

2022

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*As passed by both Houses*

**Privacy Legislation Amendment  
(Enforcement and Other Measures) Bill  
2022**

**No.     , 2022**

**A Bill for an Act to amend the law in relation to  
privacy, and for other purposes**



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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule  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

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1 **Schedule 1—Amendments**  
2

3 ***Australian Communications and Media Authority Act 2005***

4 **1 At the end of subsection 59D(1)**

5 Add:

6 ; (q) a non-corporate Commonwealth entity (within the meaning  
7 of the *Public Governance, Performance and Accountability*  
8 *Act 2013*) not otherwise covered by this subsection that is  
9 responsible for enforcing one or more laws of the  
10 Commonwealth.

11 ***Australian Information Commissioner Act 2010***

12 **2 Section 25**

13 Omit “The”, substitute “(1) Subject to subsection (2), the”.

14 **3 Paragraphs 25(e), (g) and (h)**

15 Repeal the paragraphs.

16 **4 Paragraph 25(k)**

17 Omit “1988;”, substitute “1988.”.

18 **5 Paragraph 25(l)**

19 Repeal the paragraph.

20 **6 At the end of section 25**

21 Add:

22 (2) The Information Commissioner may only delegate the following  
23 functions or powers to a member of staff of the Office of the  
24 Australian Information Commissioner who is an SES employee, or  
25 an acting SES employee, or who holds, or is acting in, a position  
26 that is equivalent to, or higher than, a position occupied by an SES  
27 employee:

28 (a) the function conferred by section 55K of the *Freedom of*  
29 *Information Act 1982* (making a decision on an IC review);

- 1 (b) the function conferred by section 73 of the *Freedom of*  
2 *Information Act 1982* (discretion not to investigate a  
3 complaint);  
4 (c) the function conferred by section 86 of the *Freedom of*  
5 *Information Act 1982* (obligation to notify on completion of  
6 investigation);  
7 (d) making determinations for the purposes of section 52 of the  
8 *Privacy Act 1988*.

9 **7 Paragraph 29(2)(a)**

10 Repeal the paragraph, substitute:

- 11 (a) both of the following apply:  
12 (i) the information was acquired by the person in the  
13 course of performing an information commissioner  
14 function or exercising a related power;  
15 (ii) the person records, discloses or otherwise uses the  
16 information in the course of performing an information  
17 commissioner function or exercising a related power; or  
18 (aa) both of the following apply:  
19 (i) the information was acquired by the person in the  
20 course of performing a freedom of information function  
21 or exercising a related power;  
22 (ii) the person records, discloses or otherwise uses the  
23 information in the course of performing a freedom of  
24 information function or exercising a related power; or  
25 (ab) both of the following apply:  
26 (i) the information was acquired by the person in the  
27 course of performing a privacy function or exercising a  
28 related power;  
29 (ii) the person records, discloses or otherwise uses the  
30 information in the course of performing a privacy  
31 function or exercising a related power; or

32 **8 Paragraph 29(2)(aa)**

33 Reletter as paragraph (ac).



1 ***Privacy Act 1988***

2 **9 Paragraph 5B(3)(b)**

3 Omit “Territory;”, substitute “Territory.”.

4 **10 Paragraph 5B(3)(c)**

5 Repeal the paragraph.

6 **11 Subsection 6(1)**

7 Insert:

8 *alternative complaint body* has the meaning given by  
9 subsection 50(1).

10 *related body corporate*: see subsection (8).

11 **12 Section 13G**

12 Before “An”, insert “(1)”.

13 **13 Section 13G (penalty)**

14 Repeal the penalty.

15 **14 At the end of section 13G**

16 Add:

17 (1A) Subsection (1) is a civil penalty provision.

18 Note: Section 80U deals with civil penalty provisions in this Act.

19 (2) The amount of the penalty for a contravention of subsection (1) by  
20 a person other than a body corporate is an amount not more than  
21 \$2,500,000.

22 (3) The amount of the penalty for a contravention of subsection (1) by  
23 a body corporate is an amount not more than the greater of the  
24 following:

25 (a) \$50,000,000;

26 (b) if the court can determine the value of the benefit that the  
27 body corporate, and any related body corporate, have  
28 obtained directly or indirectly and that is reasonably



1 **16 At the end of section 26WA**

2 Add:

- 3
  - The Commissioner may obtain information or documents in
- 4 relation to actual or suspected eligible data breaches.

