REPORT

PRIVACY IMPACT ASSESSMENT

Veterans’ Affairs Legislation Amendment (Omnibus) Bill 2017 – Schedule 5

Department of Veterans’ Affairs

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PRIVACY IMPACT ASSESSMENT - VETERANS’ AFFAIRS LEGISLATION AMENDMENT (OMNIBUS) BILL 2017 – SCHEDULE 5

1. INTRODUCTION

1.1. The Minister for Veterans Affairs through the Department of Veteran’s Affairs has asked AGS to conduct an independent privacy impact assessment (PIA) of Schedule 5 of the Veterans’ Affairs Legislation Amendment (Omnibus) Bill 2017 (the Bill).

Scope of the privacy impact assessment

1.2. The purpose of this PIA is to assess and make observations about the potential privacy implications of the proposed legislative amendments to be implemented by Schedule 5 of the Bill.

1.3. The PIA analyses how these proposed amendments balance the protection of personal privacy with the public interest in disclosing personal information in specified circumstances. It is limited to consideration of Schedule 5 of the Bill and does not address the Bill more generally.

2. EXECUTIVE SUMMARY

2.1. If enacted, Schedule 5 of the Bill will amend s 409 of the Military Rehabilitation and Compensation Act 2004 (MRC Act) and proposed s 151A of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (DRC Act) to facilitate the disclosure of certain information held by the Military Rehabilitation and Compensation Commission (MRCC) to the Commonwealth Superannuation Corporation (CSC).

2.2. Information disclosed under the amended provisions would clearly include personal information of individuals within the meaning of the Privacy Act 1988 (Privacy Act). It would also include a subset of personal information defined in the Privacy Act as sensitive information, in particular health information.

2.3. The use and disclosure of personal information under the amended provisions will be authorised use and disclosure of that information for the purposes of the Privacy Act. This will ensure the MRCC is authorised, for the purposes of the Privacy Act, to disclose personal information to the CSC to assist it in the performance or exercise of its’ statutory functions or powers. The MRCC will not require the consent of the individuals concerned before making a relevant disclosure of personal information.

2.4. However, the disclosure of personal information by the MRCC to the CSC must be for a purpose relating to the performance of a function, or the exercise of a power, by the CSC under an Act administered by the CSC, or an instrument made under such an Act. The CSC will be limited to using and further disclosing personal

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1 This PIA has been prepared with reference to the Bill as introduced into the House of Representatives on 30 March 2017. The comments we make and the conclusions we reach apply only to this version of the Bill.
information it receives from the MRCC for the specified purpose for which it was disclosed. This is more limited than the requirements in the Privacy Act and provides a balance between the policy objectives to be achieved by the authorised disclosure and the interests in protecting the privacy of personal information.

2.5. The MRCC and the CSC will otherwise continue to be subject to the ordinary operation of the Privacy Act, particularly in relation to the collection of personal information and associated notification requirements.

2.6. Clearly the proposed legislative changes raise personal privacy issues for consideration. Nevertheless, significant privacy protections remain and the recommendations made in this PIA are essentially consequential to the enactment of the legislative amendments.

3. METHODOLOGY

3.1. To prepare this PIA, we have considered the following material:

- **Veterans’ Affairs Legislation Amendment (Omnibus) Bill 2017 – Schedule 5** (extracted at Appendix 1)
- **Veterans’ Affairs Legislation Amendment (Omnibus) Bill 2017 – Second Reading speech, House of Representatives, 30 March 2017**
- **Veterans’ Affairs Legislation Amendment (Omnibus) Bill 2017 – Explanatory Memorandum**
- **Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016**
- **Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016 – Second Reading speech, House of Representatives, 9 November 2016**
- **Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016 – Explanatory Memorandum**
- **Military Rehabilitation and Compensation Act 2004** (relevant extracts are at Appendix 2)
- **Safety, Rehabilitation and Compensation Act 1988** (relevant extracts are at Appendix 3)
- **Governance of Australian Government Superannuation Schemes Act 2011**
- **Privacy Act 1988** (relevant extracts are at Appendix 4).

