 25
- (e) in relation to an authority that is an individual or corporation sole—the individual or corporation sole, or

- (f) in relation to any other authority—the chief executive of the authority or the person who exercises the functions of a chief executive officer in relation to the authority or (if there is no chief executive officer) the person prescribed by the regulations for the purposes of this paragraph. 5

**judicial officer** has the same meaning as in the *Judicial Officers Act 1986*.

**local government authority** means a council of a local government area or a county council.

**personal information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. 10

**Privacy Commissioner** means the Privacy Commissioner appointed under this Act. 15

**public authority** means any of the following:

- (a) a Government Department or the Education Teaching Service,
- (b) a statutory body representing the Crown, 20
- (c) a declared authority under the *Public Sector Management Act 1988*,
- (d) a body in relation to whom or to whose functions an account is kept of administration or working expenses, if the account: 25
  - (i) is part of the accounts prepared under the *Public Finance and Audit Act 1983*, or
  - (ii) is required by or under any Act to be audited by the Auditor-General, or
  - (iii) is an account with respect to which the Auditor-General has powers under any law, or 30
  - (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts if requested to do so by a Minister of the Crown, 35
- (e) the Police Service,



- (f) a State owned corporation within the meaning of the *State Owned Corporations Act 1989*,
- (g) a local government authority,
- (h) a person or body declared by the regulations to be a body within this definition, 5

but does not include any body declared by the regulations not to be a public authority.

**public official** means any of the following persons:

- (a) the Governor, a Minister of the Crown, a member of Parliament, a local government councillor or a judicial officer, 10
- (b) a person appointed by the Governor or a Minister of the Crown to a statutory office,
- (c) a person employed in the Public Service, the Education Teaching Service or the Police Service, 15
- (d) a person who is an officer of the Legislative Council or Legislative Assembly or who is employed by (or under the control of) the President of the Legislative Council or the Speaker of the Legislative Assembly, or both,
- (e) a person who is employed by (or engaged as a consultant by) a public authority or a public official, 20
- (f) a person who acts for or on behalf of or in the place of or as deputy or delegate of a public authority or a public official.

**public register** is defined in section 18. 25

**record** means:

- (a) a document, or
- (b) a photograph or other pictorial representation of a person, but does not include a magazine, book, newspaper or other publication that is or will be generally available to the public, a State archive (within the meaning of the *Archives Act 1960*), anything kept in a library, art gallery or museum for the purpose of reference, study or exhibition or letters or articles in the course of transmission by post. 30

**Note.** "Document" is defined in section 21 of the *Interpretation Act 1987*. It includes any disc, tape or other article from which sounds, images or messages are capable of being reproduced. 35

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*record-keeper* of a record means:

- (a) the person or body that is in possession or control of the record, or
- (b) if a person is in possession or control of the record in the course of employment by a public authority, the public authority, or 5
- (c) if a person is in possession or control of the record for the purposes of the activities of an unincorporated body (such as a committee) established by or under an Act for the purpose of assisting, or performing functions connected with, a public authority, the public authority. 10

#### 4 Application

The provisions of this Act do not apply to personal information about deceased persons.

#### 5 Crown bound by this Act

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- (1) This Act binds the Crown in right of New South Wales and also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence. 20

#### 6 Notes

Matter appearing under the heading "Note" in this Act does not form part of this Act.

## Part 2 Data protection safeguards

### Division 1 Dealings with public sector information

#### 7 Misuse or disclosure of information

- (1) A public official or former public official must not:
- (a) misuse, or 5
  - (b) disclose,

any personal information about another person to which the official or former official has or had access in the exercise of his or her official functions.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both. 10

- (2) A person who uses or discloses personal information:
- (a) in accordance with an applicable data protection code, or
  - (b) with the informed consent of the person the subject of the information, 15

is not guilty of an offence under this section.

- (3) A person who discloses personal information contained in a public register is not guilty of an offence under this section.

#### 8 Offering to supply information

A person who offers to supply (whether to a particular person or otherwise), or holds himself or herself out as being able to supply (whether to a particular person or otherwise), personal information that the person knows, or ought reasonably to know, has been or is proposed to be disclosed in contravention of section 7 is guilty of an offence. 20  
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Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.



**9 Protection of public officials**

Nothing in this Part renders a public official acting in good faith in the exercise of his or her official functions guilty of an offence.

