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TRADE SECRETS AND PRIVACY

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Commentary

On 28 January 2016, the Australian Prudential Regulation Authority (APRA) made a determination pursuant to s 57(2)(b) of the *Australian Prudential Regulation Authority Act 1998* (Cth) that specified parts of the superannuation reporting standards listed in the determination do not contain confidential information. See at [30.4385].

An application under s 464JB of the *Crimes Act 1958* (Vic) by Nine Network Australia for permission to publish an audio-visual recording of an interview between police and "Russell Street bomber" Craig Minogue in 2012 was rejected by the Supreme Court of Victoria in 2016: *Re Nine Network Australia Pty Ltd* [2016] VSC 158. See at [80.1020].

Where an interlocutory application is made for the production of confidential information, a court must weigh up the benefits and potential detriment to each party: *Gram Engineering Pty Ltd v BlueScope Steel Pty Ltd (No 2)* [2016] FCA 452; *DHR International Inc v Challis (No 4)* [2016] NSWSC 610; *DC Payments Pty Ltd v Next Payments Pty Ltd* [2016] VSC 315. See at [90.1245].

In *APT Technology Pty Ltd v Aladesaye (No 2)* [2016] FCA 203, Foster J declined to continue a springboard injunction which had been granted previously on an interlocutory basis. See at [90.2160].

On 3 March 2016, the Standing Committee on Law and Justice of the New South Wales Legislative Council published a report on remedies for the serious invasion of privacy in New South Wales. See at [300.110].

Further reforms to the *Telecommunications (Interception and Access) Act 1979* (Cth), and also the *Surveillance Devices Act 2004* (Cth), were contained in the *Counter-Terrorism Legislation Amendment Bill (No 1) 2015* (Cth). The Bill proposed amendments to a range of Commonwealth legislation to strengthen Australia's national security and counter-terrorism legislation. See at [300.5380].

In March 2016, the OECD revised its *Recommendation on Consumer Protection for E-commerce*, seeking to modernise its approach to fair business practices, information disclosures payment protections, unsafe products, dispute resolution, enforcement and education. See at [600.540].

In *"IQ" and NRMA Insurance, Insurance Australia Ltd* [2016] AICmr 36, the Privacy Commissioner found that an insurer breached the complainant's privacy by disclosing the complainant's insurance records to his spouse. See at [610.1570].

National Privacy Principle 4.1, which corresponds with APP 11.1, was considered by the Privacy Commissioner in *"HS" and AMP Life Ltd* [2015] AICmr 81. See at [610.1620].

The full text of the *Tax File Number Guidelines 2011* has been added at [610.2010].

In 2014, the Office of the Australian Information Commissioner published the *Privacy (Market and Social Research) Code 2014*. The 2014 Code describes how the Australian Privacy Principles are to be applied and complied with by AMSRO members in relation to the collection, retention, use and disclosure of personal information about the subjects of, and participants in, market and social research. The Code effectively tailors the APPs to the research context, whilst imposing some additional requirements. See at [610.2250]. Key elements of the Code are set out at [610.2251] and see [610.2252] for the full text of Pt E of the *Privacy (Market and Social Research) Code 2014*.

In February 2016, the Australian Communications and Media Authority and the New Zealand Department of Internal Affairs announced the signing of a revamped Memorandum of Understanding aimed at the provision of mutual assistance in respect of anti-spam activity. See at [610.2670].

In June 2016, the Australian Signals Directorate released its *Australian Government Information Security Manual Principles*. The Principles are summarised at [610.3036].

The concept of "Big Data" is explored in [610.3037].

A report released by the Bureau of Communications and Research in April 2016, entitled *Open Government Data and Why It Matters*, identified that the direct benefits of unlocking government data to focus on the development of new and customised products and services for business, government and the community, as well as enhanced job creation and improved tax revenues. See at [610.3037.1].

In April 2016, the Productivity Commission released an issues paper entitled *Data Availability and Use*. The issues paper was released in response to terms of reference from the Treasurer requiring the Commission to conduct a broad ranging investigation into the benefits and costs of options for improving availability and use of data. See at [610.3037.2].

