

## **Statement by the Australian Privacy Foundation**

### **The Proposed Merger of Centrelink, Medicare and the Department of Human Services**

**23 March 2011**

The Human Services Legislation Amendment Bill 2010 would merge two very large government agencies (Centrelink and Medicare) into a portfolio agency (the Department of Human Services – DHS). Centrelink and Medicare (previously the Health Insurance Commission) have long been responsible for the delivery of services of a very particular and highly privacy-sensitive nature, whereas DHS is a pure policy agency. The proposal to break down the boundaries among agencies is highly threatening both to the quality of the services provided to citizens and to their privacy.

Senior government executives have been trying to achieve merger among agencies through a long succession of Governments and Ministers. This latest attempt has been carried out in a manner that has flouted the Government's nominal commitment to openness and to enhancement of privacy protections, at the same time as blatantly compromising the office of the Privacy Commissioner.

#### **The Matter of a PIA**

1. Government policy requires that a Privacy Impact Assessment (PIA) be conducted prior to undertaking a project that has potentially significant privacy implications.
2. As far as the APF was aware, no PIA had been conducted.
3. DHS then claimed verbally on 22 March that a PIA was conducted, but:
  - it was conducted either by or in close association with the Privacy Commissioner
  - the assessment appears to have been conducted in secret
  - the country's primary privacy advocacy organisation was excluded
  - the APF is not aware of any other public interest advocacy organisations being invited to participate either
  - no report was published
  - no information was provided to the Parliament

#### **The Role of the Privacy Commissioner**

4. DHS claims to have been 'working closely' with the Office of the Australian Information Commissioner (OAIC). But 'working closely' with the OAIC is not a substitute for public consultation, because the OAIC is in no sense an advocate for the public interest in privacy.  
OAIC merely administers a statute that contains highly deficient privacy mechanisms and facilitates the processes of other government agencies and business by making sure that privacy doesn't get in their way.
5. It has emerged that the Privacy Commissioner has operated as a paid consultant for DHS, receiving over \$400,000 during the year preceding the Parliament's consideration of the Bill.  
In most people's understanding, the combination of a regulatory role with revenue must inevitably result in a conflict of interest. In this case, the resolution of that conflict has clearly been to the detriment of the privacy interest.
6. The Privacy Commissioner therefore:
  - was compromised in his ability to provide independent advice
  - failed to convince DHS to conduct consultations with the affected public
  - failed to itself conduct consultations
  - failed to convince DHS to publish the PIA report

## **The Senate Committee**

7. A Senate Committee Inquiry is not a substitute for a PIA.  
It is a last-ditch review of legislation, after the Government has made a full commitment to achieving passage of the Bill.
8. The timetable of the Senate Committee Inquiry was as follows:
  - 10 Feb – referral of the Bill to a Senate Committee
  - 21 Feb – invitation by the Committee to the APF to make a submission
  - 1 Mar – the deadline for submissions
  - 22 Mar – the deadline for the Committee to report
9. It beggars belief that a government that pretends to be open, in developing a proposal that has enormous propensity to have negative impacts on privacy:
  - avoided any public scrutiny during the development of the legislation
  - permitted the Senate an extraordinarily short period in which to consider it
  - restricted to 5 working days the public's opportunity to prepare submissions
  - precluded any public hearings on the matter
10. The Minister's spokesman, in a letter submitted for publication in the national press, implied that APF is disqualified from making any comment on the Bill because it failed to make a submission to the Senate Committee. The suggestion is repugnant to democracy.

## **The Minister**

11. Tanya Plibersek was prepared to stand up against abuse of power by DHS when she was in Opposition.
12. As the Department's Minister, however, she has quietly folded her principles.  
She is now the sponsor of DHS's plans for the creation of a single social control agency, with the capacity to merge data streams now, and databases later.

## Australian Privacy Foundation

### Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by a Patron (Sir Zelman Cowen), and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) [http://www.privacy.org.au/Campaigns/ID\\_cards/HSAC.html](http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html)
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>