**Division 2 Data protection codes**

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**10 Data protection codes must be prepared for public sector**

- (1) For the purpose of better protecting individual privacy, a data protection code relating to the collection, use and disclosure, and procedures for dealing with, personal information held by a public authority must be prepared by the head of the public authority and adopted by the public authority. 10
- (2) The code must be prepared and adopted not later than 12 months after the commencement of this section or the establishment of the authority, whichever is the later.
- (3) This section applies to personal information about any persons, including the employees of public authorities. 15

**11 Requirements for public sector data protection codes**

- (1) A data protection code of a public authority must:
  - (a) specify procedures for dealing with personal information, and 20
  - (b) specify conditions to be imposed as to the disclosure by the Archives Authority of New South Wales of public records (within the meaning of the *Archives Act 1960*) that are records of the public authority or information contained in them, and 25
  - (c) be submitted to the Privacy Commissioner for review before adoption.
- (2) The code must, in relation to procedures for dealing with personal information, conform, so far as is reasonably practicable, to the data protection principles set out in Division 4. 30
- (3) That part of the code relating to conditions to be imposed on the Archives Authority of New South Wales must conform, so far as is reasonably practicable, to Principle 10 of the data protection principles.

Clause 11 Privacy and Data Protection 1996

Part 2 Data protection safeguards

Division 2

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- (4) Despite subsections (2) and (3), a code may permit personal information to be disclosed by the public authority to another public authority for the purposes, and in the circumstances, specified in the code.
- (5) Before a code is adopted, the head of the public authority must consider the findings of the review of the code by the Privacy Commissioner. 5

## **12 Amendment of public sector data protection codes**

- (1) The head of a public authority may, from time to time, amend its data protection code and must submit the amendment to the Privacy Commissioner for review before adoption. 10
- (2) Before the amendment is adopted, the head of the public authority must consider the findings of the review of the amendment by the Privacy Commissioner.

## **13 Private sector data protection codes** 15

- (1) The Privacy Commissioner may, at the request of a person or body that is not a public authority, prepare a data protection code relating to the collection, use and disclosure, and procedures for dealing with, personal information held by the person or body for adoption by the person or body. 20
- (2) A person or body that is not a public authority may prepare and adopt a data protection code relating to the collection, use and disclosure, and procedures for dealing with, personal information held by the person or body and may submit the code to the Privacy Commissioner for review. 25

## **14 Requirements for preparation of private sector data protection codes**

- (1) In preparing a data protection code under this Division for a person or body that is not a public authority, the Privacy Commissioner must specify procedures for dealing with personal information. 30
- (2) The code must conform, so far as is reasonably practicable, to the data protection principles set out in Division 4.

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**15 Amendment of private sector data protection codes**

- (1) A person or body that is not a public authority may, from time to time, amend its data protection code and must submit the amendment to the Privacy Commissioner for review before adoption. 5
- (2) Before the amendment is adopted, the person or body must consider the findings of the review of the amendment by the Privacy Commissioner.

**16 Exemptions from public and private sector data protection codes** 10

- (1) The Privacy Commissioner may, at the request of the head of the public authority or other person or body by or for whom a data protection code is or is to be prepared, exempt personal information or classes of personal information or a person or any classes of persons from any or all of the provisions of the code. 15
- (2) A data protection code must identify any personal information or persons or classes of personal information or persons exempted from any or all of the provisions of the code.
- (3) An exemption may be revoked or varied at any time by the Privacy Commissioner on request by the head of a public authority or other person or body by or for whom a data protection code is or is to be prepared. 20
- (4) An exemption in a data protection code of a public authority may be revoked or varied at any time by the Privacy Commissioner on the Commissioner's own initiative. 25
- (5) The Privacy Commissioner is to review each exemption given by the Commissioner if it is still in force 3 years from the date it is given or was last reviewed. The review is to be undertaken as soon as possible after the end of the period of 3 years from that date. 30

**17 Review of data protection codes**

- (1) The Privacy Commissioner may review a data protection code at any time on request by the head of a public authority or other person or body by or for whom a data protection code is or is to be prepared. 35



- (2) The Privacy Commissioner may review a data protection code of a public authority at any time on the Commissioner's own initiative.
- (3) In reviewing a data protection code, the Privacy Commissioner is to have regard to whether the code complies with the applicable data protection principles, so far as is reasonably practicable, and other requirements of this Act. 5
- (4) The head of a public authority must consider the findings of a review of a data protection code of the authority by the Privacy Commissioner on the Commissioner's own initiative. 10

### **Division 3 Public registers**

#### **18 Public registers**

A public register is a register of personal information that is required by law to be, or is made, publicly available or open to public inspection, whether or not on payment of a fee, and that is prescribed by the regulations as a public register for the purposes of this Division. 15

#### **19 Disclosure of information by record-keepers**

- (1) A data protection code relating to personal information contained in a public register must require that the record-keeper not disclose the information unless satisfied that it is to be used for a purpose related to the purpose of the register or the Act under which it is kept. 20
- (2) A record-keeper:
  - (a) may require an applicant for inspection or disclosure of personal information contained in a public register to give particulars as to the intended use of any information so obtained in the form of a statutory declaration, and 25
  - (b) is not required to permit an inspection of or disclose information contained in a public register unless satisfied that it is to be used for a purpose related to the purpose of the register or the Act under which it is kept. 30
- (3) The requirements of this section prevail to the extent of any inconsistency with any requirement of any other Act or regulation under which the public register is established. 35