5 **17 Paragraphs 26WK(3)(c) and 26WR(4)(c)**

6 After “the”, insert “particular”.

7 **18 At the end of Part IIIC**

8 Add:

9 **Division 4—Commissioner’s powers to obtain information**

10 **or documents relating to eligible data breaches**

11 **26WU Power to obtain information and documents relating to**

12 **eligible data breaches**

- 13 (1) This section applies if the Commissioner has reason to believe that
- 14 a person or entity has information or documents, or can answer
- 15 questions, that are relevant to either or both of the following
- 16 matters (the *relevant matters*):
- 17 (a) an actual or suspected eligible data breach of an entity;
- 18 (b) an entity’s compliance with the requirements in Division 3 of
- 19 this Part.
- 20 (2) Without limiting subsection (1), the relevant matters may relate to
- 21 one or more of the following:
- 22 (a) whether the entity is required to comply with one or more of
- 23 those requirements;
- 24 (b) the conduct or events that led to, or may have led to, the
- 25 application of one or more of those requirements to the
- 26 entity;
- 27 (c) the actions taken by the entity to comply with one or more of
- 28 those requirements;
- 29 (d) the actual or suspected eligible data breach that has, or may
- 30 have, happened;

- 1 (e) the particular kind or kinds of information involved in the  
2 actual or suspected eligible data breach;
- 3 (f) the steps taken to notify individuals affected by the actual or  
4 suspected eligible data breach.
- 5 (3) The Commissioner may give to the person or entity a written  
6 notice requiring the person or entity:
- 7 (a) to give information of the kind specified in the notice to the  
8 Commissioner that relates to the matter; or
- 9 (b) to produce documents of the kind specified in the notice to  
10 the Commissioner that relate to the matter; or
- 11 (c) answer questions of the kind specified in the notice to the  
12 Commissioner that relate to the matter.
- 13 Note: For a failure to give information etc., see section 66.
- 14 (4) A notice given by the Commissioner under subsection (3) must  
15 state:
- 16 (a) the place at, or manner in which, the information or  
17 document is to be given or produced or the questions are to  
18 be answered; and
- 19 (b) the time at which, or the period within which, the information  
20 or document is to be given or produced or the questions are  
21 to be answered.
- 22 (5) If documents are produced to the Commissioner in accordance  
23 with a requirement under subsection (3), the Commissioner:
- 24 (a) may take possession of, and may make copies of, or take  
25 extracts from, the documents; and
- 26 (b) may retain possession of the documents for any period that is  
27 necessary for the purposes of assessing an entity's  
28 compliance with this Part; and
- 29 (c) during that period must permit a person who would be  
30 entitled to inspect any one or more of the documents if they  
31 were not in the Commissioner's possession to inspect at all  
32 reasonable times any of the documents that the person would  
33 be so entitled to inspect.
- 34 (6) This section is subject to section 70 but it has effect regardless of  
35 any other Commonwealth law.

1 (7) A person or entity is not liable to a penalty under the provisions of  
2 any other Commonwealth law because the person or entity gives  
3 information, produces a document or answers a question when  
4 required to do so under this section.

5 **19 Division 3 of Part IV (heading)**

6 Repeal the heading, substitute:

7 **Division 3—Reports and information sharing by**  
8 **Commissioner**

9 **20 At the end of Division 3 of Part IV**

10 Add:

11 **33A Commissioner may share information with other authorities**

12 (1) Subject to subsections (3) and (4), the Commissioner may share  
13 information or documents with a body covered by subsection (2) (a  
14 **receiving body**):

15 (a) for the purpose of the Commissioner exercising powers, or  
16 performing functions or duties, under this Act; or

17 (b) for the purpose of the receiving body exercising its powers,  
18 or performing its functions or duties.

19 (2) The following bodies are covered by this subsection:

20 (a) an enforcement body;

21 (b) an alternative complaint body;

22 (c) a State or Territory authority, or an authority of the  
23 government of a foreign country, that has functions to protect  
24 the privacy of individuals (whether or not the authority has  
25 other functions).

26 (3) The Commissioner may only share information or documents with  
27 a receiving body under this section if:

28 (a) the information or documents were acquired by the  
29 Commissioner in the course of exercising powers, or  
30 performing functions or duties, under this Act; and

- 1 (b) the Commissioner is satisfied on reasonable grounds that the  
2 receiving body has satisfactory arrangements in place for  
3 protecting the information or documents.
- 4 (4) If the Commissioner acquired the information or documents from  
5 an agency, the Commissioner may only share the information or  
6 documents with a receiving body under this section if the receiving  
7 body is an agency.
- 8 (5) If information is shared with a receiving body under this section,  
9 the receiving body may use the information only for the purposes  
10 for which it was shared.
- 11 (6) To avoid doubt, the Commissioner may share information or  
12 documents with a receiving body under this section whether or not  
13 the Commissioner is transferring a complaint or part of a complaint  
14 to the body.

