



# **Privacy Legislation Amendment (Emergencies and Disasters) Act 2006**

**No. 148, 2006**

**An Act to make provision for dealing with personal  
information in emergencies and disasters, and for  
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to make provision for dealing with personal  
information in emergencies and disasters, and for  
related purposes**

*[Assented to 6 December 2006]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Privacy Legislation Amendment  
(Emergencies and Disasters) Act 2006*.

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## **2 Commencement**

This Act commences on the day after it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Privacy Act 1988

### 1 After Part VI

Insert:

## Part VIA—Dealing with personal information in emergencies and disasters

### Division 1—Object and interpretation

#### 80F Object

The object of this Part is to make special provision for the collection, use and disclosure of personal information in emergencies and disasters.

#### 80G Interpretation

(1) In this Part:

*Australian citizen* has the same meaning as in the *Australian Citizenship Act 1948*.

*duty of confidence* means any duty or obligation arising under the common law or at equity pursuant to which a person is obliged not to disclose information, but does not include legal professional privilege.

*emergency declaration* means a declaration under section 80J or 80K.

*permanent resident* means a person, other than an Australian citizen:

- (a) whose normal place of residence is situated in Australia; and
- (b) whose presence in Australia is not subject to any limitation as to time imposed by law; and
- (c) who is not an illegal entrant within the meaning of the *Migration Act 1958*.

**secrecy provision** means a provision of a law of the Commonwealth, including a provision of this Act, that prohibits or regulates the use or disclosure of personal information, whether the provision relates to the use or disclosure of personal information generally or in specified circumstances.

- (2) For the purposes of this Part, a reference in the definition of **personal information** in subsection 6(1) to an individual is taken to include a reference to an individual who is not living.

#### 80H Meaning of *permitted purpose*

- (1) For the purposes of this Part, a **permitted purpose** is a purpose that directly relates to the Commonwealth's response to an emergency or disaster in respect of which an emergency declaration is in force.
- (2) Without limiting subsection (1), any of the following is a **permitted purpose** in relation to an emergency or disaster:
- (a) identifying individuals who:
    - (i) are or may be injured, missing or dead as a result of the emergency or disaster; or
    - (ii) are or may be otherwise involved in the emergency or disaster;
  - (b) assisting individuals involved in the emergency or disaster to obtain services such as repatriation services, medical or other treatment, health services and financial or other humanitarian assistance;
  - (c) assisting with law enforcement in relation to the emergency or disaster;
  - (d) coordination or management of the emergency or disaster;
  - (e) ensuring that people who are **responsible** (within the meaning of subclause 2.5 of Schedule 3) for individuals who are, or may be, involved in the emergency or disaster are appropriately informed of matters that are relevant to:
    - (i) the involvement of those individuals in the emergency or disaster; or
    - (ii) the response to the emergency or disaster in relation to those individuals.



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## **Division 2—Declaration of emergency**

### **80J Declaration of emergency—events of national significance**

The Prime Minister or the Minister may make a declaration under this section if the Prime Minister or the Minister (as the case may be) is satisfied that:

- (a) an emergency or disaster has occurred; and
- (b) the emergency or disaster is of such a kind that it is appropriate in the circumstances for this Part to apply in relation to the emergency or disaster; and
- (c) the emergency or disaster is of national significance (whether because of the nature and extent of the emergency or disaster, the direct or indirect effect of the emergency or disaster, or for any other reason); and
- (d) the emergency or disaster has affected one or more Australian citizens or permanent residents (whether within Australia or overseas).

Note: A declaration under this section is merely a trigger for the operation of this Part and is not directly related to any other legislative or non-legislative scheme about emergencies.

### **80K Declaration of emergency—events outside Australia**

- (1) The Prime Minister or the Minister may make a declaration under this section if the Prime Minister or the Minister (as the case may be) is satisfied that:
  - (a) an emergency or disaster has occurred outside Australia; and
  - (b) the emergency or disaster is of such a kind that it is appropriate in the circumstances for this Part to apply in relation to the emergency or disaster; and
  - (c) the emergency or disaster has affected one or more Australian citizens or permanent residents (whether within Australia or overseas).
- (2) The Minister must consult the Minister administering the *Diplomatic Privileges and Immunities Act 1967* before the Minister makes a declaration under this section.

Note: A declaration under this section is merely a trigger for the operation of this Part and is not directly related to any other legislative or non-legislative scheme about emergencies.

### **80L Form of declarations**

- (1) An emergency declaration must be in writing and signed by:
  - (a) if the Prime Minister makes the declaration—the Prime Minister; or
  - (b) if the Minister makes the declaration—the Minister.
- (2) An emergency declaration must be published, as soon as practicable after the declaration has effect:
  - (a) on the website maintained by the Department on the Internet; and
  - (b) by notice published in the *Gazette*.
- (3) An emergency declaration is not a legislative instrument.

### **80M When declarations take effect**

An emergency declaration has effect from the time at which the declaration is signed.

### **80N When declarations cease to have effect**

An emergency declaration ceases to have effect at the earliest of:

- (a) if a time at which the declaration will cease to have effect is specified in the declaration—at that time; or
- (b) the time at which the declaration is revoked; or
- (c) the end of 12 months starting when the declaration is made.

