

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Privacy Amendment (Public Health Contact Information) Bill 2020

No. , 2020

(Attorney-General)

**A Bill for an Act to amend the *Privacy Act 1988*,
and for related purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Amendments		3
	<i>Privacy Act 1988</i>	3
Schedule 2—Repeals		20
	<i>Privacy Act 1988</i>	20

EXPOSURE DRAFT

1 **A Bill for an Act to amend the *Privacy Act 1988*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Privacy Amendment (Public Health Contact*
6 *Information) Act 2020*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2	At the end of 90 days after the day determined under subsection 94Y(1) of the <i>Privacy Act 1988</i> as amended by this Act.	

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.

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9 repealed as set out in the applicable items in the Schedule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.

Schedule 1—Amendments

Privacy Act 1988

1 Subsection 6(1)

Insert:

contact tracing has the meaning given by subsection 94D(6).

COVID app data has the meaning given by subsection 94D(5).

COVIDSafe means an app that is made available or has been made available (including before the commencement of this Part), by or on behalf of the Commonwealth, for the purpose of facilitating contact tracing.

COVIDSafe user, in relation to a mobile telecommunications device, means the person whose registration data was uploaded from the device when the user was registered through COVIDSafe.

data store administrator means:

- (a) for the purposes of a provision of Part VIIIA specified in a determination under section 94Z—the agency specified in that determination (but not to the extent of any limitation in that determination); or
- (b) otherwise—the Health Department.

former COVIDSafe user has the meaning given by subsection 94N(2).

Health Department has the same meaning as in the *Biosecurity Act 2015*.

Health Minister means the Minister administering the *National Health Act 1953*.

in contact: a person has been *in contact* with another person if the operation of COVIDSafe in relation to the person indicates that the person may have been in the proximity of the other person.

EXPOSURE DRAFT

Schedule 1 Amendments

1 *mobile telecommunications device* means an item of customer
2 equipment (within the meaning of the *Telecommunications Act*
3 *1997*) that is used, or is capable of being used, in connection with a
4 public mobile telecommunications service (within the meaning of
5 that Act).

6 *National COVIDSafe Data Store* means the database administered
7 by or on behalf of the Commonwealth for the purpose of contact
8 tracing.

9 *registration data*, of a person, means the information about the
10 person that was uploaded from a mobile telecommunications
11 device when the person was registered through COVIDSafe.

12 *State or Territory health authority* means the State or Territory
13 authority responsible for the administration of health services in a
14 State or Territory.

15 *State or Territory privacy authority* means a State or Territory
16 authority that has functions to protect the privacy of individuals
17 (whether or not the authority has other functions).

18 **2 After Part VIII**

19 Insert:

20 **Part VIIIA—Public health contact information**

21 **Division 1—Preliminary**

22 **94A Simplified outline of this Part**

23 There are several serious offences relating to COVID app data and
24 COVIDSafe. They deal with:

- 25 • non-permitted collection, use or disclosure relating to COVID
26 app data; and
- 27 • uploading relating to COVID app data without consent; and
- 28 • retaining or disclosing uploaded data outside Australia; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

• decrypting encrypted COVID app data; and

• requiring participation in relation to COVIDSafe.

Other specific obligations relate to deletion of data and what is to happen after the COVIDSafe data period has ended (as determined by the Health Minister).

The general privacy law provided by this Act is applied to the requirements of this Part, in particular by providing for:

- COVID app data to be personal information and breaches of this Part to be interferences with privacy; and
- the Commissioner’s role in dealing with eligible data breaches, making assessments and conducting investigations in relation to this Part; and
- the Commissioner to refer matters to, and share information or documents with, State or Territory privacy authorities; and
- this Act to apply to State or Territory health authorities in relation to COVID app data.

This Part overrides any Australian law other than this Part.