4. ANALYSIS

**Proposed legislative amendments**

*Section 409 of the Military Rehabilitation and Compensation Act 2004*

4.1. Section 409 of the MRC Act provides for the giving of information by the MRCC to certain persons or agencies and is extracted in full at Appendix 2.
4.2. Section 409(2) of the MRC Act provides for the MRCC (or a staff member assisting the MRCC) to provide ‘any information obtained in the performance of his or her duties’ under the MRC Act to a person or agency specified in the table in that section, for the purpose specified in that table.

4.3. The person or agency to whom the information is disclosed must not:

- use the information for a purpose other than the specified purpose (s 409(3)(a)), or
- further disclose the information for a purpose other than the specified purpose (s 409(3)(b)).

4.4. To avoid doubt, s 409(4) provides that if information is disclosed or used in accordance with the section, the disclosure or use is taken, for the purposes of the Australian Privacy Principles (APPs), to be authorised by the MRC Act.

**Proposed amendment of s 409**

4.5. If enacted, Part 1 of Schedule 5 of the Bill (extracted at Appendix 1) will amend the table in s 409(2) to insert new table item 2A. This item will insert the Commonwealth Superannuation Corporation (CSC) as a person or agency to whom the MRCC can disclose information under the section and for the following purpose:

A purpose relating to the performance of a function, or the exercise of a power, by that Corporation under:

(a) an Act administered by CSC; or
(b) an instrument under an Act administered by CSC.

4.6. An ‘Act administered by CSC’ will be defined for the purposes of s 409 as having the meaning given by the *Governance of Australian Government Superannuation Schemes Act 2011.* That Act relevantly defines this term as follows:

**Act administered by CSC** means:

(a) the *Defence Act 1903,* to the extent that the Act deals with superannuation benefit in Part IIIAA; or
(b) the *Defence Force Retirement and Death Benefits Act 1973;* or
(c) the *Defence Forces Retirement Benefits Act 1948;* or
(d) the *Military Superannuation and Benefits Act 1991;* or
(da) the *Australian Defence Force Superannuation Act 2015;* or
(db) the *Australian Defence Force Cover Act 2015;* or
(e) the *Papua New Guinea (Staffing Assistance) Act 1973,* to the extent that the Act deals with superannuation; or
(f) the *Superannuation Act 1922;* or
(g) the *Superannuation Act 1976;* or
(h) the *Superannuation Act 1990;* or

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2 See proposed *Military Rehabilitation and Compensation Act 2004.*
Proposed s 151A of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

4.7. Analogous amendments to those discussed above in relation to the MRC Act will be made by Part 2 of Schedule 5 of the Bill (extracted at Appendix 1) to s 151A of the DRC Act, once enacted.

4.8. The DRC Act will be established by the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016, once enacted. In effect, the DRC Act will be a re-enacted version of the existing Safety, Rehabilitation and Compensation Act 1988 (SRC Act) that is modified to apply only to members of the Defence Force and their dependants. The DRC Act will apply in relation to an injury, disease, death, loss or damage that relates to certain employment in the Defence Force that occurred before the commencement of the MRC Act on 1 July 2004. Accordingly, it will provide Defence Force members with access to a ‘military specific’ compensation and rehabilitation scheme. It is also envisaged the MRCC will be able to bring the DRC Act into closer alignment with the MRC Act as part of future amendments to these Acts, over time.\(^3\)

4.9. This PIA proceeds on the basis that proposed s 151A of the DRC Act will be in analogous terms to s 151 of the SRC Act as currently enacted (extracted at Appendix 3).

4.10. Accordingly, once enacted, and as amended by Part 2 of Schedule 5 of the Bill, s 151A will relevantly provide that the MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under the DRC Act to the CRC for a purpose relating to the performance of a function, or the exercise of a power, under an Act administered by the CSC or an instrument made under such an Act. It will also provide the CSC must not use or further disclose the information disclosed to it by the MRCC for a purpose other than those purposes. To avoid doubt, information that is used or disclosed in accordance with s 151A will be taken, for the purposes of the Privacy Act, to be authorised by law.

**Transitional arrangements**

4.11. We understand it is intended that if enacted these amendments will operate so that the MRCC may disclose information to the CSC in accordance with the amended provisions, whether that information was obtained by the MRCC before, on or after the amendments commenced.