**20 Suppression of information**

- (1) A person about whom personal information is contained, or proposed to be placed, on a public register may apply to the record-keeper to have the information removed from, or not placed on, the register as publicly available and not disclosed to the public. 5
- (2) However, information that is removed from, or not placed on, the register as publicly available is to remain on the register for other purposes.
- (3) Despite the provisions of any other Act, the record-keeper may agree to the application if the record-keeper is satisfied that suppression of the information would not unduly compromise the register and the record-keeper is also satisfied that the applicant's safety or the safety of members of the applicant's family may be at risk if the application is not granted. 10  
15
- (4) An applicant who is aggrieved by a decision of a record-keeper under this section may complain to the Privacy Commissioner under section 23.
- (5) In dealing with the complaint, the Privacy Commissioner may recommend that the record-keeper agree to the application or may notify the complainant that, in the Commissioner's view, the application was properly refused. 20
- (6) A record-keeper must comply with a recommendation by the Privacy Commissioner under this section.

**Division 4 Data protection principles**

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**Note.** These principles, when referring to a "record", do not apply to generally available information (see the definition of "record" in section 3).

**21 Data protection principles**

- (1) The data protection principles are as follows:

**Principle 1**

30

**Manner and purpose of collection of information**

- (1) Personal information must 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. 5
- (2) Personal information must not be collected by a collector by unlawful or unfair means.

## Principle 2

### Solicitation of information from individual concerned

- (1) Personal information is, where practicable, to be solicited directly from the individual concerned except where the individual authorises otherwise, or where information may be disclosed to the collector in accordance with these principles or under this Act. 10
- (2) If: 15
- (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, 20
- the collector must 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 informed of: 25
- (c) the purpose for which the information is being collected, and
  - (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 30



- (e) the mandatory or voluntary nature of the information collection and the effects on the individual concerned (if any) of not providing all or any part of the requested information, and 5
- (f) the existence of the right of access to and rectification of the data relating to the individual, and
- (g) the name and address of the record-keeper, and 10
- (h) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose 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. 15

**Principle 3**

**Solicitation of information generally 20**

If:

- (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, 25  
the collector must 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, is not excessive, and is accurate, up to date and complete, and 30
- (d) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual concerned. 35

#### **Principle 4**

##### **Storage and security of information**

A record-keeper who has possession or control of a record that contains personal information must ensure that the information is: 5

- (a) stored for specified, explicit and lawful purposes and used in a way consistent with those purposes, and
- (b) adequate, relevant and not excessive in relation to the purposes for which it is stored, and 10
- (c) processed fairly and lawfully, and
- (d) kept for no longer than is necessary for the purposes for which the information is stored, and 15
- (e) 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 20
- (f) if it is necessary for the information 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 the information. 25

#### **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 must, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain: 30

- 
- (a) whether the record-keeper has possession or control of any records that contain any such information, and
- (b) whether the record-keeper has possession or control of such a record relating to that person, and 5
- (c) if the record-keeper has possession or control of a record that contains such information:
- (i) the nature of that information, and
- (ii) the main purposes for which the information is used, and 10
- (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 this State that provides for access by persons to documents. 15  
20
- (3) A record-keeper must maintain a record setting out:
- (a) the nature of the records of information about individuals kept by or on behalf of the record-keeper, and
- (b) the sources of information contained in those records, and 25
- (c) the purpose for which the information was collected and the authority for that collection, and
- (d) the purpose for which each type of record is kept, and 30
- (e) the classes of individuals about whom records are kept, and



- (f) the period for which each type of record is kept, and
  - (g) the persons who are entitled to have access to information about individuals contained in the records and the conditions under which they are entitled to have that access, and 5
  - (h) the steps that should be taken by persons wishing to obtain access to that information.
- (4) A record-keeper must:
- (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public, and 10
  - (b) give the Privacy Commissioner, in the month of June in each year, a copy of the record so maintained. 15

### **Principle 6**

#### **Access to records containing information about individuals**

If a record-keeper has possession or control of a record that contains personal information, the individual concerned is, without excessive delay or expense, 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 this State that provides for access by persons to documents. 20 25

### **Principle 7**

#### **Alteration of records containing information about individuals**

- (1) A record-keeper who has possession or control of a record that contains personal information must 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: 30

