A

Hon. Linda Burney MP

Shadow Minister for Human Services

Ref 0302 AFP Referral MB

2 March 2017

Mr Andrew Colvin APM OAM
Commissioner
Australian Federal Police
GPO Box 401
CANBERRA ACT 2601

Dear Commissioner

Possible Contravention of the *Social Security (Administration) Act 1999* and *Crimes Act 1914*

I refer for investigation and possible prosecution conduct by persons over recent weeks that may involve the unauthorised use of protected information of a number of social security recipients, in breach of section 204 of the *Social Security (Administration) Act 1999* (the Act). In particular, it appears that the staff in the Office of the Minister for Human Services or the Minister himself, have released without authorisation to journalists private personal information of certain people who are recipients of social security.

I have attached to this letter recent newspaper articles detailing the conduct in question.

In statements by the Minister yesterday and by the Department in Senate Estimates hearings today, it has been suggested that this release was permitted because of the provisions of section 202 of the Act. No suggestion has been made that section 208 of the Act, which permits the Secretary of the Department to authorise release of personal information in some circumstances, was relied on. A number of legal experts have publicly stated that reliance on section 202 is not available and is contrary to a proper reading of the Act and decades of established departmental practice.

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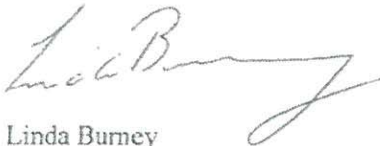
I am concerned that the release of the social security history of individuals represents a gross breach of the trust placed in the Australian Government by citizens to keep their confidential personal information safe. The release of that personal information to media outlets by those with the legal obligation to maintain confidentiality represents precisely the kind of criminal wrongdoing that section 204 of the Act is directed at. The disclosure of this information by Commonwealth officers may also constitute a criminal offence under section 70 of the *Crimes Act 1914*.

I request this matter be investigated by the Australian Federal Police as a priority and that any individuals found to have breached section 204 of the *Social Security (Administration) Act 1999* or section 70 of the *Crimes Act 1914* be referred to the Commonwealth Director of Public Prosecutions for prosecution, if appropriate.

The contact in my office is Mark Boyd who may be contacted on 02 9587 1555.

Yours sincerely,



Linda Burney
Shadow Minister for Human Services
Member for Barton

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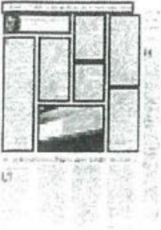

09 Feb 2017
Age, Melbourne

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How Centrelink has terrorised me

S 47F

The debt recovery operation has the extraordinarily high error rate of one in five.

S 47F

It all started when I began receiving calls from a debt collector, which I initially ignored. I knew I had no debt and any request for personal details from a stranger was cause for suspicion. But after some time I gave in to the harassment – my curiosity got the better of me, and by then the calls were interrupting everything from work meetings to putting the children to bed.

And that was how I discovered I had a Centrelink debt.

I soon found out that to even ask the simplest question about a Centrelink debt requires you to throw yourself into a vortex of humiliating and frustrating bureaucratic procedures. Initially, I tried calling Centrelink during my lunch hour, but I would end up wandering the streets around work with the phone pressed to my ear, on hold, and be no further advanced in the phone queue by the end of the hour.

Eventually, I took a day off work to go into a Centrelink office, and there I discovered the full extent of its armoury against personal contact.

Once inside, you line up to receive a seat at a computer from which you are expected to use the government website to solve your problems yourself. A single Centrelink employee marches the floor providing the occasional terse instruction to what resembles an absolute beginners' tutorial in computer literacy.

Finally seated, I found beside me an older man with the grim face of someone bracing themselves as he stared at his screen. On the other side, a young woman stupefied in front of her computer. From her murmurings, I gathered she was in fresh flight from family violence.

There is no link on the website through which you can explain that the debt they are chasing is your ex-partner's fine for non-lodgement of tax returns, as was my situation. There is no box to select for explaining his failure to lodge his return in that final year together is why the Family Tax Benefit you claimed and filed a tax return for is now seen by Centrelink as fraud.

Having gone as far as I could on the website, I eventually pressed the Centrelink employee and asked that I please be able to just speak to someone directly. I joined another queue. A different staff member saw me at a counter and, again, I relayed my story. Increasingly, I shed any dignity around discussing the details of my break-up and finances.

In reply, it was suggested that perhaps the situation could be improved if I were to prove the relationship with my ex was *truly* over. I offered to give them my ex's contact details, but ironically, privacy legislation prevented them from contacting him about either his past relationship or his tax fine, both things I had just been forced to describe at volume to a room full of strangers.

This term, de facto, which I had once taken such feminist pride in, seemed instead to imply to Centrelink that I was wandering listlessly between men. And so, I filled out forms to demonstrate that the heartache and disruption the children and I had experienced was real. And finally, as requested, I provided witnesses to verify my claim.

But this was still not enough, and the phone calls returned. I don't receive child support, and in spite of my tax returns being up to date I am now barred from receiving Family Tax Benefits (on account of this "tax fine", which also made me ineligible for getting a loan).

I am less capable of getting my ex to lodge his tax returns now than when we were together. As a single parent, I raise my children entirely out of my own earnings. Now I was being threatened with having my wages held back to pay for the debt, and I feared my budget would fall to pieces.

Terrorised by Centrelink, I began to behave as the bureaucracy saw me: angry, emotional, confused, dependent and idiotic. It does not matter I am a full-time employed economist. Now, I was a welfare cheat.

The woman from Centrelink sighed. "So, you want to appeal the decision?" she asked, and directed me to its website. Having been inside the vortex before, I demanded to lodge my appeal right then with her. She was dismissive, but I insisted.

I was, by now, quite distressed. Ultimately, this must have been noted somewhere because it triggered a call from a Centrelink social worker to check on me. Again, I explained the story. But this time, she paused in the middle of her spiel and tenderly agreed that, "this is bad, you're in a bad situation".

She would do what she could to help my appeal, she said. In the days leading up to Christmas I learnt that the board had reviewed its decision, agreed an error had been made, and that my ex's fine would be cleared from my record.

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The debt recovery operation currently being run by Centrelink using data matching has the extraordinarily high error rate of one in five.You would like to think that my story means at least the one in five errors are all being identified and eventually resolved, but it doesn't. Many of my fellow Centrelink "clients" will lack the assertiveness, confidence, energy and literacy I used to fight for my case. The errors in their debt will not be found. Money will be taken, wrongfully, from some of the very poorest people in this country. I guarantee you they are terrified.

And anyway, my case isn't over.

Days before publication of this piece I was contacted by Centrelink with a new notification of debt. I have been instructed to pay back the Family Tax Benefit we received in the year my ex didn't file his tax return. And so, it begins again.

S 47F [redacted] a Fairfax Media columnist.

"Terrorised by Centrelink, I began to behave as the bureaucracy saw me."

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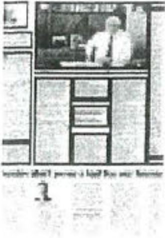

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Centrelink can be an easy target

PAUL MALONE

Centrelink needs to improve but there is more to it than meets the eye.

The ABC's *Q&A* audience laughed at Attorney General George Brandis when he suggested last Monday that people with Centrelink problems could simply contact the agency and sort out the matter.

There are so many accounts of problems with Centrelink that Brandis' view seemed like fantasy-land.

Complainants range from ABC *7.30 Report* presenter, Leigh Sales, to disability pensioners and victims of Centrelink's debt recovery operations. But could it be that sometimes the agency is being unfairly castigated?

One of the hardest-hitting criticisms came from blogger and writer S 47F in an article published in Fairfax media outlets on February 6.

She says she tried calling Centrelink during her lunch hour but "I would end up wandering the streets around work with the phone pressed to my ear, on hold, and be no further advanced in the phone queue by the end of the hour."

Eventually, she took a day off work to go into a Centrelink office.

But the media adviser for Human Services Minister Alan Tudge said that had she called the 1800 contact number on her debtor's letter she would in all probability have gone straight through.

I tried this number and low and behold, I got an instant answer.

This is not to say that all Centrelink calls are answered quickly.

There are far too many complaints for that to be true.

But there are at least two sides to every story.

In her detailed article S complained that her problem arose from the fact that she was chased by Centrelink for a debt actually owed by her former de facto partner. She then detailed the run-around she got trying to resolve the matter.

She says she soon found out that even asking the simplest question about the debt threw her into "a vortex of humiliating and frustrating bureaucratic procedures".

But Centrelink has a different story.

The agency says S 47F debt is a Family Tax Benefit (FTB) debt for the 2011-12 financial year which arose after she received more FTB than she was entitled to because she under-estimated her family income for that year.

The original debt was raised because she and her ex-partner did not lodge a tax return or confirm their income information for 2011-12.

Centrelink says that after S 47F notified the department that she had separated from her partner, the debt due to her partner's non-lodgement was cancelled.

But what of other problems S 47F says she had in dealing with Centrelink?

"Once inside, you line up to receive a seat at a computer terminal from which you are expected to use the government website to solve your problems yourself. A single Centrelink employee marches the floor providing the occasional terse instruction to what resembles an absolute beginners' tutorial in computer literacy."

Ms S says there was no link on the website through which she could explain that she thought the debt Centrelink was chasing was her ex-partner's fine for non-lodgement of tax returns.

There was no box in any window to select to explain that his failure to lodge his tax return was why the Family Tax Benefit she claimed was now seen by Centrelink as fraud. Having gone as far as she could on the website, she pressed the Centrelink employee and asked to speak to someone directly.

She joined another queue. A different staff member saw her at a counter and, again, she relayed her story, shedding any dignity around discussing the details of her break-up and finances.

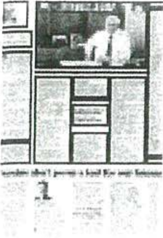
But Centrelink general manager Hank Jongen says Centrelink made numerous attempts to get in touch with S 47F via phone and letter but many of these attempts were left unanswered. Between November 16 and January 17 Centrelink made four phone calls and sent six letters to S 47F

Centrelink says it was not until 2015 that she informed them that she had separated from her partner in 2013.

Mr Jongen said the experience described by S 47F could have been avoided if she had informed the department she had separated from her partner in a timely way, and if she had lodged her tax returns in a timely way.

The Department of Human Services maintains that overall wait times have been reduced this year and social security and welfare average-speed-of-answer is around 12 minutes.

But averages don't help you if



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you happen to be inquiring at a time when wait times are over an hour. More staff are needed, particularly during the peak month of July and from December to March each year when there is increased demand for help from families and students.

For years I've thought that, of the three broad public service tasks – policy development, service delivery and regulation – far too many staff were allocated to policy development and far too few to the other two areas. Policy development is the high-status activity, but service delivery and regulation are where people meet the service and rate its performance.

At the very least I believe policy development officers should spend some time every year working at the shop front. This should apply from the head of the Prime Minister's Department, to Treasury and Finance Department budget officers. Answering pensioners' queries or fronting a Centrelink counter would not only help the service delivery officers, it would give the policy officers real insight into the role of government. Currently senior officers can find time for trivial matters such as the Australian Public Service Commission's Brandit competition.

For years the tagline One APS Career, thousands of opportunities has been attached to public service job advertisements.

I doubt if anyone paid attention to this jabber. It would be no loss if it disappeared. But with nothing else to do, the commission has run a competition to find a new tagline to "convey the employment value proposition of the APS."