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\(^3\) See the Explanatory Memorandum to the Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016 at pp i-ii. This Bill will also make necessary consequential amendments to the SRC Act to remove cover for members of the Defence Force and their dependants from that Act.
Implications for privacy of the proposed amendments

4.12. The Privacy Act regulates the collection, use, disclosure, security and storage of personal information held by Commonwealth government agencies and certain organisations. Personal information is defined in the Privacy Act to mean:

… information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.

4.13. Section 13 of the Privacy Act provides that an act or practice (which includes use and disclosure of personal information) that is not authorised under the Australian Privacy Principles (APPs) will be an interference with the privacy of the individual concerned. The APPs are set out in Schedule 1 to the Privacy Act.

Privacy implications for the MRCC

4.14. The proposed legislative amendments to be made by Schedule 5 of the Bill will expressly authorise the MRCC to disclose certain information to the CSC for specified purposes. Such disclosures of information will be taken to be authorised use and disclosure for the information purposes of the APPs in the Privacy Act.

4.15. The information the MRCC will be authorised to disclose under the amendments is information obtained by the MRCC in the performance of its statutory functions under the MRC Act and the DRC Act. This is consistent with the existing terms of s 409 of the MRC Act and s 151A of the SRC Act (as currently in force), which each authorise the MRCC to disclose information to certain listed persons or entities. The amendments to these provisions by the Bill will therefore provide consistency for the MRCC in relation to the disclosure of information obtained by it in the performance of its functions to specified persons or entities. These arrangements will be extended to the CSC for certain purposes as discussed below. In practical effect, however, the information disclosed by the MRCC under the amended provisions will be limited by the nature of the CSC request. Generally speaking, information disclosed to the CSC under the new legislative arrangements is expected to include information such as service, medical and claims information relating to individuals.

4.16. Clearly the information disclosed by the MRCC to the CSC will be ‘personal information’ for the purposes of the Privacy Act. Additionally, some information, particularly medical records and assessments, will be ‘sensitive information’ for the purposes of the Privacy Act.

4.17. Sensitive information is a sub-category of personal information for which the Privacy Act provides a higher standard of protection. It is defined in s 6 of the Privacy Act and includes health information about an individual and other information such as sexual orientation, race and ethnicity. Health information is further defined in s 6FA and includes information or an opinion about the injury, illness or disability of an individual, their expressed wishes about the future provision of health services and the health service provided.
Disclosure must be for a specified purpose

4.18. The disclosure of personal information to the CSC will only be authorised if it is for a purpose relating to the performance of a function, or the exercise of a power, by the CSC under the legislation it administers. This places limits on the disclosure of personal information by the MRCC, as it will only be authorised to disclose personal information necessary for the CSC to perform or exercise a statutory function or power concerning (broadly) the assessment of superannuation claims. That is, the CSC must require the information for the performance or exercise of a function or power with respect to a particular individual. It would not be sufficient, for the purposes of disclosure under the provisions if the information were required for reasons of mere administrative simplicity, such as the routine disclosure of information by the MRCC to CSC unrelated to the exercise of its functions, or in response to a purely anticipatory requests of information in the absence of a specific claim being assessed by the CSC.

Disclosure is taken to be authorised for purposes of the APPs

4.19. The amendments will put beyond doubt that the disclosure of information by the MRCC under s 409 of the MRCC and s 151A of the DRC Act is authorised for the purposes of the APPs, in particular APP 6 (extracted at Appendix 5).

4.20. APP 6 provides that if an APP entity such as the MRCC holds personal information about an individual that was collected for a particular purpose, the entity must not use or disclose that information for another purpose, unless the individual has consented or one of several exceptions apply. One of those exceptions is that the use or disclosure of the information is required or authorised under an Australian law, which is relevantly defined in s 6(1) of the Privacy Act to include an Act of the Commonwealth or regulations or any other instrument made under an Act.

4.21. Presently, the MRCC is prohibited from disclosing personal information it holds to the CSC unless a relevant exception to APP 6 applies, such as the individual has consented to the particular disclosure of information. The proposed legislative amendments will ensure that the disclosure of personal information by the MRCC to the CSC for the performance of its statutory functions, will be ‘authorised by or under an Australian law’ for the purposes of APP 6.

4.22. This will mean the MRCC may disclose personal information to the CSC in accordance with the amended provisions without the consent of the individual concerned. This is consistent with the policy intention for the proposed amendments.

