



Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Morris

Inquiry into the Northern Territory National Emergency Response Bill 2007 & Related Bills

The Office of the Privacy Commissioner (the Office) provides the following comments to the Senate Standing Committee on Legal and Constitutional Affairs (the Committee) regarding its inquiry into the Northern Territory National Emergency Response Bill 2007 & Related Bills (the Bills). Our comments are brief and confined to certain aspects of the handling of personal information in relation to the Bills.

As the Office understands it the *Privacy Act 1988* (Cth) (the Privacy Act) will continue to apply to personal information handled by Australian government agencies and organisations pursuant to provisions of the Bills where those agencies or organisations are already covered by the Privacy Act. However, as a result of the operation of some of the provisions of these Bills there may be entities which will be collecting, using and disclosing personal information, including sensitive information, which may not be subject any statutory requirements to protect the personal information they handle.

Given the sensitivities of much of the information that will be collected, used and disclosed under some of the provisions of the Bills the Office believes it is important that consideration be given to ensuring that appropriate privacy safeguards are put in place for those entities not currently covered by statutory privacy regulation. In the absence of legislative measures this may be achieved through the Department of Families, Community Services and Indigenous Affairs (FACSIA) providing guidance material. The Office would be pleased to assist FACSIA in this task.

The jurisdiction of the Privacy Act

The Office is an independent statutory body whose purpose it is to promote and protect privacy in Australia. The Office has responsibility for the protection of individuals' personal information that is handled by Australian and ACT government agencies, and personal information held by organisations (including not-for-profits) with an annual turnover of more than \$3 million, private sector health service providers regardless of turnover and some small businesses with an annual turnover of \$3 million or less. The *Privacy Act 1988* (the Privacy Act) regulates how these agencies and organisations handle personal information.

In the context of the Bills under consideration there would be limits to the Privacy Act's jurisdiction regarding the handling of personal information. The Privacy Act does not regulate some Australian Government agencies, for example, the Australian Crime Commission, nor does it regulate the Northern Territory or state government agencies, most small businesses or individuals. This means that some of the handling of personal information that would occur under the provisions in the various Bills would not be subject to the Privacy Act. While the Northern Territory and some states have privacy regulation in relation to some, or most, of their public services not all do¹. Below we outline some specific examples of these issues.

Northern Territory National Emergency Response Bill 2007

The Office notes that the Northern Territory National Emergency Response Bill 2007 has provisions under clauses 20 and 21 for the collection, use and disclosure of personal information regarding the sales of liquor for consumption away from licensed premises. It is likely that a significant number of licensees would fall within the definition of a small business operator in the Privacy Act and therefore be exempt from the operation of the Privacy Act.

As well, Part 3 of the Bill, provides for the collection, use and disclosure of personal information regarding the use of publicly funded computers. Under the definition of 'publicly funded computer' it appears that these provisions would apply to organisations as well as government agencies. While it is not clear what proportion of the relevant organisations, in both the above circumstances, would be small businesses it would appear there may be a gap in statutory privacy protections applying to information collected and handled under these provisions.

In addition, it would appear that small businesses operating community stores could be undertaking a role in relation to 'income management'. The Office assumes that this may require them to collect and possibly use or disclose personal information that could include financial or sensitive information. It may be that some of these businesses will not be subject to privacy regulation. The Office suggests that appropriate information handling practices based on privacy principles in the Privacy Act could be made part of the renewed licence conditions for these businesses.

Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007

The Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 contains powers for the collection use and disclosure of personal information which may include sensitive information, for example, about child protection matters.

The Office anticipates that these provisions may mean there will be significant information flows occurring across Australia between schools, both public and private, state and territory education and child welfare agencies, businesses involved in 'income management' and Australian Government agencies.

¹ We note that the issues of national consistency generally are currently being considered by the Australian Law Reform Commission in its inquiry into privacy.

The Office believes that there may be gaps in the coverage of statutory privacy regulation in relation to the handling of personal information occurring under these provisions, including, in some circumstances, sensitive information. The Office suggests that there is a need to put in place protections to ensure that individuals' personal information is appropriately handled.

Development of guidance material

In summary, in relation to all of the Bills, the Office believes that consideration should be given to ensuring that appropriate privacy safeguards are put in place for those entities not currently covered by statutory privacy regulation. In the absence of legislative measures it would be preferable that FACSIA take the lead in developing guidance material on appropriate information handling practices based on the privacy principles in the Privacy Act to guide entities not subject to the statutory privacy regulation.

Where appropriate this guidance material may be able to be incorporated or attached to licences or contractual arrangements. The Office should have a role in the development of such guidance material.

Yours sincerely

Karen Curtis
Privacy Commissioner
10 August 2007