- (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. 5
- (2) If personal information has been corrected, deleted or added to in accordance with clause 1 of this Principle, the individual concerned is entitled to have recipients of that information notified of the alterations by the record-keeper. 10
- (3) The obligation imposed on a record-keeper by clause 1 of this Principle is subject to any applicable limitation in a law of this State that provides a right to require the correction or amendment of documents. 15
- (4) If:
- (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 20
  - (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 this State, 25
- the record-keeper must, 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. 30

### **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 must not use the 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 relevant, accurate, up to date and complete. 5 10

### **Principle 9**

#### **Limits on use of personal information**

A record-keeper who has possession or control of a record that contains personal information must not use the information for a purpose other than that for which it was collected and which was specified in accordance with Principle 5 unless: 15

- (a) the individual concerned has consented to use of the information for that other purpose, or
- (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, or 20 25
- (c) use of the information is reasonably necessary for the enforcement (including investigations and the gathering of criminal intelligence) of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, or 30
- (d) use of the information for that other purpose is required or authorised by or under law, or
- (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained. 35



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**Principle 10****Limits on disclosure of personal information**

- (1) A record-keeper who has possession or control of a record that contains personal information must not disclose the information to a person, body or agency (other than the individual concerned) unless: 5
- (a) the individual concerned has been informed under Principle 2 that information of that kind is usually passed to that person, body or agency, or 10
  - (b) the individual concerned has consented to the disclosure, or
  - (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, or 15
  - (d) the disclosure is required or authorised by or under law, or
  - (e) the disclosure is reasonably necessary for the enforcement (including investigations and the gathering of criminal intelligence) of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue. 20 25
- (2) A person, body or agency to whom information is disclosed under clause 1 of this Principle must 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. 30
- (3) If personal information is used for the purposes of the enforcement (including investigations and the gathering of criminal intelligence) of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper must include in the record containing that information a note of that use. 35

## **Principle 11**

### **Limits on use of certain information**

- (1) Despite Principles 9 and 10, information relating to ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual life must not be used or disclosed by a record-keeper without the express written consent, freely given, of the individual concerned, except to the extent that the record-keeper is required or authorised to do so under the law of this State. 5  
10
- (2) Information relating to an individual's criminal history may only be processed as required or authorised by law or a data protection code under this Act.

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## **Part 3 Privacy and data protection functions of the Privacy Commissioner**

### **Division 1 Privacy Commissioner's privacy and data protection functions**

#### **22 Privacy and data protection functions of the Privacy Commissioner 5**

The Privacy Commissioner has the following functions:

- (a) to promote the adoption of, and compliance with, data protection principles and guidelines and guidelines for the promotion of privacy in both the public and private sectors, 10
- (b) to monitor compliance with data protection principles and guidelines and privacy guidelines in both the public and private sectors,
- (c) to conduct research and collect and collate information into any matter relating to data protection or the privacy of persons, 15
- (d) to prepare and publish guidelines in relation to data protection and the promotion of privacy,
- (e) to provide assistance to public authorities in relation to data protection codes, 20
- (f) to advise on, and co-ordinate, consistency among data protection codes of public authorities,
- (g) to provide advice to any person, and to prepare and publish reports and recommendations, concerning the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of persons, 25
- (h) to monitor developments in technology which may have an adverse impact on data protection or other matters relating to privacy and report to any appropriate person on how any adverse impact may be minimised, 30



- (i) to receive and investigate and, if appropriate, to conciliate complaints about the use and disclosure of personal information (whether in the private or public sector) or other violations of privacy, and for that purpose, to conduct such inquiries and make such investigations as the Commissioner thinks fit, 5
- (j) to make reports and recommendations as to complaints,
- (k) to prepare and publish a personal information digest relating to public authorities, being a digest of information maintained by record-keepers of public authorities under Principle 5 of the data protection principles, 10
- (l) to review data protection codes and exemptions from codes,
- (m) if directed by the Minister, to 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 interest of the privacy of persons, 15
- (n) to make reports and recommendations to any person in relation to any matter that concerns the need for or the desirability of action by that person in the interest of the privacy of persons. 20

## Division 2 Complaints and investigations

### 23 Complaints

- (1) An individual who is detrimentally affected by an alleged breach of a data protection principle, or a violation of the person's privacy by a public official, a public authority or other person or body may complain to the Privacy Commissioner. 25
- (2) A complaint may be in writing or verbal, but the Privacy Commissioner may require a verbal complaint to be put in writing. 30

(3) The Privacy Commissioner may require information about a complaint to be provided by the complainant in a particular manner or form, and may require a complaint to be verified by statutory declaration.

(4) A complainant may amend or withdraw a complaint. 5

#### 24 Preliminary assessment

The Privacy Commissioner may conduct a preliminary assessment of a complaint, for the purpose of deciding whether to exercise any other functions under this Act in relation to the complaint. 10

#### 25 Investigations

(1) The Privacy Commissioner may investigate a complaint or may choose not to do so.

