



Australian Government

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AUSTRALIAN PUBLIC

APS Values and Code of Conduct in practice

Overview

Australian Public Service Values¹

- The APS is apolitical, performing its functions in an impartial and professional manner.
- The APS is a public service in which employment decisions are based on merit.
- The APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves.
- The APS has the highest ethical standards.
- The APS is openly accountable for its actions, within the framework of ministerial responsibilities to the government, the Parliament and the Australian public.
- The APS is responsive to the government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs.
- The APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public.
- The APS has leadership of the highest quality.
- The APS establishes workplace relations that value communication, consultation, cooperation and input from employees on matters that affect their workplace.
- The APS provides a fair, flexible, safe and rewarding workplace.
- The APS focuses on achieving results and managing performance.
- The APS promotes equity in employment.
- The APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment.
- The APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government.
- The APS provides a fair system of review of decisions taken in respect to APS employees.

Australian Public Service Code of Conduct²

- An APS employee must behave honestly and with integrity in the course of APS employment.
- An APS employee must act with care and diligence in the course of APS employment.
- An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
- An APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws.³
- An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.
- An APS employee must maintain appropriate confidentiality about dealings that the employee has with any minister or minister's member of staff.
- An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.
- An APS employee must use Commonwealth resources in a proper manner.
- An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.
- An APS employee must not make improper use of:
 - inside information or
 - the employee's duties, status, power or authority
 in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.
- An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.
- An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.

- An APS employee must comply with any other conduct requirement that is prescribed by the regulations⁴.

1 From Section 10(1) of the *Public Service Act 1999*

2 From Section 13 of the *Public Service Act 1999*

3 For this purpose, Australian law means:

- a) any Act (including this Act), or any instrument made under an Act
- b) any law of a state or territory, including any instrument made under such a law.

4 Regulation 2.1 imposes a duty on an APS employee not to disclose certain information without authority (ie information communicated in confidence or where disclosure could be prejudicial to the effective working of government). APS employees should familiarise themselves with the full text of PS Regulation 2.1.



Australian Public Service Commission A-Z index Privacy, legal & copyright Contact us
This page can be found at www.apsc.gov.au/values/conductguidelines2.htm



Public Service Act 1999

Act No. 147 of 1999 as amended

This compilation was prepared on 20 March 2009
taking into account amendments up to Act No. 90 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

10 APS Values

(1) The APS Values are as follows:

- (d) the APS has the highest ethical standards;
- (e) the APS is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public;
- (g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;

11 Commissioner's Directions about APS Values

- (1) The Commissioner must issue directions in writing in relation to each of the APS Values for the purpose of:
 - (a) ensuring that the APS incorporates and upholds the APS Values; and
 - (b) determining where necessary the scope or application of the APS Values.
- (2) For the purposes of this Act other than this section, the APS Values have effect subject to the restrictions (if any) in directions made under subsection (1).

13 The APS Code of Conduct

- (4) An APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws. For this purpose, *Australian law* means:
 - (a) any Act (including this Act), or any instrument made under an Act; or
 - (b) any law of a State or Territory, including any instrument made under such a law.

- (10) An APS employee must not make improper use of:
 - (a) inside information; or
 - (b) the employee's duties, status, power or authority;in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.

- (11) An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.

- (13) An APS employee must comply with any other conduct requirement that is prescribed by the regulations.

14 Agency Heads bound by Code of Conduct

- (1) Agency Heads are bound by the Code of Conduct in the same way as APS employees.
- (2) Statutory office holders are bound by the Code of Conduct in the same way as APS employees.
- (3) In this section:

statutory office holder means a person who holds any office or appointment under an Act, being an office or appointment that is prescribed by the regulations for the purposes of this definition.

15 Breaches of the Code of Conduct

- (1) An Agency Head may impose the following sanctions on an APS employee in the Agency who is found (under procedures established under subsection (3)) to have breached the Code of Conduct:
 - (a) termination of employment;
 - (b) reduction in classification;
 - (c) re-assignment of duties;
 - (d) reduction in salary;
 - (e) deductions from salary, by way of fine;

- (2) The regulations may prescribe limitations on the power of an Agency Head to impose sanctions under subsection (1).

- (3) An Agency Head must establish procedures for determining whether an APS employee in the Agency has breached the Code of Conduct. The procedures:
 - (a) must comply with basic procedural requirements set out in Commissioner's Directions; and
 - (b) must have due regard to procedural fairness; and
 - (c) may be different for different categories of APS employees.

- (4) The Commissioner must issue directions in writing for the purposes of subsection (3).

- (5) An Agency Head must take reasonable steps to ensure that every APS employee in the Agency has ready access to the documents that set out the procedures referred to in subsection (3).

29 Termination of employment

- (1) An Agency Head may at any time, by notice in writing, terminate the employment of an APS employee in the Agency.

Note: The *Workplace Relations Act 1996* has rules and entitlements that apply to termination of employment.

- (3) For an ongoing APS employee, the following are the only grounds for termination:

- (g) breach of the Code of Conduct;

41 Commissioner's functions

- (1) The Commissioner's functions include the following functions:
 - (b) to evaluate the adequacy of systems and procedures in Agencies for ensuring compliance with the Code of Conduct;
 - (f) to inquire into alleged breaches of the Code of Conduct by Agency Heads and to report to the appropriate authority on the results of such enquiries (including, where relevant, recommendations for sanctions);

42 Commissioner's Directions

- (1) Commissioner's Directions cannot create offences or impose penalties.
- (2) Agency Heads and APS employees must comply with Commissioner's Directions.
- (4) Commissioner's directions are disallowable non-legislative instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*.



Public Service Regulations 1999

Statutory Rules 1999 No. 300 as amended

made under the

Public Service Act 1999

Division 2.1 The Code of Conduct

2.1 Duty not to disclose information (Act s 13)

- (1) This regulation is made for subsection 13 (13) of the Act.
- (2) This regulation does not affect other restrictions on the disclosure of information.
- (3) An APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programs.
- (4) An APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if the information:
 - (a) was, or is to be, communicated in confidence within the government; or
 - (b) was received in confidence by the government from a person or persons outside the government;whether or not the disclosure would found an action for breach of confidence.
- (5) Subregulations (3) and (4) do not prevent a disclosure of information by an APS employee if:
 - (a) the information is disclosed in the course of the APS employee's duties; or
 - (b) the information is disclosed in accordance with an authorisation given by an Agency Head; or
 - (c) the disclosure is otherwise authorised by law; or
 - (d) the information that is disclosed:
 - (i) is already in the public domain as the result of a disclosure of information that is lawful under these Regulations or another law; and
 - (ii) can be disclosed without disclosing, expressly or by implication, other information to which subregulation (3) or (4) applies.
- (6) Subregulations (3) and (4) do not limit the authority of an Agency Head to give lawful and reasonable directions in relation to the disclosure of information.

