

## TASMANIA

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# PERSONAL INFORMATION PROTECTION AMENDMENT BILL 2009

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# **PERSONAL INFORMATION PROTECTION AMENDMENT BILL 2009**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*  
15 October 2009

*(Brought in by the Minister for Justice, the Honourable  
Larissa Tahireh Giddings)*

## **A BILL FOR**

### **An Act to amend the *Personal Information Protection Act 2004***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Personal Information Protection Amendment Act 2009*.

#### **2. Commencement**

This Act commences on a day to be proclaimed.

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**3. Principal Act**

In this Act, the *Personal Information Protection Act 2004*\* is referred to as the Principal Act.

**4. Long title amended**

The long title of the Principal Act is amended by inserting “, **correction**” after “**use**”.

**5. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

- (a) by omitting “section 28(1) of the *Freedom of Information Act 1991*” from the definition of “law enforcement information” and substituting “section 30 of the *Right to Information Act 2009*”;
- (b) by omitting the definition of “personal information custodian” and substituting the following definition:

**“personal information custodian”**  
means any of the following:

- (a) a public authority;
- (b) any body, organisation or person who has entered into a personal

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information contract  
relating to personal  
information;

(c) a prescribed body;

(c) by inserting the following definition after the definition of “personal information protection principles”:

**“public authority”** has the same meaning as in the *Right to Information Act 2009*;

(d) by omitting the definition of “public sector body”;

(e) by omitting “individual.” from paragraph (b) of the definition of “sensitive information” and substituting “individual;”;

(f) by inserting the following definition after the definition of “sensitive information”:

**“State Archivist”** has the same meaning as in the *Archives Act 1983*.

**6. Sections 3A and 3B inserted**

After section 3 of the Principal Act, the following sections are inserted in Part 1:

**3A. Reference to personal information in Part 3A and Schedule 1**

In Part 3A and clause 6 of Schedule 1, a reference to personal information of a person includes the personal information of a deceased person, and rights given by this Act in respect of the personal information of a person are, where the person is a deceased person, to be taken to be rights that may be exercised in respect of that personal information by the next-of-kin of that person.

**3B. Access to information of a medical or psychiatric nature**

If –

- (a) a request is made to a personal information custodian for access to information of a medical or psychiatric nature concerning the person making the request; and
- (b) it appears to the personal information custodian that the provision to that person of access to the information might be prejudicial to the physical or mental health or wellbeing of that person –

the personal information custodian may direct that access to the information must not be provided to the person who made the request but must instead be provided

to a legally qualified medical practitioner nominated by that person and approved by the personal information custodian.

**7. Section 12 amended (Use of basic information)**

Section 12(a) of the Principal Act is amended by omitting “public sector body” and substituting “public authority”.

**8. Part 3A inserted**

After section 17 of the Principal Act, the following Part is inserted:

**PART 3A – AMENDMENT OF PERSONAL INFORMATION**

**17A. Person may request amendment of information**

If information of a person is held or used by a personal information custodian, the person can request the amendment of any part of that information if it is incorrect, incomplete, out of date or misleading.

**17B. Form of request for amendment of information**

A request under section 17A is to –

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- (a) be in writing and addressed to the personal information custodian; and
- (b) specify an address to which a notice under section 17F is to be sent; and
- (c) give particulars of the information the person believes is incomplete, incorrect, out of date or misleading; and
- (d) specify the amendments that the person wants made to that information.

**17C. Personal information custodian may amend information**

If, following receipt of a request made under section 17A, a personal information custodian decides to amend information, the personal information custodian may make the amendment by –

- (a) altering the information; or
- (b) adding an appropriate notation to it.

**17D. Notation to be added**

If a personal information custodian amends information by adding a notation to it, the notation must –

- (a) specify the way in which the information is incomplete, incorrect, out of date or misleading; and
- (b) if the information is claimed to be out of date, set out the information required to bring it up to date.