The competition has, of course, included the full bureaucratic kit of judging criteria and judging panel.

Two external judges and the head of the Department of Prime Minister and Cabinet, Martin Parkinson and the Public Service commissioner, John Lloyd have found time to ponder the 32 shortlisted entries from over 700 "fantastic" submissions. I'd rather see them down at the local Centrelink helping members of the public.

At the very least policy development officers should spend some time every year working at the shop front.

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Attorney General George Brandis was laughed at for suggesting people contact Centrelink for help. Photo: Glenn Hunt

FOIREQ18/00067 000033

Division 2—Confidentiality

161 Operation of Division

Commonwealth laws

(1) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of:

(a) the *Child Support (Assessment) Act 1989*; or

(b) the *Child Support (Registration and Collection) Act 1988*.

State and Territory laws

(1A) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of:

(a) the Education and Care Services National Law applying as a law of a State or Territory; or

(b) a law of a State or Territory that applies the Education and Care Services National Law as a law of that State or Territory (whether or not that law has commenced); or

(c) regulations made under the Education and Care Services National Law; or

(d) a law of a State or Territory that substantially corresponds to the provisions of the Education and Care Services National Law (whether or not that law has commenced); or

(e) regulations made under a law referred to in paragraph (d).

(1B) In subsection (1A):

Education and Care Services National Law means the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria.

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FOIREQ18/00067 000034

No effect on operation of the Freedom of Information Act 1982

(2) The provisions of this Division that relate to the disclosure of information do not affect the operation of the *Freedom of Information Act 1982*.

162 Protection of personal information

(1) A person may obtain protected information if the information is obtained for the purposes of:

(a) the family assistance law; or

(aa) the *Dental Benefits Act 2008*; or

(b) the Family Homelessness Prevention and Early Intervention Pilot; or

(c) the Child Care Management System Pilot.

(2) A person may:

(a) make a record of protected information; or

(b) disclose such information to any person; or

(c) otherwise use such information;

if the record, disclosure or use made of the information by the person is made:

(d) for the purposes of the family assistance law; or

(daa) for the purposes of the *Dental Benefits Act 2008*; or

(dab) for the purposes of the social security law; or

(dac) for the purposes of the *Paid Parental Leave Act 2010*; or

(dad) for the purposes of the *Student Assistance Act 1973*; or

(da) for the purpose of the Family Homelessness Prevention and Early Intervention Pilot; or

(db) for the purpose of the Child Care Management System Pilot; or

(e) for the purpose for which the information was disclosed to the person under section 167 or 168; or

(f) with the express or implied authorisation of the person to whom the information relates.

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FOIREQ18/00067 000035

(2A) A person may use protected information to produce information in an aggregated form that does not disclose, either directly or indirectly, information about a particular person.

(3) The Minister may, by legislative instrument, specify additional purposes relating to other programs administered by the Department for which protected information may be obtained under subsection (1), or recorded, disclosed or otherwise used under subsection (2).

(5) An instrument under subsection (3) does not take effect until the end of the period in which it could be disallowed in either House of the Parliament.

163 Offence: unauthorised access to protected information

(1) If:

(a) a person intentionally obtains information; and

(b) the person is not authorised under the family assistance law to obtain the information; and

(c) the person knows or ought reasonably to know that the information is protected information;

the person commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

(2) Strict liability applies to the element of an offence against subsection (1) that a person not authorised to do something is not authorised under the family assistance law to do that thing.

164 Offence: unauthorised use of protected information

(1) If:

(a) a person intentionally:

(i) makes a record of; or

(ii) discloses to any other person; or

(iii) otherwise makes use of;

information; and

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(b) the person is not authorised or required under:
   (i) the family assistance law; or
   (ii) the *Social Security Act 1991*; or
   (iii) the *Social Security (Administration) Act 1999*;
   to make the record, disclosure or use of the information that is made by the person; and

(c) the person knows or ought reasonably to know that the information is protected information;

the person commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

(2) Strict liability applies to the element of an offence against subsection (1) that a person not authorised or required to do something is not authorised or required to do that thing under:
   (a) the family assistance law; or
   (b) the *Social Security Act 1991*; or
   (c) the *Social Security (Administration) Act 1999*.

165 Offence: soliciting disclosure of protected information

(1) If:
   (a) a person (the ***first person***) solicits the disclosure of protected information from an officer or another person; and
   (b) the disclosure would be in contravention of this Division; and
   (c) the first person knows or ought reasonably to know that the information is protected information;

the first person commits an offence (whether or not any protected information is actually disclosed) punishable on conviction by imprisonment for a term not exceeding 2 years.

(2) Strict liability applies to paragraph (1)(b).

166 Offence: offering to supply protected information

(1) A person must not offer to supply (whether to a particular person or otherwise) information about another person, knowing the information to be protected information.

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Penalty: Imprisonment for 2 years.

(2) A person must not hold himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person, knowing the information to be protected information.

Penalty: Imprisonment for 2 years.

(3) Nothing in subsection (1) or (2) has the effect that an officer acting in the performance or exercise of his or her powers, duties or functions under the family assistance law commits an offence.

167 Protection of certain documents etc. from production to court etc.

An officer must not, except for the purposes of the family assistance law, be required:

(a) to produce any document in his or her possession; or

(b) to disclose any matter or thing of which he or she had notice;

because of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law, to:

(c) a court; or

(d) a tribunal; or

(e) an authority; or

(f) a person;

having power to require the production of documents or the answering of questions.

168 Disclosure of information by Secretary

(1) Despite sections 164 and 167, the Secretary may:

(a) if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases—disclose information acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law to such persons and for such purposes as the Secretary determines; or

(b) disclose any such information:
   (i) to the Secretary of a Department of State of the Commonwealth or to the head of an authority of the Commonwealth for the purposes of that Department or authority; or
   (ii) to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it; or
   (iii) to the Chief Executive Centrelink for the purposes of a centrelink program; or
   (iv) to the Chief Executive Medicare for the purposes of a medicare program.

(2) In giving certificates for the purposes of paragraph (1)(a), the Secretary must act in accordance with guidelines (if any) from time to time in force under section 169.

(3) In disclosing information under paragraph (1)(b), the Secretary must act in accordance with guidelines (if any) from time to time in force under section 169.

(4) In spite of any other provision of this Part, the Secretary may disclose information of a kind referred to in paragraph (a) or (b) of the definition of ***protected information*** in subsection 3(1) to a person who is the payment nominee or correspondence nominee, within the meaning of Part 8B, of the person to whom the information relates (the ***principal***) as if the nominee were the principal.

169 Guidelines for exercise of Secretary's disclosure powers

The Minister may, by legislative instrument, make guidelines for the exercise of either or both of the following:

(a) the Secretary's power to give certificates for the purposes of paragraph 168(1)(a);

(b) the Secretary's power under paragraph 168(1)(b).

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169A Disclosure of information—child care tax offset

(1) The Secretary may, for the purposes of the administration of the child care tax offset provided by Subdivision 61-IA of the *Income Tax Assessment Act 1997*, give the Commissioner of Taxation information about people, including their tax file numbers, acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law.

(2) Information (including tax file numbers) given to the Commissioner of Taxation under subsection (1) may be used only for the purposes of the administration of the child care tax offset provided by Subdivision 61-IA of the *Income Tax Assessment Act 1997*.

(3) This section does not limit the powers of the Secretary under section 168.

170 Officer's declaration

An officer must make a declaration in a form approved by the Minister or the Secretary if required to do so by the Minister or the Secretary for the purposes of the family assistance law.

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CHILD SUPPORT (ASSESSMENT) ACT 1989

150 Secrecy

(1) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

law enforcement officer means a member or special member of the Australian Federal Police, a member of the police force of a State or Territory or an officer in the Office of the Director of Public Prosecutions.

person to whom this section applies means a person who is or has been:

(a) the Registrar; or

(b) the Secretary to the Department; or

(ba) the CEO; or

(bb) the Commissioner; or

(c) an officer or employee of:

(i) the Agency (within the meaning of the *Public Service Act 1999*) of which the Commissioner is the Agency Head (within the meaning of that Act); or

(ii) the Department; or

(iii) the Services Delivery Agency; or

(d) otherwise appointed or employed by, or a provider of services for, the Commonwealth (other than as a marriage counsellor within the meaning of the *Family Law Act 1975*);

(e) a person to whom information is communicated under paragraph (3)(d) or (e); or

(f) a person to whom information is communicated by a person referred to in paragraph (e) or this paragraph; or

(g) a person to whom this section applied immediately before the commencement of Schedule 5 to the *Child Support Legislation Amendment Act 2001*.

produce includes permit access to.

protected document means a document that:

(a) contains information that concerns a person; and

(b) is obtained or made by a person to whom this section applies in the course of, or because of, the person's duties under or in relation to this Act.

protected information means information that:

(a) concerns a person; and

(b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's duties under or in relation to this Act.

(2) Subject to subsection (3), a person to whom this section applies must not:

(a) make a record of any protected information; or

(b) whether directly or indirectly, communicate to a person any protected information concerning another person.

Penalty: Imprisonment for 1 year.

(2A) Subsection (2) does not apply if the record is made, or the information is communicated:

(a) under or for the purposes of this Act; or

(b) in the performance of duties, as a person to whom this section applies, under or in relation to this Act.

(3) Subsection (2) does not prevent the Registrar or a person authorised by the Registrar from communicating any protected information:

(a) to the Secretary, or an officer or employee of the Department, for the purpose of the administration of this Act; or

(b) to the Secretary to the Department or the Department of Veterans' Affairs, or an officer or employee of either Department, for the purpose of the administration of any law of the Commonwealth relating to pensions, allowances or benefits; or

(ba) to the CEO or an employee of the Services Delivery Agency for the purpose of the administration of this Act or of any other law of the Commonwealth relating to pensions, allowances or benefits; or

(c) to a person performing, as a person to whom this section applies, duties under or in relation to this Act or the *Child Support (Registration and Collection) Act 1988*, or under regulations made under either Act, for the purpose of enabling the person to perform the duties; or

(ca) to a person performing, as a person to whom this section applies, duties under or in relation to an Act of which the Commissioner has the general administration, or under regulations made under such an Act, for the purpose of enabling the person to perform those duties; or

(d) to the Secretary to the Attorney-General's Department, or an officer or employee of that Department, for the purpose of:

(i) the enforcement outside Australia of:

(A) child support liabilities; or

(B) maintenance liabilities that arose under the law of the Commonwealth or of a State or Territory; or

(ii) the enforcement within Australia of maintenance liabilities that arose under the law of an external Territory or a foreign country; or

(e) to a law enforcement officer if:

(i) the information concerns a threat against a person; and

(ii) there is reason to suspect that the threat may afford evidence that an offence may be, or has been, committed against that person or another person; and

(iii) the information is communicated for the purpose of preventing, investigating or prosecuting such an offence.

(4) A person communicates protected information to a person in contravention of subsection (2) if the person communicates the information to any Minister.

(5) A person to whom this section applies is not required:

(a) to communicate protected information to a court; or

(b) to produce a protected document in court;

except where it is necessary to do so for the purposes of this Act.

(5A) Subsections (2) and (5) apply to information communicated under paragraph (3)(d) or (e) as if the purposes referred to in those paragraphs were purposes of this Act.

(6) Nothing in an Act of which the Commissioner has the general administration is to be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from communicating any information to a person performing, as a person to whom this section applies, duties under or in relation to this Act for the purpose of enabling the person to perform the duties.