18
19
20
21
22
23
24
25
26
27

94B Object of this Part

The object of this Part is to assist in preventing and controlling the entry, emergence, establishment or spread of the coronavirus known as COVID-19 into Australia or any part of Australia by providing stronger privacy protections for COVID app data and COVIDSafe users in order to:

- (a) encourage public acceptance and uptake of COVIDSafe; and
- (b) enable faster and more effective contact tracing.

94C Additional constitutional bases of this Part

Without limiting section 12B, this Part also relies on:

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (a) the Commonwealth's legislative powers under paragraph
2 51(xi) (quarantine) of the Constitution; and
3 (b) the Commonwealth's legislative powers with respect to
4 matters that are peculiarly adapted to the government of a
5 nation and cannot otherwise be carried out for the benefit of
6 the nation; and
7 (c) the Commonwealth's legislative powers under paragraph
8 51(xxxix) (matters incidental) of the Constitution.

9 **Division 2—Offences relating to COVID app data and** 10 **COVID safe**

11 **94D Collection, use or disclosure of COVID app data**

- 12 (1) A person commits an offence if:
13 (a) the person collects, uses or discloses data; and
14 (b) the data is COVID app data; and
15 (c) the collection, use or disclosure is not permitted under this
16 section.
- 17 Penalty: Imprisonment for 5 years or 300 penalty units, or both.
- 18 (2) The collection, use or disclosure is permitted if:
19 (a) the person is employed by, or in the service of, a State or
20 Territory health authority, and the collection, use or
21 disclosure is for the purpose of, and only to the extent
22 required for the purpose of, undertaking contact tracing; or
23 (b) the person is an officer, employee or contractor of the data
24 store administrator, and the collection, use or disclosure is for
25 the purpose of, and only to the extent required for the
26 purpose of:
27 (i) enabling contact tracing by persons employed by, or in
28 the service of, State or Territory health authorities; or
29 (ii) ensuring the proper functioning, integrity or security of
30 COVIDSafe or of the National COVIDSafe Data Store;
31 or
32 (c) in the case of a collection or disclosure of COVID app data—
33 the collection or disclosure is for the purpose of, and only to
34 the extent required for the purpose of:

EXPOSURE DRAFT

- 1 (i) transferring encrypted data between mobile
2 telecommunications devices through COVIDSafe; or
3 (ii) transferring encrypted data, through COVIDSafe, from
4 a mobile telecommunications device to the National
5 COVIDSafe Data Store; or
6 (d) the collection, use or disclosure is for the purpose of, and
7 only to the extent required for the purpose of, the
8 Commissioner performing the functions or exercising the
9 powers of the Commissioner under or in relation to this Part;
10 or
11 (e) the collection, use or disclosure is for the purpose of, and
12 only to the extent required for the purpose of:
13 (i) investigating whether this Part has been contravened; or
14 (ii) prosecuting a person for an offence against this Part; or
15 (f) in the case of a use of COVID app data by the data store
16 administrator—the use is for the purpose of, and only to the
17 extent required for the purpose of, producing de-identified
18 statistical information about the total number of registrations
19 through COVIDSafe.
- 20 (3) Subsection (1) does not apply to the collection of COVID app data
21 if:
22 (a) the collection of the COVID app data;
23 (i) occurs as part of the collection, at the same time, of data
24 that is not COVID app data (*non-COVID app data*);
25 and
26 (ii) is incidental to the collection of the non-COVID app
27 data; and
28 (b) the collection of the non-COVID app data is permitted under
29 an Australian law; and
30 (c) the COVID app data:
31 (i) is deleted as soon as practicable after the person
32 becomes aware that it had been collected; and
33 (ii) is not otherwise accessed, used or disclosed by the
34 person after it was collected.
- 35 Note: A defendant bears an evidential burden in relation to the matters in
36 subsection (3): see subsection 13.3(3) of the *Criminal Code*.
-

