

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 121

Issued by the authority of the Minister for Human Services

Commonwealth Services Delivery Agency Act 1997

Human Services (Centrelink) Regulations 2011

Background

The *Commonwealth Services Delivery Agency Act 1997* (the Act) establishes the statutory office of the Chief Executive Officer (CEO) of the Commonwealth Services Delivery Agency (Centrelink) and establishes Centrelink to assist the CEO in the performance of his or her functions.

Section 41 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Human Services Legislation Amendment Act 2011* (the HSLA Act) renames the Act as the *Human Services (Centrelink) Act 1997* (Centrelink Act), and substantially amends the Act. In particular, the position of CEO is abolished and replaced by a position called the Chief Executive Centrelink, to which only an SES officer in the Department of Human Services can be appointed. Centrelink is also abolished, and its functions subsumed by the Department of Human Services.

The HSLA Act received Royal Assent on 25 May 2011, and the relevant amendments to the Act commence on 1 July 2011.

New section 8 of the Centrelink Act sets out the Chief Executive Centrelink's functions. Under paragraph 8(1)(ba) of the Act these include any functions prescribed by regulations.

The purpose of the Regulations is to prescribe the functions of the Chief Executive Centrelink. The Regulations prescribe functions that the Minister of Human Services had previously directed the Chief Executive Officer of Centrelink to perform.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 July 2011 to coincide with the commencement of the relevant amendments in the HSLA Act.

Details of the *Human Services (Centrelink) Regulations 2011*

Regulation 1 — Name of Regulations

This regulation provides that the Regulations are the *Human Services (Centrelink) Regulations 2011*.

Regulation 2 — Commencement

This regulation provides that the Regulations commence on 1 July 2011.

Regulation 3 — Repeal of *Commonwealth Services Delivery Agency Regulations 1997*

This regulation repeals Statutory Rule No. 132 of 1997 and Select Legislative Instrument No. 196 of 2009, that is, the original Commonwealth Services Delivery Agency Regulations made in 1997 and their amendments in 2009 (which, amongst other things, renamed those regulations as the *Commonwealth Services Delivery Agency Regulations 1997*).

Regulation 4 — Definitions

This regulation inserts definitions of ‘Act’, ‘Commonwealth body’, ‘emergency’, ‘person affected by an emergency’, ‘personal information’ and ‘State or Territory body’.

The defined term ‘emergency’ is used primarily in regulation 10, which relates to the Chief Executive Centrelink’s function of providing emergency services. As defined in regulation 4, ‘emergency’ means an emergency or disaster in Australia or an emergency or disaster that affects one or more Australian citizens or permanent residents. An emergency includes:

- an emergency or disaster that has been the subject of a declaration under section 80J or 80K of the *Privacy Act 1988*; or
- any circumstance in respect of which the Australian Government has decided to implement a special program of assistance.

The definition of ‘emergency’ in regulation 4 is intentionally wide, so that the Chief Executive Centrelink and Departmental employees can quickly respond to any situation in which the Government considers that urgent assistance needs to be provided to people adversely affected by that situation (that is, ‘person affected by an emergency’ – see regulation 5). The definition would mirror that in regulation 3 of the *Human Services (Medicare) Regulations 1975*.

Regulation 5 — Person affected by an emergency

This regulation would provide an inclusive definition of the phrase ‘person affected by an emergency’. The definition would mirror that in regulation 3A of the *Human Services (Medicare) Regulations 1975*. While ‘person affected by an emergency’

would usually have its ordinary – and broad – meaning, the definition would make it clear that a person affected by an emergency includes:

- a person who is indirectly affected by the emergency – such as a person who has not suffered any personal injury or property loss as a result of a natural disaster, but whose business is adversely affected because customers have been affected by the disaster, or travel to or from the disaster area is restricted;
- an individual (that is, a natural person) who has a family member directly or indirectly affected by the emergency; and
- an unincorporated organisation (which is not normally regarded as a ‘person’) directly or indirectly affected by the emergency.

Regulation 6 – Protected name

Regulation 6 prescribes the names ‘Centrelink’ and ‘CRS Australia’ as protected names for the purposes of section 38 of the Centrelink Act.

Section 38 of the Centrelink Act makes it an offence for a person to use a ‘protected name’ for the purposes specified in that section, without the written consent of the Chief Executive Centrelink.

Although Centrelink is abolished as an agency from 1 July 2011, and CRS Australia is already a function program within the Department of Human Services, as the terms Centrelink and CRS Australia are widely known in the Australian community, it is considered prudent to continue to protect them from possible misuse.

Regulation 7 – Protected symbols

Subregulation 7(1) continues to protect the symbol used to date by Centrelink in connection with its services and programs as a ‘protected symbol’ for section 38 of the Centrelink Act. Section 38 of the Centrelink Act makes it an offence for a person to use a ‘protected symbol’ for the purposes specified in that section, without the written consent of the Chief Executive Centrelink.

The Centrelink symbol may continue to appear for some time in Department of Human Services shop-fronts, offices and other places where it has been physically fixed or painted. More importantly, the symbol is widely recognised in the Australian community, particularly by the more vulnerable members of the community who are reliant on Centrelink services and programs, and the Commonwealth needs to continue to protect the symbol against unauthorised use.