(7) Nothing in an Act of which the Commissioner has the general administration is to be taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from:

(a) communicating to a court any information obtained under or for the purposes of such an Act; or

(b) producing in court a document obtained or made under or for the purposes of such an Act;

where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(8) A person to whom this section applies must, if and when required by the Registrar to do so, make an oath or declaration, in a manner and form

specified by the Registrar in writing, to maintain secrecy in accordance with this section.

(9) This section has effect subject to subsection 67N(10) of the *Family Law Act 1975*.

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Part 3—Dealing with personal information

6 Australian Privacy Principle 6—use or disclosure of personal information

Use or disclosure

6.1 If an APP entity holds personal information about an individual that was collected for a particular purpose (the ***primary purpose***), the entity must not use or disclose the information for another purpose (the ***secondary purpose***) unless:

(a) the individual has consented to the use or disclosure of the information; or

(b) subclause 6.2 or 6.3 applies in relation to the use or disclosure of the information.

Note: Australian Privacy Principle 8 sets out requirements for the disclosure of personal information to a person who is not in Australia or an external Territory.

6.2 This subclause applies in relation to the use or disclosure of personal information about an individual if:

(a) the individual would reasonably expect the APP entity to use or disclose the information for the secondary purpose and the secondary purpose is:

(i) if the information is sensitive information—directly related to the primary purpose; or

(ii) if the information is not sensitive information—related to the primary purpose; or

(b) the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or

(c) a permitted general situation exists in relation to the use or disclosure of the information by the APP entity; or

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(d) the APP entity is an organisation and a permitted health situation exists in relation to the use or disclosure of the information by the entity; or

(e) the APP entity reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body.

Note: For ***permitted general situation***, see section 16A. For ***permitted health situation***, see section 16B.

6.3 This subclause applies in relation to the disclosure of personal information about an individual by an APP entity that is an agency if:

(a) the agency is not an enforcement body; and

(b) the information is biometric information or biometric templates; and

(c) the recipient of the information is an enforcement body; and

(d) the disclosure is conducted in accordance with the guidelines made by the Commissioner for the purposes of this paragraph.

6.4 If:

(a) the APP entity is an organisation; and

(b) subsection 16B(2) applied in relation to the collection of the personal information by the entity;

the entity must take such steps as are reasonable in the circumstances to ensure that the information is de-identified before the entity discloses it in accordance with subclause 6.1 or 6.2.

Written note of use or disclosure

6.5 If an APP entity uses or discloses personal information in accordance with paragraph 6.2(e), the entity must make a written note of the use or disclosure.

Related bodies corporate

6.6 If:

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(a) an APP entity is a body corporate; and
(b) the entity collects personal information from a related body corporate;

this principle applies as if the entity's primary purpose for the collection of the information were the primary purpose for which the related body corporate collected the information.

Exceptions

6.7 This principle does not apply to the use or disclosure by an organisation of:
(a) personal information for the purpose of direct marketing; or
(b) government related identifiers.

7 Australian Privacy Principle 7—direct marketing

Direct marketing

7.1 If an organisation holds personal information about an individual, the organisation must not use or disclose the information for the purpose of direct marketing.

Note: An act or practice of an agency may be treated as an act or practice of an organisation, see section 7A.

Exceptions—personal information other than sensitive information

7.2 Despite subclause 7.1, an organisation may use or disclose personal information (other than sensitive information) about an individual for the purpose of direct marketing if:
(a) the organisation collected the information from the individual; and
(b) the individual would reasonably expect the organisation to use or disclose the information for that purpose; and
(c) the organisation provides a simple means by which the individual may easily request not to receive direct marketing communications from the organisation; and

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Chapter 6: Australian Privacy Principle 6 — Use or disclosure of personal information

Version 1.0, February 2014

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Key points

- APP 6 outlines when an APP entity may use or disclose personal information.
- An APP entity can only use or disclose personal information for a purpose for which it was collected (known as the 'primary purpose'), or for a secondary purpose if an exception applies.
- The exceptions include where:
    - the individual has consented to a secondary use or disclosure
    - the individual would reasonably expect the APP entity to use or disclose their personal information for the secondary purpose, and that purpose is related to the primary purpose of collection, or, in the case of sensitive information, directly related to the primary purpose
    - the secondary use or disclosure is required or authorised by or under an Australian law or a court/tribunal order
    - a permitted general situation exists in relation to the secondary use or disclosure
    - the APP entity is an organisation and a permitted health situation exists in relation to the secondary use or disclosure
    - the APP entity reasonably believes that the secondary use or disclosure is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body, or
    - the APP entity is an agency (other than an enforcement body) and discloses biometric information or biometric templates to an enforcement body, and the disclosure is conducted in accordance with guidelines made by the Information Commissioner for the purposes of APP 6.3.

What does APP 6 say?

6.1 APP 6 outlines when an APP entity may use or disclose personal information. The intent is that an entity will generally use and disclose an individual's personal information only in ways the individual would expect or where one of the exceptions applies.

6.2 An APP entity that holds personal information about an individual can only use or disclose the information for a particular purpose for which it was collected (known as the 'primary purpose' of collection), unless an exception applies. Where an exception applies the entity may use or disclose personal information for another purpose (known as the 'secondary purpose'). Exceptions include:

- the individual consented to a secondary use or disclosure (APP 6.1(a))
- the individual would reasonably expect the secondary use or disclosure, and that is related to the primary purpose of collection or, in the case of sensitive information, directly related to the primary purpose (APP 6.2(a))

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- the secondary use or disclosure of the personal information is required or authorised by or under an Australian law or a court/tribunal order (APP 6.2(b))
- a permitted general situation exists in relation to the secondary use or disclosure of the personal information by the APP entity (APP 6.2(c))
- the APP entity is an organisation and a permitted health situation exists in relation to the secondary use or disclosure of the personal information by the organisation (APP 6.2(d))
- the APP entity reasonably believes that the secondary use or disclosure is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body (APP 6.2(e))
- the APP entity is an agency (other than an enforcement body) and discloses personal information that is biometric information or biometric templates to an enforcement body, and the disclosure is conducted in accordance with guidelines made by the Information Commissioner for the purposes of APP 6.3 (APP 6.3).

6.3 An APP entity may disclose personal information, other than sensitive information, to a related body corporate (s 13B(1)(b)).

6.4 APP 6 does not apply to the use or disclosure by an organisation of:

- personal information for the purpose of direct marketing (this is covered by APP 7), or
- government related identifiers (this is covered by APP 9) (APP 6.7).

'Holds', 'use', 'disclose' and 'purpose'

6.5 Each of the terms 'holds', 'use', 'disclose' and 'purpose' which are used in APP 6 and other APPs, are discussed in more detail in Chapter B (Key concepts). The following is a brief analysis of the meaning of these terms in the context of APP 6.

'Holds'

6.6 APP 6 only applies to personal information that an APP entity 'holds'. An APP entity 'holds' personal information 'if the entity has possession or control of a record that contains the personal information' (s 6(1)).

6.7 The term 'holds' extends beyond physical possession of a record to include a record that an entity has the right or power to deal with. For example, an APP entity that outsources the storage of personal information to a third party, but retains the right to deal with that information, including to access and amend it, holds that personal information. The term 'holds' is discussed further in Chapter B (Key concepts).

'Use'

6.8 The term 'use' is not defined in the Privacy Act. An APP entity 'uses' information where it handles or undertakes an activity with the information, within the entity's effective control. For further discussion of use, see Chapter B (Key concepts). Examples include:

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- the entity accessing and reading the personal information
- the entity searching records for the personal information
- the entity making a decision based on the personal information
- the entity passing the personal information from one part of the entity to another
- unauthorised access by an employee of the entity.[1]

'Disclose'

6.9 The term 'disclose' is not defined in the Privacy Act. An APP entity 'discloses' personal information where it makes it accessible to others outside the entity and releases the subsequent handling of the information from its effective control. This focuses on the act done by the disclosing party. The state of mind or intentions of the recipient does not affect the act of disclosure. Further, there will be a disclosure in these circumstances even where the information is already known to the recipient. For further discussion of disclosure, see Chapter B (Key concepts).

6.10 The release may be a proactive release or publication, a release in response to a specific request, an accidental release or an unauthorised release by an employee.[2] Examples include where an APP entity:

- shares the personal information with another entity or individual
- discloses personal information to themselves, but in their capacity as a different entity
- publishes the personal information on the internet, whether intentionally or not,[3] and it is accessible by another entity or individual
- accidentally provides personal information to an unintended recipient[4]
- reveals the personal information in the course of a conversation with a person outside the entity
- displays a computer screen so that the personal information can be read by another entity or individual, for example, at a reception counter or in an office.

6.11 'Disclosure' is a separate concept from:

- 'unauthorised access' which is addressed in APP 11. An APP entity is not taken to have disclosed personal information where a third party intentionally exploits the entity's security measures and gains unauthorised access to the information.[5]

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[1] An APP entity is taken to have 'used' personal information where an employee gains unauthorised access 'in the performance of the duties of the person's employment' (see s 8(1)).

[2] An APP entity is taken to have 'disclosed' personal information where an employee carries out an unauthorised disclosure 'in the performance of the duties of the person's employment' (s 8(1)).

[3] See OAIC, *Own Motion Investigation Report — Medvet SciencePty Ltd*, July 2012, OAIC website <www.oaic.gov.au>; *Own Motion Investigation Report — Telstra Corporation Limited*, June 2012, OAIC website <www.oaic.gov.au>.

[4] The APP entity may also breach APP 11 if it did not take reasonable steps to protect the information from this unauthorised disclosure (see APP 11, Chapter 11).

[5] The actions of an employee will be attributed to the APP entity where it was carried out 'in the performance of the duties of the person's employment' (s 8(1)).

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Examples include unauthorised access following a cyber-attack[6] or a theft, including where the third party then makes that personal information available to others outside the entity. However, where a third party gains unauthorised access, the APP entity may breach APP 11 if it did not take reasonable steps to protect the information from unauthorised access (see Chapter 11 (APP 11))

- 'use', which is discussed in paragraph 6.8 above. APP 6 generally imposes the same obligations on an APP entity for uses and disclosures of personal information. Therefore, this distinction is not relevant in interpreting this principle (except in relation to APP 6.3). However, the distinction is relevant to APP 8, which applies to the disclosure of personal information to an overseas recipient (see Chapter 8 (APP 8)).

'Purpose' of collection

6.12 The purpose for which an APP entity collects personal information is known as the 'primary purpose' of collection. This is the specific function or activity for which the entity collects the personal information. 'Purpose', including how to identify and describe the primary purpose, is discussed in more detail in Chapter B (Key concepts).

6.13 The notification requirements in APP 5 complement the limitations on use and disclosure under APP 6. APP 5 requires an APP entity that collects personal information about an individual to take reasonable steps either to notify the individual of certain matters or to ensure the individual is aware of those matters. This includes the primary purpose of collection and could also include other purposes for which the entity collects the information (known as secondary purposes) (see APP 5.2(d)). The notification requirements are discussed in Chapter 5 (APP 5).

Using or disclosing personal information for a secondary purpose

6.14 A 'secondary purpose' is any purpose other than the primary purpose for which the APP entity collected the personal information.

6.15 The grounds on which an APP entity may use or disclose personal information for a secondary purpose are outlined below. It is nevertheless open to an entity not to rely on any such ground and to decide not to use or disclose personal information, unless the use or disclosure is required by law (see paragraphs 6.29–6.31 below).