Privacy implications of the amendments for CSC

4.23. Section 409(3) of the MRC Act and s 151A(3) of the DRC Act will operate to prohibit the CSC from using, or further disclosing, the information disclosed to it by the

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APP 6.1(a).

APP 6.2(b).
MRCC under those sections, for a purpose other than the specified purpose for which it was disclosed.

4.24. Such use and further disclosure by the CSC of information received under the amended provisions, in accordance with these requirements, will constitute authorised use and disclosure of the information by the relevant Act for the purposes of the Privacy Act (see ss 409(5) and 151A(5) of those Acts respectively).

4.25. In effect, this means that to the extent personal information is disclosed to the CSC by the MRCC, the CSC can only use that information, or further disclose that information, for a purpose related to the performance or exercise of its statutory functions or powers.

4.26. This limitation is consistent with the existing limitation on the use and further disclosure of information received by other persons or entities to whom the MRCC may disclose information under those provisions.

4.27. This limitation is also more restrictive than that which applies under APP 6. As noted above, an APP entity can use or disclose personal information it holds for a secondary purpose, if a relevant exception applies. By contrast, under the relevant provisions as amended, the CSC will not be able to use or further disclose personal information received by the MRCC in circumstances other than for the performance or exercise of its statutory functions and powers. This is a privacy positive and provides a balance between the policy objectives to be achieved by the authorised disclosure and the interests in protecting the privacy of personal information.

Amended provisions will not otherwise displace the ordinary operation of the Privacy Act

4.28. The amended provisions will not operate to displace the ordinary operation of the Privacy Act, other than to the limited extent discussed above. A range of ordinary Privacy Act protections will continue to apply under the proposed legislative arrangements.

4.29. Sections 409 of the MRC Act and s 151A of the DRC Act are concerned with the disclosure of information by the MRCC and place certain restrictions on what can be done with that information by the recipient. These provisions do not concern the collection of the relevant information either initially or by the recipient person or entity. Accordingly, the provisions will not operate to displace the ordinary operation of the Privacy Act with respect to the collection of information either initially by the MRCC, or in turn by the CSC. Relevant requirements in APPs 3 and 5 concerning the collection of information are noted briefly in turn below.

4.30. First, APP 3 specifies when an APP entity may collect solicited personal information. Personal information is solicited by an APP entity if it explicitly requests another entity to provide personal information, or it takes active steps to collect personal information.

4.31. For an APP entity that is an agency for the purposes of the Privacy Act, APP 3 relevantly requires:
• the agency:
  – must not collect personal information (other than sensitive information) unless the information is reasonably necessary for, or directly related to, the agency’s functions or activities
  – must not collect sensitive information about an individual unless the above requirement is met and the individual concerned consents to the collection, or an exception applies (which relevantly includes where the collection is required or authorised by or under an Australian law or court/tribunal order).

• personal information must only be collected only by lawful and fair means.

• personal information must also only be collected directly from the individual concerned unless:
  – this is unreasonable or impracticable
  – the individual consents to the personal information being collected from someone other than the individual
  – the agency is required or authorised by or under an Australian law, or a court/tribunal order, to collect the information from someone other than the individual.

4.32. Nothing in the Bill will affect the MRCC’s requirement to comply with APP3 in relation to the collection of personal information for the purposes of its statutory functions.

4.33. Further, where the CSC requests information from the MRCC which includes personal information, it will be soliciting the personal information for the purposes of APP 3.

4.34. This means, consistent with APP 3, the CSC will need the consent of individuals to request their personal information from the MRCC, unless an applicable statutory authorisation to the collection otherwise exists under legislation that is administered by the CSC or the CSC reasonably forms the view that in particular circumstances it is unreasonable or impracticable to collect the information otherwise than from the MRCC. The amended s 409 of the MRC Act and 151A of the DRC Act will not operate as a statutory authorisation for this purpose.

