

25 September 2006

Ms Julie Dennett  
Acting Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

**By email: [web.senate@aph.gov.au](mailto:web.senate@aph.gov.au)**

Dear Ms Dennett,

### **Inquiry into Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006**

Thank you for your letter dated 18 September 2006 inviting the Privacy Commissioner to make a submission to the above Inquiry. My comments on the proposed legislation are set out below.

I welcome the proposed amendments to the *Privacy Act 1988*. It is the view of this Office that the current collection, use and disclosure scheme provided for by the Information Privacy Principles (IPPs) and the National Privacy Principles (NPPs) is adequate to facilitate the information flows contemplated by the amendments. Nevertheless, if the experience of organisations working with the IPPs and the NPPs indicates an uncertainty with how either set of the principles should apply in emergency and disaster situations, then this clarity is useful. It is imperative that government agencies and other entities have confidence in responding to emergency situations in a timely manner.

In responding to emergencies or disasters, this Office considers there are three requirements necessary for an organisation to fulfil. They are the inherent requirements of Information Privacy Principle 2.1(d) of the Victorian *Information Privacy Act 2000*. I suggest they should be reflected in the information handling envisaged by the amendments to the Federal Act. The requirements are that:

- the collection, use or disclosure of personal information is motivated by an *intention* to lessen or prevent the threatened harm imposed by the emergency or disaster;
- the collection, use, or disclosure of personal information is *relevant* to managing the emergency or disaster; and
- where personal information is disclosed by one agency or entity to another, the recipient is actually *in a position to act* on the information to manage the emergency or disaster.

### **Meaning of “permitted purpose” – clause 80H**

The meaning of permitted purpose in clause 80H of the Bill is potentially broad in that it captures purposes “that relate to” the Commonwealth’s response to an emergency or disaster. Some of the examples listed refer to identification of individuals “who may be involved” in an emergency or disaster. It is not clear from the examples given whether law enforcement agencies’ investigation of criminal offences thought to give rise to the emergency or disaster, or offences thought to be committed during it, is also included. This matter should be clarified in the Bill. If law enforcement activities are also contemplated, the Bill’s clauses may need further tailoring.

### **Offence to disclose information – clause 80Q**

Clause 80Q creates an offence for inappropriate disclosure but qualifies (in sub-clause 2) that where the person is an organisation, disclosure permitted under an approved privacy code or a NPP is permitted. It is noted that the current disclosure principle in the NPPs is tailored for business activities and is consequentially broad. It includes, for example, use and disclosure for research purposes and for direct marketing. Consideration should be given to restricting the types of uses and disclosures permitted under the NPPs within this framework, as appropriate. To not do so may raise serious data security issues in terms of inappropriate use or disclosure of information.

### **Need for purpose-built retention/disposal provisions**

The new amendments are said to be triggered only by a declaration issued by the Prime Minister upon emergency or disaster. This raises the question about what should happen to data (much of it being delicate in nature) handled under the scheme upon cessation of the emergency or disaster. NPP 4.2 for example requires only that personal information be destroyed or de-identified if it is no longer needed for any of the permitted purposes set out in NPP 2 (see comments on NPP 2 concerning further use/disclosure, above). Consideration should be given to having purpose-built retention and disposal provisions for data collected under the scheme.

Yours sincerely,

HELEN VERSEY  
Acting Privacy Commissioner