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Mr Timothy Pilgrim
Australian Privacy Commissioner
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Dear Mr Pilgrim

**RE: SUBMISSION REGARDING THE APPLICATION BY UNITINGCARE
WESLEY ADELAIDE FOR A PUBLIC INTEREST DETERMINATION UNDER
SECTION 73 OF THE *PRIVACY ACT 1988* (CTH)**

I write in relation to the invitation to comment on the application by UnitingCare Wesley for a Public Interest Determination (PID) under Section 73 of the Commonwealth *Privacy Act 1988*.

Please find attached a submission from SA Health in support of the proposed Public Interest Determinations.

Thank you once again for providing an opportunity to make comment and I look forward to being advised of your final decision on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'D. Swan', written over a circular scribble.

DAVID SWAN
Chief Executive

8/11/10

SA HEALTH

SUBMISSION REGARDING THE APPLICATION BY UNITINGCARE WESLEY ADELAIDE FOR A PUBLIC INTEREST DETERMINATION UNDER SECTION 73 OF THE *PRIVACY ACT 1988* (CTH)

Thank you for providing an opportunity to make a submission on this important matter.

SA Health is responsible for the provision of public health services across South Australia and encompasses all public hospitals, primary health care service agencies and ambulance services.

In South Australia, there has been significant effort to establish early intervention and coordinated support for children and families at risk that ensure they are able to access the relevant services they need.

SA Health's interest in the *SA Information Sharing Guidelines*

The development and establishment of the *South Australian Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children* (the ISG) (SA Government 2008) has been a significant State initiative. It has been designed to facilitate inter-agency capacity across both Government and non-government service sectors to support vulnerable children and their families, enabling access to the services and interventions they need by information-sharing between appropriate service providers.

SA Health has strongly supported this initiative and has worked to ensure its implementation across its Local Health Networks and services.

The ISG was approved by State Cabinet in October 2008. In December 2009, the SA Health Appendix to the ISG was completed.

SA Health has amended all of its master agreements with funded non-government organisations, requiring them to share information in accordance with the ISG and to develop an ISG Appendix for their organisation. This ensures that all agencies receiving funding from SA Health are clear about their obligations when providing services regarding information sharing to support the safety and wellbeing of children.

SA Health understands that some South Australian non-Government organisations have delayed implementation of the ISG because they receive federal program funding which obliges them to operate under the Commonwealth *Privacy Act 1998*.

SA Health support for UnitingCare Wesley's application

SA Health supports the application by UnitingCare Wesley for a Public Interest Determination (PID) regarding the Information Sharing Guidelines (ISG) under Section 73 of the Commonwealth *Privacy Act 1988* in relation to National Privacy Principles (NPP) 2.1 and NPP 10.

SA Health also supports a PID being made that gives general effect to the PID to enable all relevant South Australian non-Government organisations to

implement and operate under the ISG without legal risk or jeopardising federal program funding.

SA Health believes that the implementation of the ISG across non-Government agencies in South Australia is of substantial public benefit for the protection of children, young people and their families.

It is noted that the Australian Privacy Commissioner strongly supports initiatives that aim to protect those experiencing serious threats to their life, health or safety and to better support those adversely affected by these circumstances. SA Health believes that the application for a Public Interest Determination (PID) by UnitingCare Wesley is consistent with this principle and will provide the capacity to ensure this protection.

The challenge is to ensure that initiatives contain appropriate privacy safeguards regarding the handling of an individual's personal information, while enabling the necessary information sharing to provide strong protection against harm. The ISG achieves this by, wherever possible, requiring consent in the first instance to build strong and effective continuing relationships with families.

Responses to questions posed by the APC in relation to the application

- **the potential for the proposed act or practice to harm the interests of individuals / the extent to which the proposed act or practice is inconsistent with an individual's reasonable expectation of privacy / the nature of the public interest objectives served by the proposed interference with privacy**

The proposed practice of sharing information to ensure early coordinated action will support the interests of children and young people at risk of, or subject to, abuse or neglect or other potential threat to their long term health and wellbeing. There is a significant body of evidence that this type of information sharing across Government and non-government services, usually with the consent of the family, provides an improved capacity to respond at an earlier stage to the service and support needs of children, young people and families who are at risk. It also allows for the development of a coordinated service response that is based on trust and a positive relationship between the client and the service provider.

There are strong, well-designed procedures built into the ISG which encourage service providers to work with children, young people and their families by seeking their consent in a proactive way. This emphasis can only serve to preserve and promote the interests of all individuals concerned, and particularly vulnerable individuals such as children and young people.