Using or disclosing personal information with the individual's consent

6.16 APP 6.1(a) permits an APP entity to use or disclose personal information for a secondary purpose where the individual has consented to the use or disclosure.

6.17 Consent is defined in s 6(1) as 'express consent or implied consent' and is discussed in Chapter B (Key concepts). The four key elements of consent are:

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[6] See OAIC, *Own Motion Investigation Report — Sony Playstation Network/ Qriocity*, September 2011, OAIC website <www.oaic.gov.au>.

- the individual is adequately informed before giving consent
- the individual gives consent voluntarily
- the consent is current and specific, and
- the individual has the capacity to understand and communicate their consent.

Using or disclosing personal information where reasonably expected by the individual and related to the primary purpose of collection

6.18 APP 6.2(a) permits an APP entity to use or disclose personal information for a secondary purpose if the individual would reasonably expect the entity to use or disclose the information for that secondary purpose, and:

- if the information is sensitive information, the secondary purpose is directly related to the primary purpose of collection, or
- if the information is not sensitive information, the secondary purpose is related to the primary purpose of collection.

6.19 This exception creates a two-limb test which focuses both on the reasonable expectations of the individual, and the relationship between the primary and secondary purposes.

Reasonably expect

6.20 The 'reasonably expects' test is an objective one that has regard to what a reasonable person, who is properly informed, would expect in the circumstances. This is a question of fact in each individual case. It is the responsibility of the APP entity to be able to justify its conduct.

6.21 An APP entity should consider whether an individual would reasonably expect it to use or disclose for a secondary purpose only some of the personal information it holds about the individual, rather than all of the personal information it holds. The entity should only use or disclose the minimum amount of personal information sufficient for the secondary purpose. For example, an individual may not reasonably expect an entity that is investigating their complaint against a contractor to disclose the individual's residential address and home contact details to the contractor as part of its investigation. The individual would reasonably expect the entity to give the contractor only the minimum amount of personal information necessary to enable them to respond to the complaint.[7]

6.22 Examples of where an individual may reasonably expect their personal information to be used or disclosed for a secondary purpose include where:

- the individual makes adverse comments in the media about the way an APP entity has treated them. In these circumstances, it may be reasonable to expect that the

[7] For another example of where an individual would not reasonably expect disclosure, see *W v Telecommunications Company* [2007] PrivCmrA 25, Australasian Legal Information Institute website <www.austlii.edu.au>.

entity may respond publicly to these comments in a way that reveals personal information specifically relevant to the issues that the individual has raised[8]

- an agency discloses to another agency a query, view or representation that an individual has made to the first-mentioned agency[9]
- the entity has notified the individual of the particular secondary purpose under APP 5.1 (see Chapter 5 (APP 5))
- the secondary purpose is a normal internal business practice, such as as auditing, business planning, billing or de-identifying the personal information.

Relationship between the primary and secondary purpose

6.23 This exception is limited to using or disclosing personal information for a secondary purpose that is 'related', or for sensitive information 'directly related', to the primary purpose of collection.

Related secondary purpose

6.24 A related secondary purpose is one which is connected to or associated with the primary purpose. There must be more than a tenuous link.[10]

6.25 Examples of where a secondary purpose is related to the primary purpose of collection include:

- an organisation collects personal information about an individual for the primary purpose of collecting a debt. A law firm, acting on behalf of that organisation in relation to the debt collection, contacts the individual's neighbour and seeks information from the neighbour about the individual's whereabouts (but does not disclose any specific information about the debt). This disclosure to the neighbour, for the secondary purpose of locating the individual, is related to the primary purpose of debt collection and would be within the individual's reasonable expectations[11]
- an agency collects personal information to include in an employee's personnel file for the primary purpose of administering that individual's employment.[12] It then uses this personal information as part of an investigation into complaints by the individual about working conditions. In these circumstances, the use for the secondary purpose of investigating a complaint in the workplace is related to the

[8] See *L v Commonwealth Agency* [2010] PrivCmrA 14 (24 December 2010), Australasian Legal Information Institute website <www.austlii.edu.au>.

[9] Explanatory Memorandum, Privacy Amendment (Enhancing Privacy Protection) Bill 2012, p 78.

[10] For examples of where disclosure of personal information for a secondary purpose is not related to the primary purpose of collection, see *B v Hotel* [2008] PrivCmrA 2, Australasian Legal Information Institute website <www.austlii.edu.au>; *E v Insurance Company* [2011] PrivCmrA 5, Australasian Legal Information Institute website <www.austlii.edu.au>.

[11] This example is adapted from *M and Law Firm* [2011] AICmrCN 7 (available at Australasian Legal Information Institute website <www.austlii.edu.au>), where the Commissioner also referred the complaint to the Australian Competition and Consumer Commission to consider whether the debt collection practices were consistent with its debt collection guidelines.

[12] The exemption relating to employee records in s 7B(3) only applies to organisations.

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primary purpose of collection, and would be within the individual's reasonable expectations[13]

- an APP entity uses personal information for the purpose of de-identifying the information.

Directly related secondary purpose

6.26 For the use or disclosure of sensitive information, the secondary purpose must be 'directly related' to the primary purpose of collection. A directly related secondary purpose is one which is closely associated with the primary purpose, even if it is not strictly necessary to achieve that primary purpose. This requirement for a direct relationship recognises that the use and disclosure of sensitive information can have serious ramifications for the individual or their associates, including humiliation, embarrassment or loss of dignity.

6.27 An example of where a secondary purpose is directly related to the primary purpose of collection is:

- a health service provider collects health information about an individual for the purpose of providing treatment, and then decides, for ethical and therapeutic reasons, that they cannot treat the individual. The health service provider then advises another provider at the medical clinic of the individual's need for treatment and of the provider's inability to provide that treatment. This disclosure to the other provider is directly related to the purpose for which the information was collected, and would be within the individual's reasonable expectations.[14]

6.28 The use of sensitive information for the purpose of de-identifying the information will also be directly related to the primary purpose of collection.

Using or disclosing personal information as required or authorised by law

6.29 An APP entity may use or disclose personal information for a secondary purpose if the use or disclosure is required or authorised by or under an Australian law or a court/tribunal order (APP 6.2(b)).

6.30 The meaning of 'required or authorised by or under an Australian law or a court/tribunal order' is discussed in Chapter B (Key concepts).

6.31 Examples of where an APP entity may be required or authorised by law to use or disclose personal information include where:

- a warrant, order or notice issued by a court requires the entity to provide information, or produce records or documents that are held by the entity
- the entity is subject to a statutory requirement to report certain matters to an agency or enforcement body, for example, specific financial transactions, notifiable diseases and suspected cases of child abuse

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[13] *N v Commonwealth Agency* [2009] PrivCmrA 17, Australasian Legal Information Institute website <www.austlii.edu.au>.
[14] *F v Medical Specialist* [2009] PrivCmrA 8, Australasian Legal Information Institute website <www.austlii.edu.au>.

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- a law applying to the entity clearly and specifically authorises it to use or disclose the personal information, for example:
  - to give a record to the Private Health Insurance Ombudsman,[15] or to disclose matters to a trustee conducting a bankruptcy investigation[16]
  - a specified use or disclosure of personal information by an Agency Head, the Merit Protection Commissioner or the Australian Public Service Commissioner[17]
  - a specified use or disclosure of personal information under the Privacy Act, for example, to de-identify personal information as required by APP 11.

Using or disclosing personal information where a permitted general situation exists

6.32 An APP entity may use or disclose personal information for a secondary purpose if a 'permitted general situation' exists in relation to the use or disclosure of the information by the entity (APP 6.2(c)).

6.33 Section 16A lists seven permitted general situations (two of which only apply to agencies). The seven situations are set out below, and are discussed in Chapter C (Permitted general situations), including the meaning of relevant terms.

Lessening or preventing a serious threat to life, health or safety

6.34 An APP entity may use or disclose personal information for a secondary purpose where:

- it is unreasonable or impracticable to obtain the individual's consent to the use or disclosure, and
- the entity reasonably believes the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety (s 16A(1), Item 1).

6.35 Examples of where this permitted general situation might apply include:

- where an individual is seriously injured while interstate and, due to their injuries, cannot give informed consent, the individual's usual health service provider may be able to disclose personal information about the individual to another health service provider who is treating the individual's serious injuries on the basis that it is impracticable to obtain the individual's consent
- where an APP entity that provides child protection services has evidence that a child is at risk of physical or sexual abuse by their parent, the entity may be able to disclose the personal information of the parent to another child protection service on the basis that it would be unreasonable to obtain the parent's consent.

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[15] *Private Health Insurance Act 2007*, s 250.10.
[16] *Bankruptcy Act 1966*, s 77A.
[17] *Public Service Act 1999*, s 72E and Public Service Regulations 1999, regulation 9.2.

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Taking appropriate action in relation to suspected unlawful activity or serious misconduct

6.36 An APP entity may use or disclose personal information for a secondary purpose where the entity:

- has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in, and
- reasonably believes that the collection use or disclosure is necessary in order for the entity to take appropriate action in relation to the matter (s 16A(1), Item 2).

6.37 Examples of where this permitted general situation might apply are the use of personal information by:

- an APP entity that is investigating fraudulent conduct by a professional adviser or a client in relation to the entity's functions or activities
- an agency that is investigating a suspected serious breach by a staff member of the Australian Public Service Code of Conduct.

Locating a person reported as missing

6.38 An APP entity may use or disclose personal information for a secondary purpose where the entity:

- reasonably believes that the use or disclosure is reasonably necessary to assist any APP entity, body or person to locate a person who has been reported as missing, and
- the use or disclosure complies with rules made by the Commissioner under s 16A(2) (s 16A(1), Item 3).

Reasonably necessary for establishing, exercising or defending a legal or equitable claim

6.39 An APP entity may use or disclose personal information for a secondary purpose where the use or disclosure is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim (s 16A(1) Item 4).

6.40 An example of where this permitted general situation might apply is where an individual has made a claim under their life insurance policy and the insurer is preparing to dispute the claim. The insurer may use or disclose personal information about the individual to establish its defence of the claim.

Reasonably necessary for a confidential alternative dispute resolution processes

6.41 An APP entity may use or disclose personal information for a secondary purpose where the use or disclosure is reasonably necessary for the purposes of a confidential alternative dispute resolution (ADR) process (s 16A(1), Item 5).

6.42 An example of where this permitted general situation might apply is where an APP entity discloses their version of events during a confidential ADR process, where that account includes the disclosure of personal information about an individual who is

directly or indirectly involved in the dispute. This permitted general situation will only apply where the parties to the dispute and the ADR provider are bound by confidentiality obligations.

Necessary for a diplomatic or consular function or activity

6.43 An agency may use or disclose personal information for a secondary purpose where the agency reasonably believes that the use or disclosure is necessary for the agency's diplomatic or consular functions or activities (s 16A(1), Item 6). This permitted general situation applies only to agencies, and not to organisations.

6.44 An example of where this permitted general situation might apply is where an agency with diplomatic or consular functions uses or discloses personal information to grant a diplomatic visa to a foreign national accredited as a member of the diplomatic staff of a mission to Australia.

Necessary for certain Defence Force activities outside Australia

6.45 The Defence Force (as defined in s 6(1)) may use or disclose personal information for a secondary purpose where it reasonably believes that the use or disclosure is necessary for a warlike operation, peacekeeping, civil aid, humanitarian assistance, a medical emergency, a civil emergency or disaster relief occurring outside Australia and the external Territories (s 16A(1), Item 7).

