

**Senate Standing Committee on Finance and Public Administration**  
**Inquiry into the provisions of the Human Services (Enhanced  
Service Delivery) Bill 2007**

**Senator Stott-Despoja asked the Acting Victorian Privacy Commissioner**

1. Is the review of administrative decisions something we should be placing in the Bill? Can you provide any model terms?
2. Should victims of a privacy breach be informed, and is there room for redress?

**Answer:**

1. The provisions for administrative review need to be contained in the Bill, especially as some of the powers that the Secretary has (such as refusing to issue an access card) can cause severe hardship. It is recognised that there are numerous review models already existing in relation the present welfare system. It is suggested that whatever model is chosen it should include:
  - A review that is external to the Department of Human Services; whether ministerial or by judicial/quasi judicial body.
  - Whatever review body or person is chosen the person seeking the review should have the right to be heard by a representative or otherwise.
  - The review mechanism should be low cost and accessible.
  - There should be provision for a review to be dealt with urgently and provision for there to be interim relief pending a final decision. For example if the Secretary decides that an access card should not be issued and the person seeking the review requires a card in order to access Commonwealth benefits such as a disability pension or expensive medication there needs to be a mechanism that allows a person interim access to benefits where it can be shown delay may cause hardship.
  - Any review should be a review of both facts and law.
2. The former Privacy Commissioner in his Report 01.06 'Jenny's Case' Chapter 9 and Report 03.06 'Mr 'C's Case' Chapter 5<sup>1</sup> discussed whether victims of a privacy breach should be notified. He concluded that the presumption should

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<sup>1</sup> These were reports under Part 6 of the Victorian *Information Privacy Act 2000* and can be found at [www.privacy.vic.gov.au>Publications>Reports and Submissions](http://www.privacy.vic.gov.au/Publications/Reports%20and%20Submissions). 'Jenny's case' in particular provides useful references in the footnotes to Chapter 9 to US and Canadian models.

be that privacy breaches should be notified to the persons they affect except in the most exceptional circumstances when notification may be neither necessary nor desirable. In summary he concluded that only when notification was likely to cause more harm than it would alleviate should it not occur. I endorse this approach.

In the case of a breach of information held on the Register or in the chip on the card swift notification may be especially important to enable the individual to take steps to reduce the effects of the breach, including recovering a lost identity through identity theft. A model that could be adopted is to require notification unless exceptional circumstances exist. If it is believed that notification should not occur then the matter should be referred to an external body such as the Privacy Commissioner for final decision.

There are existing mechanisms for redress for privacy breaches under the federal *Privacy Act* and state and territory Acts. The difficulty is that some states do not have privacy laws and there are gaps in the redress available because of exemptions. It may be preferable to provide a purpose built provision for civil redress in the Bill, including civil redress for harm arising from criminal acts under the Bill, such as unlawfully refusing services without showing the access card. A possible model might be to create the scheme under the legislation but use existing regulators such as privacy commissioners or ombudsmen to administer it.