

PRIVACY ACT 1988 - SECT 6

Interpretation

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

"ACC" means the Australian Crime Commission.

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

"agency" means:

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

"annual turnover" of a business has the meaning given by section 6DA.

"approved privacy code" means:

(a) a [privacy code](#) approved by the Commissioner under section 18BB; or

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

"bank" means:

(a) the Reserve [Bank](#) of Australia; or

(b) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the [Banking Act 1959](#) ; or

(c) a person who carries on [State banking](#) within the meaning of paragraph 51(xiii) of the Constitution.

"Board of the ACC" means the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*.

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

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

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

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

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

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

"commercial credit" means a [loan](#) sought or obtained by a person, other than a [loan](#) of a kind referred to in the definition of [credit](#) in this subsection.

"Commissioner" means the Privacy Commissioner.

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

"Commission of inquiry" has the same meaning as it has in the [Quarantine Act 1908](#) .

"Commonwealth contract" means a contract, to which the Commonwealth or an [agency](#) is or was a party, under which services are to be, or were to be, provided to an [agency](#).

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

"Commonwealth enactment" means:

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

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

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

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

"consent" means express [consent](#) or implied [consent](#).

"contracted service provider" , for a [government contract](#), means:

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

"corporation" means a body corporate that:

(a) is a [foreign corporation](#);

(b) is a [trading corporation](#) formed within the limits of Australia or is a [financial corporation](#) so formed; or

(c) is incorporated in a Territory, other than the Northern Territory.

"credit" means a [loan](#) sought or obtained by an [individual](#) from a [credit provider](#) in the course of the [credit provider](#) carrying on a business or undertaking as a [credit provider](#), being a [loan](#) that is intended to be used wholly or primarily for domestic, family or household purposes.

"credit card" means any article of a kind commonly known as a [credit card](#), charge card or any similar article intended for use in obtaining cash, goods or services by means of [loans](#), and includes any article of a kind commonly issued by persons carrying on business to customers or prospective customers of those persons for use in obtaining goods or services from those persons by means of [loans](#).

"credit enhancement" , in relation to a [loan](#), means:

(a) the process of insuring risk associated with purchasing or funding the [loan](#) by means of a [securitisation arrangement](#); or

(b) any other similar process related to purchasing or funding the [loan](#) by those means.

"credit information file" , in relation to an [individual](#), means any [record](#) that contains information relating to the [individual](#) and is kept by a [credit reporting agency](#) in the course of carrying on a [credit reporting business](#) (whether or not the [record](#) is a copy of the whole or part of, or was prepared using, a [record](#) kept by another [credit reporting agency](#) or any other person).

"credit provider" has the meaning given by section 11B, and, for the purposes of sections 7 and 8 and Parts III, IV and V, is taken to include a [mortgage insurer](#) and a [trade insurer](#).

"credit report" means any [record](#) or information, whether in a written, oral or other form, that:

(a) is being or has been prepared by a [credit reporting agency](#); and

(b) has any bearing on an [individual](#)'s:

(i) eligibility to be provided with [credit](#); or

(ii) history in relation to [credit](#); or

(iii) capacity to repay [credit](#); and

(c) is used, has been used or has the capacity to be used for the purpose of serving as a factor in establishing an [individual](#)'s eligibility for [credit](#).

"credit reporting agency" has the meaning given by section 11A.

"credit reporting business" means a business or undertaking (other than a business or undertaking of a kind in respect of which regulations made for the purposes of subsection (5C) are in force) that involves the preparation or maintenance of [records](#) containing [personal information](#) relating to [individuals](#) (other than [records](#) in which the only [personal information](#) relating to [individuals](#) is publicly available information), for the purpose of, or for purposes that include as the dominant purpose the purpose of, providing to other persons (whether for profit or reward or otherwise) information on an [individual](#)'s:

- (a) eligibility to be provided with [credit](#); or
- (b) history in relation to [credit](#); or
- (c) capacity to repay [credit](#);

whether or not the information is provided or intended to be provided for the purposes of assessing applications for [credit](#).

"credit reporting complaint" means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because:

- (a) it [breached](#) the [Code of Conduct](#); or
- (b) it [breached](#) a provision of Part IIIA.

"credit reporting infringement" means:

- (a) a [breach](#) of the [Code of Conduct](#); or
- (b) a [breach](#) of a provision of Part IIIA.

"current credit provider", in relation to an [individual](#), means a [credit provider](#) who has given, to the [individual](#), [credit](#) that has not yet been fully repaid or otherwise fully discharged.

"Defence Force" includes the Australian Navy Cadets, the Australian Army Cadets and the Australian Air Force Cadets.

"Department" means an [Agency](#) within the meaning of the *Public Service Act 1999*.

