Australian Government
Attorney-General's Department

Information Law and
Human Rights Division

28 September 2006

Ms Jackie Morris
A/Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Morris

Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006

Thank you for your letter of 26 September 2006 in which you invite the Department to comment on specific issues raised by submissions to the Committee's inquiry into the Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006.

I have attached the Department's comments on those issues.

Yours sincerely

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ISSUES RAISED BY SUBMISSIONS –
ATTORNEY-GENERAL'S DEPARTMENT RESPONSES

Clause 80H

1. The Victorian Privacy Commissioner stated that it is not clear in relation to clause 80H of the Bill whether law enforcement agencies' investigation of criminal offences thought to give rise to the emergency or disaster, or offences thought to be committed during it, is also included within the meaning of 'permitted purpose'. What is the intended scope of the term 'permitted purpose'? Is it intended to encompass law enforcement activities?

The Bill deliberately confines collection, use and disclosure by an entity for a 'permitted purpose', so as to prevent disclosure occurring for reasons that are too broad. Subclause 80H(1) states that a 'permitted purpose' is one that relates to the Commonwealth's response to an emergency or disaster in respect of which an emergency declaration is in force. Paragraph 80H(2)(c) ensures that collection, use or disclosure of personal information is permitted if it assists with law enforcement in relation to the emergency or disaster.

To that extent, the activities of law enforcement agencies in an emergency or disaster, including criminal investigations, are encompassed by the Bill. It would be expected that the activities of such agencies would be a key component in the response to particular emergencies and disasters.

The Bill does not displace the usual operation of the Privacy Act. The Privacy Act will continue to apply to law enforcement agencies in the usual way. The Australian Federal Police is bound by the Privacy Act. Under the Act, the AFP already may disclose personal information where that disclosure is reasonably necessary for the enforcement of the criminal law. Equally, another agency subject to the Privacy Act already may disclose personal information to a law enforcement agency where the disclosure is reasonably necessary for the enforcement the criminal law. AGD does not expect that the proposed amendments will have any effect on those existing provisions.

2. The NSW Council for Civil Liberties stated that the definition of 'permitted purpose' should be restricted to those enumerated in subclause 80H(2) or, if necessary, purposes 'closely connected' to those enumerated in subclause 80H(2). Do you agree with the proposal to limit the scope of 'permitted purpose'?

The Government was reluctant to limit the scope of 'permitted purpose' to the purposes listed in subclause 80H(2) as it would eliminate the flexibility of enabling necessary additional purposes which have not been identified in subclause 80H(2).

Clause 80P

3. The ABS proposed that sections 19 and 19A of the *Census and Statistics Act 1905* be included in the list of designated secrecy provisions in proposed section 80P(7) of the Bill. The ABS notes that these provisions could be listed as exempt in the regulations accompanying the Privacy Act, but is concerned at the potential for this to be viewed as a serious compromise of safeguards in relation to ABS data. Would you be prepared to consider such an amendment to subsection 80P(7)?

The Bill lists as a 'designated secrecy provision' those secrecy provisions binding the Inspector-General of Intelligence and Security and the intelligence agencies. This is because the

IGIS and most intelligence agencies are completely exempt from the Privacy Act, and other intelligence agencies are partially exempt in relation to their intelligence collection and analysis activities. Subclause 80R(2) of the Bill makes it clear that the Bill only enables disclosure but does not compel it. Therefore the ABS would not be required in any way to disclose personal information under the Bill. In this respect, the ABS is in the same position as other agencies which do not have a secrecy provision specified as a designated secrecy provision.

4. CrimTrac raised concerns that the definition of 'personal information' in section 6 of the Privacy Act does not cover genetic material and that interpretation of the definitions within section 6 might exclude the disclosure of fingerprint data held by Australian law enforcement agencies. Can you confirm that clause 80P authorises the disclosure of genetic information about an individual and fingerprint data?

The Privacy Legislation Amendment Act 2006 amended the definition of 'health information' and 'sensitive information' in the Privacy Act to include genetic information. This means that genetic information that is also personal information will be covered by the provisions of the Privacy Act.

Clause 80P will authorise disclosure of genetic information about an individual and fingerprint data if such information and data falls within the definition of personal information' in section 6 of the Privacy Act. The Bill does not make any changes to that definition. However, if genetic information and fingerprint data does not fall within the definition of 'personal information' in the Privacy Act, then the Privacy Act will not apply in relation to the collection, storage, use and disclosure of such information and data. That is, there are no Privacy Act restrictions on its handling. Consequently, the Bill will also not apply to such information.

For example, a human tissue sample (blood, skin, hair) by itself would not be considered genetic information (or personal information) for the purposes of the Privacy Act. However, the result of a genetic test or DNA information obtained from the tissue sample would be genetic information and this information would be personal information if it allowed the identity of the individual to be ascertained. For example, if the genetic information also contained the name of or other identifying information about the individual.

Accordingly, if the tissue sample or fingerprint data contained the name or other identifying information about the individual concerned, that sample would have to be handled in compliance with the Privacy Act.