4.35. Second, APP 5 requires that an APP entity that collects personal information about an individual must take reasonable steps either to notify the individual of certain matters, or to ensure the individual is aware of those matters. The matters that must

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6 APP 3.3(a).
7 APP 3.3(a) and 3.3(b) read with 3.4(a).
8 APP 3.5
9 APP 3.6.
10 See the Australian Information Commissioner’s APP Guidelines at paragraph 3.65 which set out considerations that may be relevant.
be notified include: the collecting entity’s identity and contact details; the facts and circumstances of collection; if the collection is required or authorised by law; the purposes of collection; the consequences for the individual if personal information is not collected; the usual practices of the entity in further disclosing personal information of the relevant kind; and information about access and correction in the APP entity’s APP Privacy policy (APP 5 matters). Reasonable steps either to notify an individual of these APP 5 matters, or to ensure the individual is aware of those matters, must be taken at or before the time of collection, or as soon as practicable afterwards.

4.36. The Bill makes no change to these notification requirements under APP5.

4.37. To the extent, therefore, that information disclosed by the MRCC to the CSC in accordance with the amended provisions includes personal information, the CSC must comply with APP 5 in notifying the individual concerned about its collection of that personal information.

5. MATTERS FOR FURTHER CONSIDERATION AND RECOMMENDATIONS

5.1. Issues identified that may warrant further consideration and recommended steps to clarify or enhance the protection of privacy are noted below.

Procedures to ensure accuracy of personal information

5.2. APP 10 imposes an obligation to check the accuracy of personal information before disclosure. APP 1 imposes an obligation to have in place procedures to ensure compliance with the APPs.

5.3. It is recommended that the MRCC review its procedures to ensure it has appropriate procedures in place when disclosing information in accordance with the amended provisions. This will ensure that any personal information disclosure in accordance with the amended provisions is not inaccurate, out of date or incomplete.

Recommendation 1: The MRCC review and implement as necessary appropriate procedures to ensure accuracy of information prior to disclosure in accordance with the amended provisions

Update privacy policy and collection notices

5.4. As noted above, APP 5 requires that reasonable steps be taken to notify an individual of matters concerning collection of their personal information, which relevantly includes notification of other APP entities to which the collecting entity usually discloses personal information of the kind being collected.

5.5. To ensure compliance with APP1 and APP 5, it is recommended the Department ensure it has an up to date privacy policy and any associated collection notices that

\[\text{APP 5.2}\]
\[\text{APP 5.1}\]
address the potential for disclosure of personal information to the CSC in accordance with the amended provisions.

5.6. Having regard to the nature of the personal information that may be disclosed to the CSC it is recommended that the privacy policy and collection notices should be clear that personal information being collected which could potentially be disclosed to the CSC in the future includes sensitive information.

Recommendation 2: The Department should ensure that it has an up to date privacy policy and any associated collection notices that address the potential for disclosure of personal information in accordance with the amended provisions.
APPENDIX 1 - VETERANS’ AFFAIRS LEGISLATION AMENDMENT (OMNIBUS) BILL 2017 – SCHEDULE 5

Schedule 5—Disclosure of information

PART 1—MAIN AMENDMENTS

Military Rehabilitation and Compensation Act 2004

1 Subsection 409(2) (after table item 2)

Insert:

2A The Commonwealth Superannuation Corporation

A purpose relating to the performance of a function, or the exercise of a power, by that Corporation under:

(a) an Act administered by CSC; or

(b) an instrument under an Act administered by CSC

2 At the end of section 409

Add:

(5) In this section:

Act administered by CSC has the meaning given by the Governance of Australian Government Superannuation Schemes Act 2011.

3 Application provision

The amendment of subsection 409(2) of the Military Rehabilitation and Compensation Act 2004 made by this Part applies in relation to the provision of information on or after the commencement of this item (whether the information was obtained before, on or after that commencement).

PART 2—CONTINGENT AMENDMENTS

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

4 Subsection 151A(1)

Repeal the subsection, substitute:

(1) The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to a person specified in the following table for the purposes specified in the table:
Omit “The Secretary or Chief Executive”, substitute “The person”.

5 **At the end of section 151A**

Add:

(4) In this section:

*Act administered by CSC* has the meaning given by the Governance of Australian Government Superannuation Schemes Act 2011.

6 **Application provision**

The repeal and substitution of subsection 151A(1) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* made by this Part applies in relation to the provision of information on or after the commencement of this item (whether the information was obtained before, on or after that commencement).
409 Giving information

(1) Nothing in a law of a State or of a Territory may operate to prevent a person from giving information, producing documents or giving evidence for the purposes of this Act.

