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Ms Julie Dennett

A/g Committee Secretary

Senate Standing Committee on Legal and Constitutional Affairs

Department of the Senate

PO Box 6100

Parliament House

CANBERRA ACT 2600

Dear Ms Dennett

RE: Inquiry into the Privacy Legislation Amendment (Emergencies and Disasters)

With reference to your invitation to make a submission to this inquiry, I have pleasure in forwarding to you the attached statement, which sets out the additional issues that CrimTrac believes should be addressed in the proposed amendments to the Privacy legislation, to optimise responses by agencies such as CrimTrac to emergencies and disasters.

The experience of the agency in assisting in the identification of victims in some recent international disasters has highlighted some very practical considerations surrounding victim identification.

I would be happy to discuss further any of the issues raised in this submission with the Committee, should it wish.

Yours sincerely

Ben McDevitt AM APM

Chief Executive Officer

21/09/2006

Attachment:

Submission to Inquiry into the Privacy Legislation Amendment (Emergencies and Disasters)

Submission

Inquiry into the Privacy Legislation Amendment (Emergencies
and Disasters)

21 September 2006.



Introduction

The CrimTrac Agency played an integral role as part of the Australian Government response to the Disaster Victim Identification (DVI) operations that followed the Thailand "Boxing Day" Tsunami 2004.

The agency's initial role was to provide biometric identification technology in support of the DVI process. This role expanded during 2005 to include providing forensic expertise related to fingerprint and DNA procedures and assisting to coordinate the collection and matching of fingerprint data obtained from international government and law enforcement agencies.

CrimTrac's experience during the Thailand DVI operation provides the agency with a unique opportunity to add practical input into the drafting of the new bill to ensure that information sharing requirements are explicitly defined to enable an effective and efficient response to the issue of person identification.

The following response is provided in relation to specific parts of the Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006 that defines proposed amendments to the Privacy Act 1988.

Section 80G - Interpretation

This section includes references to Australian Citizens and Permanent residents.

Consideration should be given toward including temporary residents (visitors) in Australia at the time of a disaster or emergency situation.

Examples where personal information related to temporary residents or visitors may be invaluable to a response would include;

- Passenger and Visitor movement and entry into Australia information – DIMA, Customs, Airline Companies; and
- Persons applying for permanent residency – DIMA (personal and biometric information obtained in the Visa application process).

Comment:

During a disaster situation the availability of information will be vital to the process of person identification. Information obtained from customs declaration forms may provide links to residential addresses of persons while they are visiting Australia and this information will be vital for law enforcement agencies in their response to collecting all possible information (i.e. DNA samples from personal items left in a hotel or house) that may assist in the identification process.

DIMA is one government agency currently expanding the use of biometric information obtained from visa applicants (i.e. photographs and/ or fingerprints).

Section 80N - When declarations cease to have effect

The following is an extract from section 80N from the proposed Bill;

An emergency declaration ceases to have effect:

- (a) if a time at which the declaration will cease to have effect is specified in the declaration – at that time; or
- (b) at the earlier of:

- (i) the time at which the declaration is revoked; or
- (ii) the end of 12 months starting when the declaration is made.

Comment:

It is unlikely that an appropriate time frame for the conclusion of the declaration could be determined immediately following an emergency event or disaster occurring.

Consideration should be given to allow an extension of the emergency provision time frame prior to the end the initial determined cessation date or prior to the completion of the 12 month default time period. This would provide an option for the Government to extend the time frame in situations where the identification process continues to rely upon the provision of identifying information from government, private and public sources.

The Thailand Tsunami DVI and the Lockerbie "Pan-Am" Disaster Investigation are examples where criminal investigation and victim identification processes continued well beyond a 12 month period.

80P - Authorisation of collection, use and disclosure of personal information

Comment:

The proposed Bill is specifically targeted at the release and management of personal Information as part of the overall response towards a declared emergency or disaster situation.

The definition of personal information within Section 6 of the Privacy Act 1988 does not cover the disclosure of genetic material and interpretation of the definitions held within this same section (related to "sensitive information") may exclude the disclosure of fingerprint data (criminal record) held by Australian law enforcement agencies.

Consideration should be given to extend the scope of the Bill to include reference to the release of Personal Information that includes "*Sensitive Information*" and specifically authorises the disclosure of:

- (a) health information about an individual; or
- (b) genetic information about an individual that is not otherwise health information.

Comment:

In order to identify victims of a natural disaster or emergency involving multiple deaths or casualties it is critical that personal information including "*Sensitive Information*" defined within the Privacy Act 1988 be provided to agencies responsible for the identification and repatriation process. This information may be held by Government agencies or the private sector.

Managing and obtaining the release of "*Sensitive Information*" during the Thailand Tsunami DVI Operation became a constant barrier to the expedient identification and repatriation of deceased persons.

As a specific example, the United Kingdom was placed in a position whereby legislation had to be drafted and parliament reconvened to enact the new legislation allowing the release of "*Sensitive Information*" (fingerprint and DNA data) to the Thailand government as part of the DVI process during 2005.