



**Australian Government**

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**Office of the Privacy Commissioner**

**Social Security and Other  
Legislation Amendment  
(Welfare Reform and  
Reinstatement of Racial  
Discrimination Act) Bill 2009**

**Submission to the Senate  
Standing Committee on  
Community Affairs**

**February 2010**

## Key Recommendations

The Office of the Privacy Commissioner (the Office) has a number of suggestions and comments focusing on the protection of individuals' personal information in relation to the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 ('the Bill'):

- i. The Office welcomes the aspects of the Bill which present an opportunity for good personal information handling practices. It is important to ensure that any personal information collected, used and disclosed under the income management scheme is handled in accordance with the Privacy Act.
- ii. Education for community store managers and their staff and communities on information privacy protection under the income management scheme would be useful, including training and accessible guidance, in helping to ensure personal privacy is protected.
- iii. The Office recommends appropriate information handling practices, based on the principles in the Privacy Act, could be incorporated into the Bill's expanded 'assessable matters' criteria which comprise the licence conditions for community stores.
- iv. The Office supports the Bill repealing the requirement in the Northern Territory National Emergency Response Act, so that certain unnecessary record keeping requirements on the sale of liquor in the Northern Territory no longer apply. The Office also suggests that businesses which collected personal information under those provisions should be advised or required to securely dispose of this information.
- v. The Office notes the amendment of the Australian Crime Commission's powers under the Bill. In relation to any handling of personal medical records by law enforcement agencies in this context, the Office would encourage ongoing dialogue between law enforcement agencies, communities, and the health professions in the interests of meeting the community's and patients' expectations that the privacy of personal medical records will be respected. A key aim should be that any such handling does not discourage individuals, including young people, from seeking medical treatment.
- vi. The Office suggests that a Privacy Impact Assessment be considered for relevant measures involving additional personal information handling before they are implemented. The Office also recommends that privacy issues (particularly around the handling of payment recipients' personal information) be considered as part of the evaluation processes for assessing the Bill's effectiveness. Such assessment and evaluation of privacy risks would usefully inform decisions about any future national rollout of income management measures.

## Office of the Privacy Commissioner

1. The Office is an independent statutory body whose purpose is to promote and protect privacy in Australia. The Office, established under the *Privacy Act 1988* (Cth) ('Privacy Act'), has responsibilities for the protection of individuals' personal information handled by Australian and ACT Government agencies, large private sector organisations, all private health service providers and some small businesses.
2. The Office welcomes the opportunity to make a submission to the Senate Standing Committee on Community Affairs (the Committee) on Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 ('the Bill').<sup>1</sup>

## Coverage of the Privacy Act and related laws

3. The Privacy Act largely protects the 'personal information' of individuals through binding privacy principles.<sup>2</sup> The 11 Information Privacy Principles<sup>3</sup> (IPPs) regulate personal information handling by Australian and ACT Government agencies.
4. The 10 National Privacy Principles (NPPs) regulate private sector organisations with an annual turnover greater than \$3 million, all private health service providers, and some other small businesses.<sup>4</sup> Many small business employers (other than health service providers) are not subject to the NPPs.
5. In October 2009 the Australian Government announced its first stage policy response to the Australian Law Reform Commission's 2008 review of privacy laws.<sup>5</sup> Draft legislation to implement the first stage response, including a single set of privacy principles for the private sector and Australian Government agencies, is expected in 2010.
6. Relatedly, the Office notes that Northern Territory (NT) privacy legislation, the *Information Act 2002*, covers personal information, record-keeping and archive management in the NT public sector. That Act does not regulate information held by the private sector, such as 'takeaway alcohol' businesses. Beyond the NT, state-based privacy laws in other states and territories similarly focus on their public sectors, although some of those laws also regulate private health services.

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<sup>1</sup> The Bill and related Explanatory Memorandum are available at: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/billhome/r4265%22>.

<sup>2</sup> Personal information is defined in section 6 of the Privacy Act, and in brief refers to information or an opinion from which an individual is identifiable.

<sup>3</sup> The IPPs are available at [www.privacy.gov.au/law/act/ipp](http://www.privacy.gov.au/law/act/ipp).

<sup>4</sup> The NPPs are available at [www.privacy.gov.au/law/act/npp](http://www.privacy.gov.au/law/act/npp).