15 **33B Commissioner may disclose certain information if in the public**  
16 **interest etc.**

17 *Information may generally be disclosed if in the public interest*

- 18 (1) The Commissioner may disclose information acquired by the  
19 Commissioner in the course of exercising powers or performing  
20 functions or duties under this Act if the Commissioner is satisfied  
21 that it is in the public interest to do so.

22 *Public interest considerations*

- 23 (2) In determining under subsection (1) whether the Commissioner is  
24 satisfied that a disclosure is in the public interest, the  
25 Commissioner:
- 26 (a) must have regard to the following:
- 27 (i) the rights and interests of any complainant or  
28 respondent;
- 29 (ii) whether the disclosure will, or is likely to, prejudice any  
30 investigation the Commissioner is undertaking;
- 31 (iii) whether the disclosure will, or is likely to, disclose the  
32 personal information of any person;

- 
- 1 (iv) whether the disclosure will, or is likely to, disclose any  
2 confidential commercial information;
- 3 (v) whether the Commissioner reasonably believes that the  
4 disclosure would be likely to prejudice one or more  
5 enforcement related activities conducted by or on behalf  
6 of an enforcement body; and
- 7 (b) may have regard to any other matter the Commissioner  
8 considers relevant.
- 9 (3) This section does not limit any other powers the Commissioner has  
10 to disclose information under this Act or any other law of the  
11 Commonwealth.

12 **21 After paragraph 33C(1)(c)**

13 Insert:

- 14 (ca) the ability of an entity subject to Part IIIC to comply with  
15 that Part, including the extent to which the entity has  
16 processes and procedures in place to:
- 17 (i) assess suspected eligible data breaches; and  
18 (ii) provide notice of eligible data breaches to the  
19 Commissioner and to individuals at risk from such  
20 breaches;

21 **22 At the end of section 33C**

22 Add:

- 23 (3) Without limiting subsection (2), if the Commissioner has reason to  
24 believe that an entity or file number recipient being assessed has  
25 information or a document relevant to the assessment the  
26 Commissioner may, by written notice, require the entity or file  
27 number recipient to give the information or produce the document  
28 within the period specified in the notice, which must not be less  
29 than 14 days after the notice is given to the entity or file number  
30 recipient.

31 Note: For a failure to give information etc., see section 66.

- 32 (4) The Commissioner must not give a notice under subsection (3)  
33 unless the Commissioner is satisfied that it is reasonable in the  
34 circumstances to do so, having regard to the following:
- 35 (a) the public interest;

- 1 (b) the impact on the entity or file number recipient of  
2 complying with the notice;  
3 (c) any other matters that the Commissioner considers relevant.
- 4 (5) An enforcement body is not required to comply with a notice given  
5 by the Commissioner under subsection (3) if the chief executive  
6 officer of the enforcement body believes on reasonable grounds  
7 that compliance with the notice would be likely to prejudice one or  
8 more enforcement related activities conducted by or on behalf of  
9 the enforcement body.
- 10 (6) Subsection (3) is subject to section 70 but it has effect regardless of  
11 any other Commonwealth law.
- 12 (7) A person or entity is not liable to a penalty under the provisions of  
13 any other Commonwealth law because the person or entity gives  
14 information or produces a document when required to do so under  
15 subsection (3).
- 16 (8) The Commissioner may publish information relating to an  
17 assessment on the Commissioner's website.

18 **23 At the end of subsection 44(1)**

19 Add:

20 Note: For a failure to give information etc., see section 66.

21 **24 At the end of subsection 46(4)**

22 Add:

23 Note: For a failure to give information etc., see section 66.

24 **25 At the end of subsection 47(1)**

25 Add:

26 Note: For a failure to give information etc., see section 66.

27 **26 Subsection 50(1)**

28 Omit "In this section", substitute "In this Act".



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1 **27 Subsection 50(1) (after paragraph (b) of the definition of**  
2 ***alternative complaint body*)**

3 Insert:

4 (ba) the eSafety Commissioner; or

5 **28 Subsection 50(1) (definition of *Ombudsman*)**

6 Repeal the definition.

7 **29 After subparagraph 52(1)(b)(ii)**

8 Insert:

9 (iia) a declaration that the respondent must prepare and publish, or  
10 otherwise communicate, a statement about the conduct (see  
11 section 52A);