"eligible case manager" means an entity (within the meaning of the [Employment Services Act 1994](#)):

- (a) that is, or has at any time been, a contracted case manager within the meaning of that Act; and

(b) that is not covered by paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of the definition of [agency](#) .

"eligible communications service" means a postal, telegraphic, telephonic or other like service, within the meaning of paragraph 51(v) of the Constitution.

"eligible hearing service provider" means an entity (within the meaning of the [Hearing Services Administration Act 1997](#)):

(a) that is, or has at any time been, engaged under Part 3 of the [Hearing Services Administration Act 1997](#) to provide [hearing services](#); and

(b) that is not covered by paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (j) of the definition of [agency](#) .

"employee record" , in relation to an employee, means a [record](#) of [personal information](#) relating to the employment of the employee. Examples of [personal information](#) relating to the employment of the employee are [health information](#) about the employee and [personal information](#) about all or any of the following:

- (a) the engagement, training, disciplining or resignation of the employee;
- (b) the termination of the employment of the employee;
- (c) the terms and conditions of employment of the employee;
- (d) the employee's personal and emergency contact details;
- (e) the employee's performance or conduct;
- (f) the employee's hours of employment;
- (g) the employee's salary or wages;
- (h) the employee's [membership](#) of a professional or trade association;
- (i) the employee's trade union [membership](#);
- (j) the employee's recreation, long service, sick, personal, maternity, paternity or other leave;
- (k) the employee's taxation, [banking](#) or superannuation affairs.

"enforcement body" means:

- (a) the Australian Federal Police; or
- (aa) the [Integrity Commissioner](#); or
- (b) the ACC; or

(c) the Australian Customs Service; or

(d) the Australian Prudential Regulation Authority; or

(e) the Australian Securities and Investments Commission; or

(f) another [agency](#), to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law; or

(g) another [agency](#), to the extent that it is responsible for administering a law relating to the protection of the public revenue; or

(h) a police force or service of a [State](#) or a Territory; or

(i) the New South Wales Crime Commission; or

(j) the Independent Commission Against Corruption of New South Wales; or

(k) the Police Integrity Commission of New South Wales; or

(l) the Crime and Misconduct Commission of Queensland; or

(m) another prescribed authority or body that is established under a law of a [State](#) or Territory to conduct criminal investigations or inquiries; or

(n) a [State or Territory authority](#), to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law; or

(o) a [State or Territory authority](#), to the extent that it is responsible for administering a law relating to the protection of the public revenue.

"Federal Court" means the [Federal Court](#) of Australia.

"file number complaint" means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant:

(a) because it [breached](#) a guideline issued under section 17; or

(b) because it involved an unauthorised requirement or request for disclosure of a [tax file number](#).

"financial corporation" means a [financial corporation](#) within the meaning of paragraph 51(xx) of the Constitution.

"foreign corporation" means a [foreign corporation](#) within the meaning of paragraph 51(xx) of the Constitution.

" Freedom of Information Act " means the Freedom of Information Act 1982 .

"generally available publication" means a magazine, book, newspaper or other publication (however published) that is or will be generally available to members of the public.

"genetic relative of an individual (the **first individual**) means another individual who is related to the first individual by blood, including but not limited to a sibling, a parent or a descendant of the first individual.

"government contract" means a Commonwealth contract or a State contract.

"guarantee" includes an indemnity given against the default of a borrower in making a payment in respect of a loan.

"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.

"health service" means:

(a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it:

(i) to assess, record, maintain or improve the individual's health; or

(ii) to diagnose the individual's illness or disability; or

(iii) to treat the individual's illness or disability or suspected illness or disability; or

(b) the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

"hearing services" has the same meaning as in the [Hearing Services Administration Act 1997](#).

"individual" means a natural person.

"individual concerned", in relation to [personal information](#) or a [record](#) of [personal information](#), means the [individual](#) to whom the information relates.

"Information Privacy Principle" means any of the [Information Privacy Principles](#) set out in section 14.

"Integrity Commissioner" has the same meaning as in the [Law Enforcement Integrity Commissioner Act 2006](#).

"intelligence agency" means:

- (a) the Australian Security Intelligence [Organisation](#);
- (b) the Australian Secret Intelligence Service; or
- (c) the Office of National Assessments.

"IPP complaint" means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because it [breached](#) an [Information Privacy Principle](#).

"loan" means a contract, arrangement or understanding under which a person is permitted to defer payment of a debt, or to incur a debt and defer its payment, and includes:

- (a) a hire-purchase agreement; and
- (b) such a contract, arrangement or understanding for the hire, lease or renting of goods or services, other than a contract, arrangement or understanding under which:
 - (i) full payment is made before, or at the same time as, the goods or services are provided; and
 - (ii) in the case of a hiring, leasing or renting of goods--an amount greater than or equal to the value of the goods is paid as a deposit for the return of the goods.