Note Under section 70 of the *Crimes Act 1914*, it is an offence for an APS employee to publish or communicate any fact or document which comes to the employee's knowledge, or into the employee's possession, by virtue of being a Commonwealth officer, and which it is the employee's duty not to disclose.

2.2 Statutory office holders bound by the Code of Conduct (Act s 14)

- (1) For the purposes of the definition of *statutory office holder* in subsection 14 (3) of the Act, an office is prescribed if it is in a class of offices that:
 - (a) are not an office of Agency Head; and
 - (b) are not judicial offices; and
 - (c) are held by non-APS employees who:
 - (i) are acting in relation to the exercise of their direct or indirect supervisory duties in relation to APS employees; and
 - (ii) are engaged or employed under an Act.
- (2) For the purposes of the definition of *statutory office holder* in subsection 14 (3) of the Act, an appointment is prescribed if it is in a class of appointments that:
 - (a) are not appointments to an office of Agency Head; and
 - (b) are not judicial appointments; and
 - (c) relate to non-APS employees who:
 - (i) are acting in relation to the exercise of their direct or indirect supervisory duties in relation to APS employees; and
 - (ii) are appointed under an Act.
- (3) In this regulation:

non-APS employee means a person employed or appointed under an Act who is not an APS employee.



Public Service Commissioner's Directions 1999

as amended

made under subsection 11 (1), subsection 15 (4) and section 36 of the

Public Service Act 1999

This compilation was prepared on 24 February 2009
taking into account amendments up to the *Public Service Commissioner's Amendment
Directions 2009 (No. 1)*

Prepared by the Australian Public Service Commission, Canberra.

2.5 The APS has the highest ethical standards (Act s 10 (1) (d))

Note In addition to upholding and, if appropriate, promoting the APS Value mentioned in para 10 (1) (d) of the Act, Agency Heads and APS employees must also comply with the APS Code of Conduct and any other conduct requirement prescribed by the regulations — see s 13 and 14 of the Act.

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (d) of the Act, an Agency Head must at all times model and promote the highest standard of ethical behaviour, and must put in place measures in the Agency directed at ensuring that:
 - (a) APS employees in the Agency are aware of:
 - (i) the content of the Code of Conduct; and
 - (ii) any other conduct requirement prescribed for the purposes of subsection 13 (13) of the Act; and
 - (iii) any Agency-specific conduct requirement authorised by the Agency Head; and
 - (iv) the consequences of breaching the Code of Conduct or any other conduct requirement; and
 - (v) the procedures for dealing with a breach of the Code of Conduct or any other conduct requirement; and
 - (b) managers are aware of the importance of modelling and promoting the highest standard of ethical behaviour; and
 - (c) procedures are in place for dealing with whistleblowing disclosures; and
 - (d) APS employees are aware of the procedures for dealing with whistleblowing disclosures, and are encouraged to make such disclosures in appropriate circumstances; and

Note See the *Public Service Regulations 1999* in relation to the procedures for dealing with whistleblowing disclosures.

 - (e) allegations of misconduct are addressed in a fair, timely, systematic and effective way.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (d) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in the Agency:
 - (a) model and promote the highest standard of ethical behaviour; and
 - (b) support the Agency Head in meeting the requirements mentioned in subclause (1).

2.6 The APS is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public (Act s 10 (1) (e))

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (e) of the Act, an Agency Head must take all reasonable steps to ensure that he or she:
 - (a) understands the accountability framework within which he or she operates; and
 - (b) meets individual and Agency statutory and reporting obligations; and
 - (c) is able, within the accountability framework, to demonstrate clearly and appropriately to Ministers, to the Parliament and to other stakeholders that he or she has efficiently, effectively and ethically used the resources allocated to him or her.

- (2) In upholding the APS Value mentioned in paragraph 10 (1) (e) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in the Agency, take all reasonable steps to ensure that he or she:
 - (a) understands the accountability framework within which he or she operates; and
 - (b) meets individual and Agency statutory and reporting obligations; and
 - (c) is able, within the accountability framework, to demonstrate clearly and appropriately to Ministers, to the Parliament and to other stakeholders that he or she has efficiently, effectively and ethically used the resources allocated to him or her.

2.8 The APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public (Act s 10 (1) (g))

- (1) In upholding and promoting the APS Value mentioned in paragraph 10 (1) (g) of the Act, an Agency Head must put in place measures in the Agency directed at ensuring that:
 - (a) information is provided to the Australian public about rights and entitlements, and the processes for gaining access to them; and
 - (b) within the overall framework of Government policy, the rights and entitlements of clients, and the resources of the Agency, appropriate account is taken of the particular interests and sensitivities of individual Agency clients, including their diversity and right to privacy; and
 - (c) services are delivered taking into account the principles set out in the following documents:
 - (i) the document entitled *Principles for Developing a Service Charter*, published by the Department of Industry, Science and Tourism in March 1997;
 - (ii) the document entitled *Charter of Public Service for a Culturally Diverse Society*, published by the Department of Immigration and Multicultural Affairs in June 1998.
- (2) In upholding the APS Value mentioned in paragraph 10 (1) (g) of the Act, an APS employee must, taking into account the employee's duties and responsibilities in an Agency, help to ensure that:
 - (a) information is provided to the Australian public about rights and entitlements, and the processes for gaining access to them; and
 - (b) within the overall framework of Government policy, the rights and entitlements of clients, and the resources of the Agency, appropriate account is taken of the particular interests and sensitivities of individual Agency clients, including their diversity and right to privacy; and
 - (c) services are delivered taking into account the principles set out in the following documents:
 - (i) the document entitled *Principles for Developing a Service Charter*, published by the Department of Industry, Science and Tourism in March 1997;
 - (ii) the document entitled *Charter of Public Service for a Culturally Diverse Society*, published by the Department of Immigration and Multicultural Affairs in June 1998.



Privacy Act 1988

Act No. 119 of 1988 as amended

This compilation was prepared on 9 January 2009
taking into account amendments up to Act No. 144 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

6 Interpretation

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

health information means:

- (a) information or an opinion about:
 - (i) the health or a disability (at any time) of an individual; or
 - (ii) an individual's expressed wishes about the future provision of health services to him or her; or
 - (iii) a health service provided, or to be provided, to an individual; that is also personal information; or
- (b) other personal information collected to provide, or in providing, a health service; or
- (c) other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances; or
- (d) genetic information about an individual in a form that is, or could be, predictive of the health of the individual or a genetic relative of the individual.

