



Katy Gallagher MLA

CHIEF MINISTER

MINISTER FOR HEALTH

MINISTER FOR HIGHER EDUCATION

MINISTER FOR REGIONAL DEVELOPMENT

MEMBER FOR MOLONGLO

Senator the Hon Ian Macdonald
Chair
Senate Standing Committee on Legal
and Constitutional Affairs
Legcon.sen@aph.gov.au

Dear Senator

Thank you for your letter of 3 October 2014 relating to the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the Migration Amendment (Character and General Cancellation) Bill 2014 ("the Bill").

I have concerns regarding s 501L which provides that the Minister for Immigration and Border Protection ("the Minister") may, by written notice, require the head of an agency of a State or Territory to disclose personal information to the Minister of a kind specified in the notice and that relates to a person/s included in a class of persons specified in the notice. I note that the Minister must not give such a notice to the head of an agency unless the Minister "reasonably believes" that the head of the agency has, or can reasonably acquire, the information and the information is relevant for the purposes of considering whether the person passes the character test, or the Minister reasonably suspects or is satisfied that the person does not pass the character test.

Under the ACT's *Information Privacy Act 2014* the use and disclosure of personal information held by a public sector agency is restricted unless use or disclosure is required under law. The TPPs reflect the operation of the Australian Privacy Principles that are found in the *Privacy Act 1988* (Cth). The TPPs provide for the disclosure of information where it is required or authorised by or under an Australian law, and the proposed amendments to the *Migration Act 1958* would appear to satisfy the requirements of the Information Privacy Act.

However, it is foreseeable that an individual to whom the proposed Migration Act amendments apply may seek to argue that the "reasonably believes" basis for release (as referred to above) was not present and that the release of information held by the ACT Government was not then properly authorised by an Australian law. It is possible that an individual may then seek to complain to the Office of the Information Commissioner about a potential breach of their privacy.

To ensure the lawfulness of release prior to releasing any information, an ACT official would need to be satisfied that such a release is authorised under an Australian law. That will require ACT

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0840 Fax: (02) 6205 3030 Email: gallagher@act.gov.au
Facebook: [KatyGallagherMLA](https://www.facebook.com/KatyGallagherMLA) Twitter: [@katyGMLA](https://twitter.com/katyGMLA)



officials being given information demonstrates the basis of the Commonwealth's request. It is important the Commonwealth Ministers and officials are mindful of this.

The same issue is likely to arise under the privacy laws in at least some states.

Thank you for inviting a submission from me.

Yours sincerely

Katy Gallagher MLA
Chief Minister
12 NOV 2014