(2) The Commission (or a staff member assisting the Commission) may provide any information obtained in the performance of his or her duties under this Act to a person or agency specified in this table for the purpose specified in the table:

<table>
<thead>
<tr>
<th>Item</th>
<th>Person or agency</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>An employee of the Defence Department</td>
<td>A purpose relating to litigation involving a service injury, disease or death in relation to which a claim has been made under section 319</td>
</tr>
<tr>
<td>2</td>
<td>The Chief of the Defence Force</td>
<td>A purpose relating to reconsideration or review under Chapter 8 of a determination made under Chapter 2 about acceptance of liability for a service injury, disease or death</td>
</tr>
<tr>
<td>3</td>
<td>A person or agency specified in the regulations</td>
<td>A purpose specified in the regulations in relation to that person or agency</td>
</tr>
</tbody>
</table>

(3) The person or agency must not:

(a) use the information for a purpose other than the specified purpose; or

(b) further disclose the information for a purpose other than the specified purpose.

(4) To avoid doubt, if information is disclosed or used in accordance with this section, the disclosure or use is taken, for the purposes of the Australian Privacy Principles, to be authorised by this Act.
APPENDIX 3 - SAFETY, REHABILITATION AND COMPENSATION ACT 1988 – S 151A

151A Giving information

(1) The MRCC (or a staff member assisting the MRCC) may provide any information obtained in the performance of duties under this Act to any of the following persons for the purposes of the relevant Department or of Centrelink or Medicare (as the case requires):
   (a) the Secretary of the Department administered by the Minister who administers the National Health Act 1953;
   (b) the Secretary of the Department administered by the Minister who administers the Aged Care Act 1997;
   (c) the Secretary of the Department administered by the Minister who administers the Human Services (Centrelink) Act 1997;
   (d) the Chief Executive Centrelink (within the meaning of the Human Services (Centrelink) Act 1997);
   (e) the Chief Executive Medicare (within the meaning of the Human Services (Medicare) Act 1973).

(2) The Secretary or Chief Executive must not:
   (a) use the information for a purpose other than those purposes; or
   (b) further disclose the information for a purpose other than those purposes.

(3) To avoid doubt, information that is used or disclosed in accordance with this section is taken, for the purposes of the Privacy Act 1988, to be authorised by law.
3 Australian Privacy Principle 3—collection of solicited personal information

*Personal information other than sensitive information*

3.1 If an APP entity is an agency, the entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for, or directly related to, one or more of the entity’s functions or activities.

3.2 If an APP entity is an organisation, the entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for one or more of the entity’s functions or activities.

*Sensitive information*

3.3 An APP entity must not collect sensitive information about an individual unless:

(a) the individual consents to the collection of the information and:
   (i) if the entity is an agency—the information is reasonably necessary for, or directly related to, one or more of the entity’s functions or activities; or
   (ii) if the entity is an organisation—the information is reasonably necessary for one or more of the entity’s functions or activities; or

(b) subclause 3.4 applies in relation to the information.

3.4 This subclause applies in relation to sensitive information about an individual if:

(a) the collection of the information is required or authorised by or under an Australian law or a court/tribunal order; or

(b) a permitted general situation exists in relation to the collection of the information by the APP entity; or

(c) the APP entity is an organisation and a permitted health situation exists in relation to the collection of the information by the entity; or

(d) the APP entity is an enforcement body and the entity reasonably believes that:
   (i) if the entity is the Immigration Department—the collection of the information is reasonably necessary for, or directly related to, one or more enforcement related activities conducted by, or on behalf of, the entity; or
   (ii) otherwise—the collection of the information is reasonably necessary for, or directly related to, one or more of the entity’s functions or activities; or

(e) the APP entity is a non-profit organisation and both of the following apply:
   (i) the information relates to the activities of the organisation;
   (ii) the information relates solely to the members of the organisation, or to individuals who have regular contact with the organisation in connection with its activities.
Note: For permitted general situation, see section 16A. For permitted health situation, see section 16B.

Means of collection

3.5 An APP entity must collect personal information only by lawful and fair means.

3.6 An APP entity must collect personal information about an individual only from the individual unless:
   (a) if the entity is an agency:
       (i) the individual consents to the collection of the information from someone other than the individual; or
       (ii) the entity is required or authorised by or under an Australian law, or a court/tribunal order, to collect the information from someone other than the individual; or
   (b) it is unreasonable or impracticable to do so.