"media organisation" means an [organisation](#) whose activities consist of or include the collection, preparation for dissemination or dissemination of the following material for the purpose of making it available to the public:

(a) material having the character of news, current affairs, information or a documentary;

(b) material consisting of commentary or opinion on, or analysis of, news, current affairs, information or a documentary.

"medical research" includes epidemiological research.

"mortgage credit" means [credit](#) provided in connection with the acquisition, maintenance or improvement of real property, being [credit](#) in respect of which the real property is security.

"mortgage insurer" means a [corporation](#) that carries on a business or undertaking (whether for profit, reward or otherwise) that involves providing insurance to [credit providers](#) in respect of [mortgage credit](#) given by [credit providers](#) to other persons.

"National Privacy Principle" means a clause of Schedule 3. A reference in this Act to a [National Privacy Principle](#) by number is a reference to the clause of Schedule 3 with that number.

"nominated AGHS company" means a company that:

(a) is the nominated company (within the meaning of Part 2 of the [Hearing Services and AGHS Reform Act 1997](#)); and

(b) is either:

(i) Commonwealth-owned (within the meaning of that Part); or

(ii) a [corporation](#).

"NPP complaint" means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant because it [breached](#) a [National Privacy Principle](#).

"Ombudsman" means the Commonwealth [Ombudsman](#).

"organisation" has the meaning given by section 6C.

"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.

"principal executive", of an [agency](#), has a meaning affected by section 37.

"privacy code" means a written code regulating acts and practices that affect privacy.

"record" means:

- (a) a document; or
- (b) a database (however kept); or
- (c) a photograph or other pictorial representation of a person;

but does not include:

- (d) a [generally available publication](#); or
- (e) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
- (f) Commonwealth [records](#) as defined by subsection 3(1) of the *Archives Act 1983* that are in the open access period for the purposes of that Act; or
- (fa) [records](#) (as defined in the *Archives Act 1983*) in the care (as defined in that Act) of the National Archives of Australia in relation to which the Archives has entered into arrangements with a person other than a Commonwealth institution (as defined in that Act) providing for the extent to which the Archives or other persons are to have access to the [records](#); or
- (g) documents placed by or on behalf of a person (other than an [agency](#)) in the memorial collection within the meaning of the *Australian War Memorial Act 1980*; or
- (h) letters or other articles in the course of transmission by post.

"registered political party" means a political party registered under Part XI of the [Commonwealth Electoral Act 1918](#).

"representative complaint" means a complaint where the persons on whose behalf the complaint was made include persons other than the complainant, but does not include a complaint that the Commissioner has determined should no longer be continued as a [representative complaint](#).

"Secretary" means an [Agency](#) Head within the meaning of the *Public Service Act 1999*.

"securitisation arrangement" means an arrangement:

- (a) involving the funding, or proposed funding, of:
 - (i) [loans](#) that have been, or are to be, provided by a [credit provider](#);

or

- (ii) the purchase of [loans](#) by a [credit provider](#);

by issuing instruments or entitlements to investors; and

(b) under which payments to investors in respect of such instruments or entitlements are principally derived, directly or indirectly, from such [loans](#).

"sensitive information" means:

- (a) information or an opinion about an [individual](#)'s:
 - (i) racial or ethnic origin; or
 - (ii) political opinions; or
 - (iii) [membership](#) of a political association; or
 - (iv) religious beliefs or affiliations; or
 - (v) philosophical beliefs; or
 - (vi) [membership](#) of a professional or trade association; or
 - (vii) [membership](#) of a trade union; or
 - (viii) sexual preferences or practices; or
 - (ix) criminal [record](#);that is also [personal information](#); or
- (b) [health information](#) about an [individual](#); or
- (c) genetic information about an [individual](#) that is not otherwise [health information](#).

"serious credit infringement" means an act done by a person:

- (a) that involves fraudulently obtaining [credit](#), or attempting fraudulently to obtain [credit](#); or
- (b) that involves fraudulently evading the person's obligations in relation to [credit](#), or attempting fraudulently to evade those obligations; or
- (c) that a reasonable person would consider indicates an intention, on the part of the first-mentioned person, no longer to comply with the first-mentioned person's obligations in relation to [credit](#).

"small business" has the meaning given by section 6D.

"small business operator" has the meaning given by section 6D.

"solicit", in relation to [personal information](#), means request a person to provide that information, or a kind of information in which that information is included.

"staff of the Ombudsman" means the persons appointed or employed for the purposes of section 31 of the *Ombudsman Act 1976* .