Subregulation 7(2) protects a new symbol that may be used by the Department of Human Services in connection with its programs and services.

Part 2 – Prescribed functions of the Chief Executive Centrelink

Regulation 8 — Prescribed functions

Regulation 8 provides that Part 2 of the Regulations prescribes functions of the Chief Executive Centrelink for paragraph 8(1)(ba) of the Centrelink Act.

Regulation 9 — Delegated functions

Regulation 9 provides that it is a prescribed function of the Chief Executive Centrelink to perform functions delegated to the Chief Executive Centrelink under a Commonwealth, State or Territory law. Note that ‘function’ in this regulation includes ‘power’ — see the definition of ‘function’ in section 3 of the Centrelink Act, and the operation of paragraph 13(1)(b) of the *Legislative Instruments Act 2003*.

This regulation is intended to put beyond doubt the Chief Executive Centrelink’s legal capacity to exercise powers and functions delegated to him or her under Commonwealth, State or Territory laws. As a matter of practice, the CEO of Centrelink was delegated a wide variety of powers under Commonwealth legislation, mostly related to health and welfare programs, and the Chief Executive Centrelink is similarly delegated those powers from 1 July 2011.

The CEO of Centrelink currently exercises few, if any, powers as delegate under State or Territory laws. However, Commonwealth-State co-operation in the delivery of human and related services is increasing. Sections 13 and 14 of the Centrelink Act recognise that the Chief Executive Centrelink may be given functions and powers under State or Territory laws, and that the Commonwealth agrees to this conferral of functions and powers. Consequently, regulation 9 also provides that it is a function of the Chief Executive Centrelink to exercise powers delegated to him or her under State or Territory laws, provided that this is permitted under sections 13 and 14 of the Act.

Section 12 of the Centrelink Act permits the Chief Executive Centrelink to sub-delegate functions and powers, that have been delegated to him or her, to Departmental officers.

Regulation 10 – Functions related to provision of emergency services

Regulation 10 would provide that it is a prescribed function of the Chief Executive Centrelink to:

- provide a service, benefit, program or facility to a person affected by an emergency; and
- participate in disaster planning and policy activities.

Subregulation 10(2) makes it clear that the Chief Executive Centrelink is able to perform these emergency-related functions for or under an arrangement with a State or Territory body (as defined in regulation 4).

Subregulation 10(3) makes it clear that the provision of emergency services function includes a number of activities, for example:

- establishing and maintaining a register of persons affected by the emergency;
- receiving, processing, investigating, deciding and paying claims for assistance;
- referring persons to other relevant organisations;
- providing information to a State or Territory body about a person affected by an emergency which will assist that body to provide a payment, benefit or other assistance; and
- working with government and non-government bodies in relation to the provision of assistance.

Regulation 10 is intended to replace a direction given by the Minister for Human Services to the CEO of Centrelink under the *Commonwealth Services Delivery Agency (Functions of the Chief Executive Officer) Direction 2011 (No. 1)*, and is consistent with regulation 21 of the *Human Services (Medicare) Regulations 1975*.

The purpose of regulation 10 is two-fold. First, it would make clear that the Chief Executive Centrelink can assist or co-operate with State and Territory bodies in responding to emergencies. In 2011, after the devastating floods in Queensland and Victoria and Cyclone Yasi, the Minister for Human Services issued the direction referred to above to enable Centrelink officers to assist officers of States and Territories to provide assistance to persons affected by disasters.

Second, the regulation is intended to ensure that, in responding to emergencies, the Chief Executive Centrelink can collect, use and disclose personal information, particularly where prior consent to that collection, use or disclosure cannot reasonably be obtained from a person because of the circumstances of the emergency.

Regulation 11 – Function of providing specified services

Regulation 11 provides that it is a function of the Chief Executive Centrelink to provide the services set out in Schedule 1 to the Regulations to the entities described in subregulation 11(1). It is intended to replace a direction given by the Minister for Human Services to the CEO of Centrelink under the *Commonwealth Services Delivery Agency (Functions of Chief Executive Officer) Direction 2007*.

As for the function set out at regulation 10, regulation 11 is intended to serve the dual purposes of ensuring that the Chief Executive Centrelink can provide the specified services to non-Commonwealth bodies, and ensure that in providing those services, personal information may be collected, used and disclosed for purposes related to those services. In most cases, this collection, use and disclosure is with the consent of the individual concerned (see, for example items 2 and 3 of Schedule 1).

Schedule 1 – Specified services

Schedule 1 to the Regulations identifies the specified services that are subject to the function set out in regulation 11.

Item 1 of Schedule 1 relates to services, benefits, programs or facilities that are intended to facilitate or promote the efficient and effective delivery of government services to an inmate of a correctional facility.

Item 2 of Schedule 1 relates to the Centrepay service which assists customers to manage their financial commitments by paying amounts directly to relevant third parties. The service is conducted:

- with the individual's consent, or as required or permitted under a Commonwealth law; and
- consistently with arrangements between the Department and the individual.

Item 3 of Schedule 1 relates to the Centrelink confirmation e-service facility under which customers consent to Centrelink sharing their information with a third party. As with item 2 of Schedule 1, the service is conducted with the individual's consent, and consistent with arrangements between the Department and the individual.