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.

use, in relation to information, does not include mere disclosure of the information, but does include the inclusion of the information in a publication.

(2) For the purposes of this Act, an act or practice breaches an Information Privacy Principle if, and only if, it is contrary to, or inconsistent with, that Information Privacy Principle.

13 Interferences with privacy

For the purposes of this Act, an act or practice is an interference with the privacy of an individual if the act or practice:

- (bb) constitutes a breach of the guidelines in force under section 135AA of the *National Health Act 1953*;

Division 2—Information Privacy Principles

14 Information Privacy Principles

The Information Privacy Principles are as follows:

Information Privacy Principles

Principle 1

Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
 - (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
 - (b) the collection of the information is necessary for or directly related to that purpose.
2. Personal information shall not be collected by a collector by unlawful or unfair means.

Principle 3

Solicitation of personal information generally

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector;
the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:
- (c) the information collected is relevant to that purpose and is up to date and complete;
and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 4

Storage and security of personal information

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

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

Principle 5

Information relating to records kept by record-keeper

1. A record-keeper who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:
 - (a) whether the record-keeper has possession or control of any records that contain personal information; and
 - (b) if the record-keeper has possession or control of a record that contains such information:
 - (i) the nature of that information;
 - (ii) the main purposes for which that information is used; and
 - (iii) the steps that the person should take if the person wishes to obtain access to the record.
2. A record-keeper is not required under clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.
3. A record-keeper shall maintain a record setting out:
 - (a) the nature of the records of personal information kept by or on behalf of the record-keeper;
 - (b) the purpose for which each type of record is kept;
 - (c) the classes of individuals about whom records are kept;
 - (d) the period for which each type of record is kept;
 - (e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
 - (f) the steps that should be taken by persons wishing to obtain access to that information.
4. A record-keeper shall:
 - (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and
 - (b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

Principle 6

Access to records containing personal information

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

Principle 7

Alteration of records containing personal information

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

- (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.
- 2. The obligation imposed on a record-keeper by clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.
- 3. Where:
 - (a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and
 - (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth;the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

Principle 8

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

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

Principle 9

Personal information to be used only for relevant purposes

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

Principle 10

Limits on use of personal information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:
 - (a) the individual concerned has consented to use of the information for that other purpose;
 - (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
 - (c) use of the information for that other purpose is required or authorised by or under law;
 - (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or

- (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.
2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

Principle 11

Limits on disclosure of personal information

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

Division 2—Functions of Commissioner

27 Functions of Commissioner in relation to interferences with privacy

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

- (g) to maintain, and to publish annually, a record (to be known as the Personal Information Digest) of the matters set out in records maintained by record-keepers in accordance with clause 3 of Information Privacy Principle 5;
 - (h) to conduct audits of records of personal information maintained by agencies for the purpose of ascertaining whether the records are maintained according to the Information Privacy Principles;
 - (ha) to conduct audits of particular acts done, and particular practices engaged in, by agencies in relation to personal information, if those acts and practices, and those agencies, are prescribed by regulations made for the purposes of this paragraph;
 - (j) whenever the Commissioner thinks it necessary, to inform the Minister of action that needs to be taken by an agency in order to achieve compliance by the agency with the Information Privacy Principles;
 - (k) to examine (with or without a request from a Minister) a proposal for data matching or data linkage that may involve an interference with the privacy of individuals or which may otherwise have any adverse effects on the privacy of individuals and to ensure that any adverse effects of such proposal on the privacy of individuals are minimised;
 - (m) for the purpose of promoting the protection of individual privacy, to undertake educational programs on the Commissioner's own behalf or in co-operation with other persons or authorities acting on behalf of the Commissioner;
 - (p) to issue guidelines under the *Data-matching Program (Assistance and Tax) Act 1990*;
 - (pa) to issue guidelines under section 135AA of the *National Health Act 1953*;
 - (q) to monitor and report on the adequacy of equipment and user safeguards;
 - (r) may, and if requested to do so, shall make reports and recommendations to the Minister in relation to any matter that concerns the need for or the desirability of legislative or administrative action in the interests of the privacy of individuals;
 - (s) to do anything incidental or conducive to the performance of any of the Commissioner's other functions.
- (1A) To avoid doubt, the Commissioner is not subject to Part V in performing functions, and exercising powers, conferred on an adjudicator by an approved privacy code under which the Commissioner has been appointed as an independent adjudicator to whom complaints may be made.
- (2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions under subsection (1).
- (3) Without limiting subsection (2), the Commissioner may, at the request of an organisation, examine the records of personal information maintained by the organisation, for the purpose of ascertaining whether the records are maintained according to:
- (a) an approved privacy code that binds the organisation; or
 - (b) to the extent (if any) that the organisation is not bound by an approved privacy code—the National Privacy Principles.

29 Commissioner to have regard to certain matters

In the performance of his or her functions, and the exercise of his or her powers, under this Act, the Commissioner shall:

- (a) have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information (through the media and otherwise) and the recognition of the right of government and business to achieve their objectives in an efficient way;
- (b) take account of:
 - (i) international obligations accepted by Australia, including those concerning the international technology of communications; and
 - (ii) developing general international guidelines relevant to the better protection of individual privacy;
- (c) ensure that his or her recommendations and guidelines are, within the limitations of the powers of the Commonwealth, capable of acceptance, adaptation and extension throughout Australia; and
- (d) ensure that his or her directions and guidelines are consistent with whichever of the following (if any) are relevant:
 - (i) the Information Privacy Principles;
 - (ii) the National Privacy Principles;
 - (iii) the Code of Conduct and Part IIIA.

