

Forms of Exemptions and Exceptions in the Privacy Act as at December 2016

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/

- ... not being ...
- ... established or appointed ... otherwise than ...
- {However} ... not ... if ...
- ... {an entity} other than ...
- Except so far as the contrary intention appears, ...
- ... do not apply to ...
- ... not in relation to / in respect of ...
- ... but does not include ...
- Despite ...
- ... other than ...
- ... is exempt ...
- ... is not covered by ...
- A permitted general situation exists in relation to ...
- ... a permitted purpose ...
- The Commissioner shall not approve the issue of guidelines unless ...

Forms of Exemptions and Exceptions in the Australian Privacy Principles (APPa) as at December 2016

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/sch1.html

- ... such steps as are reasonable in the circumstances ...
- ... if it is practicable to specify ...
- ... in such form as is appropriate ...
- ... does not apply if ...
- ... unless the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities ...
- ... unless it is unreasonable or impracticable
- ... usually ...
- ... is likely to ...
- Despite ...
- ... reasonably believes ...

Quick Scan of the Privacy Act

Since originally enacted in 1988, the Privacy Act has suffered massive bloat, and is now contains over 78,000 words.

Also indicative of the enormous complexity that has been imposed is the fact that the consolidation of the 1,700-word IPPs that applied to some of the public sector 1989-2014 and the 3,300-word NPPs that applied to some of the private sector 2001-2014, into the APPs that encompass some of both, has resulted in a monstrous set of 'principles' almost 5,500 words long.

The Privacy Act might reasonably be expected to contain:

- no mandations of dataveillance
- prohibitions on dataveillance
- safeguards against permitted dataveillance
- mitigation measures to manage the risk of collateral damage from permitted dataveillance
- controls to ensure that safeguards and mitigation measures are in place

Definitions

Defined outside the Privacy Act? Not at all?

- body corporate

s.6 Definitions

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s6.html

- agency
- APP entity
- corporation
- employee record
- enforcement body (7 Clth agencies named, but highly extensive; all State and Territory "police force or services"; corruption bodies; but enormously extensive; and extensible by Regulations as well)
- media organisation
- non-profit organisation

s.6A

- breach

s.6C Definitions

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s6c.html

- organisation

s.6D Definitions

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s6d.html

- small business
- small business operator

s.13

[http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s13.html?stem=0&synonyms=0&query=in interference%20with%20the%20privacy%20of%20an%20individual](http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s13.html?stem=0&synonyms=0&query=in%20interference%20with%20the%20privacy%20of%20an%20individual)

- an interference with the privacy of an individual

s.16A

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s16a.html

- permitted general situation

s.16B

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s16b.html

- permitted health situation

s.80G - emergencies

- permitted purpose

s.80P - emergencies

- designated secrecy provision

APP8.1

- overseas recipient

Exemptions and Exceptions in the Privacy Act as at December 2016

s.6A - Fully Exempted Activities

- archival evaluation
http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s6a.html
- **act or practice outside Australia**
http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s6a.html
- **act of practice required by an applicable law of a foreign country** (also s. 13D)
http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s6a.html

s.7 - Fully Exempted Entities

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s7.html

- FOI Act Schedule 1 (3 courts)
- FOI Act Schedule 2 Part I Div I (9 agencies)
- FOI Act Schedule 2 Part II Div I (3 agencies)
- a federal court
- a Minister
- several Commissioners or Commissions
- in relation to a record that has originated with, or has been received from [list of intelligence and similar agencies]

s.7B - Fully Exempted Activities

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s7b.html

- **Individuals in non-business capacity**
- **Employee records**
- **Journalism by a media organisation (minor condition re 'standards')**
- **Organisation acting under State contract**

s.7C - Political Acts and Practices

- Members of a Parliament etc.
- Contractors for political representatives etc.
- Subcontractors ...
- Volunteers ...

s.12A - State banking or insurance within that State

s.13B - disclosures to related bodies corporate

s.13C - transfer of data from a partnership to a successor partnership

s.13D - act of practice required by an applicable law of a foreign country (also s.6A)

s.16 - personal data held for Personal, family or household affairs

s.16A - Substantial Exemption for Permitted General Situations

- emergency: impracticable to gain consent and serious threat to life ...
- **protection of own legal interests: reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities**
- missing persons: to assist any APP entity, body or person to locate a person who has been reported as missing
- **protection of (any entity's?) legal interests: the establishment, exercise or defence of a legal or equitable claim**
- **resolution processes for (any?) dispute: for the purposes of a confidential alternative dispute resolution process**
- **diplomatic or consular functions or activities**

- for war, peacekeeping or civil emergency outside Australia

s.16B - Substantial Exemption for Permitted Health Situations

- to provide a health service to the individual
- research relevant to public health or public safety
- the compilation or analysis of statistics relevant to public health or public safety
- the management, funding or monitoring of a health service
- third party's genetic data re health of genetic relatives
- patient incapable of giving consent

s.20A – Credit Reporting

- The Australian Privacy Principles do not apply to a credit reporting body ...

s.20C – Credit Reporting

- Authorisation of non-consensual disclosure and use of personal data for credit reporting ...

s.72 - Public Interest Determinations

- the Commissioner is satisfied that the public interest in an act or practice substantially outweighs the public interest in adhering to that code or principle

s.80A - Temporary public interest determinations

- As fo s.72 plus the issues require an urgent decision

s.80G - Emergencies (see also ss.80P, 80Q)

- for 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, incl.
- identifying individuals injured, missing, dead or involved
- assisting such individuals
- assisting law enforcement
- informing 'responsible persons' for such individuals

s.95 - Medical Research [enormous power granted to the NH&MRC]

s.95A - Health Information [enormous power granted to the NH&MRC]

- research
- the compilation or analysis of statistics, relevant to public health or public safety

s.95AA - Genetic Information [enormous power granted to the NH&MRC]

- lessening or preventing a serious threat to the life, health or safety of an individual who is a genetic relative of the individual to whom the genetic information relates

s.100 - Regulations, incl.

- necessary or convenient for carrying out or giving effect to this Act

Exceptions and Exemptions in the APPs as at December 2016:

http://www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/sch1.html

APP2.2 – anonymity and pseudonymity

- if the APP entity is required or authorised to deal with individuals who have identified themselves
- if it is impracticable

APP3 – collection of solicited personal information

- consent and reasonably necessary for, or directly related to, one or more of the agency's functions or activities
- consent and reasonably necessary for one or more of the organisation's functions or activities
- required or authorised by law
- a permitted general situation exists
- a permitted health situation exists
- an enforcement body ...
- a non-profit organisation ...

APP6 – use or disclosure of personal information

- [Usual long list similar to APP3]

APP7 – Direct Marketing

- Despite the nominal prohibition, [Authorisation of non-consensual, opt-out use of personal data for direct marketing]
- Despite the nominal prohibition, [Authorisation of non-consensual use of personal data by contracted service providers for a Commonwealth contract]

APP8 – cross-border disclosure of personal information

- [even longer list of loopholes]

APP9 – adoption, use or disclosure of government related identifiers

- [Usual long list similar to APP3]
- any organisation can be authorised by Regulation

APP10 – quality of personal information

- ... such steps (if any) as are reasonable in the circumstances ...

APP11 – security of personal information [and destruction]

- ... such steps (if any) as are reasonable in the circumstances ...

APP12 – access to personal information

- agencies retain the scope to use all FOI and other exemptions
- organisations have a long list of loopholes available
- ... give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so
- organisation may charge a fee

APP13 – correction of personal information

- ... such steps (if any) as are reasonable in the circumstances ...