(2) The Privacy Commissioner may discontinue an investigation.

(3) In deciding whether to investigate a complaint or whether to discontinue an investigation, the Privacy Commissioner may have regard to such matters as the Commissioner thinks fit, and without limitation may have regard to whether in the Commissioner's opinion: 15

(a) the complaint is frivolous, vexatious or not in good faith, or 20

(b) the subject-matter of the complaint is trivial, or

(c) the subject-matter of the complaint relates to a matter permitted by or under any Act, or

(d) there is available to the complainant an alternative, satisfactory and readily available means of redress. 25

#### 26 Conciliation of complaints

The Privacy Commissioner may conciliate a complaint, whether or not the Commissioner investigates the complaint, and may determine the procedures for conciliation. 30

## **27 Reasons for refusal or discontinuance of investigation**

If a complaint has been made to the Privacy Commissioner and the Commissioner:

- (a) refuses to investigate the complaint, or
- (b) discontinues an investigation of the complaint, 5

the Commissioner is required to inform the complainant in writing of the decision and the reasons for the decision.

## **28 Notice of investigation**

- (1) The Privacy Commissioner is required to give notice of an investigation to the complainant and (so far as practicable) to any person the subject of a complaint. 10
- (2) The notice must be in writing and describe the subject-matter of the complaint.

## **29 Information to be given**

- (1) For the purposes of an investigation, the Privacy Commissioner may require the head of a public authority or a public official: 15
  - (a) to give the Commissioner a statement of information, or
  - (b) to produce to the Commissioner any document or other thing, or
  - (c) to give the Commissioner a copy of any document. 20
- (2) A requirement under this section must be in writing, must specify or describe the information, document or thing required, and must fix a time and place for compliance.

## **30 Inquiries**

- (1) The Privacy Commissioner, in the course of an investigation, may make or hold inquiries. 25
- (2) For the purposes of any inquiry under this section, the Privacy Commissioner has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* and that Act (section 13 and Division 2 of Part 2 excepted) applies to any witness summoned 30



by or appearing before the Commissioner in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 (2) of that Act has effect subject to section 31 of this Act.

- (3) An inquiry is to be conducted in the absence of the public. 5

### **31 Limits on secrecy and privilege (information and inquiries)**

- (1) This section applies where, in the course of an investigation, the Privacy Commissioner requires any person under section 29 or 30:
- (a) to give any statement of information, or 10  
 (b) to produce any document or other thing, or  
 (c) to give a copy of any document, or  
 (d) to answer any question.
- (2) The Privacy Commissioner must set aside the requirement if it appears to the Commissioner that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commissioner that the person consents to compliance with the requirement. 15
- (3) The person must however comply with the requirement despite:
- (a) any rule of law which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest, or 20  
 (b) any privilege of a public authority or public official in that capacity which the authority or employee could have claimed in a court of law, or 25  
 (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official in that capacity.

### **32 Cabinet proceedings** 30

- (1) This Act does not enable the Privacy Commissioner:
- (a) to require any person:  
 (i) to give any statement of information, or

- (ii) to produce any document or other thing, or
  - (iii) to give a copy of any document, or
  - (iv) to answer any question,  
which relates to confidential proceedings of Cabinet or any committee of Cabinet, or 5
- (b) to inspect any document or thing which so relates.
- (2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information, document, thing or question relates to confidential proceedings of Cabinet or of a committee of Cabinet is conclusive that it does so relate. 10

### 33 Submissions

- (1) The Privacy Commissioner must give an opportunity to make submissions on the subject-matter of the complaint the subject of the investigation to any person given notice of an investigation under section 28. 15
- (2) The Privacy Commissioner may determine the mode in which a person is to be given an opportunity to make any such submissions, the manner and period in which any such submissions must be made, and the scope of any such submissions. 20

### 34 Representation

- (1) A person is not entitled to be represented by another person at an inquiry before the Privacy Commissioner without the leave of the Commissioner.
- (2) Leave is not to be given under this section for a person to be represented by a practising barrister or practising solicitor unless the Commissioner is satisfied that leave should be given in the special circumstances of the case. 25
- (3) The Commissioner may allow any person appearing before the Commissioner the services of an interpreter. 30

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**35 General procedure**

The Privacy Commissioner:

- (a) may determine the procedures to be followed in exercising functions under this Act, including the procedures to be followed at an inquiry, and 5
- (b) is to act as quickly as is practicable in the circumstances, and
- (c) is to act in an informal manner (including avoiding conducting formal hearings) as far as possible, and
- (d) is not bound by the rules of evidence and may inform himself or herself on any matter in any way that he or she considers to be just, and 10
- (e) is to act according to the substantial merits of the case without undue regard to technicalities.

