Australian Government
Office of the Australian Information Commissioner

Dr Timothy Kendall
Acting Committee Secretary
Community Affairs Legislation Committee
Department of the Senate
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Parliament House
Canberra ACT 2600

Dear Dr Kendall

Human Services Legislation Amendment Bill 2010

The Office of the Australian Information Commissioner (OAIC) welcomes the opportunity to make a submission to the Senate Community Affairs Legislation Committee on the *Human Services Legislation Amendment Bill 2010* (the Bill). The Bill is part of the Government's Service Delivery Reform (SDR) agenda and is of interest to the OAIC in its capacity as the national privacy regulator.

Background

Since February 2010, the OAIC has been providing policy advice and guidance to the Department of Human Services (DHS) on privacy issues arising from the SDR project under a funded Memorandum of Understanding (MOU). The terms of the MOU recognise the benefits of cooperation on privacy issues without compromising the independence of the OAIC (both as an independent adviser to Government and an independent statutory office with regulatory functions).

The OAIC and DHS recognise that SDR represents a significant change in the way that Government services are delivered. This includes the integration of Medicare Australia and Centrelink into DHS itself (the subject of this Bill), but also the new programs and coordination of services that form part of the project. Personal information flows are central to service delivery. The OAIC has therefore welcomed the opportunity to be consulted on SDR from the outset under the MOU with DHS.

Amendments to secrecy provisions

In brief, secrecy provisions are clauses in Government agencies' enabling or operating legislation, which set limits on the way agencies can handle the information they hold. This is sometimes called 'protected information'. It includes, but is not limited to, personal information about individuals. Secrecy provisions apply in addition to the Information Privacy Principles (IPPs) under the *Privacy Act 1988* (Privacy Act).

The Bill seeks to clarify how the secrecy provisions applying to Medicare Australia, Centrelink and other DHS programs will operate, when those provisions across different Acts apply to information held by DHS (including personal information).

To enable the Government's intended integration of Medicare Australia and Centrelink into DHS, the OAIC acknowledges the need to ensure that secrecy provisions can operate effectively, post-integration; and the desirability of replicating current information handling arrangements where there is no substantive case for change.

In light of the new departmental arrangements, and the increased capacity for personal information sharing under SDR programs (with individual consent[1]), it is expected that DHS – in consultation with the OAIC and others – will continue to have in place appropriate internal protocols for the handling of customers' personal information associated with different programs within DHS. Such protocols should continue to ensure that personal information is only collected, used and disclosed:

- as required or authorised by law
- with appropriate sensitivity (for example, ensuring protections for health and other sensitive information; and for personal circumstances that require additional information security, such as for victims of domestic violence)
- in accordance with customers' reasonable expectations, and
- in accordance the Government's policy to seek consent to "any new sharing of customer data..." as explained in the Second Reading Speech to the Bill.[2]

The OAIC will continue to assist DHS to ensure Australians' personal information remains protected, and that the public's high level of trust in Government agencies is maintained.[3]

Information Privacy Principles (IPPs)

In addition to secrecy requirements, these protocols should draw from the baseline legal requirements in the IPPs[4] and best practice. These include:

- collection requirements under IPPs 1-3 (eg, ensuring collection is necessary for a lawful purpose, and that customers are given notice about usual uses and disclosures), and
- use and disclosure requirements under IPPs 9-11 (eg, use for relevant purposes only, limits on secondary uses and on disclosures outside the agency).

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[1] Other than "existing customer data sharing arrangements supported by legislation" (Second Reading Speech, The Hon Julie Collins MP, Australian Parliament House of Representatives, 25 November 2010).

[2] Ibid.

[3] See Office of the Privacy Commissioner, *Community Attitudes to Privacy 2007* (survey by Wallis Consulting Group), which found that "Perceived trustworthiness, in regard to the protection of personal information, has increased for Health Service Providers [91%] and Government departments [73%] in comparison with 2004." (p 17, www.privacy.gov.au/materials/types/research). See also pp 40-41 for results on *Sharing of personal information between Government departments*.

[4] The 11 Information Privacy Principles, set out in section 14 of the *Privacy Act 1988* (Cth), apply to Australian Government agencies. See www.privacy.gov.au/law/act/ipp.

Medicare investigations and patient notification

As a separate issue, the Bill proposes to amend section 8ZN in Part IID of the *Medicare Australia Act 1973*.[5] In brief, we understand the amendments:

- limit the notification requirement in that section to situations where an authorised officer "examines a record containing clinical details relating to an individual patient" (Item 74)
- create an additional *exception* to this notification requirement, where "the examination of the record did not result in [the officer] obtaining any knowledge of any of the clinical details relating to the patient." (Item 76)

Our understanding of this is that there is a presumption in favour of notification where a record is examined but notification would not be required if an investigating officer does not obtain knowledge of a patient's clinical details beyond any pre-existing knowledge from the prior course of the investigation.

The OAIC has been briefed on Medicare Australia's existing investigations process and the intended operation of the amended provisions. The OAIC considers that, from the information provided, the provision appropriately balances privacy protection and the efficient and effective conduct of relevant investigations. In particular the OAIC notes the extensive security arrangements that apply to such investigations – including legal (eg search warrants), technical (IT safeguards), physical (storage) and operational (eg training and certification).

In addition, the OAIC understands that, if the Bill is passed, Medicare Australia intends to update its investigations protocols and will consult the OAIC during this process. The OAIC would welcome the opportunity to assist in this regard.

Yours sincerely

Timothy Pilgrim
Australian Privacy Commissioner

4 March 2011

[5] Schedule 1, Items 74-76 of the Bill. The existing s 8ZN requires Medicare Australia to notify a patient in writing if Part IID investigatory powers have been used in respect of a record containing the patient's clinical details (see Explanatory Memorandum to the Bill, p 25, para 189).