6.46 An example of where this permitted general situation might apply is where the Defence Force uses and discloses personal information about an enemy or other hostile adversary in order to support military operations.

Using or disclosing personal information where a permitted health situation exists

6.47 An organisation may use or disclose personal information if a 'permitted health situation' exists in relation to the use or disclosure (APP 6.2(d)). This exception applies only to organisations, and not to agencies.

6.48 Section 16B lists three permitted health situations that relate to the use or disclosure of health information or genetic information by an organisation. The three situations are set out below, and are discussed in Chapter D (Permitted health situations), including the meaning of relevant terms.

Conducting research; compiling or analysing statistics; management, funding or monitoring of a health service

6.49 An organisation may use or disclose health information about an individual for a secondary purpose if the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety, and:

- it is impracticable to obtain the individual's consent to the use or disclosure

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- the use or disclosure is conducted in accordance with guidelines approved under s 95A,[18] and
- in the case of disclosure, the organisation reasonably believes that the recipient of the information will not disclose the information, or personal information derived from that information (s 16B(3)).

6.50 An example of where this permitted health situation might apply is where an organisation discloses health information to a researcher who is conducting public health research in circumstances where the age of the information makes it impracticable to obtain consent. The disclosing organisation should have a written agreement with the researcher which requires the researcher not to disclose the health information, or any personal information that is derived from that health information. The disclosure must be carried out in accordance with guidelines approved under s 95A.

Necessary to prevent a serious threat to the life, health or safety of a genetic relative

6.51 An organisation may use or disclose genetic information about an individual for a secondary purpose if:

- the organisation has obtained the information in the course of providing a health service to the individual
- the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of another individual who is a genetic relative of the individual
- the use or disclosure is conducted in accordance with guidelines approved under s 95AA,[19] and
- in the case of disclosure, the recipient of the information is a genetic relative of the individual (s 16B(4)).

6.52 An example of where this permitted health situation might apply is:

- in the course of providing a health service, an organisation obtains information that a patient has a pathogenic mutation in the Huntington disease gene, and
- the individual refuses to consent to the organisation disclosing any information to their genetic relatives, even after the individual has participated in discussions and counselling, and received information about the implications of the diagnosis for the individual's genetic relatives
- despite this refusal, the organisation may disclose the genetic information to genetic relatives under this exception, providing any disclosure is in accordance with the guidelines approved under s95AA.

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[18] See National Health and Medical Research Council (NHMRC), *Guidelines approved under Section 95A of the Privacy Act 1988,* NHMRC website <www.nhmrc.gov.au>.

[19] See National Health and Medical Research Council (NHMRC), *Use and disclosure of genetic information to a patient's genetic relatives under Section 95AA of the Privacy Act 1988: Guidelines for health practitioners in the private sector,* NHMRC website <www.nhmrc.gov.au>.

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Disclosure to a responsible person for the individual

6.53 An organisation may disclose health information about an individual for a secondary purpose if:

- the organisation provides a health service to the individual
- the recipient of the information is a 'responsible person' for the individual
- the individual is either physically or legally incapable of giving consent to the disclosure, or physically cannot communicate consent to the disclosure
- the individual providing the health service (the 'carer') is satisfied that either the disclosure is necessary to provide appropriate care or treatment of the individual, or the disclosure is made for compassionate reasons
- the disclosure is not contrary to any wish expressed by the individual before the individual became unable to give or communicate consent of which the carer is aware or of which the carer could reasonably be expected to be aware
- the disclosure is limited to the extent reasonable and necessary for providing appropriate care or fulfilling compassionate reasons (s 16B(5)).

6.54 An example of where this permitted health situation might apply is where an individual who cannot give consent is released from hospital into the care of family members. The health service provider (referred to in this exception as the 'carer') discloses health information to the family members to enable them to monitor the individual's progress and administer medication. In these circumstances, the exception would apply where the carer is satisfied that the disclosure is necessary to provide appropriate care for the individual. The disclosure must be limited to the extent reasonable and necessary to provide appropriate care.

6.55 Another example is where a carer discloses health information to an unconscious patient's family members about the patient's condition. In these circumstances, the exception would apply where the carer is satisfied that the disclosure is necessary for compassionate reasons. The disclosure must be limited to the extent reasonable and necessary for the compassionate reasons.

Using or disclosing personal information for an enforcement related activity

6.56 An APP entity may use or disclose personal information for a secondary purpose where the entity reasonably believes that the use or disclosure of the personal information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body (APP 6.2(e)).

6.57 'Enforcement body' is defined in s 6(1) as a list of specific bodies and is discussed in Chapter B (Key concepts). The list includes Commonwealth, State and Territory bodies that are responsible for policing, criminal investigations, and administering laws to protect the public revenue or to impose penalties or sanctions. Examples of Commonwealth enforcement bodies are the Australian Federal Police, Australian Crime

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Commission, Customs, the Integrity Commissioner,[20] the Immigration Department,[21] Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and AUSTRAC.

6.58 'Enforcement related activities' is defined in s 6(1) and is discussed in Chapter B (Key concepts). Enforcement related activities include the prevention, detection, investigation and prosecution or punishment of criminal offences and intelligence gathering activities.

Reasonable belief

6.59 The phrase 'reasonable belief' is discussed in Chapter B (Key concepts). In summary, the APP entity must have a reasonable basis for the belief, and not merely a genuine or subjective belief. It is the responsibility of the entity to be able to justify its reasonable belief.

6.60 In some circumstances, the basis for an APP entity's 'reasonable belief' will be clear, for example, if the entity discloses personal information in response to a written request by an enforcement body and the request is dated and signed by an authorised person. In other circumstances, the basis for this belief may be less clear, and the entity will need to reflect more carefully about whether its judgment is reasonable.

Reasonably necessary

6.61 The 'reasonably necessary' test is an objective test: whether a reasonable person who is properly informed would agree that the use or disclosure is reasonable in the circumstances. Again, it is the responsibility of an APP entity to be able to justify that the particular use or disclosure is reasonably necessary.

6.62 For example, investigators from an enforcement body suspect that a particular building is being used for drug trafficking activities. As part of the enforcement body's intelligence gathering, the investigators request an APP entity to disclose the personal information of individuals associated with the building (although the investigators do not know the extent, if any, of the involvement of the individuals). This disclosure would be 'reasonably necessary' as it forms an important part of the enforcement body's intelligence gathering about the suspected drug trafficking.

6.63 The use or disclosure does not need to relate to an existing enforcement related activity. The use or disclosure may be reasonably necessary for the initiation of an enforcement related activity. This recognises that a law enforcement body may not be in a position to prevent, detect or investigate offences or breaches of the law, unless and until certain information, including personal information, is brought to its attention.

6.64 An APP entity should ensure that it only uses or discloses the minimum amount of personal information reasonably necessary for a particular enforcement related activity. For example, an entity may hold a range of personal information about an individual, such as the person's contact details, their photograph and information about their

[20] 'Integrity Commissioner is defined in s 6(1) as having the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

[21] 'Immigration Department' is defined in s 6(1) as the Department administered by the Minister administering the *Migration Act 1958*.

FOIREQ18/00067 000074

political views and religious views. Before disclosing all of this personal information to the enforcement body, the entity should consider whether only some of it is reasonably necessary for the enforcement related activity. If so, it should disclose only that information.

Making a written note of use or disclosure for this secondary purpose

6.65 If an APP entity uses or discloses personal information in accordance with the 'enforcement related activities' exception in APP 6.2(e), the entity must make a written note of the use or disclosure (APP 6.5).

6.66 The APP entity could include the following details in that note:

- the date of the use or disclosure
- details of the personal information that was used or disclosed
- the enforcement body conducting the enforcement related activity
- if the entity used the personal information, how the personal information was used by the entity
- if the entity disclosed the personal information, who it disclosed the personal information to (this may be the enforcement body or another entity)
- the basis for the entity's 'reasonable belief'. This will help the entity assure itself that this exception applies, and it may be a useful reference if the entity later needs to justify its reasonable belief.

6.67 This requirement does not apply where a law prohibits the APP entity from making such a record.

Disclosing biometric information to an enforcement body

6.68 An agency may disclose biometric information or biometric templates for a secondary purpose if:

- the agency is not an enforcement body, and
- the recipient of the information is an enforcement body, and
- the disclosure is conducted in accordance with guidelines made by the Commissioner for the purposes of APP 6.3 (see APP 6.3, Chapter 6).

6.69 This exception does not apply to organisations.

6.70 'Biometric information' and 'biometric templates' are types of 'sensitive information' (defined in s 6(1)). 'Enforcement body' is defined in s 6(1) and is discussed in more detail in Chapter B (Key concepts).

De-identifying certain health information before disclosure

6.71 APP 6.4 applies where an organisation collects health information under an exception to APP 3 in s 16B(2). Section 16B(2) outlines the permitted health situation that

allows an organisation to collect health information about an individual if the collection is necessary for research relevant to public health or safety, the compilation or analysis of statistics relevant to public health or public safety, or the management, funding or monitoring of a health service and certain other criteria are satisfied (see Chapter D (Permitted health situations)).

6.72 In these circumstances, APP 6.4 requires the organisation to take reasonable steps to ensure that the information is de-identified, before it discloses the information in accordance with APPs 6.1 or 6.2.

6.73 Personal information is de-identified 'if the information is no longer about an identifiable individual or an individual who is reasonably identifiable' (s 6(1)). De-identification is discussed in more detail in Chapter B (Key concepts).[22]

6.74 The reasonable steps that an organisation should take will depend upon circumstances that include:

- the possible adverse consequences for an individual if their health information is not de-identified before it is disclosed. More rigorous steps may be required as the risk of adversity increases
- the practicability, including time and cost involved. However, an organisation is not excused from taking particular steps to de-identify health information by reason only that it would be inconvenient, time-consuming or impose some cost to do so. Whether these factors make it unreasonable to take a particular step will depend on whether the burden is excessive in all the circumstances.

Related bodies corporate

Disclosing personal information to a related body corporate

6.75 Section 13B(1)(b) provides that where a body corporate discloses personal information (other than sensitive information) to a related body corporate, this is generally not considered 'an interference with the privacy of an individual' under the Privacy Act (interferences with privacy are discussed in Chapter A (Introductory matters)). This provision applies to related bodies corporate and not to other corporate relationships, such as a franchise or joint-venture relationship.[23]

6.76 The effect of this provision is that an APP entity may disclose personal information (other than sensitive information) to a related body corporate without relying on an exception in APP 6.2.

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[22] See also, OAIC *Privacy Business Resource — De-identification of Data and Information* and *Information Policy Agency Resource — De-identification of Data and Information*, OAIC website <www.oaic.gov.au>.

[23] Section 6(8) states 'for the purposes of this Act, the question of whether bodies corporate are related to each other is determined in the manner in which that question is determined under the *Corporations Act 2001*'.

FOIREQ18/00067 000076

Using or disclosing personal information collected from a related body corporate

6.77 An APP entity that collects personal information from a related body corporate is taken to have the same primary purpose of collection as its related body corporate (APP 6.6). Under APP 6, the entity may only use or disclose the personal information for that primary purpose, unless an exception to that principle applies (see paragraph 6.2 above).