12 **30 After paragraph 52(1A)(b)**

13 Insert:

14 (ba) a declaration that the respondent must prepare and publish, or  
15 otherwise communicate, a statement about the conduct (see  
16 section 52A);

17 **31 After subsection 52(1A)**

18 Insert:

19 (1AAA) Without limiting subparagraph (1)(b)(ia) or paragraph (1A)(b), the  
20 steps specified by the Commissioner may include a requirement for  
21 the respondent to:

22 (a) engage, in consultation with the Commissioner, a suitably  
23 qualified independent adviser to review:

24 (i) the acts or practices engaged in by the respondent that  
25 were the subject of the complaint; and

26 (ii) the steps (if any) taken by the respondent to ensure that  
27 the conduct referred to in the determination is not  
28 repeated or continued; and

29 (iii) any other matter specified in the declaration that is  
30 relevant to those acts or practices, or that complaint; and

31 (b) provide a copy of the review to the Commissioner.

1 **32 After subsection 52(5)**

2 Insert:

3 (5A) The Commissioner may publish a determination made under this  
4 section on the Commissioner’s website.

5 **33 After section 52**

6 Insert:

7 **52A Determination—requirement to notify conduct constituting**  
8 **interference with privacy of individual**

- 9 (1) If a determination under section 52 includes a declaration  
10 mentioned in subparagraph 52(1)(b)(ia) or paragraph 52(1A)(ba),  
11 the respondent must, within 14 days after receiving the  
12 determination (or such longer period as the Commissioner allows):
- 13 (a) prepare a statement, in consultation with the Commissioner,  
14 setting out:
    - 15 (i) the identity and contact details of the respondent or, if  
16 the respondent is the principal executive of an agency,  
17 the agency; and
    - 18 (ii) a description of the conduct engaged in by the  
19 respondent that constitutes the interference with the  
20 privacy of an individual; and
    - 21 (iii) the steps (if any) undertaken, or to be undertaken, by the  
22 respondent to ensure the conduct is not repeated or  
23 continued; and
    - 24 (iv) any other information required by the declaration to be  
25 included in the statement; and
  - 26 (b) if required by the declaration—give a copy of the statement  
27 to the complainant or, if the complaint is a representative  
28 complaint, to each class member identified as affected by the  
29 determination, in the manner specified by the declaration;  
30 and
  - 31 (c) if required by the declaration—publish, or otherwise  
32 communicate, the statement in the manner specified by the  
33 declaration; and
  - 34 (d) give the Commissioner, within 14 days after the end of the  
35 period specified in the declaration, evidence that the actions

1 required by paragraphs (b) and (c) were taken in accordance  
2 with this section and the declaration.

3 (2) The matters specified by the Commissioner for the purposes of  
4 subsection (1) must be reasonable and appropriate.

5 **34 Division 3 of Part V (heading)**

6 Repeal the heading, substitute:

7 **Division 3—Enforcement of determinations**

8 **35 At the end of section 55**

9 Add:  
10 ; and (d) must prepare and publish, or otherwise communicate, a  
11 statement in accordance with a declaration included in the  
12 determination under subparagraph 52(1)(b)(ia) or  
13 paragraph 52(1A)(ba) and section 52A.

14 **36 At the end of section 58**

15 Add:  
16 ; and (d) must prepare and publish, or otherwise communicate, a  
17 statement in accordance with a declaration included in the  
18 determination under subparagraph 52(1)(b)(ia) or  
19 paragraph 52(1A)(ba) and section 52A.

20 **37 At the end of section 59**

21 Add:  
22 ; and (d) the preparation, publishing or communicating of a statement  
23 in accordance with a declaration included in the  
24 determination under subparagraph 52(1)(b)(ia) or  
25 paragraph 52(1A)(ba) and section 52A.

26 **38 Subsection 66(1)**

27 Repeal the subsection, substitute:

28 *Basic contravention*

29 (1) A person contravenes this subsection if:

- 1 (a) the person is required to give information, answer a question  
2 or produce a document or record under this Act; and  
3 (b) the person refuses or fails to do so.  
4 Civil penalty: 60 penalty units.

