

THE UNIVERSITY OF
NEW SOUTH WALES



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FACULTY OF LAW
Graham Greenleaf
Professor of Law

12 June 2006

Professor Allan Fels, AO
Chair, Consumer and Privacy Taskforce
Department of Human Services

Dear Professor Fels,

Submission #1: Openness of enquiry

I am writing as Co-Director of the Cyberspace Law & Policy Centre at the University of New South Wales. First, I would like to congratulate you, Mr Puplick and Mr Wood on your appointments to a task to which you all bring considerable relevant experience, and one which is of great significance to Australia's future.

I notice that you do not have any public terms of reference, apart from the rather droll note on your website that 'The primary focus of the Taskforce will be to address the tension between meeting consumer demand for increased Access Card functionality and any concerns that consumers may have about data protection and privacy issues.' If consumer demand is all you have to worry about, your job will be very easy.

Consequently, organizations such as ours need to suggest what reasonable terms for your enquiry might be. Although you have not called for submissions, I assume you wish to receive them, so have framed this letter in the form of a submission on the fundamental questions relating to the openness of your enquiry. We wish to make the three submissions below. I note that you intend to have 'genuine, informed and long-term consultation' with consumer and privacy advocate groups and, I assume, research centres such as ours. We welcome this commitment.

1 Publication of documents relating to privacy impact

Organisations like the Cyberspace Law & Policy Centre cannot provide meaningful input into your Taskforce's enquiry on privacy issues, or have any genuine interaction with you on these complex issues, unless we are aware of the principal advice and information that has been given to the government, and to your Taskforce, on these issues. Our submissions will be too easily dismissed with a contemptuous 'they don't know what they are talking about'.

To address this imbalance of information it is necessary that the government release the Clayton Utz Privacy Impact Assessment (PIA) to the public. It is clear from the Senate committee discussions of the card that the PIA is still quite relevant to future discussions.

Furthermore, it is clear from the Senate committee discussions that a former Deputy Privacy Commissioner (Mr Nigel Waters I understand) was contracted separately by the Department to advise on privacy issues. We can safely assume that, under these circumstances, Mr Waters would have

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given information, recommendations or advice to the government or Clayton Utz. As with the PIA, such documents should also be available as inputs into the consultations you propose to have.

We therefore submit that you should press the government to make these documents public. This is not 'a matter for the government'. It is a matter that goes to the heart of the credibility of the process you are undertaking.

2 Publication of further details from the KPMG report

For the same reasons as above, we submit that your Taskforce should press the government to release more of the KPMG report than it has released to date. The wholesale excisions from that report are not credible for the reasons stated. At the least, substantial parts of the excised chapters should be able to be reinstated with no damage to genuine public interests.

3 Publication of all recommendations you make to government

We submit that if your processes are to be characterised by openness, they should be accompanied by a commitment that your recommendations to government should be made public, if not at the same time as they go to government, then within a very short time thereafter such as a week to allow the government to prepare its response. We would like to know if there is anything in your terms of reference that precludes you making your advice public.

We look forward to your comments on these submissions.

Your sincerely,

Graham Greenleaf
Co-Director
Cyberspace Law & Policy Centre

Cc: Mr Chris Puplick