Division 3—Reports by Commissioner

30 Reports following investigation of act or practice

- (1) Where the Commissioner has investigated an act or practice without a complaint having been made under section 36, the Commissioner may report to the Minister about the act or practice, and shall do so:
 - (a) if so directed by the Minister; or
 - (b) if the Commissioner:
 - (i) thinks that the act or practice is an interference with the privacy of an individual; and
 - (ii) has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the investigation or has endeavoured without success to effect such a settlement.
- (2) Where the Commissioner reports under subsection (1) about an act done in accordance with a practice, the Commissioner shall also report to the Minister about the practice.
- (3) Where, after an investigation under paragraph 27(1)(a), 28(1)(b) or (c) or 28A(1)(b) of an act or practice of an agency, file number recipient, credit reporting agency or credit provider, the Commissioner is required by virtue of paragraph (1)(b) of this section to report to the Minister about the act or practice, the Commissioner:
 - (a) shall set out in the report his or her findings and the reasons for those findings;
 - (b) may include in the report any recommendations by the Commissioner for preventing a repetition of the act or a continuation of the practice;
 - (c) may include in the report any recommendation by the Commissioner for either or both of the following:
 - (i) the payment of compensation in respect of a person who has suffered loss or damage as a result of the act or practice;
 - (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;
 - (d) shall serve a copy of the report on the agency, file number recipient, credit reporting agency or credit provider concerned and the Minister (if any) responsible for the agency, recipient, credit reporting agency or credit provider; and
 - (e) may serve a copy of the report on any person affected by the act or practice.
- (4) Where, at the end of 60 days after a copy of a report about an act or practice of an agency, file number recipient, credit reporting agency or credit provider was served under subsection (3), the Commissioner:
 - (a) still thinks that the act or practice is an interference with the privacy of an individual; and
 - (b) is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice;the Commissioner shall give to the Minister a further report that:
 - (c) incorporates the first-mentioned report and any document that the Commissioner has received, in response to the first-mentioned report, from the agency, file number recipient, credit reporting agency or credit provider;
 - (d) states whether, to the knowledge of the Commissioner, any action has been taken as a result of the findings, and recommendations (if any), set out in the first-mentioned report and, if so, the nature of that action; and
 - (e) states why the Commissioner is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice;

and shall serve a copy of the report on the Minister (if any) responsible for the agency, recipient, credit reporting agency or credit provider.

- (5) The Minister shall cause a copy of a report given to the Minister under subsection (4) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.
- (6) This section does not apply to:
 - (a) a complaint made under section 36 in relation to an act or practice of an organisation; or
 - (b) a complaint the Commissioner accepts under subsection 40(1B).

31 Report following examination of proposed enactment

- (1) Where the Commissioner has examined a proposed enactment under paragraph 27(1)(b), subsections (2) and (3) of this section have effect.
- (2) If the Commissioner thinks that the proposed enactment would require or authorise acts or practices of an agency or organisation that would be interferences with the privacy of individuals, the Commissioner shall:
 - (a) report to the Minister about the proposed enactment; and
 - (b) include in the report any recommendations he or she wishes to make for amendment of the proposed enactment to ensure that it would not require or authorise such acts or practices.
- (3) Otherwise, the Commissioner may report to the Minister about the proposed enactment, and shall do so if so directed by the Minister.
- (4) Where the Privacy Commissioner is of the belief that it is in the public interest that the proposed enactment should be the subject of a further report, the Commissioner may give to the Minister a further report setting out the Commissioner's reasons for so doing.
- (5) The Minister shall cause a copy of a report given under subsection (4) to be laid before each House of the Parliament as soon as practicable, and no later than 15 sitting days of that House, after the report is received by the Minister.

Part V—Investigations

Division 1—Investigation of complaints and investigations on the Commissioner’s initiative

36 Complaints

- (1) Subject to subsection (1A), an individual may complain to the Privacy Commissioner about an act or practice that may be an interference with the privacy of the individual.
- (1A) Subsection (1) does not apply to a complaint by an individual about an act or practice of an organisation that is bound by an approved privacy code that:
 - (a) contains a procedure for making and dealing with complaints to an adjudicator in relation to acts or practices that may be an interference with the privacy of an individual; and
 - (b) is relevant to the act or practice complained of.
- (1B) Subsection (1A) does not prevent an individual from making a complaint under an approved privacy code to the adjudicator for the code if the adjudicator is the Commissioner.
- (1C) Subsection (1A) does not prevent an individual from complaining under this Part to the Commissioner about an act done, or practice engaged in, by an organisation purportedly for the purpose of meeting (directly or indirectly) an obligation under a Commonwealth contract (whether or not the organisation is a party to the contract).

Note: Section 40A requires an adjudicator for an approved privacy code to refer a code complaint to the Commissioner if the complaint is about an act or practice of a contracted service provider for a Commonwealth contract.
- (2) In the case of an act or practice that may be an interference with the privacy of 2 or more individuals, any one of those individuals may make a complaint under subsection (1) on behalf of all of the individuals.
- (2A) In the case of a representative complaint, this section has effect subject to section 38.
- (3) A complaint shall be in writing.
- (4) It is the duty of:
 - (a) members of the staff of the Commissioner; and
 - (b) members of the staff of the Ombudsman who have had powers of the Commissioner delegated to them under section 99;to provide appropriate assistance to a person who wishes to make a complaint and requires assistance to formulate the complaint.
- (5) The complaint shall specify the respondent to the complaint.
- (6) In the case of a complaint about an act or practice of an agency:
 - (a) if the agency is an individual or a body corporate, the agency shall be the respondent; and
 - (b) if the agency is an unincorporated body, the principal executive of the agency shall be the respondent.
- (7) In the case of a complaint about an act or practice of an organisation, the organisation is the respondent.

Note: Section 70A contains further rules about how this Part operates in relation to respondent organisations that are not legal persons.

- (8) The respondent to a complaint about an act or practice described in one of paragraphs 13(b) to (d) (inclusive), other than an act or practice of an agency or organisation, is the person who engaged in the act or practice.

42 Preliminary inquiries

Where a complaint has been made to the Commissioner, or the Commissioner accepts a complaint under subsection 40(1B), the Commissioner may, for the purpose of determining:

- (a) whether the Commissioner has power to investigate the matter to which the complaint relates; or
 - (b) whether the Commissioner may, in his or her discretion, decide not to investigate the matter;
- make inquiries of the respondent.

43 Conduct of investigations

- (1) Before commencing an investigation of a matter to which a complaint relates, the Commissioner shall inform the respondent that the matter is to be investigated.
- (1A) Before starting to investigate an act done, or practice engaged in, by a contracted service provider for the purpose of providing (directly or indirectly) a service to an agency under a Commonwealth contract, the Commissioner must also inform the agency that the act or practice is to be investigated.

