

**Annotated**  
**National Privacy**  
**Principles**

by

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**Fourth Edition**

**PRESIDIAN**  
LEGAL PUBLICATIONS

2009



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**Coverage of**  
***Privacy Act 1988 (Cth)***



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## [1-25] Introduction

[1-30] The *Privacy Act 1988* was significantly altered by the *Privacy Amendment (Private Sector) Act 2000*. Until such time, the Act applied largely to public sector agencies and regulated their use of personal information, although it did already regulate the private sector in relation to:<sup>1</sup>

- credit reporting - regarding the collection, storage, use and disclosure of credit information files and credit reports;<sup>2</sup> and
- tax file numbers - regarding the collection, use and disclosure of tax file numbers by tax file numbers recipients.<sup>3</sup>

The amendments, based around the inclusion of ten National Privacy Principles, extended the operation of the Act to apply to most private sector organisations.

## [1-50] Entities to Which Act Applies

### [1-75] “Organisations”

[1-80] In relation to the private sector, the *Privacy Act 1988* applies to any entity that is an “organisation” as defined by the Act. An organisation means, subject to specified exemptions (see [1-150]), an individual, a body corporate, a partnership, an unincorporated association<sup>4</sup> or a trust<sup>5</sup> (s.6C(1)). As such, the Act applies not only to businesses but also to bodies such as non-profit organisations, clubs and unions unless they are exempt entities.

### [1-100] Non-organisations treated as organisations

[1-110] The *Privacy Act 1988* applies to certain types of entities that would otherwise not be “organisations” as if they are organisations. These entities are outlined below:

- A small business operator within the meaning of the Act (see [1-250]) that is a “reporting entity” for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act) – Such an operator will be subject to the *Privacy Act 1988*, with any prescribed modifications, in regard to activities carried on for the purpose of compliance with the AML/CTF Act or rules or regulations under the AML/CTF Act as if they were an organisation (s.6E(1A)). The Privacy

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1. The Act also applied generally to eligible case managers and eligible hearing service providers in the private sector that fell within the definition of an agency.

2. In relation to credit reporting, see Part IIIA of the Act.

3. See Privacy Commissioner, *Tax File Number Guidelines 1992*.

4. As such, the Act applies to bodies such as non-profit organisations, clubs and unions unless they are exempt entities (see [1-150]), eg. they have a turnover of less than \$3m.

5. If a legal person acts in more than one of these capacities, the person is taken to be a different organisation in each of those capacities (s.6C(2)).

Commissioner has produced guidance materials to assist small businesses understand their privacy obligations in relation to AML/CTF.<sup>6</sup>

- A small business operator prescribed by regulation<sup>7</sup> (s.6E(1)) – The regulations do not currently prescribe any small business operators for this purpose. The Act may also apply to prescribed acts or practices of a prescribed small business operator (regulations regarding tenancy database operators have been passed in this respect (see [1-550])).
- A small business operator that registers<sup>8</sup> a desire with the Privacy Commissioner to be treated as an organisation<sup>9</sup> (s.6EA(1)) (the Commissioner maintains a publicly available Register of Businesses That Have Opted into Coverage by the NPPs – available at <www.privacy.gov.au>).
- State and Territory instrumentalities prescribed, with any modifications, by regulation (s.6F) – Certain authorities of N.S.W. have been prescribed for this purpose, comprising Australian Inland Energy Water Infrastructure, Country Energy, Energy Australia and Integral Energy Australia (reg.3A).

## **[1-150] Exempt Entities**

### **[1-200] Entities excluded from being an organisation**

**[1-210]** The *Privacy Act 1988* does not apply to entities excluded from the definition of an “organisation”. The entities that are excluded are a small business operator (see [1-250]), a registered political party,<sup>10</sup> an agency, a State or Territory authority and a prescribed instrumentality of a State or Territory (s.6C(1)).

The small business operator exemption is the most widely applicable exemption in the private sector and largely results in the Act applying only to medium-to-large size businesses. As such, small business operators generally are not bound by the Act regarding the manner in which they handle personal information.

### **[1-250] “Small business operator”**

**[1-260]** The exemption that is the most widely applicable in the private sector is the small business operator exemption. A small business operator is an individual, body corporate, partnership, unincorporated association or trust

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6. Available at <www.privacy.gov.au> (accessed 15 May 2009). See also “Anti-Money Laundering and Counter-Terrorism Financing” in *Privacy Matters*, Volume 2 Issue 1 Spring 2007.

7. The Act may apply with prescribed modifications (s.6E(1)).

8. Such a registration must be in writing (s.6EA(2)) and may be revoked (s.6EA(4)).

9. Section 16D does not apply to such operators (s.6EA(1)).

10. Other entities that work with a registered political party, such as political representatives, contractors and volunteers, are also exempt in certain circumstances, see [1-1050].



Pages 7-12 are not part of this book preview.



