**36 Referral of complaints to other bodies** 15

- (1) The Privacy Commissioner may, before or after investigating a complaint (whether or not the investigation is completed), refer the complaint for investigation or other action to any person or body (*the relevant authority*) considered by the Commissioner to be appropriate in the circumstances. 20
- (2) The Commissioner may communicate to the relevant authority any information which the Commissioner has obtained during the investigation of the complaint.
- (3) The Commissioner must not refer a matter to a relevant authority except after appropriate consultation with the relevant authority and after taking its views into consideration. 25

**Division 3 Reports****37 Report of complaints**

- (1) The Privacy Commissioner may report on any complaint under this Act and any matters arising in relation to any such complaint, and in particular may report on any investigation under this Act. 30



Clause 37 Privacy and Data Protection 1996

Part 3 Privacy and data protection functions of the Privacy Commissioner  
Division 3

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- (2) The Privacy Commissioner is to give a copy of any such report to the Minister.
- (3) The Privacy Commissioner may (but need not) give a copy of any such report to the complainant or to such bodies and other persons as appear to be materially involved in the subject-matter of the complaint concerned. 5

### 38 Annual report

- (1) The Privacy Commissioner is, as soon as practicable after 30 June in each year, to prepare and submit to the Minister a report of his or her work and activities for the 12 months preceding that date. 10
- (2) The Minister is to lay that report or cause it to be laid before each House of Parliament as soon as practicable after receiving it.

### 39 Special report to Parliament

- (1) The Privacy Commissioner may, at any time, make a special report on any matter arising in connection with the discharge of his or her functions to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report. 15
- (2) The Privacy Commissioner may include in a report under this section a recommendation that the report be made public immediately. 20
- (3) A copy of a report made or furnished to the Presiding Officer of a House of Parliament must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer. 25
- (4) If a report includes a recommendation by the Privacy Commissioner that the report be made public immediately, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House. 30
- (5) A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House. 35

(6) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made or furnished in accordance with this Act.

(7) In this section, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly. If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council and, if there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

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Clause 40 Privacy and Data Protection 1996

Part 4 Privacy Commissioner

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## **Part 4 Privacy Commissioner**

### **40 Appointment of Privacy Commissioner**

- (1) The Governor may, on the recommendation of the Minister, appoint a person to be Privacy Commissioner.
- (2) Schedule 1 has effect with respect to the Privacy Commissioner. 5

### **41 Staff of Privacy Commissioner**

- (1) The staff of the Privacy Commissioner is (subject to this section) to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Privacy Commissioner may employ other staff with the approval of the Minister. Part 2 of the *Public Sector Management Act 1988* does not apply to the employment of any such staff. 10
- (3) The Privacy Commissioner may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government agency or any other public or local government authority. Any staff of whose services the Commissioner makes use is taken to be the staff of the Commissioner for the purposes of this Act. 15
- (4) The Commissioner may, with the approval of the Minister, engage consultants or other persons for the purpose of getting expert assistance. 20

### **42 General functions**

- (1) The Privacy Commissioner has the functions conferred or imposed on the Commissioner by or under this or any other Act.
- (2) The Privacy Commissioner may do all such things as are supplemental or incidental to the exercise of the Commissioner's functions. 25



### 43 Delegation of functions

- (1) The Privacy Commissioner may delegate to an authorised person any of the functions of the Commissioner other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Commissioner if the delegate is authorised in writing to do so by the Commissioner. 5
- (3) In this section, *authorised person* means:
  - (a) a member of the staff of the Commissioner, or
  - (b) a person of a class prescribed by the regulations or approved by the Minister. 10

## **Part 5 Privacy Advisory Committee**

### **44 Privacy Advisory Committee**

- (1) There is established by this Act the Privacy Advisory Committee.
- (2) The Committee is to consist of the following part-time members appointed by the Governor: 5
  - (a) a member of the Legislative Assembly or the Legislative Council nominated by the Minister,
  - (b) a member of the Legislative Assembly or the Legislative Council nominated by the Leader of the Opposition in the Legislative Assembly, 10
  - (c) not more than 4 members nominated by the Minister having, in the opinion of the Minister, special knowledge of or interest in matters affecting the privacy of persons.
- (3) The Minister is to appoint, by the instrument of appointment or a subsequent instrument, one of the members to be the Chairperson of the Committee. 15
- (4) The Committee may regulate its own proceedings for the calling of meetings and the conduct of its business.
- (5) Schedule 2 has effect with respect to the members of the Committee. 20

### **45 Functions of Privacy Advisory Committee**

The Privacy Advisory Committee has the following functions:

- (a) on its own initiative, or when requested by the Privacy Commissioner, to advise the Commissioner on matters relevant to his or her functions, 25
- (b) to recommend material to the Commissioner for inclusion in guidelines to be issued by the Commissioner in exercising his or her functions.