The nature of the public interest objectives served by the proposed interference with privacy through sharing information is that no child or young person should be put at risk of harm to protect their own privacy interests or those of others. From the perspective of the individual child and from a public health perspective, every child and young person who is properly nurtured is likely to be physically, psycho-socially and mentally healthier.

- **the need to balance the competing interests contained in s29 of the Privacy Act**

It is noted that s29 of the Privacy Act requires the Commissioner to have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information (through the media and otherwise) and the recognition of the right of government and business to achieve their objectives in an efficient way.

It is believed that this has been addressed by the response above.

- **the impact on the public interest if the proposed act or practice is not permitted.**

If the proposed act or practice is not permitted, SA Health believes that the broader public interest will not be served. The prevention of child abuse and neglect has been endorsed by the then titled Australian Health Minister's Conference (AHMC) (now Standing Council on Health), Community and Disability Services Ministerial Committee (CDSMC) and the Australian Education Systems Officials Committee (AESOC) as a Children's Headline Indicator priority area for national reporting on the progress of children's health, wellbeing and welfare. Child abuse and neglect is also being tackled by the Council of Australian Governments (COAG) through the *National framework for protecting Australia's children*. This framework aims to increase coordination between governments and non-government organisations, with a focus on improving child protection through prevention, early intervention and best practice strategies (FaHCSIA 2008a).

In addition, COAG has endorsed the *National Plan to Reduce Violence against Women and their Children* which identifies the necessity for better information sharing by all agencies providing services to children young people and families. These national plans will not be as effectively implemented as they could be if information sharing along the lines proposed under the ISG is not permitted.

SA Health believes there would be a range of other negative effects on the public interest if the proposed act or practice is not permitted. The APC should note that SA Health and other government agencies fund a significant number of non-government agencies to provide services to children and young people and to their families. These agencies have significant relationships with our clients and may have particular insights or knowledge about the child or the family or an adult in the family that may be important for making better assessments regarding the need to provide service responses to a child, young person or their family.

The Child Death and Serious Injury Review Committee, which was established by the *Children's Protection Act 1993* has the role of contributing to the prevention of death or serious injury to South Australia's children. The Committee reviews the circumstances and causes of deaths and serious injuries to children and makes recommendations to Government for changes to legislation, policies and procedures that may help prevent similar deaths or serious injuries. These changes may also bring broader benefits to children at risk generally in the population.

In its 2009 Annual Report of child deaths due to assault or intentional injury, the Committee recommended the co-ordination of interagency effort and has noted that all agencies have referred to the whole-of-Government Information Sharing Guidelines as the means by which collaborative efforts would be facilitated and guided in the future.

Child abuse and neglect and serious family difficulties remain significant issues in Australia and children, young people and families at risk are a significant proportion of the "public". The long term interests of this population will not be served as well as it could be if this practice was not permitted and it is suggested that the wider public interest would also not be served since social costs will continue to be considerable if the current limitations in responding to children and young people at risk continue to apply.

- **the appropriateness of making a determination that gives general effect to the PID, that is, to allow other organisations that have implemented and complied with the ISG to perform the permitted act or practice in the same circumstances as the applicant.**

SA Health strongly supports the making of a determination that gives general effect to the PID to allow other organisations that have implemented and complied with the ISG to perform the permitted act or practice in the same circumstances as the applicant.

All non-government agencies that are similar to *UnitingCare Wesley* will be required to undertake the proper privacy protection requirements embedded in the ISG before information is shared, including seeking consent as a first measure. These organisations are required to comply with the ISG through contract compliance arrangements as well as the requirements imposed by the Office for the Guardian for Children and Young People through the ISG procedural implementation and the compliance and monitoring requirements.

Any requirement for each relevant NGO to seek a PID in its own right will delay the effective roll out of the ISG across those NGO services which work with children and families and that provide their services under a contract with either the State or Commonwealth Government or both.

The strictures in the application of the ISG are specific and the degree of monitoring undertaken and oversight provided by the Office of the Guardian for Children and Young People in South Australia will also ensure that the permitted act or practice is undertaken in the same circumstances as required of *UnitingCare Wesley*.

- **Scope and nature of the draft determinations**

The scope and nature of both draft determinations are supported. The proposal that these PIDs should apply for a period of 5 years is also supported. This length of time will enable non-government organisations to integrate required practices within their organisational procedures and practices and gives a sufficient period to provide stability in the application of these procedures and practices.