For example, an APP entity collects personal information about an applicant contractor for the purpose of assessing their suitability to perform work on its behalf. The parent company then collects that personal information from the entity. The primary purpose of this collection is taken to be the same as the original purpose of collection. The parent company may only disclose the personal information to a third party for another purpose, where an exception to APP 6 applies.

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Our reference: CII7/00004

Ms Annette Musolino
Chief Counsel, Legal Services
Department of Human Services

By email: Annette.Musolino@humanservices.gov.au

Dear Ms Musolino

I refer to the former Commissioner's preliminary inquiries into the Department of Human Services' (Department) response to public allegations made about it by a Centrelink customer. Thank you for the Department's response in relation to those inquiries, dated 12 May 2017.

I am writing to advise of my view that the exception at Australian Privacy Principle **(APP)** 6.2(a) applies in the particular circumstances of this matter.

As I have found that the exception at APP 6.2(a) does apply on this occasion and there has consequently not been a breach of the *Privacy Act 1988* (Cth), I am ceasing preliminary inquiries into this matter.

I have outlined the reasons for my decision below.

The Department's position

The Department outlined its position in correspondence to the Office of the Australian Information Commissioner (**OAIC**), dated 12 May 2017. I summarise this below.

The specific disclosure reported in the media

The Department advises that the article published 6 February 2017 contained factual inaccuracies and potentially misleading statements. Given this, the Department briefed the Minister's office on the individual's case and consideration was given as to whether the Department or the Minister might publicly respond to the matters raised in the article to correct the public record.

The Department subsequently released a limited amount of protected information about the individual's case to a journalist of *The Canberra Times* on 22 February 2017, in response to the journalist's request for information about problems experienced by Centrelink customers as raised in the individual's article.

The Department reports that all information disclosed about the individual had been cleared for release by SES officers in the Department including SES lawyers.

The Department contends the disclosure was permitted by APP 6.2(a) on the basis the individual would reasonably expect the Department to disclose personal information necessary to respond publicly to the matters the individual had raised publicly.

The Department also contends that the APP 6.2(b) exception applies as the use and disclosure of the complainant's personal information was authorised under the following Australian laws:

(i) s 162(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) **(FAA Act);** and

(ii) s 202(2) of the *Social Security (Administration) Act 1999* (Cth) **(SSA Act).**

My view

APP 6.2(a) – reasonable expectation of the disclosure for a secondary purpose

APP 6.2(a)(ii) provides that if an APP entity holds personal information for a primary purpose, it may use or disclose it for a secondary purpose if the individual would reasonably expect it to do so, and the secondary purpose is related to the primary purpose.

This exception creates a two-limb test which focuses on both the reasonable expectations of the individual, and the relationship between the primary and secondary purposes.

The Department has referred to this exception, and to the Guidelines the OAIC has published, which describe circumstances where an individual may reasonably expect their personal information to be used or disclosed for a secondary purpose, including:

> Where the individual makes adverse comments in the media about the way an APP entity has treated them. In these circumstances, it may be reasonable to expect that the entity may respond publicly to these comments in a way that reveals personal information specifically relevant to the issues that the individual has raised.[1]

In *L v Commonwealth Agency* [2010] PrivCmrA 14 (**L v Commonwealth Agency**)[2], the OAIC found that Information Privacy Principle 11.1(a), which was the equivalent of APP 6.2(a) for agencies at the time, applied. This was on the basis the complainant had complained publicly about the agency's handing of their application, and the information the agency disclosed was confined and responded only to the issues that had been publicly raised.

Similarly, I consider that the information disclosed by the Department in this current matter was limited to the issues that had been publicly raised, and focused on clarifying potentially misleading statements and correcting factual inaccuracies. I am therefore satisfied the first limb of the reasonable expectation test has been met.

[1] APP Guidelines, [6.22]

[2] See *L v Commonwealth Agency* [2010] PrivCmrA 14 (24 December 2010), Australasian Legal Information Institute website <www.austlii.edu.au>

To form a view as to whether the second limb of the reasonable expectation test has been met, I must consider the purpose for which the individual's personal information was collected, and the purpose for which it was disclosed. The purpose for which it was disclosed must be related, by more than a tenuous link, to the purpose for which it had been collected.

It appears the primary purpose for the collection of the personal information was for the administration of the individual's social security entitlements and obligations.

The Department has advised that the secondary purpose for which the information was used and disclosed was to correct, clarify and provide context to the information the individual included in the article. Specifically, to respond to criticisms as to the Department's administration of the individual's entitlements and obligations, and the factual assertions the individual had made.

On consideration of all of the information available to me I am satisfied this secondary purpose is related to the primary purpose. The Department collected the information in the course of administering the individual's entitlements and obligations. The individual then publically criticised its administrative performance, and in doing so, made certain factual assertions. The disclosure was related to and associated with those factual assertions. In my view, the second limb of the reasonable expectation test is met and the Department was permitted to disclose the individual's personal information because the purposes were sufficiently related to each other. I am therefore satisfied the disclosure is permitted by APP 6.2(a)(ii) in this instance.

My view on this was reached after very careful and close consideration of the precise disclosures made by the Centrelink customer, and those made by the Department. Had the Department released more information, or the customer published less, I may have reached a contrary view. As such I caution the Department against using my conclusion in this case as a general authority to release customer information in response to public criticism. The Department must be careful to ensure that when responding to public criticism it releases the minimum information necessary, and that it acts within the reasonable expectations of the individual concerned.

APP 6.2(b) – authorised or required by or under law

The Department additionally relies on the exception under APP 6.2(b), claiming that the disclosure of the protected information was a disclosure made for the purposes of family assistance law and social security law, arising under the FAA and SSA Acts.

There is, however, no need to address the application of APP 6.2(b), having regard to my conclusion that the disclosure was permitted under the APP 6.2(a)(ii) exception.

Decision

As I have decided the disclosure in this instance was authorised by APP 6.2(a)(ii), an investigation is not required and I will cease inquiries into this matter.

If you wish to discuss this, please contact Mr Andrew Solomon, acting Deputy Commissioner, on 02 9284 9708.

Yours sincerely

Angelene Falk
Acting Australian Information Commissioner
Acting Australian Privacy Commissioner

23 May 2018

A

Hon. Linda Burney MP

Shadow Minister for Human Services

Ref 0302 AFP Referral MB

2 March 2017

Mr Andrew Colvin APM OAM
Commissioner
Australian Federal Police
GPO Box 401
CANBERRA ACT 2601

Dear Commissioner

Possible Contravention of the *Social Security (Administration) Act 1999* and *Crimes Act 1914*

I refer for investigation and possible prosecution conduct by persons over recent weeks that may involve the unauthorised use of protected information of a number of social security recipients, in breach of section 204 of the *Social Security (Administration) Act 1999* (the Act). In particular, it appears that the staff in the Office of the Minister for Human Services or the Minister himself, have released without authorisation to journalists private personal information of certain people who are recipients of social security.

I have attached to this letter recent newspaper articles detailing the conduct in question.

In statements by the Minister yesterday and by the Department in Senate Estimates hearings today, it has been suggested that this release was permitted because of the provisions of section 202 of the Act. No suggestion has been made that section 208 of the Act, which permits the Secretary of the Department to authorise release of personal information in some circumstances, was relied on. A number of legal experts have publicly stated that reliance on section 202 is not available and is contrary to a proper reading of the Act and decades of established departmental practice.

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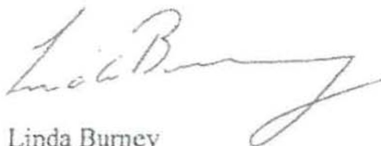
I am concerned that the release of the social security history of individuals represents a gross breach of the trust placed in the Australian Government by citizens to keep their confidential personal information safe. The release of that personal information to media outlets by those with the legal obligation to maintain confidentiality represents precisely the kind of criminal wrongdoing that section 204 of the Act is directed at. The disclosure of this information by Commonwealth officers may also constitute a criminal offence under section 70 of the *Crimes Act 1914*.

I request this matter be investigated by the Australian Federal Police as a priority and that any individuals found to have breached section 204 of the *Social Security (Administration) Act 1999* or section 70 of the *Crimes Act 1914* be referred to the Commonwealth Director of Public Prosecutions for prosecution, if appropriate.

The contact in my office is Mark Boyd who may be contacted on 02 9587 1555.

Yours sincerely,



Linda Burney
Shadow Minister for Human Services
Member for Barton

09 Feb 2017
Age, Melbourne

Section: General News • Article type : News Item • Audience : 87,979 • Page: 19
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How Centrelink has terrorised me

The debt recovery operation has the extraordinarily high error rate of one in five.

It all started when I began receiving calls from a debt collector, which I initially ignored. I knew I had no debt and any request for personal details from a stranger was cause for suspicion. But after some time I gave in to the harassment – my curiosity got the better of me, and by then the calls were interrupting everything from work meetings to putting the children to bed.

And that was how I discovered I had a Centrelink debt.

I soon found out that to even ask the simplest question about a Centrelink debt requires you to throw yourself into a vortex of humiliating and frustrating bureaucratic procedures. Initially, I tried calling Centrelink during my lunch hour, but I would end up wandering the streets around work with the phone pressed to my ear, on hold, and be no further advanced in the phone queue by the end of the hour.

Eventually, I took a day off work to go into a Centrelink office, and there I discovered the full extent of its armoury against personal contact.

Once inside, you line up to receive a seat at a computer from which you are expected to use the government website to solve your problems yourself. A single Centrelink employee marches the floor providing the occasional terse instruction to what resembles an absolute beginners' tutorial in computer literacy.

Finally seated, I found beside me an older man with the grim face of someone bracing themselves as he stared at his screen. On the other side, a young woman stupefied in front of her computer. From her murmurings, I gathered she was in fresh flight from family violence.

There is no link on the website through which you can explain that the debt they are chasing is your ex-partner's fine for non-lodgement of tax returns, as was my situation. There is no box to select for explaining his failure to lodge his return in that final year together is why the Family Tax Benefit you claimed and filed a tax return for is now seen by Centrelink as fraud.

Having gone as far as I could on the website, I eventually pressed the Centrelink employee and asked that I please be able to just speak to someone directly. I joined another queue. A different staff member saw me at a counter and, again, I relayed my story. Increasingly, I shed any dignity around discussing the details of my break-up and finances.

In reply, it was suggested that perhaps the situation could be improved if I were to prove the relationship with my ex was *truly* over. I offered to give them my ex's contact details, but ironically, privacy legislation prevented them from contacting him about either his past relationship or his tax fine, both things I had just been forced to describe at volume to a room full of strangers.

This term, de facto, which I had once taken such feminist pride in, seemed instead to imply to Centrelink that I was wandering listlessly between men. And so, I filled out forms to demonstrate that the heartache and disruption the children and I had experienced was real. And finally, as requested, I provided witnesses to verify my claim.

But this was still not enough, and the phone calls returned. I don't receive child support, and in spite of my tax returns being up to date I am now barred from receiving Family Tax Benefits (on account of this "tax fine", which also made me ineligible for getting a loan).

I am less capable of getting my ex to lodge his tax returns now than when we were together. As a single parent, I raise my children entirely out of my own earnings. Now I was being threatened with having my wages held back to pay for the debt, and I feared my budget would fall to pieces.

Terrorised by Centrelink, I began to behave as the bureaucracy saw me: angry, emotional, confused, dependent and idiotic. It does not matter I am a full-time employed economist. Now, I was a welfare cheat.