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (4) The admissibility of the non-COVID app data as evidence in any
2 proceedings is not affected by the incidental collection or
3 subsequent deletion of the COVID app data as required by
4 subparagraph (3)(c)(i).
- 5 (5) **COVID app data** is data relating to a person that:
6 (a) has been collected or generated (including before the
7 commencement of this Part) through the operation of
8 COVIDSafe; and
9 (b) is stored, or has been stored (including before the
10 commencement of this Part), on a mobile
11 telecommunications device.
- 12 However, it does not include:
13 (c) information obtained, from a source other than directly from
14 the National COVIDSafe Data Store, in the course of
15 undertaking contact tracing by a person employed by, or in
16 the service of, a State or Territory health authority; or
17 (d) information that is de-identified.
- 18 (6) **Contact tracing** is the process of identifying persons who have
19 been in contact with a person who has tested positive for the
20 coronavirus known as COVID-19, and includes:
21 (a) notifying a person that the person has been in contact with a
22 person who has tested positive for the coronavirus known as
23 COVID-19; and
24 (b) notifying a person who is a parent, guardian or carer of
25 another person that the other person has been in contact with
26 a person who has tested positive for the coronavirus known
27 as COVID-19; and
28 (c) providing information and advice to a person who:
29 (i) has tested positive for the coronavirus known as
30 COVID-19; or
31 (ii) is a parent, guardian or carer of another person who has
32 tested positive for the coronavirus known as
33 COVID-19; or
34 (iii) has been in contact with a person who has tested
35 positive for the coronavirus known as COVID-19; or

- 1 (iv) is a parent, guardian or carer of another person who has
2 been in contact with a person who has tested positive for
3 the coronavirus known as COVID-19.

4 **94E COVID app data on mobile telecommunications devices**

5 A person commits an offence if:

- 6 (a) the person uploads, or causes to be uploaded, data from a
7 mobile telecommunications device to the National
8 COVIDSafe Data Store; and
9 (b) the data is COVID app data; and
10 (c) consent to the upload has not been given by:
11 (i) the COVIDSafe user in relation to that device; or
12 (ii) if the COVIDSafe user is unable to give consent—a
13 parent, guardian or carer of the COVIDSafe user; or
14 (iii) if the COVIDSafe user has requested a parent, guardian
15 or carer of the COVIDSafe user to act on the
16 COVIDSafe user's behalf—that parent, guardian or
17 carer.

18 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

19 **94F COVID app data in the National COVIDSafe Data Store**

20 (1) A person commits an offence if:

- 21 (a) the person retains data on a database outside Australia; and
22 (b) the data is COVID app data that has been uploaded from a
23 mobile telecommunications device to the National
24 COVIDSafe Data Store.

25 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

26 (2) A person commits an offence if:

- 27 (a) the person discloses data to another person outside Australia;
28 and
29 (b) the data is COVID app data that has been uploaded from a
30 mobile telecommunications device to the National
31 COVIDSafe Data Store; and
32 (c) the person is not a person who:

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (i) is employed by, or in the service of, a State or Territory
2 health authority; and
3 (ii) discloses the data for the purpose of, and only to the
4 extent required for the purpose of, undertaking contact
5 tracing.

6 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

7 **94G Decrypting COVID app data**

8 A person commits an offence if:

- 9 (a) the person decrypts encrypted data; and
10 (b) the data is COVID app data that is stored on a mobile
11 telecommunications device.

12 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

13 **94H Requiring the use of COVIDSafe**

14 (1) A person commits an offence if the person requires another person
15 to:

- 16 (a) download COVIDSafe to a mobile telecommunications
17 device; or
18 (b) have COVIDSafe in operation on a mobile
19 telecommunications device; or
20 (c) consent to uploading COVID app data from a mobile
21 telecommunications device to the National COVIDSafe Data
22 Store.