Note: See subsection 6(9) about provision of services to an agency.
- (2) An investigation under this Division shall be conducted in private but otherwise in such manner as the Commissioner thinks fit.
- (3) The Commissioner may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as he or she thinks fit.
- (4) Subject to subsection (5), it is not necessary for a complainant or respondent to be afforded an opportunity to appear before the Commissioner in connection with an investigation under this Division.
- (5) The Commissioner shall not make a finding under section 52 that is adverse to a complainant or respondent unless the Commissioner has afforded the complainant or respondent an opportunity to appear before the Commissioner and to make submissions, orally, in writing or both, in relation to the matter to which the investigation relates.
- (6) Where the Commissioner affords an agency, organisation or person an opportunity to appear before the Commissioner under subsection (5), the agency, organisation or person may, with the approval of the Commissioner, be represented by another person.
- (7) Where, in connection with an investigation of a matter under this Division, the Commissioner proposes to afford the complainant or respondent an opportunity to appear before the Commissioner and to make submissions under subsection (5), or proposes to make a requirement of a person under section 44, the Commissioner shall, if he or she has not previously informed the responsible Minister (if any) that the matter is being investigated, inform that Minister accordingly.
- (8) The Commissioner may, either before or after the completion of an investigation under this Division, discuss any matter that is relevant to the investigation with a Minister concerned with the matter.
- (8A) Subsection (8) does not allow the Commissioner to discuss a matter relevant to an investigation of a breach of an approved privacy code or the National Privacy Principles with a Minister, unless the investigation is of an act done, or practice engaged in:
 - (a) by a contracted service provider for a Commonwealth contract; and
 - (b) for the purpose of providing a service to an agency to meet (directly or indirectly) an obligation under the contract.
- (9) Where the Commissioner forms the opinion, either before or after completing an investigation under this Division, that there is evidence that an officer of an agency has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify the Commissioner doing so, the Commissioner shall bring the evidence to the notice of:
 - (a) an appropriate officer of an agency; or
 - (b) if the Commissioner thinks that there is no officer of an agency to whose notice the evidence may appropriately be drawn—an appropriate Minister.

46 Directions to persons to attend compulsory conference

- (1) For the purposes of performing the Commissioner's functions in relation to a complaint (except an NPP complaint or a code complaint accepted under subsection 40(1B)), the Commissioner may, by written notice, direct:
- (a) the complainant;
 - (b) the respondent; and
 - (c) any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the matter to which the complaint relates or whose presence at the conference is, in the opinion of the Commissioner, likely to assist in connection with the performance of the Commissioner's functions in relation to the complaint;

to attend, at a time and place specified in the notice, a conference presided over by the Commissioner.

- (2) A person who has been directed to attend a conference and who:
- (a) fails to attend as required by the direction; or
 - (b) fails to attend from day to day unless excused, or released from further attendance, by the Commissioner;
- is guilty of an offence punishable on conviction:
- (c) in the case of an individual—by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or
 - (d) in the case of a body corporate—by a fine not exceeding \$5,000.

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A person who has been directed under subsection (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference.
- (4) The Commissioner may, in a notice given to a person under subsection (1), require the person to produce such documents at the conference as are specified in the notice.

65 Failure to attend etc. before Commissioner

- (1) A person shall not:
- (a) refuse or fail to attend before the Commissioner; or
 - (b) refuse or fail to be sworn or make an affirmation;
- when so required under this Act.

Penalty: \$2,000 or imprisonment for 12 months, or both.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Penalty: \$2,000 or imprisonment for 12 months, or both.

- (3) A person shall not furnish information or make a statement to the Commissioner knowing that it is false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

66 Failure to give information etc.

- (1) A person shall not refuse or fail:
- (a) to give information; or
 - (b) to answer a question or produce a document or record;
- when so required under this Act.

Penalty:

- (a) in the case of an individual—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

- (1A) For the purposes of subsection (1B), a journalist has a reasonable excuse if giving the information, answering the question or producing the document or record would tend to reveal the identity of a person who gave information or a document or record to the journalist in confidence.

- (1B) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

- (2) For the purposes of subsections (3) to (11) (inclusive):

document includes a record.

information includes an answer to a question.

- (3) Subject to subsections (4), (7) and (10), it is a reasonable excuse for the purposes of subsection (1B) for an individual:
- (a) to refuse or fail to give information when so required under this Act; or
 - (b) to refuse or fail to produce a document when so required under this Act;
- that giving the information, or producing the document, as the case may be, might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.
- (4) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the individual a written undertaking under subsection (5).
- (5) An undertaking by the Director of Public Prosecutions shall:
- (a) be an undertaking that:
 - (i) information given, or a document produced, by the individual; or
 - (ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;
 - (b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and

- (c) state the general nature of those reasons.
- (6) The Commissioner may recommend to the Director of Public Prosecutions that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (5).
- (7) Subsection (3) does not apply in relation to a failure or refusal by an individual to give information, or to produce a document, on the ground that giving the information or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the individual a written undertaking under subsection (8).
- (8) An undertaking by the Attorney-General of the State, or authorised person, shall:
 - (a) be an undertaking that:
 - (i) information given, or a document produced, by the individual; or
 - (ii) any information or document obtained as a direct or indirect consequence of the giving of the information, or the production of the document;will not be used in evidence in any proceedings for an offence against a law of the State, or in any disciplinary proceedings, against the individual, other than proceedings in respect of the falsity of evidence given by the individual;
 - (b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the information or document should be available to the Commissioner; and
 - (c) state the general nature of those reasons.
- (9) The Commissioner may recommend to the Attorney-General of a State that an individual who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (8).
- (10) For the purposes of subsection (1B):
 - (a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and
 - (b) it is not a reasonable excuse for an individual to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the individual in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the individual or make the individual liable to forfeiture or a penalty.
- (11) Subsections (4), (7) and (10) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate an individual or make an individual liable to forfeiture or a penalty, have been commenced against the individual and have not been finally dealt with by a court or otherwise disposed of.

**Privacy Guidelines for the Medicare Benefits and
Pharmaceutical Benefits Programs**

**Issued by the Privacy Commissioner under section 135AA of the
*National Health Act 1953 (Cth)***

Date of Issue: 6 March 2008

Date of Effect: 1 July 2008

2.9 A Medicare Australia PIN must not:

- (a) be based on or derived from a person's name, date of birth, address, telephone number or Medicare card number;
- (b) enable an individual's identity to be determined from the Medicare Australia PIN alone; or
- (c) reveal any health related or other personal information of the individual.

2.10 Medicare Australia may disclose claims information* to the Department* provided that such disclosures do not include personal identification components*, except as permitted by Guideline 8. Medicare Australia may disclose to the Department* claims information* that contains a Medicare Australia PIN and/or an encrypted form of an individual's Medicare card number.

