



President
Professor Gillian Triggs

6 November 2014

Legal and Constitutional Affairs Legislation Committee
P O Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Senators,

Inquiry into the *Freedom of Information Amendment (New Arrangements) Bill 2014*

Thank you for the opportunity to make some brief comments about the Bill which proposes abolition of the OAIC and reintegration of the Privacy Commissioner into the Australian Human Rights Commission (AHRC).

The AHRC has worked with the Department and the Attorney-General to explore how the decision can be implemented in practice.

We have raised several concerns about the Bill and the Explanatory Memorandum and have been pleased to see that an amendment has been moved to section 43A(1) to replace the word 'must' with 'may'. In this way, the independence of the AHRC under the Paris Principles has been addressed.

We remain concerned, however, about other aspects of the Bill and Explanatory Memorandum that are impractical. The Bill proposes that the Australian Privacy Commissioner should sit within the AHRC but not be a member of the Commission. The staff assigned to Commissioner will be staff of the AHRC but under the exclusive direction of the Privacy Commissioner. These provisions will not work as a matter of law as the Accountable Authority for the purposes of the *Public Governance, Performance and Accountability Act* (PGPA) remains the President of the AHRC.

It is also proposed that the Privacy Commissioner should have the same status as a staff member for the purposes of the PGPA. While all other Commissioners within the AHRC report through the President to the Attorney-General, the Australian Privacy Commissioner would report directly to the Attorney-General.

I believe the model proposed by the Bill fails to understand the legal obligations under the PGPA and the *Australian Human Rights Commission Act* and, with the best will in the world, creates potential for conflict. There are confusing lines of authority both in financial and staffing respects.

Accordingly, we suggest that, if the Bill is passed, the Senate Committee recommend one of the following options:

1. The creation of the Australian Privacy Commission as a separate Commonwealth Entity.
2. The appointment of the Australian Privacy Commissioner as a member of the Commission who would function in a similar way to all other statutory Commissioners at the AHRC, who also have individual portfolio and statutory reporting obligations.
3. Redraft the Bill and the Explanatory Memo to make it clear that the Australian Privacy Commissioner will be free to direct the staff assigned to him only **in compliance with his statutory functions**, but that in all other respects the Privacy Commissioner is subject to the directions of the President and usual Commission governance processes.

Please be assured that the Commission is committed to making this new arrangement work effectively and efficiently. It remains vital, however, that the governance structure of the Commission be protected in the interests of its independence and to ensure conformity with the *PGPA*.

I welcome the opportunity to explain my views in more detail at a public hearing, were the Committee to decide to conduct hearings. In any event, I will be happy to discuss the Commission's concerns and suggestion with members of the Committee at any time.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gillian Triggs', with a stylized flourish at the end.

Gillian Triggs
President