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Monday 25 September 2006

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

by email: legcon.sen@aph.gov.au

Dear Sir/Madam,

Inquiry into the Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006

1. The New South Wales Council for Civil Liberties ('CCL') thanks the Committee for the opportunity to make a written submission to the above inquiry.

2. Privacy is a fundamental human right.[1] As such, any abrogation of the limited protections provided by the *Privacy Act 1998* should be strictly limited to those necessary to achieve a legitimate goal. CCL acknowledges the importance of ensuring that relevant organisations are able to respond effectively to large scale emergencies and disasters. However, we are concerned that the bill is too broadly drafted and is not appropriately adapted to achieving its stated aim.

Specific concerns:

3. The definition of a 'permitted purpose' is too broad. A purpose is permitted if it merely *relates* to the Commonwealth's *response* to an emergency or disaster. The words 'relates' and 'response' both cast the net too wide. As the bill effectively suspends altogether the privacy protection offered by the *Privacy Act*, a 'permitted purpose' should be restricted to those enumerated in cl 80H(2) or, if necessary, purposes 'closely connected' to those enumerated in cl 80H(2).

4. The Explanatory Memorandum ('EM') and Minister's second reading speech state that the act is directed at facilitating the *urgent* assistance of individuals caught up in a major disaster or emergency. A declaration is therefore an *emergency* suspension of normal privacy protections. However, the bill does not impose any limit on the length of time that a declaration can be in effect. Under cl 80N(a) a declaration specifying a time beyond 12 months could be made. Also, the default provision of 12 months under sub-cl (b) is itself too long.

[1] Article 17, *International Covenant on Civil and Political Rights*.

5. We note that The CrimTrac Agency in their written submission state that victim identification operations can take over twelve months, and on this basis submit that declarations should be made for longer periods and disclosure of "sensitive information" including health records and genetic information also be allowed.

6. In our view, however, a distinction needs to be drawn between the need for the urgent provision of assistance immediately following a disaster and the longer term process of victim identification. While the former may justify an emergency suspension of privacy rights, the latter does not warrant their prolonged suspension.

7. As noted in the EM, the Privacy Act already has exemptions that can be applied on a case-by-case basis. If these are insufficient to facilitate victim identification processes then specific provisions for victim identification may warrant consideration. It is wholly inappropriate, however, to apply broad emergency powers for over twelve months to overcome a specific deficiency, if one exists, in the current regime.

8. As such, a declaration should only facilitate the provision of assistance in the immediate aftermath of a disaster – a declaration should therefore be valid for a maximum of one month only. Parliamentary approval should be required for longer periods.

9. There does not appear to be any prohibition on derivative or ancillary use of information obtained under the provisions of clause 80P. If information received legitimately under the provisions of this bill is misused at a later time, since that information was gained when a declaration allowing collection, use or disclosure was in place it is unclear whether an aggrieved individual will have any recourse.

10. The limited offence in s 80Q does not appear to prevent the use of information by the same entity but for an unrelated purpose. A provision should be inserted providing that information obtained for a 'permitted purpose' can only be used for that 'permitted purpose'. Information obtained for a 'permitted purpose' should also be destroyed within one month after a declaration ceases to have effect, unless the individual concerned consents to its retention. A failure to include such restrictions raises the risk that an organisation may capitalise on an emergency situation to accumulate information not otherwise available to it.

11. The bill over-rides general law duties of confidence without any explanation or justification. According to the Minister's second reading speech, 'the bill serves to clarify and enhance what is largely already permissible under the Privacy Act'. All of the examples cited, both in the EM and the Minister's second reading speech involve perceived deficiencies in the *Privacy Act*. The case has simply not been made for extending the effects of this bill beyond the *Privacy Act*.

12. The prospect of increased information sharing may reduce public confidence and result in a decreased willingness to provide information. This is especially so given the excessively broad terms in which the bill is currently drafted. This concern is highlighted in the written submission made to the committee by the Australian Bureau of Statistics. In our view, rather than applying exemptions on an agency by agency basis the bill itself needs to be more tightly drafted to ensure that its scope is appropriately limited.

13. Unfortunately due to time constraints CCL is unable to make a more comprehensive submission at this time. However, we would be happy to elaborate on any of the above points and give evidence at any public hearings.

Yours faithfully,

Anish Bhasin
Committee Member

Thomas Spohr
Member