Part C) Department of Health and Ageing

Guideline 7: Use of claims information

- 7.1 Except where restricted by these Guidelines, claims information* provided to the Department* by Medicare Australia in accordance with Guideline 2.10 may be used by the Department* as authorised by the Secretary of the Department*, or delegate*.
- 7.2 The Secretary of the Department*, or delegate*, must not permit the establishment of a system which stores claims information* from both the Medicare Benefits Program* and Pharmaceutical Benefits Program* in a combined form.
- 7.3 Claims information* from the Medicare Benefits Program* and Pharmaceutical Benefits Program* concerning particular individuals may be linked by a Medicare Australia PIN only where:
- (a) linkage is necessary for a use authorised by the Secretary of the Department*, or delegate*;
 - (b) claims information* identified by the Medicare Australia PIN or any personal identification components* is used solely as a necessary intermediate step to obtain aggregate or de-identified information; and
 - (c) such linked records are destroyed within one month of their creation.
- 7.4 Claims information* from the Medicare Benefits Program* and Pharmaceutical Benefits Program* shall only be linked in this temporary manner in conjunction with the Medicare Australia PIN where there is no practical alternative.
- 7.5 Claims information* may be held indefinitely for policy and research purposes by the Department* provided that such claims information* does not include personal identification components*.
- 7.6 Where the Department* discloses claims information* it must be reasonably satisfied that the recipient is not in a position to identify the individual to which the information relates unless:
- (a) that information is disclosed to Medicare Australia for the purpose of Guideline 5.7; or

(b) that claims information* is released under section 130 of the *Health Insurance Act 1973* or section 135A of the *National Health Act 1953*.

- 8.1 An officer of the Department* may collect from Medicare Australia the name and other personal identification components* corresponding to a Medicare Australia PIN where that is authorised by the Secretary of the Department*, or delegate*, and is necessary:
- (a) to clarify which information relates to a particular individual where doubt has arisen in the conduct of an activity involving the linkage of de-identified information; or
 - (b) for the purpose of disclosing personal information in a specific case or in a specific set of circumstances as expressly authorised or required by or under law.
- 8.2 The Secretary of the Department*, or delegate*, must ensure that where information is obtained under paragraph (a) of Guideline 8.1, that information is not retained once the doubt has been clarified.
- 8.3 The Department* must maintain and make publicly available a policy statement outlining its practices of disclosure in relation to paragraph (b) of Guideline 8.1.
- 8.4 The Secretary of the Department*, or delegate*, must establish procedures to ensure that a request to disclose identified individual information is referred to Medicare Australia where practicable. Requests for disclosure should only be handled by the Department* where it is not practicable for the request to be referred to Medicare Australia.
- 8.5 Where information is collected under paragraph (b) of Guideline 8.1, the Secretary of the Department*, or delegate*, must ensure that:
- (a) a record of that collection is retained by the Department*; and
 - (b) the record is held under strict security by a designated officer.
- 8.6 The Secretary of the Department* must advise the Privacy Commissioner of procedures developed to ensure compliance with Guidelines 8.2, 8.4 and 8.5 and any changes to those procedures.

Guideline 9: Miscellaneous

- 9.1 Paper copies of claims information* contained in the Medicare Benefits claims database* or the Pharmaceutical Benefits claims database* may be made where reasonably necessary for a lawful purpose. However, paper copies may not be made of the complete or a major proportion of either the Medicare Benefits claims database* or the Pharmaceutical Benefits claims database*. Paper copies of information must not be made for the purpose of circumventing the requirements of these Guidelines.
- 9.2 Medicare Australia and the Secretary of the Department* must keep the Privacy Commissioner informed, in a manner approved by the Privacy Commissioner, of any arrangements that Medicare Australia or the Department* make in relation to any delegation or authorisations given that are associated with the implementation of these Guidelines.
- 9.3 Medicare Australia and the Department* shall take reasonable steps to make all staff aware of the need to protect the privacy of individuals in relation to claims information* and of the content of these Guidelines.
- 9.4 To the extent that a Guideline imposes more specific obligations than the Privacy Act or the secrecy provisions of legislation relating to Medicare Australia and the Department*, the Guideline prevails.

Meaning of terms

Terms used in these Guidelines which are defined in section 135AA of the *National Health Act 1953* have the meaning provided for in that section.

Defined terms used in the Guidelines are marked with an asterisk (*).

agency* is defined in section 135AA(11) of the *National Health Act 1953* as 'having the same meaning as in the *Privacy Act 1988*';

claims information* means information to which these guidelines relate as defined in section 135AA(1) of the *National Health Act 1953*; for clarity in these Guidelines, as is indicated in section 135AA(2), 'claims information' does not include information about service providers.

database* is defined in section 135AA(11) of the *National Health Act 1953* as 'a discrete body of information stored by means of a computer';

delegate* means a Deputy Secretary or First Assistant Secretary of the Department* or the Australian Government Chief Medical Officer to whom a delegation has been made by the Secretary of the Department*.

enforcement body* is defined in section 6 of the *Privacy Act 1988*.

Medicare Benefits Program* is defined in section 135AA(11) of the *National Health Act 1953* as 'the program for providing Medicare benefits under the *Health Insurance Act 1973*';

old information* is defined in section 135AA(11) of the *National Health Act 1953* as 'information to which this section [section 135AA of the *National Health Act 1953*] applies that has been held by one or more agencies for at least the preceding 5 years';

personal identification components*, in relation to claims information, is defined in section 135AA(11) of the *National Health Act 1953* as 'so much of the information as includes any of the following:

- (a) the name of the person to whom the information relates;
- (b) the person's address;
- (c) the person's Medicare card number;
- (d) the person's Pharmaceutical entitlements number';

Pharmaceutical Benefits Program* is defined in section 135AA(11) of the *National Health Act 1953* as 'the program for supplying pharmaceutical benefits under Part VII of this [National Health] Act';

the Department* means the Department of Health and Ageing or any other successor agency or agencies which may have responsibilities under the Administrative Arrangements Order for administration of relevant provisions of the *National Health Act 1953* or the *Health Insurance Act 1973*.



Health Insurance Act 1973

Act No. 42 of 1974 as amended

This compilation was prepared on 7 January 2009
taking into account amendments up to Act No. 144 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

130 Officers to observe secrecy

- (1) A person shall not, directly or indirectly, except in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act or for the purpose of enabling a person to perform functions under the *Medicare Australia Act 1973*, the *Dental Benefits Act 2008* or the medical indemnity legislation, and while he or she is, or after he or she ceases to be, an officer, make a record of, or divulge or communicate to any person, any information with respect to the affairs of another person acquired by him or her in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act.

Penalty: \$500.