In June 2016, the Productivity Commission released a Research Paper entitled *Digital Disruption: What Do Governments Need to Do?* The Research Paper reflected expert opinion on digital disruption with the objective of informing governments about the policy tasks posed by digital technologies. See at [610.3037.3].

In May 2016, the OAIC produced a draft *Guide to Big Data and the Australian Privacy Principles*. The guide emphasised that privacy issues can be avoided to the extent that data can be de-identified and not classifiable as "personal information" within the meaning of the *Privacy Act 1988* (Cth). See at [610.3037.4].

On 11 May 2016, the Victorian Civil & Administrative Tribunal held that the inadvertent disclosure by a Department of Health and Human Services employee of the complainant's case notes to a third party did not constitute a breach of Information Privacy Principle (IPP) 2 (use and disclosure of personal information) or IPP 4 (data security): *TSJ and Department of Health and Human Services (Vic)* [2016] VCAT 687. See at [610.3970].

The *My Health Records Act 2012* (Cth) is supported by the *My Health Records Rule 2016* (Cth). The Rule introduces access control mechanisms and prescribes requirements for the secure operation of the system, identity verification and other participation requirements affecting healthcare provider organisations, contracted service providers, repository operators and portal operators. See at [610.5930].

In proceedings initiated in 2016 against the Department of Education and Training under the *Health Records Act 2001* (Vic), the Department failed to prevent the disclosure of documents to the applicant which the Department asserted were the subject of legal professional privilege:

Harrison v Department of Education and Training (Human Rights) [2016] VCAT 913. See at [610.6350].

Key extracts from the Privacy Shield Principles published by the European Commission on 29 February 2016 is set out at [630.1010].

Legislation

Data-matching Program (Assistance and Tax) Act 1990 (Cth)

Amending Legislation

The *Data-matching Program (Assistance and Tax) Act 1990* (Cth) has been amended by the *Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015* (Cth) (Act 126, 2015). Schedule 1 Pt 1 commenced on 5 March 2016.

Purpose of Amendments

The purpose of the amending Act relates to matters such as updating references to the Legislative Instruments Act to refer to the Legislation Act, as the Legislative Instruments Act will be renamed.

Do Not Call Register Act 2006 (Cth)

Amending Legislation

The *Do Not Call Register Act 2006* (Cth) has been amended by the *Statute Law Revision Act (No 1) 2016* (Cth) (Act 4, 2016). Schedule 6 commenced on 10 March 2016.

Purpose of Amendments

The purpose of the amending Act is to correct technical errors that have occurred in laws as a result of drafting and clerical mistakes and to repeal spent or obsolete provisions and Acts.

Amending Legislation

The *Do Not Call Register Act 2006* (Cth) has also been amended by the *Territories Legislation Amendment Act 2016* (Cth) (Act 33, 2016). Schedule 5 commenced on 1 July 2016.

Purpose of Amendments

The purpose of the amending Act is to expressly provide that they do not extend to Norfolk Island.

Privacy Act 1988 (Cth)

Amending Legislation

The *Privacy Act 1988* (Cth) has been amended by the *Norfolk Island Legislation Amendment Act 2015* (Cth) (Act 59, 2015). Schedule 2 Pt 1 commenced on 1 July 2016.

Purpose of Amendments

The purpose of the amending Act is to remove redundant references to the crown in the right of Norfolk Island.

Amending Legislation

The *Privacy Act 1988* (Cth) has been amended by the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Cth) (Act 62, 2015). Schedule 2 commenced on 16 June 2016.

Purpose of Amendments

The purpose of the amending Act is to update references to managing biosecurity risk under the Biosecurity Bill and substitute references to Quarantine Act with Biosecurity Act.

Amending Legislation

The *Privacy Act 1988* (Cth) has been amended by the *Australian Crime Commission Amendment (National Policing Information) Act 2016* (Cth) (Act 45, 2016) which commenced on 1 July 2016.

Purpose of Amendments

The purpose of the amending Act is to repeal reference to the CrimTrac Agency from the definition of "enforcement body" in the Privacy Act, as CrimTrac will no longer exist as an independent agency. All of its functions will be absorbed by the ACC through Sch 1 of this Bill.