<sup>5</sup> The Government's response is available from the Department of Prime Minister and Cabinet's Privacy webpage at [www.dpmc.gov.au/privacy/alrc.cfm](http://www.dpmc.gov.au/privacy/alrc.cfm).

## Background

7. The Office has previously made submissions to the Senate Standing Committee on Legal and Constitutional Affairs on the Northern Territory Emergency Response Bill 2007 in August 2007<sup>6</sup> and to the Northern Territory Emergency Response (NTER) Review Board in September 2008.<sup>7</sup>
8. The current Bill proposes amendments to several Acts relating to the income management arrangements, most notably the *Northern Territory National Emergency Response Act 2007* ('NTNER Act'). The Bill retains the core measures of the NTNER Act, amends several other measures and repeals provisions which limit the application of the *Racial Discrimination Act 1975* (Cth) and State and Territory anti-discrimination laws to the NTER.
9. The Office understands that the Bill generally gives effect to a scheme of income management that will initially commence across urban, regional and remote areas in the Northern Territory. Other trials are currently underway in Western Australia and Queensland. If deemed successful, the income management scheme is proposed as a first step in a future roll out to disadvantaged regions across Australia.
10. The Office notes that the Bill aims to support disengaged and vulnerable welfare recipients in the most disadvantaged locations in Australia. It is important to ensure that any personal information collected, used or disclosed under the income management scheme is handled in accordance with the principles in the Privacy Act.
11. Privacy is important in this context given:
  - (i) the generally acknowledged importance of information privacy and security in the community, particularly with the ease of digital communication
  - (ii) the potential for unwanted attention or stigma associated with receipt of welfare payments or income management, particularly if information is shared unnecessarily or released without informed consent
  - (iii) the intent of the Bill to focus on disadvantaged or otherwise vulnerable communities, heightening the need for agency and institutional awareness of, and compliance with, privacy obligations.<sup>8</sup>

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<sup>6</sup> Office submission available at: [www.privacy.gov.au/materials/types/submissions/view/6758](http://www.privacy.gov.au/materials/types/submissions/view/6758).

<sup>7</sup> Office submission available at: [www.privacy.gov.au/materials/types/submissions/view/6700](http://www.privacy.gov.au/materials/types/submissions/view/6700).

<sup>8</sup> For example, the Office's *Community Attitudes Survey 2007* suggests some sections of the Australian community – such as young people, those without tertiary education, and Northern Territory (NT) residents – are less aware of federal privacy laws (and relevant complaint options, rights and obligations) than others. Of 1503 individuals surveyed, average community awareness was 69%; 59% of people educated up to Year 12 were aware of privacy laws, compared with 80% of people who are tertiary educated; awareness amongst young people (aged 18-24) was 50%; and awareness in the NT was 40%. See [www.privacy.gov.au/materials/types/download/8820/6616](http://www.privacy.gov.au/materials/types/download/8820/6616), p 6-9.

12. This submission outlines several privacy safeguards which may help to minimise the risk of personal information being mishandled.

## Community stores and income management

13. The Bill will establish a new model of income management for people who meet criteria that are designed to be objective and independent of race or ethnicity.<sup>9</sup>
14. Income management means that an individual's benefits may be income managed by Centrelink so that a percentage of their Centrelink benefit is earmarked for specific use, such as food or clothing purchases. The Office understands that community stores enter into contracts with Centrelink for the management of Centrelink clients' income for these purposes, and that this involves the sharing of personal information.
15. Centrelink is subject to the IPPs in the Privacy Act in the way it handles personal information about its clients. It is also understood that having contracts with Centrelink would mean that community stores which handle personal information are also subject to the Privacy Act (for activities performed under those contracts).<sup>10</sup>
16. It is important that community store managers, their staff and customers are assisted to understand how the Privacy Act applies to personal information handled under the income management scheme. Education, training and accessible guidance material – such as brochures, leaflets, and posters – would reduce the risk of personal information being mishandled and improve community trust in the initiative.
17. For example, the Office previously developed guidance material for the Department of Families, Health, Community Services and Indigenous Affairs (FaHCSIA) on the privacy issues related to the NTER measures.<sup>11</sup> This material could be adapted to apply to the measures proposed under the Bill, particularly to assist entities that may be less familiar with personal information handling obligations and good practice.