- (2) A person who is, or has been, an officer shall not, except for the purposes of this Act, be required:
 - (a) to produce in court any document that has come into his or her possession or under his or her control in the performance of his or her duties or functions under this Act; or
 - (b) to divulge or communicate to a court any matter or thing that has come under his or her notice in the performance of any such duties or functions.
- (3) Notwithstanding anything contained in the preceding provisions of this section, the Secretary or the Medicare Australia CEO may:
 - (a) if the Minister certifies, by instrument in writing, that it is necessary in the public interest that any information acquired by an officer in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act, should be divulged, divulge that information to such person as the Minister directs; or
 - (c) divulge any such information to a person who, in the opinion of the Minister, is expressly or impliedly authorized by the person to whom the information relates to obtain it.
- (3A) Notwithstanding anything contained in the preceding provisions of this section, the Secretary or the Medicare Australia CEO may divulge any information acquired by an officer in the performance of duties, or in the exercise of powers or functions, under this Act to an authority or person if:
 - (a) the authority or person is a prescribed authority or person for the purposes of this subsection; and
 - (b) the information is information of a kind that may, in accordance with the regulations, be provided to the authority or person.
- (4) An authority or person to whom information is divulged under subsection (3) or (3A), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under subsections (1) and (2) as if he or she were a person performing duties under this Act and had acquired the information in the performance of those duties.
- (4A) This section does not prohibit:
 - (a) the provision to a person of a document that was provided to the Medicare Australia CEO by the person in relation to a claim for a Medicare benefit; or

- (b) the divulging or communicating to a person of information relating to the person; or
 - (c) information that:
 - (i) has been provided to a prescribed professional disciplinary body or a prescribed professional regulatory body; and
 - (ii) was contained in a claim for a medicare benefit;

from being used by the body for the purpose of any investigation or inquiry being conducted by the body in the performance of its functions or the exercise of its powers.
- (5E) This section does not prohibit the Medicare Australia CEO, or an employee of Medicare Australia, from providing to:
- (a) the Director of Professional Services Review appointed under section 83; or
 - (b) a Committee set up under section 93; or
 - (c) the Determining Authority established by section 106Q; or
 - (d) any person providing services to any of the above;
- information to help the Director, Committee or Authority in the performance of functions or duties, or the exercise of powers, under Part VAA, or to assist a person referred to in paragraph (d) in the provision of services referred to in that paragraph.
- (6) Notwithstanding anything contained in subsections (1) and (2), where:
- (a) a person has been convicted of:
 - (i) an offence against Division 3 of Part IIBA or section 128A, 128B or 129AA of this Act; or
 - (ii) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence referred to in subparagraph (i); or
 - (b) an order has been made in relation to a person under section 19B of the *Crimes Act 1914* in relation to an offence referred to in subparagraph (a)(i) or (ii); or
 - (ba) a pecuniary penalty order has been made against a person in respect of a contravention of a civil penalty provision in Division 2 of Part IIBA of this Act;
- the Secretary or the Medicare Australia CEO may divulge any information acquired by an officer in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act that concerns a matter referred to in paragraph (a), (b) or (ba) to:
- (c) the Secretary to the Department of Social Security; or
 - (ca) the Centrelink CEO or an employee of Centrelink; or
 - (d) the Secretary to the Department of Veterans' Affairs; or
 - (e) a person or persons who, under a law of a State or Territory that provides for the registration or licensing of practitioners, optometrists or opticians, is, or are, empowered to take disciplinary action with respect to practitioners, optometrists or opticians or to investigate practitioners, optometrists or opticians in connection with the taking of such disciplinary action; or
 - (f) a director, secretary or employee of a private health insurer who is authorized by the Secretary or the Medicare Australia CEO, by instrument in writing, for the purposes of this subsection.

(7) Notwithstanding anything contained in subsection (1) or (2), where the Minister, by instrument in writing, certifies that it is desirable for such of the following purposes as he or she specifies in the certificate, that is to say:

- (a) the administration of an Act administered by the Minister for Social Security;
- (b) the administration of an Act administered by the Minister for Veterans' Affairs;
- (ba) the administration of the *Migration Act 1958*;
- (c) the administration of a specified law of a State or Territory, being a law that provides for the registration or licensing of practitioners, optometrists or opticians; or
- (d) the carrying on of the business of a specified private health insurer or a private health insurer included in a specified class of private health insurers;

that information of a kind referred to in the certificate, being information acquired by an officer in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act, should be divulged, the Secretary or the Medicare Australia CEO may divulge information of that kind:

- (e) if the certificate specifies a purpose of the kind referred to in paragraph (a)—to the Secretary to the Department of Social Security or to the Centrelink CEO or an employee of Centrelink;
- (f) if the certificate specifies a purpose of the kind referred to in paragraph (b)—to the Secretary to the Department of Veterans' Affairs;
- (fa) if the certificate specifies a purpose of the kind referred to in paragraph (ba)—to the Secretary to the Department of Immigration and Ethnic Affairs;
- (g) if the certificate specifies a purpose in relation to a specified law of the kind referred to in paragraph (c)—to the person or persons who, under that law, is, or are, empowered to take disciplinary action with respect to practitioners, optometrists or opticians or to investigate practitioners, optometrists or opticians in connection with the taking of such disciplinary action; or
- (h) if the certificate specifies a purpose of the kind referred to in paragraph (d)—to a director, secretary or employee of each private health insurer to which the certificate relates, being a director, secretary or employee who is authorized by the Secretary or the Medicare Australia CEO, by instrument in writing, for the purposes of this subsection.

(8) Information relating to the rendering of a professional service shall not be divulged in pursuance of subsection (6) or (7) in a manner that is likely to enable the identification of the person to whom that service was rendered unless:

- (a) the person to whom that service was rendered is a person referred to in paragraph (6)(a), (b) or (ba); or
- (b) the Minister certifies that he or she has reasonable grounds for suspecting that the person to whom that service was rendered has committed, or is committing, an offence of the kind referred to in subparagraph (6)(a)(i) or (ii) or a contravention of a civil penalty provision referred to in paragraph (6)(ba).

(9) A person to whom information is divulged under subsection (6) or (7) and any person or employee under the control of the first-mentioned person shall not, directly or indirectly, except:

- (a) in the case of the Secretary to the Department of Social Security or a person or employee under the control of the Secretary to the Department of Social Security—in the performance of his or her duties, or in the exercise of his or her powers or functions, under an Act administered by the Minister for Social Security; or
- (aa) in the case of the Centrelink CEO or an employee of Centrelink—in the performance of powers or functions under an Act administered by the Minister for Social Security; or
- (b) in the case of the Secretary to the Department of Veterans' Affairs or a person or employee under the control of the Secretary—in the performance of his or her duties, or in the exercise of his or her powers or functions, under an Act administered by the Minister for Veterans' Affairs; or
- (ba) in the case of the Secretary to the Department of Immigration and Ethnic Affairs or a person or employee under the control of the Secretary—in the performance of his or her duties, or in the exercise of his or her powers or functions, under the *Migration Act 1958*; or
- (c) in the case of a person or persons referred to in paragraph (6)(e) or (7)(g) or a person or employee under the control of such a person or persons—in the performance of his or her duties, or in the exercise of his or her powers or functions, under the law referred to in that paragraph; or
- (d) in the case of a director, secretary or employee of a private health insurer or a person or employee under the control of such a person—in the performance of his or her duties, or in the exercise of his or her powers or functions in relation to the carrying on of the business of the insurer;

and while he or she is, or after he or she ceases to be, such a person, make a record of, or divulge or communicate to any person, any information so divulged.