The woman from Centrelink sighed. "So, you want to appeal the decision?" she asked, and directed me to its website. Having been inside the vortex before, I demanded to lodge my appeal right then with her. She was dismissive, but I insisted.

I was, by now, quite distressed. Ultimately, this must have been noted somewhere because it triggered a call from a Centrelink social worker to check on me. Again, I explained the story. But this time, she paused in the middle of her spiel and tenderly agreed that, "this is bad, you're in a bad situation".

She would do what she could to help my appeal, she said. In the days leading up to Christmas I learnt that the board had reviewed its decision, agreed an error had been made, and that my ex's fine would be cleared from my record.

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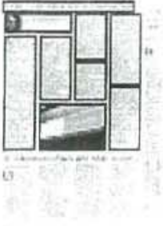

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The debt recovery operation currently being run by Centrelink using data matching has the extraordinarily high error rate of one in five.You would like to think that my story means at least the one in five errors are all being identified and eventually resolved, but it doesn't. Many of my fellow Centrelink "clients" will lack the assertiveness, confidence, energy and literacy I used to fight for my case. The errors in their debt will not be found. Money will be taken, wrongfully, from some of the very poorest people in this country. I guarantee you they are terrified.

And anyway, my case isn't over.

Days before publication of this piece I was contacted by Centrelink with a new notification of debt. I have been instructed to pay back the Family Tax Benefit we received in the year my ex didn't file his tax return. And so, it begins again.

██ is a Fairfax Media columnist

"Terrorised by Centrelink, I began to behave as the bureaucracy saw me."

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Sunday Canberra Times, Canberra

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Centrelink can be an easy target

PAUL MALONE

Centrelink needs to improve but there is more to it than meets the eye.

The ABC's *Q&A* audience laughed at Attorney General George Brandis when he suggested last Monday that people with Centrelink problems could simply contact the agency and sort out the matter.

There are so many accounts of problems with Centrelink that Brandis' view seemed like fantasy-land.

Complainants range from ABC *7.30 Report* presenter, Leigh Sales, to disability pensioners and victims of Centrelink's debt recovery operations. But could it be that sometimes the agency is being unfairly castigated?

One of the hardest-hitting criticisms came from blogger and writer [redacted] in an article published in Fairfax media outlets on February 6.

She says she tried calling Centrelink during her lunch hour but "I would end up wandering the streets around work with the phone pressed to my ear, on hold, and be no further advanced in the phone queue by the end of the hour."

Eventually, she took a day off work to go into a Centrelink office.

But the media adviser for Human Services Minister Alan Tudge said that had she called the 1800 contact number on her debtor's letter she would in all probability have gone straight through.

I tried this number and low and behold, I got an instant answer.

This is not to say that all Centrelink calls are answered quickly.

There are far too many complaints for that to be true.

But there are at least two sides to every story.

In her detailed article Ms [redacted] complained that her problem arose from the fact that she was chased by Centrelink for a debt actually owed by her former de facto partner. She then detailed the run-around she got trying to resolve the matter.

She says she soon found out that even asking the simplest question about the debt threw her into "a vortex of humiliating and frustrating bureaucratic procedures".

But Centrelink has a different story.

The agency says Ms [redacted]'s debt is a Family Tax Benefit (FTB) debt for the 2011-12 financial year which arose after she received more FTB than she was entitled to because she under-estimated her family income for that year.

The original debt was raised because she and her ex-partner did not lodge a tax return or confirm their income information for 2011-12.

Centrelink says that after Ms [redacted] notified the department that she had separated from her partner, the debt due to her partner's non-lodgement was cancelled.

But what of other problems Ms [redacted] says she had in dealing with Centrelink?

"Once inside, you line up to receive a seat at a computer terminal from which you are expected to use the government website to solve your problems yourself. A single Centrelink employee marches the floor providing the occasional terse instruction to what resembles an absolute beginners' tutorial in computer literacy."

Ms [redacted] says there was no link on the website through which she could explain that she thought the debt Centrelink was chasing was her ex-partner's fine for non-lodgement of tax returns.

There was no box in any window to select to explain that his failure to lodge his tax return was why the Family Tax Benefit she claimed was now seen by Centrelink as fraud. Having gone as far as she could on the website, she pressed the Centrelink employee and asked to speak to someone directly.

She joined another queue. A different staff member saw her at a counter and, again, she relayed her story, shedding any dignity around discussing the details of her break-up and finances.

But Centrelink general manager Hank Jongen says Centrelink made numerous attempts to get in touch with Ms [redacted] via phone and letter but many of these attempts were left unanswered. Between November 16 and January 17 Centrelink made four phone calls and sent six letters to Ms [redacted].

Centrelink says it was not until 2015 that she informed them that she had separated from her partner in 2013.

Mr Jongen said the experience described by Ms [redacted] could have been avoided if she had informed the department she had separated from her partner in a timely way, and if she had lodged her tax returns in a timely way.

The Department of Human Services maintains that overall wait times have been reduced this year and social security and welfare average-speed-of-answer is around 12 minutes.

But averages don't help you if

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you happen to be inquiring at a time when wait times are over an hour. More staff are needed, particularly during the peak month of July and from December to March each year when there is increased demand for help from families and students.

For years I've thought that, of the three broad public service tasks – policy development, service delivery and regulation – far too many staff were allocated to policy development and far too few to the other two areas. Policy development is the high-status activity, but service delivery and regulation are where people meet the service and rate its performance.

At the very least I believe policy development officers should spend some time every year working at the shop front. This should apply from the head of the Prime Minister's Department, to Treasury and Finance Department budget officers. Answering pensioners' queries or fronting a Centrelink counter would not only help the service delivery officers, it would give the policy officers real insight into the role of government. Currently senior officers can find time for trivial matters such as the Australian Public Service Commission's Brandit competition.

For years the tagline One APS Career, thousands of opportunities has been attached to public service job advertisements.

I doubt if anyone paid attention to this jabber. It would be no loss if it disappeared. But with nothing else to do, the commission has run a competition to find a new tagline to "convey the employment value proposition of the APS."

The competition has, of course, included the full bureaucratic kit of judging criteria and judging panel.

Two external judges and the head of the Department of Prime Minister and Cabinet, Martin Parkinson and the Public Service commissioner, John Lloyd have found time to ponder the 32 shortlisted entries from over 700 "fantastic" submissions. I'd rather see them down at the local Centrelink helping members of the public.

At the very least policy development officers should spend some time every year working at the shop front.

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Attorney General George Brandis was laughed at for suggesting people contact Centrelink for help. Photo: Glenn Hunt

Privacy Commissioner Case Note

Case Citation:

B v Hotel [2008] PrivCmrA 2

Subject Heading:

Improper disclosure of personal information by an organisation

Law:

National Privacy Principle 2.1 in Schedule 3 of the *Privacy Act 1988* (Cth)

Facts:

The complainant stayed overnight with their spouse at one of the premises of a hotel chain. About three weeks later the complainant received a package from the hotel, which contained garments that did not belong to them. The complainant re-sealed the parcel, marked it 'return to sender' and put it back in the post.

Soon after the complainant received a letter in the post from the person who owned the garments. This individual has the same first and last name as the complainant and had also recently been a guest of the respondent hotel.

The complainant had not had any previous contact with that individual.

Issues:

National Privacy Principle 2.1 provides that an organisation must not use or disclose personal information about an individual for a purpose, other than the primary purpose of the collection, unless an exception in National Privacy Principle 2.1(a)-(h) applies.

Outcome:

The Privacy Commissioner opened an investigation into the matter of the disclosure of the complainant's personal information, that is, their name and address, by the hotel, under section 40(1) of the Privacy Act.

During the investigation, the hotel did not dispute that it disclosed the complainant's personal information to a third party, being the individual who owned the garments. The hotel did offer the explanation that the disclosure was a result of the two individuals having the same first and last name.

The Commissioner was of the view that the hotel disclosed the complainant's personal information to a third party, and considered whether the disclosure was permitted by NPP 2.1.

The Commissioner formed the view that the disclosure of the complainant's personal information did not appear to be consistent with the primary purpose for which the information was collected and none of the exceptions listed in NPP 2.1 applied to permit the disclosure.

Consequently, the Commissioner was satisfied that there had been an interference with the complainant's privacy.

The Commissioner considered it appropriate to attempt, by conciliation, to effect a settlement of the matters that gave rise to the investigation.

The hotel offered the complainant a written apology, an explanation of the steps the hotel took to investigate the matter, advised that it had reaffirmed to employees the importance of adherence to their privacy policy, and a goodwill gesture of a voucher for one night's complimentary accommodation to the complainant.

This offer was accepted by the complainant. The Commissioner then closed the complaint under section 41(2)(a) of the Privacy Act on the grounds that the hotel had adequately dealt with the complaint.

OFFICE OF THE PRIVACY COMMISSIONER

May 2008

Australian Government
Office of the Australian Information Commissioner

Case note

Case Citation:

L v Commonwealth Agency [2010] PrivCmrA 14

Subject Heading:

Improper disclosure of personal information

Law:

Information Privacy Principle 11 in Part III Division 2 of the *Privacy Act 1988* (Cth).

The following case was decided by the Privacy Commissioner prior to 1 November 2010. On 1 November 2010 all the powers of the Privacy Commissioner under the Privacy Act were conferred on the Australian Information Commissioner.

Facts:

The complainant made adverse comments in the media and on a blog about the way an Australian government agency handled an application they had made. The agency received several enquiries from the media about the issues and disclosed the complainant's personal information in responding to those enquiries. A journalist included that information in an article.

The complainant alleged that the agency improperly disclosed their personal information to the journalist.

Issues:

IPP 11 prohibits agencies from disclosing personal information to anyone other than the individual concerned, unless an exception applies.

The exception at IPP 11.1(a) permits disclosure where the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency.

Outcome:

The Commissioner investigated this matter under section 40(1) of the Privacy Act.

The Commissioner's *Plain English Guidelines to Information Privacy Principles 8-11* provide examples of when an individual may be considered to be reasonably likely to be aware that information may be disclosed under IPP 11.1(a). The Guidelines state:

> a person who complains publicly about an agency in relation to their circumstances (for example, to the media) is considered to be reasonably likely to be aware that the agency

may respond publicly – and in a way that reveals personal information relevant to the issues they have raised.

The Commissioner took into account that the complainant had complained publicly about the agency's handling of their application. The information provided by the agency was confined to responding to the issues raised publicly by the complainant. The Commissioner considered that the complainant was reasonably likely to have been aware that the agency may respond, in the way it did, to the issues raised. Therefore, the Commissioner took a preliminary view that IPP 11.1(a) permitted that disclosure.

The complainant subsequently withdrew the complaint and the matter was closed.

Office of the Australian Information Commissioner
December 2010

A

Hon. Linda Burney MP
Shadow Minister for Human Services

Ref 0302 AFP Referral MB

2 March 2017

Mr Andrew Colvin APM OAM
Commissioner
Australian Federal Police
GPO Box 401
CANBERRA ACT 2601

Dear Commissioner

Possible Contravention of the *Social Security (Administration) Act 1999* and *Crimes Act 1914*

I refer for investigation and possible prosecution conduct by persons over recent weeks that may involve the unauthorised use of protected information of a number of social security recipients, in breach of section 204 of the *Social Security (Administration) Act 1999* (the Act). In particular, it appears that the staff in the Office of the Minister for Human Services or the Minister himself, have released without authorisation to journalists private personal information of certain people who are recipients of social security.