Spam Act 2003 (Cth)

Amending Legislation

The *Spam Act 2003* (Cth) has been amended by the *Statute Law Revision Act (No 1) 2016* (Cth) (Act 4, 2016). Schedule 6 commenced on 10 March 2016.

Purpose of Amendments

The purpose of the amending Act is to correct technical errors that have occurred in laws as a result of drafting and clerical mistakes and to repeal spent or obsolete provisions and Acts.

Telecommunications Act 1997 (Cth)

Amending Legislation

The *Telecommunications Act 1997* (Cth) has been amended by the *Statute Law Revision Act (No 1) 2016* (Cth) (Act 4, 2016). Schedule 6 commenced on 10 March 2016.

Purpose of Amendments

The purpose of the amending Act is to correct technical errors that have occurred in laws as a result of drafting and clerical mistakes and to repeal spent or obsolete provisions and Acts.

Privacy Regulation 2013 (Cth)

Amending Legislation

The *Privacy Regulation 2013* (Cth) has been amended by the *Privacy Amendment (External Dispute Resolution Scheme) Regulation 2016* (Cth) (F2016L00707 of 2016). Schedule 1 commenced on 10 May 2016.

Purpose of Amendments

The purpose of the amending instrument is to prescribe utilities in Tasmania, the Australian Capital Territory and the Northern Territory as exempt from the EDR obligation until 1 January 2017. This time-limited exemption enables those utilities to

continue to access the credit reporting system whilst necessary legislative changes or other arrangements are made.

Privacy and Personal Information Protection Act 1998 (NSW)

Amending Legislation

The *Privacy and Personal Information Protection Act 1998* (NSW) has been amended by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2015* (NSW) (Act 58, 2015). Schedule 3 commenced on 15 January 2016.

Purpose of Amendments

The purpose of the amending Act is to make minor amendments to various Acts and instruments consequent on the enactment of the *Government Sector Employment Act 2013* (NSW).

Amending Legislation

The *Privacy and Personal Information Protection Act 1998* (NSW) has been amended by the *Privacy and Personal Information Protection Amendment (Exemptions Consolidation) Act 2015* (NSW) (Act 69, 2015) which commenced on 1 January 2016 except for Sch 1 item 2 which commenced on 1 April 2016.

Purpose of Amendments

The purpose of the amending Act is to make amendments to allow public sector agencies to disclose personal information to interstate persons or bodies or Commonwealth agencies for certain purposes.

Health Records (Privacy and Access) Act 1997 (ACT)

Amending Legislation

The *Health Records (Privacy and Access) Act 1997* (ACT) has been amended by the *Health Legislation Amendment Act 2016* (ACT) (Act 11, 2016) which commenced on 2 March 2016.

Purpose of Amendments

The purpose of the amending Act is to amend the *Health Records (Privacy and Access) Act 1997* (HRA) to bring the definitions of the HRA in line with the definitions for carer, child, young person and guardian in other legislation. The amendments will also clarify the application of the HRA to records held by the Health Services Commissioner.

Amending Legislation

The *Health Records (Privacy and Access) Act 1997* (ACT) has been amended by the *Protection of Rights (Services) Legislation Amendment Act 2016 (No 2)* (ACT) (Act 13, 2016) which commenced on 1 April 2016.

Purpose of Amendments

The purpose of the amending Act is largely to maintain the existing functions while of the justice related statutory office holders while making reallocations necessary as a result of the new structure for the Human Rights Commission and the Public Trustee and Guardian office.

Information Act 2002 (NT)

Amending Legislation

The *Information Act 2002* (NT) has been amended by the *Information Amendment Act (No 2) 2015* (NT) (Act 29, 2015) which commenced on 1 May 2016.

Purpose of Amendments

The purpose of the amending Act is to transfer jurisdiction for the hearing of complaints to the Northern Territory Civil and Administrative Tribunal and to reform the complaint process to facilitate the hearing of complaints by the Tribunal and to improve the pathway of complaints.

Amending Legislation

The *Information Act 2002* (NT) has been amended by the *Local Court (Related Amendments) Act 2016* (NT) (Act 8, 2016) which commenced on 1 May 2016.

Purpose of Amendments

The purpose of the amending Act is to ensure uniformity of terminology with the *Local Court (Repeals and Related Amendments) Act 2016* and make minor drafting amendments as required.