5 **39 After subsection 66(1)**

6 Insert:

7 *Multiple contraventions*

8 (1AA) A person commits an offence if:

- 9 (a) the person is a corporation; and  
10 (b) the person engages in conduct that constitutes a system of  
11 conduct or a pattern of behaviour; and  
12 (c) the system of conduct or pattern of behaviour results in 2 or  
13 more contraventions of subsection (1).

14 Penalty: 300 penalty units.

15 **40 Subsection 66(1B)**

16 After “(1)”, insert “or (1AA)”.

17 **41 Subsection 66(1B) (note)**

18 Repeal the note, substitute:

19 Note: A person who wishes to rely on this subsection bears an evidential  
20 burden in relation to the matter in this subsection: see  
21 subsection 13.3(3) of the *Criminal Code* and section 96 of the  
22 Regulatory Powers Act.

23 **42 Paragraph 67(b)**

24 Omit “, whether or not pursuant to a requirement under section 44”.

25 **43 Subsection 70(1)**

26 Omit “is not entitled to require”, substitute “must not exercise a power  
27 under this Act that requires”.

28 **44 After Division 1 of Part VIB**

29 Insert:

1 **Division 1A—Infringement notices**

2 **80UB Infringement notices**

3 *Provisions subject to an infringement notice*

4 (1) Subsection 66(1) of this Act is subject to an infringement notice  
5 under Part 5 of the Regulatory Powers Act.

6 Note: Part 5 of the Regulatory Powers Act creates a framework for using  
7 infringement notices in relation to provisions.

8 *Infringement officer*

9 (2) For the purposes of Part 5 of the Regulatory Powers Act, each of  
10 the following is an infringement officer in relation to the provision  
11 mentioned in subsection (1):

12 (a) the Commissioner;

13 (b) a member of the staff of the Commissioner who holds, or is  
14 acting in, an office or position that is equivalent to an SES  
15 employee.

16 *Relevant chief executive*

17 (3) For the purposes of Part 5 of the Regulatory Powers Act, the  
18 Commissioner is the relevant chief executive in relation to the  
19 provision mentioned in subsection (1).

20 *Extension to external Territories*

21 (4) Part 5 of the Regulatory Powers Act, as that Part applies in relation  
22 to the provision mentioned in subsection (1), extends to every  
23 external Territory.

24 **45 Application of amendments**

25 (1) Subsection 59D(1) of the *Australian Communications and Media*  
26 *Authority Act 2005*, as amended by this Schedule, applies in relation to  
27 authorised disclosure information acquired by the ACMA before or  
28 after the commencement of this item.

- 1 (2) Subsection 29(2) of the *Australian Information Commissioner Act 2010*,  
2 as amended by this Schedule, applies in relation to information acquired  
3 before or after the commencement of this item.
- 4 (3) Section 13G of the *Privacy Act 1988*, as amended by this Schedule,  
5 does not apply in relation to an act done, or a practice engaged in,  
6 before the commencement of this item.
- 7 (4) Paragraphs 26WK(3)(c) and 26WR(4)(c) of the *Privacy Act 1988*, as  
8 amended by this Schedule, apply in relation to statements prepared after  
9 the commencement of this item.
- 10 (5) A notice may be given under section 26WU of the *Privacy Act 1988*, as  
11 added by this Schedule, in relation to an actual or suspected eligible  
12 data breach that occurred, or may have occurred, before or after the  
13 commencement of this item.
- 14 (6) Section 33A of the *Privacy Act 1988*, as added by this Schedule, applies  
15 in relation to the sharing of information or documents after the  
16 commencement of this item, whether the information or documents  
17 were obtained by the Commissioner before or after that commencement.
- 18 (7) Section 33B of the *Privacy Act 1988*, as added by this Schedule, applies  
19 in relation to the disclosure of information after the commencement of  
20 this item, whether the information was obtained by the Commissioner  
21 before or after that commencement.
- 22 (8) Section 33C of the *Privacy Act 1988*, as amended by this Schedule,  
23 applies in relation to:  
24 (a) assessments started before the commencement of this item  
25 but not concluded at that commencement; and  
26 (b) assessments started after that commencement.
- 27 (9) Section 52 of the *Privacy Act 1988*, as amended by this Schedule,  
28 applies in relation to:  
29 (a) the investigation of complaints that started before the  
30 commencement of this item but not finally dealt with at that  
31 commencement; and  
32 (b) the investigation of complaints that started after that  
33 commencement.

- 1 (10) Subsection 52(5A) of the *Privacy Act 1988*, as inserted by this  
2 Schedule, applies in relation to determinations made by the  
3 Commissioner before or after the commencement of this item.  
4

(113/22)

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