"State" includes the Australian Capital Territory and the Northern Territory.

"State contract" means a contract, to which a [State](#) or Territory or [State or Territory authority](#) is or was a party, under which services are to be, or were to be, provided to a [State or Territory authority](#).

Note: See also subsection (9) about provision of services to a [State or Territory authority](#).

"State or Territory authority" has the meaning given by section 6C.

"subcontractor" , for a [government contract](#), means an [organisation](#):

(a) that is or was a party to a contract (the *subcontract*):

(i) with a [contracted service provider](#) for the [government contract](#) (within the meaning of paragraph (a) of the definition of [contracted service provider](#));
or

(ii) with a [subcontractor](#) for the [government contract](#) (under a previous application of this definition); and

(b) that is or was responsible under the subcontract for the provision of services to an [agency](#) or a [State or Territory authority](#), or to a [contracted service provider](#) for the [government contract](#), for the purposes (whether direct or indirect) of the [government contract](#).

"tax file number" means a [tax file number](#) as defined in Part VA of the *Income Tax Assessment Act 1936* .

"tax file number information" means information (including information forming part of a database), whether compiled lawfully or unlawfully, and whether [recorded](#) in a material form or not, that [records](#) the [tax file number](#) of a person in a manner connecting it with the person's identity.

"temporary public interest determination" means a determination made under section 80A.

"trade insurer" means a [corporation](#) that carries on a business or undertaking (whether for profit, reward or otherwise) that involves providing insurance to [credit providers](#) in respect of commercial [credit](#) given by [credit providers](#) to other persons.

"trading corporation" means a [trading corporation](#) within the meaning of paragraph 51(xx) of the Constitution.

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

(1A) In order to avoid doubt, it is declared that an ACT enactment is not a [Commonwealth enactment](#) for the purposes of this Act.

(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](#).

(3) For the purposes of this Act, an act or practice [breaches](#) a guideline issued under section 17 if, and only if, it is contrary to, or inconsistent with, the guideline.

(3A) For the purposes of this Act, an act or practice [breaches](#) the [Code of Conduct](#) if, and only if, it is contrary to, or inconsistent with, the [Code of Conduct](#).

(4) The definition of [individual](#) in subsection (1) shall not be taken to imply that references to persons do not include persons other than natural persons.

(5) For the purposes of this Act, a person shall not be taken to be an [agency](#) merely because the person is the holder of, or performs the duties of:

(a) a prescribed office;

(b) an office prescribed by regulations made for the purposes of subparagraph 4(3)(b)(i) of the [Freedom of Information Act 1982](#) ;

(c) an office established by or under a [Commonwealth enactment](#) for the purposes of an [agency](#);

(d) a judicial office or of an office of magistrate; or

(e) an office of [member](#) of a tribunal that is established by or under a law of the Commonwealth and that is prescribed for the purposes of this paragraph.

(5A) For the purposes of the definition of [credit reporting business](#) in subsection (1), information concerning commercial transactions engaged in by or on behalf of an [individual](#) is not to be taken to be information relating to an [individual's](#):

(a) eligibility to be provided with [credit](#); or

(b) history in relation to [credit](#); or

(c) capacity to repay [credit](#).

(5B) In considering whether a business or undertaking, carried on by a [credit provider](#) that is a [corporation](#), is a [credit reporting business](#) within the meaning of this Act, the provision of information by the [credit provider](#) to [corporations](#) related to it is to be disregarded.

(5C) The regulations may provide that businesses or undertakings of a specified kind are not [credit reporting businesses](#) within the meaning of this Act.

(5D) A reference in this Act to the purchase of a [loan](#) includes a reference to the purchase of rights to receive payments under the [loan](#).

(6) For the purposes of this Act, the [Department](#) of Defence shall be taken to include the [Defence Force](#).

(7) Nothing in this Act prevents a complaint from:

(a) being both a [file number complaint](#) and an [IPP complaint](#); or

(b) being both a [file number complaint](#) and a [credit reporting complaint](#);

or

(c) being both a [file number complaint](#) and a [code complaint](#); or

(d) being both a [file number complaint](#) and an [NPP complaint](#); or

(e) being both a [code complaint](#) and a [credit reporting complaint](#); or

(f) being both an [NPP complaint](#) and a [credit reporting complaint](#).

(8) For the purposes of this Act, the question whether bodies corporate are related to each other is determined in the manner in which that question is determined under the [Corporations Act 2001](#) .

(9) To avoid doubt, for the purposes of this Act, services *provided* to an [agency](#) or a [State or Territory authority](#) include services that consist of the provision of services to other persons in connection with the performance of the functions of the [agency](#) or [State or Territory authority](#).