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<sup>9</sup> Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Schedule 2 – introduces new provisions into Part 3B of the *Social Security (Administration) Act 1999*.

<sup>10</sup> See eg, Privacy Act, ss 95B and 6D(4)(e). The Office has a webpage and Information Sheet outlining the privacy obligations of Commonwealth contractors: [www.privacy.gov.au/government/contractors](http://www.privacy.gov.au/government/contractors).

<sup>11</sup> This material was discussed in the Office's submission to the NTER Review Board (above note 7). Also, in 1998 the Office jointly developed a protocol to assist Australian Government agencies in the NT to comply with the Information Privacy Principles (IPP) in handling Indigenous people's personal information. While this protocol is due to be updated, much of the general guidance is still applicable: [www.privacy.gov.au/materials/types/download/9093/6744](http://www.privacy.gov.au/materials/types/download/9093/6744).

## Licensing of Community Stores

18. The community stores licensing process under the Bill involves the assessment and monitoring of businesses which are a key source of food, drink and grocery items for an indigenous community<sup>12</sup>. The licensing process is intended to enable scrutiny of the financial, retail, and governance arrangements of a particular store.<sup>13</sup>
19. The Bill amends the existing community stores licensing scheme in Part 7 of the NTNER Act by expanding its scope to additional businesses, and modifying the range of 'assessable matters' which form the basis for assessing community stores in relation to licensing decisions.<sup>14</sup>
20. One of the nine assessable matters includes the community stores' capacity to participate in the income management scheme, and (if applicable) the community store's record of compliance with the scheme's requirements. For example, this could be demonstrated by its administrative and record-keeping practices and technical systems.<sup>15</sup>
21. To the extent that this promotes appropriate personal information handling, the Office welcomes the Bill's strengthening of the community stores licensing process.
22. To further this aim, the Office recommends that appropriate personal information handling practices (based on the privacy principles in the Privacy Act) could be included in the expanded 'assessable matters' criteria proposed under the Bill.<sup>16</sup> For example, the ability to adequately protect personal information could be considered under the proposed criterion noted above, relating to administrative and record-keeping practices.<sup>17</sup>
23. Even where legal obligations to comply with the Privacy Act would be in place, considering the ability to adequately protect personal information may reinforce those obligations and assist organisations to put reasonable protections in place. As the Privacy Act contains high level principles, often expressed in terms of 'reasonable steps', these principles allow for flexibility and are intended to avoid imposing an unreasonable compliance burden.

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<sup>12</sup> The Bill alters the definition of 'community store'. The current requirement under the NTNER Act is that one of the main purposes of the business is the provision of grocery items and drinks. The Bill will also allow for fast food shops, takeaway food shops and roadhouses to be subject to the community stores licensing scheme.

<sup>13</sup> Explanatory Memorandum (EM) to the Bill, p 51.

<sup>14</sup> Bill, Item 12 repeals subsection 93(1) of the NTNER Act which provides a definition of assessable matters in relation to community stores and replaces it with a new definition.

<sup>15</sup> As noted in the EM to the Bill, p 62.

<sup>16</sup> This was also recommended in the Office's 2007 submission on the NTNER Bill 2007 (above note 6). Regarding the proposed criteria, see the Bill, Item 12, proposed subsection 93(1)(g); and EM p 62.

<sup>17</sup> Bill, Item 12, proposed subsection 93(1)(g); EM p 62.

## Alcohol Restrictions

24. Under the existing NTNER Act, customers who purchase certain amounts of alcohol are, at the time of purchase, required to have their photo identification sighted (but not recorded) and have some personal information recorded (their name and address, and the name or address of the place where the alcohol will be consumed), with licensees required to keep this information for 3 years.<sup>18</sup>
25. The Bill amends the NTNER Act's alcohol measures, with Schedule 3 of the Bill removing Division 3A of Part 2 of the NTNER Act so that those record-keeping requirements on alcohol sales no longer apply.
26. In its September 2008 submission to the NTER Review Board, the Office noted the following:

*Takeaway businesses are required to collect particular information under the NTNER Act about purchasers and consumption locations at takeaway points of sale. The Office is unsure for what subsequent function or activity the information is required, how it is to be used or to whom the information may be disclosed.*