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## Part 6 Miscellaneous

### 46 Proceedings for offences

Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

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### 47 Personal liability of Privacy Commissioner and others

A matter or thing done by the Privacy Commissioner, a member of the staff of the Commissioner, a person acting under the direction of the Commissioner or a member of the Privacy Advisory Committee does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the Commissioner, member of staff, person so acting or member of the Privacy Advisory Committee personally to any action, liability, claim or demand.

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### 48 Disclosure by Privacy Commissioner or staff member

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(1) The Privacy Commissioner or a member of the staff of the Commissioner must not disclose any information obtained by him or her in the course of his or her office, unless the disclosure is made:

- (a) with the consent of the person the subject of the information, or
- (b) for the purpose of discharging functions of the Commissioner or member of staff under this or any other Act.

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Maximum penalty: 10 penalty units.

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(2) Subsection (1) does not prevent the Commissioner from furnishing any information relating to:

- (a) a matter arising under a law of another State, the Commonwealth or a Territory of the Commonwealth, or
- (b) an undertaking that is or was being carried out jointly by New South Wales and another State, the Commonwealth or a Territory of the Commonwealth,

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to a person exercising under a law of that other State, the Commonwealth or that Territory, as the case may be, functions similar to those exercised by the Commissioner under this Act.

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- (3) Subsection (1) does not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted.

#### 49 Offences

- (1) A person must not: 5
- (a) without lawful excuse, wilfully obstruct, hinder or resist the Privacy Commissioner or a member of the staff of the Commissioner in the exercise of functions under this or any other Act, or
  - (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Commissioner or a member of the staff of the Commissioner under this or any other Act, or 10
  - (c) wilfully make any false statement to or mislead, or attempt to mislead, the Commissioner or a member of the staff of the Commissioner in the exercise of functions under this or any other Act. 15

Maximum penalty: 10 penalty units.

- (2) A person must not directly or indirectly: 20
- (a) if the person is not the Privacy Commissioner—represent that he or she is the Commissioner, or
  - (b) if the person has not been appointed under this Act as acting Commissioner—represent that he or she has been so appointed, or
  - (c) if the person is not a person to whom a delegation has been made under this Act—represent that he or she is such a person, or 25
  - (d) if the person is not a member of the staff of the Commissioner—represent that he or she is a member of that staff. 30

Maximum penalty: 10 penalty units.

- (3) For the purposes of subsection (2), a person represents that a state of affairs exists if the person does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists. 35

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**50 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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**51 Freedom of Information Act 1989**

- (1) Nothing in this Act requires or permits information to be disclosed in contravention of the *Freedom of Information Act 1989*.
- (2) Nothing in this Act prevents or prohibits information from being disclosed in accordance with the *Freedom of Information Act 1989*.

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**52 Amendment of other Acts**

The Acts specified in Schedule 3 are amended as set out in that Schedule.

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**53 Repeal of Privacy Committee Act 1975 No 37**

The *Privacy Committee Act 1975* is repealed.

**54 Savings, transitional and other provisions**

Schedule 4 has effect.

**55 Review of Act**

20

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## **Schedule 1 Provisions relating to the Privacy Commissioner**

(Section 40)

### **1 Appointment of acting Privacy Commissioner**

- (1) The Minister may, from time to time, appoint a person to act in the office of the Privacy Commissioner during the illness or absence of the Commissioner (or during a vacancy in the office of the Commissioner). The person, while so acting, has all the functions of the Commissioner and is taken to be the Commissioner. 5  
10
- (2) The Minister may, at any time, remove a person from office as acting Privacy Commissioner.
- (3) An acting Privacy Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine. 15

### **2 Terms and conditions of appointment**

- (1) Subject to this Act, the Privacy Commissioner holds office on terms and conditions approved by the Minister.
- (2) Subject to clause 4, the Privacy Commissioner holds office for such period (not exceeding 5 years) as is specified in the Commissioner's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 20
- (3) The Privacy Commissioner is to be appointed on a full-time basis.

### **3 Remuneration**

25

The Privacy Commissioner is entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975* and such travelling and subsistence allowances as the Minister may from time to time determine.



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#### 4 Vacancy in office

- (1) The office of Privacy Commissioner becomes vacant if the holder of the office:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or 5
  - (c) resigns the office by letter addressed to the Minister, or
  - (d) is removed from office by the Governor under this clause, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 10
  - (f) becomes a mentally incapacitated person, or
  - (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable. 15
- (2) The Governor may remove the Privacy Commissioner from office for misbehaviour, incapacity or incompetence. 20

#### 5 Effect of certain other Acts

Parts 2 and 8 of the *Public Sector Management Act 1988* do not apply to or in respect of the appointment of the Privacy Commissioner.