23 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

24 (2) A person commits an offence if the person:

- 25 (a) refuses to enter into, or continue, a contract or arrangement
26 with another person (including a contract of employment); or
27 (b) takes adverse action (within the meaning of the *Fair Work*
28 *Act 2009*) against another person; or
29 (c) refuses to allow another person to enter:
30 (i) premises that are otherwise accessible to the public; or
31 (ii) premises that the other person has a right to enter; or

- 1 (d) refuses to allow another person to participate in an activity;
2 or
3 (e) refuses to receive goods or services from another person; or
4 (f) refuses to provide goods or services to another person;
5 on the ground that, or on grounds that include the ground that, the
6 other person:
7 (g) has not downloaded COVIDSafe to a mobile
8 telecommunications device; or
9 (h) does not have COVIDSafe in operation on a mobile
10 telecommunications device; or
11 (i) has not consented to uploading COVID app data from a
12 mobile telecommunications device to the National
13 COVIDSafe Data Store.

14 Penalty: Imprisonment for 5 years or 300 penalty units, or both.

15 **94J Extended geographical jurisdiction for offences**

16 Section 15.1 (extended geographical jurisdiction—category A) of
17 the *Criminal Code* applies to all offences against this Division.

18 **Division 3—Other obligations relating to COVID app data** 19 **and COVIDSafe**

20 **94K COVID app data not to be retained**

21 The data store administrator must take all reasonable steps to
22 ensure that COVID app data is not retained on a mobile
23 telecommunications device:

- 24 (a) for more than 21 days; or
25 (b) in any case in which it is not possible to comply with
26 paragraph (a) within 21 days—for longer than the shortest
27 practicable period.

28 **94L Deletion of registration data on request**

- 29 (1) If the COVIDSafe user in relation to a mobile telecommunications
30 device, or a parent, guardian or carer of that person, requests the
31 data store administrator to delete any registration data of the person

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 that has been uploaded from the device to the National COVIDSafe
2 Data Store, the data store administrator:
- 3 (a) must take all reasonable steps to delete the data from the
4 National COVIDSafe Data Store as soon as practicable; and
5 (b) if it not practicable to delete the data immediately—must not
6 use or disclose the data for any purpose.
- 7 (2) A request under subsection (1) may only be made by a parent,
8 guardian or carer of the COVIDSafe user if:
- 9 (a) the COVIDSafe user is unable to make a request under
10 subsection (1); or
11 (b) the COVIDSafe user has requested that parent, guardian or
12 carer to act on the COVIDSafe user’s behalf.
- 13 (3) Subsection (1) does not:
- 14 (a) prevent the data store administrator from accessing data for
15 the purpose of, and only to the extent required for the
16 purpose of, confirming that the correct data is being deleted;
17 or
18 (b) require the data store administrator to delete from the
19 National COVIDSafe Data Store data relating to the person
20 that:
- 21 (i) was uploaded from another mobile telecommunications
22 device in relation to which another person is a
23 COVIDSafe user; and
24 (ii) was collected through the other device interacting with
25 the device mentioned in subsection (1).
- 26 (4) This section does not apply to data that is de-identified.

94M Deletion of data received in error

- 28 A person who receives COVID app data in error must, as soon as
29 practicable:
- 30 (a) delete the data; and
31 (b) notify the data store administrator that the person received
32 the data.

1 **94N Effect of deletion of COVIDSafe from a mobile**
2 **telecommunications device**

- 3 (1) The data store administrator must not collect from a person,
4 through a particular mobile telecommunications device, COVID
5 app data relating to the person if the person is a former
6 COVIDSafe user in relation to that device.
- 7 (2) A person is a *former COVIDSafe user*, in relation to a mobile
8 telecommunications device, at a particular time if:
9 (a) COVIDSafe has been deleted from the device in relation to
10 which the person was the COVIDSafe user; and
11 (b) after COVIDSafe was last deleted from that device—
12 COVIDSafe has not been downloaded to that device.

