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Commission
of Jurists

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ICJ GENEVA

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President
Prof. Sir Nigel Rodley, United Kingdom
Secretary-General
Wilder Taylor
Australian Commissioner
The Hon Justice Evatt AC
The Hon Judge O’Meally AM RFD

Dear Mr Attorney,

ICJ AUSTRALIA

It is noted that the Government has introduced the *Freedom of Information Amendment (New Arrangements) Bill 2014* (The Act) – which abolishes the Office of the Australian Information Commission (OAIC). However, that legislation has not been passed by the Parliament.

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Prior to the failure to have the legislation passed, a budgetary decision had been made by the government to cease funding the OAIC from January 2015. While some funding remained and has continued throughout this year and some provision has been made in the 2015-2016 Budget, it is insufficient to enable the OAIC to discharge its statutory obligations. The Government has allowed the Freedom of information Commissioner position to remain vacant since the beginning of this year and recently called on the Privacy Commissioner to act as the Acting information Commissioner (for an unpublished term) to replace the original incumbent, Professor MacMillan, who vacated his office as from the 1st July 2015.

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Federal Court
Western Australia
Adjunct Professor Greg McIntyre SC

The present situation is that it is the formal position of the Government to cease funding the effective operation of the OAIC. The result is that the Government is seeking to achieve executively what it cannot achieve legislatively.

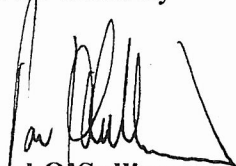
This is of profound concern to the ICJ which has the responsibility of defending the Rule of Law.

The Rule of Law is not a nebulous concept but does have some very specific components one of which is the doctrine of the Separation of Powers. Professor A V Dicey, over one

As the Bill is still before the Parliament, the OAIC remains responsible for privacy and FOI regulation and the Government is ensuring that arrangements are in place for the continued exercise of the Information Commissioner functions. In July 2015 Mr Timothy Pilgrim PSM was appointed as the acting Information Commissioner for a three-month period while the Government considers options for the future of the Information Commissioner position. Mr Pilgrim is performing the functions and exercising the Commissioner powers under the *Privacy Act 1988*, *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010*.

The OAIC's privacy functions are already funded on an ongoing basis. Additional resources will be provided to the OAIC for the continued exercise of its FOI functions in 2015-16, and the OAIC will continue to perform those FOI functions necessary to ensure the ongoing operation of the FOI system.

Yours sincerely



Paul O'Sullivan
Chief of Staff