## **Division 3—Provisions dealing with the use and disclosure of personal information**

### **80P Authorisation of collection, use and disclosure of personal information**

- (1) At any time when an emergency declaration is in force in relation to an emergency or disaster, an entity may collect, use or disclose personal information relating to an individual if:
    - (a) the entity reasonably believes that the individual concerned may be involved in the emergency or disaster; and
    - (b) the collection, use or disclosure is for a permitted purpose in relation to the emergency or disaster; and
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- (c) in the case of a disclosure of the personal information by an agency—the disclosure is to:
    - (i) an agency; or
    - (ii) a State or Territory authority; or
    - (iii) an organisation; or
    - (iv) an entity not covered by subparagraph (i), (ii) or (iii) that is, or is likely to be, involved in managing, or assisting in the management of, the emergency or disaster; or
    - (v) a person who is *responsible* for the individual (within the meaning of subclause 2.5 of Schedule 3); and
  - (d) in the case of a disclosure of the personal information by an organisation or another person—the disclosure is to:
    - (i) an agency; or
    - (ii) an entity that is directly involved in providing repatriation services, medical or other treatment, health services or financial or other humanitarian assistance services to individuals involved in the emergency or disaster; or
    - (iii) a person or entity prescribed by the regulations for the purposes of this paragraph; or
    - (iv) a person or entity specified by the Minister, by legislative instrument, for the purposes of this paragraph; and
  - (e) in the case of any disclosure of the personal information—the disclosure is not to a media organisation.
- (2) An entity is not liable to any proceedings for contravening a secrecy provision in respect of a use or disclosure of personal information authorised by subsection (1), unless the secrecy provision is a designated secrecy provision (see subsection (7)).
  - (3) An entity is not liable to any proceedings for contravening a duty of confidence in respect of a disclosure of personal information authorised by subsection (1).
  - (4) An entity that is an agency does not breach an Information Privacy Principle in respect of a collection, use or disclosure of personal information authorised by subsection (1).

- (5) An entity that is an organisation does not breach an approved privacy code or a National Privacy Principle in respect of a collection, use or disclosure of personal information authorised by subsection (1).
- (6) A collection, use or disclose of personal information by an officer or employee of an agency in the course of duty as an officer or employee is authorised by subsection (1) only if the officer or employee is authorised by the agency to collect, use or disclose the personal information.
- (7) In this section:

***designated secrecy provision*** means any of the following:

- (a) sections 18 and 92 of the *Australian Security Intelligence Organisation Act 1979*;
- (b) section 34 of the *Inspector-General of Intelligence and Security Act 1986*;
- (c) section 39, 39A, 40 and 41 of the *Intelligence Services Act 2001*;
- (d) a provision of a law of the Commonwealth prescribed by the regulations for the purposes of this paragraph;
- (e) a provision of a law of the Commonwealth of a kind prescribed by the regulations for the purposes of this paragraph.

***entity*** includes the following:

- (a) a person;
- (b) an agency;
- (c) an organisation.

## Division 4—Other matters

### 80Q Disclosure of information—offence

- (1) A person (the ***first person***) commits an offence if:
  - (a) personal information that relates to an individual is disclosed to the first person because of the operation of this Part; and
  - (b) the first person subsequently discloses the personal information; and

- (c) the first person is not *responsible* for the individual (within the meaning of subclause 2.5 of Schedule 3).

Penalty: 60 penalty units or imprisonment for 1 year, or both.

- (2) Subsection (1) does not apply to the following disclosures:
  - (a) if the first person is an agency—a disclosure permitted under an Information Privacy Principle;
  - (b) if the first person is an organisation—a disclosure permitted under an approved privacy code or a National Privacy Principle;
  - (c) a disclosure permitted under section 80P;
  - (d) a disclosure made with the consent of the individual to whom the personal information relates;
  - (e) a disclosure to the individual to whom the personal information relates;
  - (f) a disclosure to a court;
  - (g) a disclosure prescribed by the regulations.

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

- (3) If a disclosure of personal information is covered by subsection (2), the disclosure is authorised by this section.
- (4) For the purposes of paragraph (2)(f), *court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

## **80R Operation of Part**

- (1) The operation of this Part is not limited by a secrecy provision of any other law of the Commonwealth (whether made before or after the commencement of this Act) except to the extent that the secrecy provision expressly excludes the operation of this section.

Note: Section 3 provides for the concurrent operation of State and Territory laws.

- (2) Nothing in this Part is to be taken to require an entity to collect, use or disclose personal information.

**80S Severability—additional effect of Part**

- (1) Without limiting its effect apart from each of the following subsections of this section, this Part has effect in relation to a collection, use or disclosure as provided by that subsection.
- (2) This Part has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure by a corporation.
- (3) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure taking place in the course of, or in relation to, trade or commerce:
  - (a) between Australia and places outside Australia; or
  - (b) among the States; or
  - (c) within a Territory, between a State and a Territory or between 2 Territories.
- (4) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution.
- (5) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure taking place in a Territory.
- (6) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure taking place in a place acquired by the Commonwealth for public purposes.
- (7) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure by an agency.
- (8) This Part also has the effect it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure for purposes relating to the defence of the Commonwealth.

- (9) This Part also has the effect that it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure taking place outside Australia.
- (10) This Part also has the effect that it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure:
  - (a) in relation to which the Commonwealth is under an obligation under an international agreement; or
  - (b) that is of international concern.
- (11) This Part also has the effect that it would have if its operation in relation to a collection, use or disclosure were expressly confined to a collection, use or disclosure in relation to an emergency of national significance.

**80T Compensation for acquisition of property—constitutional safety net**

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## Schedule 2—Australian Security Intelligence Organisation Act 1979

### 1 At the end of subsection 18(3)

Add:

- ; or (c) if an emergency declaration (within the meaning of section 80G of the *Privacy Act 1988*) is in force—the information may be communicated in accordance with Part VIA of that Act.

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[*Minister's second reading speech made in—  
Senate on 13 September 2006  
House of Representatives on 28 November 2006*]

(128/06)