13 **94P Obligations after the end of the COVIDSafe data period**

- 14 (1) After the end of the day determined under subsection 94Y(1), the
15 data store administrator must not:
16 (a) collect any COVID app data; or
17 (b) make COVIDSafe available to be downloaded.
- 18 (2) As soon as reasonably practicable after the end of the day
19 determined under subsection 94Y(1), the data store administrator
20 must:
21 (a) delete all COVID app data from the National COVIDSafe
22 Data Store; and
23 (b) after the deletion, take all reasonable steps to inform all
24 COVIDSafe users (other than former COVIDSafe users) in
25 relation to mobile telecommunications devices that:
26 (i) all COVID app data has been deleted from the National
27 COVIDSafe Data Store; and
28 (ii) COVID app data can no longer be collected; and
29 (iii) they should delete COVIDSafe from their mobile
30 telecommunications devices.

EXPOSURE DRAFT

Schedule 1 Amendments

1 **Division 4—Application of general privacy measures**

2 **94Q COVID app data is taken to be personal information**

3 COVID app data relating to an individual is taken, for the purposes
4 of this Act, to be personal information about the individual.

5 **94R Breach of requirement is an interference with privacy**

6 (1) An act or practice in breach of a requirement of this Part in relation
7 to an individual constitutes an act or practice involving an
8 interference with the privacy of the individual for the purposes of
9 section 13.

10 Note: The act or practice may be the subject of a complaint under section 36.

11 (2) Subsection (1) applies despite subsections 7(1A) and (1B).

12 **94S Breach of requirement may be treated as an eligible data breach**

13 (1) For the purposes of this Act, if the data store administrator, or a
14 State or Territory health authority, breaches a requirement of this
15 Part in relation to COVID app data:

- 16 (a) the breach is taken to be an eligible data breach; and
17 (b) an individual to whom the data relates is taken to be at risk
18 from the eligible data breach.

19 (2) Part IIIC applies in relation to such a breach as if:

- 20 (a) subsection 26WE(3) and sections 26WF, 26WH and 26WJ
21 did not apply in relation to the breach; and
22 (b) Subdivision B of Division 3 of that Part:
23 (i) required the data store administrator, or State or
24 Territory health authority, to notify the Commissioner
25 that there were reasonable grounds to believe that there
26 had been an eligible data breach; and
27 (ii) only required compliance with sections 26WK and
28 26WL in relation to the breach if the Commissioner
29 required the administrator or authority so to comply;
30 and
31 (c) sections 26WN, 26WP, 26WQ, 26WS and 26WT did not
32 apply in relation to the breach.
-

EXPOSURE DRAFT

- 1 (3) Without limiting the circumstances in which the Commissioner
2 may, under subparagraph (2)(b)(ii), require the administrator or
3 authority so to comply, the Commissioner must so require if:
4 (a) the Commissioner is satisfied that the breach may be likely to
5 result in serious harm to any of the individuals to whom the
6 information relates; and
7 (b) subsection (4) does not apply.
- 8 (4) The Commissioner may decide not to require compliance, or to
9 allow an extended period for compliance, if the Commissioner is
10 satisfied on reasonable grounds that requiring compliance, or
11 requiring compliance within the ordinary period for compliance,
12 would not be reasonable in the circumstances, having regard to the
13 following:
14 (a) the public interest;
15 (b) any relevant advice given to the Commissioner by:
16 (i) an enforcement body; or
17 (ii) the Australian Signals Directorate;
18 (c) such other matters (if any) as the Commissioner considers
19 relevant.
- 20 (5) Paragraph (4)(b) does not limit the advice to which the
21 Commissioner may have regard.

