

## **Submission by the Department of Family and Community Services to the Senate Legal and Constitutional Committee Inquiry into the *Privacy Act 1988***

The Department of Family and Community Services (FaCS) welcomes the opportunity to provide a submission to the Legal and Constitutional References Committee's Inquiry into the *Privacy Act 1988* (the Privacy Act).

We would like to comment on three aspects of the terms of reference, namely the overall effectiveness and appropriateness of the Privacy Act, the capacity to respond to new and emerging technologies and the effectiveness of the private sector provisions.

### ***Overall effectiveness and appropriateness of the Privacy Act 1988 as a means by which to protect the privacy of Australians***

The Privacy Act currently provides a good balance between protecting the rights of individuals while allowing efficient government administration.

The recent changes to the Administrative Arrangements Order (available at <http://www.pmc.gov.au/parliamentary/docs/aa0.pdf>) altered the manner in which the income support system is administered. Responsibility for administration of the primary legislation, including the social security law and the family assistance law has been divided between three different agencies, namely the Department of Family and Community Services, the Department of Employment and Workplace Relations (DEWR) and the Department of Education, Science and Training (DEST). In addition, the Minister for Human Services has responsibility for the service delivery of income support to Centrelink customers.

In order to ensure consistent and efficient services to Centrelink customers, it is important that these portfolios have access to and, are able to share, data for their purposes, including in particular to inform future policy development and for research purposes. This would enable longitudinal research across government, as well as the matching of data, to facilitate policy responsiveness to community needs. In addition, the ability for agencies to respond to identity related crime relies on the need to be able to share, in certain circumstances, identification information about individuals. Failure to do so may lead to a deleterious impact on individuals, should they become victims of otherwise preventable identify theft.

FaCS is currently in the process of developing a Children's Services National Minimum Dataset. While not specifically mentioned in the terms of reference, the National Minimum Dataset seeks to implement a statistical linkage key to identify individuals across different child care services. While this does not use new or emerging technology, identifying individuals through statistical linkage keys greatly assists in the collection of child care data, such as for the Australian Government Census of Child Care Services. Any tightening of the provisions of the Privacy Act may have a significant impact on FaCS's ability to extract child care information, including customer reference numbers from the Centrelink Child Care Benefit administrative database, to enable FaCS to undertake effective program management and policy development.

## ***Capacity of the current legislative regime to respond to new and emerging technologies which have implications for privacy***

It is envisaged that the benefits associated with the use of new and emerging technologies will extend across the range of service delivery options including payment of income support, accessing concessions and providing verification of concessions/income support status. FaCS wishes to comment specifically on a number of issues in the context of the child care program.

Under the child care program, information is collected from child care services relating to children to whom the service provides care as well as information about the service's operation. The gathering of information is governed by the confidentiality provisions relating to protected information under Part 6, Division 2 of *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act), the privacy provisions in the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (the 2000 Determination) and the National Privacy Principles under the Privacy Act.

There is a legislative requirement under Part 8A of the Family Assistance Administration Act for child care services to provide certain information regarding each child's care (for example attendance) to Centrelink. In addition, there is a requirement under the *Child Care Benefit (Record Keeping) Rules 2000* to keep records of attendance. Currently a parent's signature as proof of attendance is required. However, child care services are currently exploring a number of emerging technologies to assist with recording attendance and the submission of records to the appropriate agencies.

These technologies, such as swipe cards which electronically record and store attendance data, have the potential to deliver a number of significant benefits to all stakeholders in child care. These benefits include:

- reduced administrative burden for service providers;
- security benefits;
- greater integrity of data used to calculate entitlements; and
- reduced scope for fraud.

Notwithstanding the above, under the 2000 Determination child care services have a legislative obligation to provide information regarding their service. This obligation includes a requirement to complete and return a census, surveys (such as fee surveys or information on utilisation) or information on the operation of the service. Although the terms of reference for the inquiry do not directly affect the information collected in, say, a census, services are considering using emerging technologies in the future to collect information.

The Australian Government Census of Child Care Services will be redeveloped from 2006 onwards and aims to take advantage of any technology used by child care services to record information about individual children, families and staff. It is envisaged that this will reduce the amount of work required by child care services in

completing the Census and to make the collection of information for the Census more efficient.

As noted, FaCS is aware of the potential benefits associated with the use of new technologies in the provision of income support. FaCS acknowledges, however, that while there may be benefits for stakeholders in adopting new technologies, it is also important to ensure that the community remains confident regarding the protection and security of their privacy. FaCS recognises that it is important to ensure that there are adequate safeguards in place so that information collected and held through these technologies cannot be misused. Additionally, FaCS believes that full consideration should be given to the issue of customer choice in relation to the use of new and emerging technologies in the provision of income support.

### ***Effectiveness of the private sector provisions of the Privacy Act***

Generally, FaCS has no concerns regarding the effectiveness of the private sector provisions of the Privacy Act. However, FaCS has encountered difficulties in the operation of National Privacy Principle (NPP) 7.2. FaCS recently provided a submission to the Privacy Commissioner's Office with regard to their review of the private sector provisions.

Concessional services to customers of FaCS are often provided by private organisations, many of which are funded by the department. As you are no doubt aware, many of these private organisations are required to comply with the private sector provisions of the Privacy Act. However, the provision of these services is being complicated by the necessity for such organisations to comply with NPP 7.2.

The provision of a number of concessional services is made available through call centres and the Internet, which precludes visual confirmation of a customer's concessional status. Additionally, though concession cards may appear valid (or unexpired), a customer may no longer be qualified to use that card. A person must qualify for the concession at the time the concession is received. Concessions cards are usually issued at regular intervals (eg annually) and are generally valid for a specified period from their date of issue, provided that a person does not lose qualification for the card. In the event that a customer loses qualification, a customer's co-operation is relied upon for them to destroy their concession card. However, FaCS is aware that, in some instances, customers will continue to seek concessions after their concession card is no longer in force.

NPP 7.2 prohibits the use of a unique identifier unless one of the exemptions applies. Neither consent from the customer, nor the equivalent of an IPP2 notice, is sufficient for the purposes of NPP 7.2. In many circumstances NPP 7.2 does not allow private organisations to confirm a customer's concessional status by using or disclosing a customer identifier (such as a Centrelink customer reference number (CRN)). This is causing complications for Centrelink's Customer Confirmation eService (CCeS), which was set up to assist in the confirmation of the eligibility of customers to concessional entitlements from various state government and private sector organisations. Compelling customers to provide proof of their concession status other than through CCeS is an added burden for customers. Furthermore, compelling customers to provide proof will be more difficult and expensive for all providers to administer.

Although NPP 7.2 permits the making of regulations, allowing parties to enter into an arrangement which authorises the use of a CRN for the purposes of checking the concession status of customers, this is a cumbersome approach. Any regulations in force would require amendment every time exemption from NPP 7.2 was required by a new provider.

The difficulties faced by private organisations to confirm a customer's concessional status is potentially detrimental to the provision of these types of services. The CCeS was intended to provide a more efficient, value added service to customers, without necessitating further contact with Centrelink.

In our response to the Privacy Commissioner's Office, the department suggested that NPP 7.2 be reviewed and that consideration be given to amending it to allow private organisations to confirm a customer's identifier in a wider range of circumstances than currently allowed, perhaps with the consent of the customer.