



Australian Government

Office of the Australian Information Commissioner

Inquiry into the Australian Law Reform Commission

Submission to the Senate Legal and Constitutional Affairs Reference Committee

January 2011

Submission by Prof John McMillan, Australian Information Commissioner

Office of the Australian Information Commissioner

1. The Office of the Australian Information Commissioner (the OAIC) is established by the *Australian Information Commissioner Act 2010* (Cth)¹ (the AIC Act) and commenced operation on 1 November 2010. The OAIC is an independent statutory agency headed by the Australian Information Commissioner. The Information Commissioner is supported by two other statutory officers: the Freedom of Information Commissioner and the Privacy Commissioner. The former Office of the Privacy Commissioner was integrated into the OAIC on 1 November 2010.
2. The OAIC brings together the functions of information policy, and independent oversight of privacy protection and freedom of information (FOI), in one agency, to advance the development of consistent workable information policy across all Australian government agencies.
3. The Commissioners of the OAIC share two broad functions:
 - a. the FOI functions, set out in s8 of the AIC Act – providing access to information held by the Australian Government in accordance with the *Freedom of Information Act 1982* (Cth)², and
 - b. the privacy functions, set out in s9 of the AIC Act – protecting the privacy of individuals in accordance with the *Privacy Act 1988* (Cth)³ (the Privacy Act) and other legislation.
4. The Information Commissioner also has the the information commissioner functions, set out in s7 of the AIC Act. Those comprise strategic functions relating to information management by the Australian Government.

¹ www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP201046680

² www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401430

³ www.comlaw.gov.au/comlaw%5Cmanagement.nsf/lookupindexpagesbyid/IP200401860

Comments on the Inquiry

5. The OAIC welcomes the opportunity to make a submission to the Senate Legal and Constitutional References Committee regarding its inquiry into the Australian Law Reform Commission (the ALRC).⁴

Role of the ALRC

6. Over more than three decades the ALRC has played a leadership role in Australian law reform. The ALRC's contribution to the development of the law and government administration has been achieved through expert research and analysis and its comprehensive reports. Crucial to this role is its ability to do this from a position of independence from all active participants, such as Parliament, government agencies and regulators, allowing it to maintain an appropriate degree of objectivity.
7. The OAIC notes that the ALRC enjoys an excellent record of implementation of its recommendations - the ALRC 2009-10 Annual Report states that 90 percent of all ALRC recommendations have been implemented. Recommendations made by the ALRC have had a direct impact on the history, role and functions of the OAIC. For example, the recent reforms to the Commonwealth FOI regime (implemented by the *Freedom of Information Amendment (Reform) Act 2010 (Cth)*⁵) substantially reflect the recommendations of the joint report of the ALRC and the Administrative Review Council titled *Open Government - A Review of the Federal Freedom of Information Act 1982* (ALRC Report 77).⁶
8. Another example is the ALRC's inquiry into privacy in the 1980s which culminated in the release of the report titled *Privacy* (ALRC Report 22).⁷ That report recommended national privacy legislation which resulted in the enactment of the Privacy Act.
9. In 2006, the Australian Government again asked the ALRC to conduct an inquiry into privacy, this time to determine whether the Privacy Act and related laws continued to provide an effective framework for the protection of privacy in Australia. That inquiry resulted in the report titled *For Your Information: Australian Privacy Law and Practice* (ALRC Report 108).⁸ The Australian Government's first stage response to that report addresses 197 of the 295 recommendations in the report and largely adopts the majority of them.

⁴ www.aph.gov.au/senate/committee/legcon_ctte/law_reform_commission/index.htm

⁵ www.comlaw.gov.au/Details/C2010A00051/0c7e05b4-c947-4a67-b180-e375e561988d

⁶ www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC77.pdf

⁷ www.alrc.gov.au/sites/default/files/pdfs/publications/alrc22_summary.pdf

⁸ www.alrc.gov.au/publications/report-108

10. In addition, the *Privacy Legislation Amendment Act 2006 (Cth)*⁹ implemented a number of ALRC recommendations directed at amending the Privacy Act so that it protected human genetic information. Those amendments were a direct result of the recommendations made in the report by the ALRC and the Australian Health Ethics Committee (AHEC) of the National Health and Medical Research Council titled *Essentially Yours: The Protection of Human Genetic Information in Australia* (ALRC Report 96).¹⁰
11. The Government is often able to implement the ALRC's recommendations with little change because of the quality and effectiveness of the ALRC's inquiry process. The independence of the ALRC is also a key factor, which allows the ALRC to develop balanced and implementable recommendations for law reform.

Allocation of functions between the ALRC and other statutory agencies

12. In the OAIC's view, the allocation of functions between the ALRC and the OAIC is appropriate, effective, and essential to the work of the OAIC.
13. As noted above, the ALRC has conducted a number of inquiries that have direct relevance to the role and functions of the OAIC, including inquiries into FOI, privacy, secrecy, the protection of human genetic information, and the protection of classified and security sensitive information.
14. In each of these areas the ALRC has produced well researched and comprehensive reports that have greatly benefited the OAIC, in both its role as an adviser to the Australian Government on policy issues, and in its day to day operations as a regulator. The OAIC is greatly assisted by the kind and depth of research and analysis currently carried out by the ALRC.

Suggested areas for development

15. The OAIC notes that the ALRC does not currently, as a matter of course, publish the submissions made to it in connection with the inquiries that the ALRC conducts.
16. The OAIC is of the view that submissions could be published on the ALRC's website unless special circumstances apply. Publication of submissions could add to the community's understanding of the perspective of the various participants in the ALRC's inquiries, and promote further discussion of the issues before the ALRC.
17. It is also a further way of enhancing transparency in government processes and assisting in promoting the concept of treating government information as a national resource.

⁹ www.comlaw.gov.au/Details/C2006A00099/88e815f3-53ea-409d-8f47-67cf7adc040f

¹⁰ www.alrc.gov.au/publications/report-96