I have attached to this letter recent newspaper articles detailing the conduct in question.

In statements by the Minister yesterday and by the Department in Senate Estimates hearings today, it has been suggested that this release was permitted because of the provisions of section 202 of the Act. No suggestion has been made that section 208 of the Act, which permits the Secretary of the Department to authorise release of personal information in some circumstances, was relied on. A number of legal experts have publicly stated that reliance on section 202 is not available and is contrary to a proper reading of the Act and decades of established departmental practice.

Office: 203 / 13A Montgomery Street, Kogarah NSW 2217
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Phone: (02) 9587 1555 Email: Linda.Burney.MP@aph.gov.au

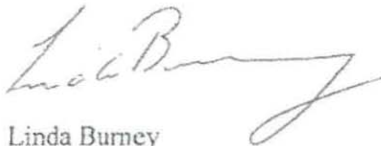
FOIREQ18/00067 000325

I am concerned that the release of the social security history of individuals represents a gross breach of the trust placed in the Australian Government by citizens to keep their confidential personal information safe. The release of that personal information to media outlets by those with the legal obligation to maintain confidentiality represents precisely the kind of criminal wrongdoing that section 204 of the Act is directed at. The disclosure of this information by Commonwealth officers may also constitute a criminal offence under section 70 of the *Crimes Act 1914.*

I request this matter be investigated by the Australian Federal Police as a priority and that any individuals found to have breached section 204 of the *Social Security (Administration) Act 1999* or section 70 of the *Crimes Act 1914* be referred to the Commonwealth Director of Public Prosecutions for prosecution, if appropriate.

The contact in my office is Mark Boyd who may be contacted on 02 9587 1555.

Yours sincerely,



Linda Burney
Shadow Minister for Human Services
Member for Barton

B

09 Feb 2017
Age, Melbourne

Section: General News • Article type : News Item • Audience : 87,979 • Page: 19
Printed Size: 441.00cm² • Market: VIC • Country: Australia • ASR: AUD 24,671
Words: 1008 • Item ID: 725397796

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How Centrelink has terrorised me

The debt recovery operation has the extraordinarily high error rate of one in five.

It all started when I began receiving calls from a debt collector, which I initially ignored. I knew I had no debt and any request for personal details from a stranger was cause for suspicion. But after some time I gave in to the harassment – my curiosity got the better of me, and by then the calls were interrupting everything from work meetings to putting the children to bed.

And that was how I discovered I had a Centrelink debt.

I soon found out that to even ask the simplest question about a Centrelink debt requires you to throw yourself into a vortex of humiliating and frustrating bureaucratic procedures. Initially, I tried calling Centrelink during my lunch hour, but I would end up wandering the streets around work with the phone pressed to my ear, on hold, and be no further advanced in the phone queue by the end of the hour.

Eventually, I took a day off work to go into a Centrelink office, and there I discovered the full extent of its armoury against personal contact.

Once inside, you line up to receive a seat at a computer from which you are expected to use the government website to solve your problems yourself. A single Centrelink employee marches the floor providing the occasional terse instruction to what resembles an absolute beginners' tutorial in computer literacy.

Finally seated, I found beside me an older man with the grim face of someone bracing themselves as he stared at his screen. On the other side, a young woman stupefied in front of her computer. From her murmurings, I gathered she was in fresh flight from family violence.

There is no link on the website through which you can explain that the debt they are chasing is your ex-partner's fine for non-lodgement of tax returns, as was my situation. There is no box to select for explaining his failure to lodge his return in that final year together is why the Family Tax Benefit you claimed and filed a tax return for is now seen by Centrelink as fraud.

Having gone as far as I could on the website, I eventually pressed the Centrelink employee and asked that I please be able to just speak to someone directly. I joined another queue. A different staff member saw me at a counter and, again, I relayed my story. Increasingly, I shed any dignity around discussing the details of my break-up and finances.

In reply, it was suggested that perhaps the situation could be improved if I were to prove the relationship with my ex was *truly* over. I offered to give them my ex's contact details, but ironically, privacy legislation prevented them from contacting him about either his past relationship or his tax fine, both things I had just been forced to describe at volume to a room full of strangers.

This term, de facto, which I had once taken such feminist pride in, seemed instead to imply to Centrelink that I was wandering listlessly between men. And so, I filled out forms to demonstrate that the heartache and disruption the children and I had experienced was real. And finally, as requested, I provided witnesses to verify my claim.

But this was still not enough, and the phone calls returned. I don't receive child support, and in spite of my tax returns being up to date I am now barred from receiving Family Tax Benefits (on account of this "tax fine", which also made me ineligible for getting a loan).

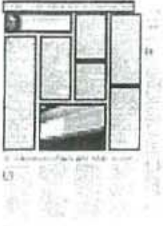
I am less capable of getting my ex to lodge his tax returns now than when we were together. As a single parent, I raise my children entirely out of my own earnings. Now I was being threatened with having my wages held back to pay for the debt, and I feared my budget would fall to pieces.

Terrorised by Centrelink, I began to behave as the bureaucracy saw me: angry, emotional, confused, dependent and idiotic. It does not matter I am a full-time employed economist. Now, I was a welfare cheat.

The woman from Centrelink sighed. "So, you want to appeal the decision?" she asked, and directed me to its website. Having been inside the vortex before, I demanded to lodge my appeal right then with her. She was dismissive, but I insisted.

I was, by now, quite distressed. Ultimately, this must have been noted somewhere because it triggered a call from a Centrelink social worker to check on me. Again, I explained the story. But this time, she paused in the middle of her spiel and tenderly agreed that, "this is bad, you're in a bad situation".

She would do what she could to help my appeal, she said. In the days leading up to Christmas I learnt that the board had reviewed its decision, agreed an error had been made, and that my ex's fine would be cleared from my record.



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The debt recovery operation currently being run by Centrelink using data matching has the extraordinarily high error rate of one in five.You would like to think that my story means at least the one in five errors are all being identified and eventually resolved, but it doesn't. Many of my fellow Centrelink "clients" will lack the assertiveness, confidence, energy and literacy I used to fight for my case. The errors in their debt will not be found. Money will be taken, wrongfully, from some of the very poorest people in this country. I guarantee you they are terrified.

And anyway, my case isn't over.

Days before publication of this piece I was contacted by Centrelink with a new notification of debt. I have been instructed to pay back the Family Tax Benefit we received in the year my ex didn't file his tax return. And so, it begins again.

[redacted] is a Fairfax Media columnist

"Terrorised by Centrelink, I began to behave as the bureaucracy saw me."

26 Feb 2017
Sunday Canberra Times, Canberra

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Centrelink can be an easy target

PAUL MALONE

Centrelink needs to improve but there is more to it than meets the eye.

The ABC's *Q&A* audience laughed at Attorney General George Brandis when he suggested last Monday that people with Centrelink problems could simply contact the agency and sort out the matter.

There are so many accounts of problems with Centrelink that Brandis' view seemed like fantasyland.

Complainants range from ABC *7.30 Report* presenter, Leigh Sales, to disability pensioners and victims of Centrelink's debt recovery operations. But could it be that sometimes the agency is being unfairly castigated?

One of the hardest-hitting criticisms came from blogger and writer [redacted] in an article published in Fairfax media outlets on February 6.

She says she tried calling Centrelink during her lunch hour but "I would end up wandering the streets around work with the phone pressed to my ear, on hold, and be no further advanced in the phone queue by the end of the hour."

Eventually, she took a day off work to go into a Centrelink office.

But the media adviser for Human Services Minister Alan Tudge said that had she called the 1800 contact number on her debtor's letter she would in all probability have gone straight through.

I tried this number and low and behold, I got an instant answer.

This is not to say that all Centrelink calls are answered quickly.

There are far too many complaints for that to be true.

But there are at least two sides to every story.

In her detailed article Ms [redacted] complained that her problem arose from the fact that she was chased by Centrelink for a debt actually owed by her former de facto partner. She then detailed the runaround she got trying to resolve the matter.

She says she soon found out that even asking the simplest question about the debt threw her into "a vortex of humiliating and frustrating bureaucratic procedures".

But Centrelink has a different story.

The agency says Ms [redacted]'s debt is a Family Tax Benefit (FTB) debt for the 2011-12 financial year which arose after she received more FTB than she was entitled to because she under-estimated her family income for that year.

The original debt was raised because she and her ex-partner did not lodge a tax return or confirm their income information for 2011-12.

Centrelink says that after Ms [redacted] notified the department that she had separated from her partner, the debt due to her partner's non-lodgement was cancelled.

But what of other problems Ms [redacted] says she had in dealing with Centrelink?

"Once inside, you line up to receive a seat at a computer terminal from which you are expected to use the government website to solve your problems yourself. A single Centrelink employee marches the floor providing the occasional terse instruction to what resembles an absolute beginners' tutorial in computer literacy."

Ms [redacted] says there was no link on the website through which she could explain that she thought the debt Centrelink was chasing was her ex-partner's fine for non-lodgement of tax returns.

There was no box in any window to select to explain that his failure to lodge his tax return was why the Family Tax Benefit she claimed was now seen by Centrelink as fraud. Having gone as far as she could on the website, she pressed the Centrelink employee and asked to speak to someone directly.

She joined another queue. A different staff member saw her at a counter and, again, she relayed her story, shedding any dignity around discussing the details of her break-up and finances.

But Centrelink general manager Hank Jongen says Centrelink made numerous attempts to get in touch with Ms [redacted] via phone and letter but many of these attempts were left unanswered. Between November 16 and January 17 Centrelink made four phone calls and sent six letters to Ms [redacted].

Centrelink says it was not until 2015 that she informed them that she had separated from her partner in 2013.

Mr Jongen said the experience described by Ms [redacted] could have been avoided if she had informed the department she had separated from her partner in a timely way, and if she had lodged her tax returns in a timely way.

The Department of Human Services maintains that overall wait times have been reduced this year and social security and welfare average-speed-of-answer is around 12 minutes.

But averages don't help you if

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you happen to be inquiring at a time when wait times are over an hour. More staff are needed, particularly during the peak month of July and from December to March each year when there is increased demand for help from families and students.

For years I've thought that, of the three broad public service tasks – policy development, service delivery and regulation – far too many staff were allocated to policy development and far too few to the other two areas. Policy development is the high-status activity, but service delivery and regulation are where people meet the service and rate its performance.

At the very least I believe policy development officers should spend some time every year working at the shop front. This should apply from the head of the Prime Minister's Department, to Treasury and Finance Department budget officers. Answering pensioners' queries or fronting a Centrelink counter would not only help the service delivery officers, it would give the policy officers real insight into the role of government. Currently senior officers can find time for trivial matters such as the Australian Public Service Commission's Brandit competition.

For years the tagline One APS Career, thousands of opportunities has been attached to public service job advertisements.

I doubt if anyone paid attention to this jabber. It would be no loss if it disappeared. But with nothing else to do, the commission has run a competition to find a new tagline to "convey the employment value proposition of the APS."

The competition has, of course, included the full bureaucratic kit of judging criteria and judging panel.

Two external judges and the head of the Department of Prime Minister and Cabinet, Martin Parkinson and the Public Service commissioner, John Lloyd have found time to ponder the 32 shortlisted entries from over 700 "fantastic" submissions. I'd rather see them down at the local Centrelink helping members of the public.

At the very least policy development officers should spend some time every year working at the shop front.

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Attorney General George Brandis was laughed at for suggesting people contact Centrelink for help. Photo: Glenn Hunt