22 **94T Commissioner may conduct an assessment relating to COVID**
23 **app data**

- 24 (1) The Commissioner's power under section 33C to conduct an
25 assessment includes the power to conduct an assessment of
26 whether the acts or practices of an entity or a State or Territory
27 authority in relation to COVID app data comply with this Part.
- 28 (2) Without limiting subsection 33C(2), if:
29 (a) the Commissioner is conducting under that subsection an
30 assessment of a matter of a kind mentioned in subsection (1)
31 of this section; and
32 (b) the Commissioner has reason to believe that an entity or a
33 State or Territory authority being assessed has information or
34 a document relevant to the assessment;

EXPOSURE DRAFT

Schedule 1 Amendments

1 the Commissioner may, by written notice, require the entity or
2 authority to give the information or produce the document within
3 the period specified in the notice, which must not be less than 14
4 days after the notice is given to the entity or authority.

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

6 **94U Investigation under section 40 to cease if COVID data offence** 7 **may have been committed**

- 8 (1) This section applies if, in the course of an investigation under
9 section 40, the Commissioner forms the opinion that:
10 (a) an offence against Division 2 of this Part; or
11 (b) an offence against section 6 of the *Crimes Act 1914*, or
12 section 11.1, 11.2, 11.4 or 11.5 of the *Criminal Code*, being
13 an offence that relates to an offence against that Division;
14 may have been committed.
- 15 (2) The Commissioner must:
16 (a) inform the Commissioner of Police or the Director of Public
17 Prosecutions of that opinion; and
18 (b) in the case of an investigation under subsection 40(1), give a
19 copy of the complaint to the Commissioner of Police or the
20 Director of Public Prosecutions, as the case may be; and
21 (c) subject to subsection (3) of this section, discontinue the
22 investigation except to the extent that it concerns matters
23 unconnected with the offence that the Commissioner believes
24 may have been committed.
- 25 (3) If the Commissioner of Police or the Director of Public
26 Prosecutions:
27 (a) has been informed of the Commissioner's opinion under
28 paragraph (2)(a); and
29 (b) decides that the matter will not be, or will no longer be, the
30 subject of proceedings for an offence;
31 the Commissioner of Police or the Director of Public Prosecutions,
32 as the case requires, must give a written notice to that effect to the
33 Commissioner.
- 34 (4) Upon receiving such a notice the Commissioner may continue the
35 investigation discontinued under paragraph (2)(c).
-

1 **94V Referring COVID data matters to State or Territory privacy**
2 **authorities**

3 (1) If:

- 4 (a) a complaint has been made under section 36 about an act or
5 practice that may involve a breach of a requirement of this
6 Part; and
7 (b) before the Commissioner commences, or after the
8 Commissioner has commenced, to investigate the matter, the
9 Commissioner forms the opinion that:
10 (i) the complainant has made, or could have made, a
11 complaint relating to that matter to a State or Territory
12 privacy authority; and
13 (ii) that matter could be more conveniently or effectively
14 dealt with by that State or Territory authority;

15 the Commissioner may decide not to investigate the matter, or not
16 to investigate the matter further.

17 (2) If the Commissioner so decides, the Commissioner must:

- 18 (a) transfer the complaint to that State or Territory authority; and
19 (b) give notice in writing to the complainant stating that the
20 complaint has been so transferred; and
21 (c) give to that State or Territory authority any information or
22 documents that relate to the complaint and are in the
23 possession, or under the control, of the Commissioner.

24 (3) A complaint transferred under subsection (2) is taken, for the
25 purposes of this Act, to have been made to that State or Territory
26 authority.

27 **94W Commissioner may share information with State or Territory**
28 **privacy authorities**

29 (1) Subject to subsection (2), the Commissioner may share information
30 or documents with a State or Territory privacy authority:

- 31 (a) for the purpose of the Commissioner exercising powers, or
32 performing functions or duties under this Act in relation to
33 the requirements of this Part; or
34 (b) for the purpose of the State or Territory privacy authority
35 exercising its powers, or performing its functions or duties.