**17E. Time within which personal information custodian must notify claimant**

A personal information custodian must take all reasonable steps to enable a person to be notified of a decision on a request made under section 17A as soon as practicable, but in any case not later than 20 working days after the request was received by or on behalf of the personal information custodian.

**17F. Reasons to be given**

- (1) If, in relation to a request made under section 17A, a decision is made not to amend the information in the way requested, the personal information

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custodian that received the request must give the applicant written notice of the decision.

- (2) Notice given under subsection (1) is to –
- (a) state the reasons for the decision; and
  - (b) state the name and designation of the person who made the decision; and
  - (c) inform the applicant –
    - (i) of the applicant's right to make a complaint about the decision; and
    - (ii) that the Ombudsman is the authority to whom a complaint can be made; and
    - (iii) of the time within which the complaint must be made.

**17G. Requirement for notation**

If a personal information custodian decides to refuse to amend information pursuant to a request made under section 17A, the person who made the request may, at any time, by written notice, require the personal information

custodian to add to the information a notation –

- (a) specifying the respects in which the information is claimed by the applicant to be incomplete, incorrect, out of date or misleading; and
- (b) if the information is claimed to be out of date, setting out the information it is claimed is required to bring it up to date.

**17H. Notice to be added to information**

If a notice is given to a personal information custodian under section 17G, the personal information custodian must ensure –

- (a) that a notation as required by the notice is added to the information; and
- (b) that, if the information to which the notation relates is disclosed to a person (including another personal information custodian), there is also furnished to that person a statement –
  - (i) stating that the person to whom the information relates claims that it is

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incomplete, incorrect, out of date or misleading, as the case may be; and

(ii) giving particulars of the notation; and

(iii) if the personal information custodian considers it appropriate to do so, giving the reasons why the personal information custodian did not amend the information.

**17I. How amendments to be made**

If a personal information custodian agrees to amend information in accordance with a request made under section 17A, the amendment may take the form of a notation of the original document but no amendment is to be made that –

(a) deletes or expunges the information which has been amended; or

(b) destroys the document –

unless the State Archivist agrees.

**9. Section 18 amended (Making of complaints)**

Section 18 of the Principal Act is amended as follows:

- (a) by inserting in subsection (5) “, other than a complaint about a decision to refuse a request to amend personal information made in accordance with Part 3A,” after “A complaint”;
- (b) by inserting the following subsection after subsection (5):

(5A) A complaint about a decision to refuse a request to amend personal information made in accordance with Part 3A must be made within 20 working days of the date on which the notice of the decision is given under section 17F(1).

**10. Schedule 1 amended (Personal Information Protection Principles)**

Clause 6 of Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting subclause (1) and substituting the following subclause:
  - (1) If a personal information custodian holds personal information about an individual,

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the personal information  
custodian –

(a) may provide that  
individual with access to  
his or her personal  
information on receipt of  
a written request from the  
individual for access to  
his or her personal  
information; or

(b) if the personal  
information custodian –

(i) notifies the  
individual of a  
decision to refuse  
a request under  
paragraph (a); or

(ii) does not respond  
to a request under  
paragraph (a)  
within 20 working  
days –

the personal information  
custodian, on receipt of a  
further written request  
from the individual for  
access to his or her  
personal information,  
must provide the  
individual with access to

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his or her personal  
information as if –

- (iii) the written request were an application for assessed disclosure of information under section 13 of the *Right to Information Act 2009*; and
  - (iv) the personal information custodian were subject to that Act; and
  - (v) a reference in that Act to a public authority or a Minister were a reference to a personal information custodian.
- (b) by omitting from subclause (2) “Part 4 of the *Freedom of Information Act 1991*” and substituting “Part 3A”;
- (c) by omitting from subclause (2) “, whether or not the personal information custodian is subject to that Act, as if a

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reference to an agency or Minister in that Act were a reference to a personal information custodian”.

**11. Repeal of Act**

This Act is repealed on the ninetieth day from the day on which it commences.