*The Office is also unsure as to why the licensee needs to store the personal information for three years and what happens to the information once it is forwarded to the Licensing Commission. Related to this, the Office is concerned at anecdotal first-hand reports of this information being stored with inadequate security, such as in boxes under counters.*

27. The Office is therefore supportive of the amendment to repeal those provisions, as the Government has noted that this record-keeping measure has not been effective.<sup>19</sup> Repealing this measure minimises the likelihood of personal information being lost, misused or unnecessarily collected.
28. The Office understands that some small businesses which collected personal information under the above measure may not be subject to the Privacy Act in future, unless they continue to be Commonwealth contractors. However, contractual obligations to comply with the Privacy Act extend beyond the completion of a Commonwealth contract.<sup>20</sup>
29. In light of the Bill's repeal of this measure, the Office believes it would be appropriate to advise or require relevant businesses to securely dispose of personal information collected under those record-keeping provisions. This may include shredding the information or providing it to a nominated government agency for secure and immediate destruction or de-identification.

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<sup>18</sup> NTNER Act, section 20 - record-keeping is currently required for takeaway alcohol sales over \$100, or more than five litres of wine.

<sup>19</sup> Second Reading Speech, Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, available at: [www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/ss\\_legislation\\_amend\\_25nov2009.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/ss_legislation_amend_25nov2009.htm).

<sup>20</sup> See the Office's Information Sheet 14 (above note 10), p 3.

## Sensitive information and law enforcement

30. The Bill amends the *Australian Crime Commission Act 2002* ('ACC Act') by repealing and replacing the definition of 'Indigenous violence or child abuse' in subsection 4(1) of the ACC Act. The new definition will be 'serious violence or child abuse committed against an Indigenous person'. This amendment is to ensure that the Australian Crime Commission's (ACC) special powers are used only in relation to violence and child abuse committed against Indigenous victims.<sup>21</sup>
31. An area of past sensitivity in relation to the NTER has been the issue of law enforcement access to medical records.<sup>22</sup> In the interests of good privacy practice and meeting the community's and patients' expectations that medical privacy will be respected, the Office encourages ongoing dialogue between law enforcement agencies, communities, and the medical and other health professions, to manage the sensitivities around collection of medical records for law enforcement purposes. It is important that the handling of such records, or the perception of how they may be handled, does not discourage individuals (including young people) from seeking medical treatment.

## Privacy Evaluation

32. Where additional or modified personal information handling is anticipated under this or related bills,<sup>23</sup> the Office suggests that the agencies involved should consider undertaking a Privacy Impact Assessment (PIA) of relevant measures before they are implemented. This would ensure that personal information flows are identified, and any resulting privacy risks from the collection, use, storage and disclosure of personal information handled under those measures are addressed.<sup>24</sup>
33. The Office welcomes the evaluation processes planned for assessing the effectiveness of the Bill's measures. As part of these processes, the Office suggests that the handling of personal information be included. This may help to ensure that appropriate privacy protection frameworks are in place, and assist in decision making on any future proposals.
34. The Office notes that appropriate privacy evaluation will be especially valuable if the measures under the Bill are rolled out nationally. If such a rollout occurs, significant personal information flows could be anticipated between the various entities responsible for implementing or participating in income management measures, and on a much broader scale. The Office would also welcome further input and community consultation in advance of such a national rollout.

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<sup>21</sup> Bill, Schedule 7.

<sup>22</sup> See, eg, *ABC News* online, "Crime Commission vows court loss won't deter investigations", 2/12/08 ([www.abc.net.au/news/stories/2008/12/02/2435415.htm](http://www.abc.net.au/news/stories/2008/12/02/2435415.htm)); *Australian Doctor*, "Crime Commission still fighting for patient records", 13/3/09; and *ABC News* online, "Crime body wins access to kids' health files", 10/7/09 ([www.abc.net.au/news/stories/2009/07/10/2622325.htm](http://www.abc.net.au/news/stories/2009/07/10/2622325.htm)).

<sup>23</sup> For example, record-keeping about individuals' income management by additional businesses.

<sup>24</sup> The Office has produced a PIA Guide (2006) for agencies, which explains the process and steps through the various stages, available at [www.privacy.gov.au/materials/types/download/9349/6590](http://www.privacy.gov.au/materials/types/download/9349/6590).