Solicited personal information

3.7 This principle applies to the collection of personal information that is solicited by an APP entity.

5 Australian Privacy Principle 5—notification of the collection of personal information

5.1 At or before the time or, if that is not practicable, as soon as practicable after, an APP entity collects personal information about an individual, the entity must take such steps (if any) as are reasonable in the circumstances:
   (a) to notify the individual of such matters referred to in subclause 5.2 as are reasonable in the circumstances; or
   (b) to otherwise ensure that the individual is aware of any such matters.

5.2 The matters for the purposes of subclause 5.1 are as follows:
   (a) the identity and contact details of the APP entity;
   (b) if:
       (i) the APP entity collects the personal information from someone other than the individual; or
       (ii) the individual may not be aware that the APP entity has collected the personal information;
       the fact that the entity so collects, or has collected, the information and the circumstances of that collection;
   (c) if the collection of the personal information is required or authorised by or under an Australian law or a court/tribunal order—the fact that the collection is so required or authorised (including the name of the Australian law, or details of the court/tribunal order, that requires or authorises the collection);
   (d) the purposes for which the APP entity collects the personal information;
   (e) the main consequences (if any) for the individual if all or some of the personal information is not collected by the APP entity;
(f) any other APP entity, body or person, or the types of any other APP entities, bodies or persons, to which the APP entity usually discloses personal information of the kind collected by the entity;

(g) that the APP privacy policy of the APP entity contains information about how the individual may access the personal information about the individual that is held by the entity and seek the correction of such information;

(h) that the APP privacy policy of the APP entity contains information about how the individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the entity, and how the entity will deal with such a complaint;

(i) whether the APP entity is likely to disclose the personal information to overseas recipients;

(j) if the APP entity is likely to disclose the personal information to overseas recipients—the countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them.

6 Australian Privacy Principle 6—use or disclosure of personal information

Use or disclosure

6.1 If an APP entity holds personal information about an individual that was collected for a particular purpose (the primary purpose), the entity must not use or disclose the information for another purpose (the secondary purpose) unless:

(a) the individual has consented to the use or disclosure of the information; or

(b) subclause 6.2 or 6.3 applies in relation to the use or disclosure of the information.

Note: Australian Privacy Principle 8 sets out requirements for the disclosure of personal information to a person who is not in Australia or an external Territory.

6.2 This subclause applies in relation to the use or disclosure of personal information about an individual if:

(a) the individual would reasonably expect the APP entity to use or disclose the information for the secondary purpose and the secondary purpose is:

(i) if the information is sensitive information—directly related to the primary purpose; or

(ii) if the information is not sensitive information—related to the primary purpose; or

(b) the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or

(c) a permitted general situation exists in relation to the use or disclosure of the information by the APP entity; or

(d) the APP entity is an organisation and a permitted health situation exists in relation to the use or disclosure of the information by the entity; or

(e) the APP entity reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body.
6.3 This subclause applies in relation to the disclosure of personal information about an individual by an APP entity that is an agency if:

(a) the agency is not an enforcement body; and
(b) the information is biometric information or biometric templates; and
(c) the recipient of the information is an enforcement body; and
(d) the disclosure is conducted in accordance with the guidelines made by the Commissioner for the purposes of this paragraph.

6.4 If:

(a) the APP entity is an organisation; and
(b) subsection 16B(2) applied in relation to the collection of the personal information by the entity;

the entity must take such steps as are reasonable in the circumstances to ensure that the information is de-identified before the entity discloses it in accordance with subclause 6.1 or 6.2.

Written note of use or disclosure

6.5 If an APP entity uses or discloses personal information in accordance with paragraph 6.2(e), the entity must make a written note of the use or disclosure.

Related bodies corporate

6.6 If:

(a) an APP entity is a body corporate; and
(b) the entity collects personal information from a related body corporate;

this principle applies as if the entity’s primary purpose for the collection of the information were the primary purpose for which the related body corporate collected the information.

Exceptions

6.7 This principle does not apply to the use or disclosure by an organisation of:

(a) personal information for the purpose of direct marketing; or
(b) government related identifiers.