EXPOSURE DRAFT

Schedule 1 Amendments

- 1 (2) The Commissioner may only share information or documents with
2 a receiving body under this section if:
- 3 (a) the information or documents were acquired by the
4 Commissioner in the course of exercising powers, or
5 performing functions or duties, under this Act; and
- 6 (b) the Commissioner is satisfied on reasonable grounds that the
7 receiving body has satisfactory arrangements in place for
8 protecting the information or documents.
- 9 (3) To avoid doubt, the Commissioner may share information or
10 documents with a State or Territory privacy authority under this
11 section whether or not the Commissioner is transferring a
12 complaint or part of a complaint to the body.

13 **94X Application to State or Territory health authorities**

14 This Act applies in relation to a State or Territory health authority,
15 as if the authority were an organisation, to the extent that the
16 authority deals with, or the activities of the authority relate to,
17 COVID app data.

18 **Division 5—Miscellaneous**

19 **94Y Determining the end of the COVIDSafe data period**

- 20 (1) Subject to subsection (2), the Health Minister must, by notifiable
21 instrument, determine a day if the Health Minister is satisfied that,
22 by that day, use of COVIDSafe:
- 23 (a) is no longer required to prevent or control; or
24 (b) is no longer likely to be effective in preventing or
25 controlling;
- 26 the entry, emergence, establishment or spread of the coronavirus
27 known as COVID-19 into Australia or any part of Australia.
- 28 (2) The Health Minister must not make a determination under
29 subsection (1) unless the Health Minister has consulted, or
30 considered recommendations from, the Commonwealth Chief
31 Medical Officer or the Australian Health Protection Principal
32 Committee.

- 1 (3) The Commonwealth Chief Medical Officer or the Australian
2 Health Protection Principal Committee may recommend to the
3 Health Minister that the Health Minister make a determination
4 under subsection (1).

5 **94Z Agencies may be determined to be data store administrator**

- 6 (1) The Secretary of the Health Department may, by notifiable
7 instrument, determine that a particular agency is the data store
8 administrator for the purposes of one or more provisions of this
9 Part specified in the determination.
- 10 (2) The determination may limit the extent to which the agency is the
11 data store administrator for those purposes.

12 **94ZA COVID App data remains property of the Commonwealth**

- 13 COVID App data is the property of the Commonwealth, and
14 remains the property of the Commonwealth even after it is
15 disclosed to, or used by:
- 16 (a) a State or Territory health authority; or
17 (b) any other person or body (other than the Commonwealth an
18 authority of the Commonwealth).

19 **94ZB Operation of other laws**

- 20 (1) This section cancels the effect of a provision of any Australian law
21 (other than this Part) that, but for this section, would have the
22 effect of permitting or requiring conduct, or an omission to act, that
23 would otherwise be prohibited under this Part.
- 24 (2) However, the cancellation does not apply to a provision of an Act
25 if the provision:
- 26 (a) commences after this Part commences; and
27 (b) expressly permits or requires the conduct or omission despite
28 the provisions of this Part.

EXPOSURE DRAFT

Schedule 2 Repeals

1 **Schedule 2—Repeals**
2

3 Note: The repeals made by this Schedule commence at the end of 90 days after the day
4 determined under subsection 94Y(1) of the *Privacy Act 1988* as amended by this Act.

5 ***Privacy Act 1988***

6 **1 Subsection 6(1)**

7 Repeal the following definitions:

- 8 (a) definition of *contact tracing*;
9 (b) definition of *COVID app data*;
10 (c) definition of *COVIDSafe*;
11 (d) definition of *COVIDSafe user*;
12 (e) definition of *data store administrator*;
13 (f) definition of *former COVIDSafe user*;
14 (g) definition of *Health Department*;
15 (h) definition of *Health Minister*;
16 (i) definition of *in contact*;
17 (j) definition of *mobile telecommunications device*;
18 (k) definition of *National COVIDSafe Data Store*;
19 (l) definition of *registration data*;
20 (m) definition of *State or Territory health authority*;
21 (n) definition of *State or Territory privacy authority*.

22 **2 Part VIIIA**

23 Repeal the Part.