## **Schedule 2 Provisions relating to members of the Privacy Advisory Committee**

(Section 44)

### **1 Deputies of members**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment. 5
- (2) In the case of a member nominated by the Leader of the Opposition, the Minister must appoint a person so nominated to be the deputy of the member. 10
- (3) In the absence of a member, the member's deputy:
- (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is taken to be the member.
- (4) A deputy while acting in the place of a member who is Chairperson of the Committee does not have the member's functions as Chairperson. 15
- (5) A deputy while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person. 20

### **2 Term of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 25

### **3 Remuneration of members**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) for attending meetings and transacting the business of the Committee as the Minister may from time to time determine in respect of the member. 30

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#### 4 Vacancy in office of members

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by letter addressed to the Minister, or 5
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee for having been absent from those meetings, or 10
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 15
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable. 20
- (2) The Minister may remove a member from office at any time. 25

#### 5 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### 6 Effect of certain other Acts

- (1) Parts 2 and 8 of the *Public Sector Management Act 1988* do not apply to or in respect of the appointment of a member. 30



- (2) If, by or under any Act, provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office, 5
- the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as such a member. 10
- (3) The office of a part-time member is not, for the purposes of any Act, an office or place of profit under the Crown.

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## Schedule 3 Amendment of other Acts

(Section 52)

### 3.1 Defamation Act 1974 No 18

#### [1] Section 17B

Omit section 17B. Insert instead: 5

#### 17B Matters relating to the Privacy Commissioner

- (1) There is a defence of absolute privilege for a publication to or by the Privacy Commissioner, as Privacy Commissioner, or to any member of the staff of the Privacy Commissioner, as such a member. 10
- (2) Subsection (1) applies in relation to an acting Privacy Commissioner in the same way as it applies in relation to the Privacy Commissioner.
- (3) There is a defence of absolute privilege for the publication under section 39 of the *Privacy and Data Protection Act 1996* of a report. 15
- (4) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the *Privacy and Data Protection Act 1996*, of a copy of a report previously made public under section 39 of that Act. 20

#### [2] Schedule 2 Proceedings of Public Concern and Official and Public Documents and Records

Omit clause 2 (11). Insert instead:

- (11) proceedings of the Privacy Commissioner, so far as those proceedings are included in a report previously made public under section 39 of the *Privacy and Data Protection Act 1996*, 25

**3.2 Freedom of Information Act 1989 No 5**

**Schedule 2 Exempt Bodies and Offices**

Insert at the end of Schedule 2:

The office of Privacy Commissioner—the complaint handling, investigative and reporting functions of that office. 5

**3.3 Ombudsman Act 1974 No 68**

**Schedule 1 Excluded Conduct of Public Authorities**

Omit item 16. Insert instead:

**16** Conduct of the Privacy Commissioner or a member of the staff of the Privacy Commissioner, or conduct of the Privacy Advisory Committee, when exercising functions under the *Privacy and Data Protection Act 1996*. 10

**3.4 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

**Schedule 1 Public Offices** 15

Insert at the end of Schedule 1:

Privacy Commissioner.



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## Schedule 4 Savings, transitional and other provisions

(Section 54)

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 5
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 10
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of the publication. 15

### 2 Privacy Committee

- (1) The Privacy Committee is abolished.
- (2) A person who, immediately before the repeal of the *Privacy Committee Act 1975*, held office as a member of the Privacy Committee:
  - (a) ceases to hold office on that repeal, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the Privacy Advisory Committee under this Act. 20 25

- (c) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

### 3 Existing complaints

A complaint received by the Privacy Committee but not concluded immediately before the repeal of the *Privacy Committee Act 1975* is to be dealt with under this Act as if the complaint had been made to the Privacy Commissioner. 5

### 4 Previous conduct

A complaint under this Act may be made in relation to events that occurred before the commencement of this clause. A complaint may not be made if a complaint was made about the same events under the *Privacy Committee Act 1975*. 10

### 5 Existing reports

A publication to which there was a defence of absolute privilege under section 17B of the *Defamation Act 1974*, immediately before the amendment to that section by Schedule 3, continues to be subject to that defence. 15

### 6 Annual report

The Privacy Commissioner is, in the Commissioner's first annual report, to report on the activities of the Privacy Committee in the period from the date of the last annual report of the Committee to the date of abolition of the Committee. 20

**7 Application of data protection principles to previously collected information**

For the purposes of sections 11 (2) and 14 (2), and of the review of data protection codes by the Privacy Commissioner, Principles 1, 2 and 3 of the data protection principles do not apply to personal information collected before the commencement of this clause.

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