Penalty: \$500.

- (10) A person to whom information is divulged under subsection (6) or (7) or a person or employee under the control of the first-mentioned person shall not, except in the performance of duties or the exercise of powers or functions referred to in whichever of paragraphs (9)(a), (aa), (b), (ba), (c) and (d) is applicable, be required:
 - (a) to produce in court any document that has come into his or her possession or under his or her control under subsection (6) or (7); or
 - (b) to divulge or communicate to a court any matter or thing that has come under his or her notice under subsection (6) or (7).
- (14) Where:
 - (a) a person solicits the disclosure of protected information from an officer or another person; and
 - (b) the disclosure would be in contravention of this section; and
 - (c) the first-mentioned person knows or ought reasonably to know that the information is protected information;
 the first-mentioned person is guilty of an offence, whether or not any protected information is actually disclosed.
- (15) Where protected information is disclosed to a person in contravention of this section, the person is guilty of an offence if he or she knows or ought reasonably to know that the disclosure is in contravention of this section and:
 - (a) he or she in any way solicited the disclosure of the information; or
 - (b) he or she discloses the information to another person; or

(c) he or she uses the information otherwise than by disclosing it to another person.

(17) Where:

- (a) a person is convicted of an offence under subsection (14); and
 - (b) the person acted as an employee or agent of another person in soliciting the disclosure of the information;
- the other person is guilty of an offence.

(17A) An offence under subsection (17) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(19) Where:

- (a) a person is convicted of an offence under subsection (15); and
 - (b) the person acted as an employee or agent of another person in obtaining the information;
- the other person is guilty of an offence.

(19A) An offence under subsection (19) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(21) A person who:

- (a) offers to supply (whether to a particular person or otherwise) information about another person; and
 - (b) knows that the information is protected information;
- is guilty of an offence.

(22) A person who:

- (a) holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person; and
 - (b) knows that the information is protected information;
- is guilty of an offence.

(23) The penalty for an offence against subsection (14), (15), (17), (19), (21) or (22) is imprisonment for a period not exceeding 2 years.

(24) Nothing in this section has the effect that an officer exercising or performing his or her duties, functions or powers under, or in relation to, this Act is guilty of an offence.



National Health Act 1953

Act No. 95 of 1953 as amended

This compilation was prepared on 1 January 2009
taking into account amendments up to Act No. 144 of 2008

[**Note:** Subsections 90(3A), (3AA), (3AB), (3AC), (3AD), (3AE), (3AF) and (3B)
cease to have effect on 30 June 2010, *see* section 90(3C)

Division 4B of Part VII ceases to have effect on 30 June 2010, *see* section 99Y]

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

135AA Privacy guidelines

Information to which this section applies

- (1) Subject to subsection (2), this section applies to information that:
 - (a) is information relating to an individual; and
 - (b) is held by an agency (whether or not the information was obtained by that agency or any other agency after the commencement of this section); and
 - (c) was obtained by that agency or any other agency in connection with a claim for payment of a benefit under the Medicare Benefits Program or the Pharmaceutical Benefits Program.

Information to which this section does not apply

- (2) This section does not apply to such information:
 - (a) so far as it identifies:
 - (i) a person who provided the service or goods in connection with which the claim for payment is made; or
 - (ii) a person who, in his or her capacity as the provider of services, made a referral or request to another person to provide the service or goods; or
 - (b) so far as it is contained in a database that:
 - (i) is maintained for the purpose of identifying persons who are eligible to be paid benefits under the Medicare Benefits Program or the Pharmaceutical Benefits Program; and
 - (ii) does not contain information relating to claims for payment of such benefits; or
 - (c) so far as it is not stored in a database.

Issuing guidelines

- (3) The Privacy Commissioner must, by written notice, issue guidelines relating to information to which this section applies.

135AB Breaches of the privacy guidelines

- (1) A breach of the guidelines issued under section 135AA constitutes an act or practice involving interference with the privacy of an individual for the purposes of section 13 of the *Privacy Act 1988*.
- (2) An individual may complain to the Privacy Commissioner about an act or practice in relation to the operation of guidelines issued under section 135AA of this Act which may be an interference with the privacy of an individual.
- (3) If a complaint is made, Part V of the *Privacy Act 1988* applies, with such modifications as the circumstances require, as if the complaint were an IPP complaint (within the meaning of that Act) made under section 36 of that Act.

135AC Authorisation of collection of particular health information

- (1) If:
 - (a) particular health information is disclosed to an organisation; and

(b) the disclosure is authorised by or under a health law;
then the collection of the information by the organisation to whom the information is disclosed is taken to be authorised by or under law for the purposes of subparagraph 10.2(b)(i) of National Privacy Principle 10 in Schedule 3 to the *Privacy Act 1988*.

(2) In this section:

health law means any of the following:

- (a) an Act administered by the Minister;
- (b) the *Medicare Australia Act 1973*.

organisation has the same meaning as in the *Privacy Act 1988*.



Medicare Australia Act 1973

Act No. 41 of 1974 as amended

This compilation was prepared on 4 July 2008
taking into account amendments up to Act No. 42 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by
application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

7 Chief Executive Officer's service delivery functions

- (4) Without limiting subsection (2) or (3), arrangements for the provision of Commonwealth services may include arrangements for:
- (a) making the Chief Executive Officer or specified employees, or employees in specified classes of employees, available to exercise powers or perform functions in connection with the provision of the services (including powers and functions delegated to the Chief Executive Officer or employees under other laws); or
 - (b) determining a person's eligibility for, or entitlement to receive or have access to, the services; or
 - (c) maintaining records related to the provision of the services; or
 - (d) providing Commonwealth authorities and other persons with information related to the provision of the services; or
 - (e) undertaking education, compliance, investigation and enforcement activities related to the provision of the services; or
 - (f) recovering overpayments and other amounts due to the Commonwealth in connection with the provision of the services; or
 - (g) conducting litigation or proceedings related to the provision of the services.

20 Staff

- (1) Subject to this Part, the staff of Medicare Australia are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and
 - (b) the Chief Executive Officer is the Head of that Statutory Agency.