



The Senate

STANDING COMMITTEE ON FINANCE
AND PUBLIC ADMINISTRATION

Legislation

Parliament House
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Submission
relating to the Inquiry into
Freedom of Information Amendment
(Reform) Bill 2009
and Information Commissioner Bill 2009

Submitted by: David Glynne Jones

Submitted on: 28 January 2010

1 Submission

Basis of submission

- Previous verbal and written submissions to public consultation on FOI Reform and Information Commissioner legislation (PM&C, May 2009);
- Invitation from Committee Secretary to provide a written submission to The Senate Standing Committee on Finance and Public Administration;
- Extensive experience advising and assisting Australian Government agencies on information, data and related issues at branch, division, agency and cross-government level (agencies include Treasury (Tax Review), FaCS/FaCSIA, Centrelink, DEWR/DEEWR, DAFF/BRS, DOTARS, DITR and ATSIIC).

Other submissions relevant to this submission

- Written submission to public consultation on FOI Reform and Information Commissioner legislation (PM&C, May 2009)
- Independent public submission to Reform of Australian Government Administration review (copy attached for information)
- Independent public submission to Australian Government 2010 Budget process proposing establishment of an Information Management and Accountability (IMA) Act (copy attached for information)

Scope of submission

- The scope of this submission is confined to the proposed Information Commissioner Bill 2009.

2 General Comments

Establishment of the Information Commissioner

The Australian Government is to be commended on its initiative in establishing the statutory role of the Information Commissioner. The absence of an independent statutory advocate for the legitimate public interest in information held by the Government is a fundamental deficiency in the democratic relationship between citizens, organisations and government.

The primary focus of the Information Commissioner must be on ensuring that accessible, equitable and effective mechanisms are established and maintained over time for the articulation of legitimate public demand for and access to information held by the Government. The Information Commissioner must play a central role in building an improved basis for public trust and confidence in the Government's stewardship and custodianship of citizen and corporate information.

The Information Commissioner should also have the functions, powers and resources to oversight and mediate the information demands placed on citizens and organisations by the Government and its agencies – it is unclear if these are contained in the proposed Bill.

What is less clear is the extent to which the Information Commissioner can or should attempt to shape and direct the internal administrative arrangements of agencies for the governance and management of information. There is a strong case for a separate role and functions, standing within the administrative structure of the Australian Public Service. This role would have legislative and regulatory powers to make directions

about general administrative policy and arrangements across and within agencies for governing and managing the supply of information to all stakeholders including the public, individual citizens, organisations, governments and other agencies.

3 Principle Issues for Consideration

- *Whether the measures will assist in the creation of a pro-disclosure culture with respect to government and what further measures may be appropriate*

My general view is that the proposed Information Commissioner Bill 2009 will significantly assist in the creation of a pro-disclosure culture, but that more forceful arrangements are also required with respect to the administrative arrangements within agencies for the management of information (this issue is addressed in detail below).

- *Assessment of the functions, powers and resources of the Information Commissioner*

In considering this issue it is essential to assess the extent to which the proposed functions, powers and resources of the Information Commissioner are likely to achieve a fundamental and sustained improvement of the status quo arrangements and performance of Australian Government agencies for the governance and management of information.

It is currently estimated that the management of information (not including its utilisation) accounts for approximately 25% of Australian Government administrative operating costs. The accrued stock value of Australian Government information assets is conservatively estimated at \$30 billion, and may be as high as \$50 billion.

Currently there is no consistent administrative approach for the management and accountability of information resources and assets at government or agency level. Consequently there is no effective overall control or accountability for information performance, costs or risk at either government or agency level.

The information arrangements and culture of most agencies is 'implicit', with little or no explicit administrative arrangements consistently addressing all information resources and assets held by agencies.

The current situation is not dissimilar to that for financial resources in the early-mid 1980s, following devolution of financial management to agencies and prior to implementation of the FMA and Audit Acts.

Notwithstanding numerous worthwhile initiatives at COAG and Australian Government level, there is no general administrative imperative requiring agency heads, executives and managers to give consistent attention to or account for the management of information. The prospect of any fundamental improvement of performance in this environment is negligible.

The Guide to Part 2 of the Bill states that the Information Commissioner functions are "strategic functions concerning information management by the Commonwealth Government". However, the actual functions are defined in terms of reporting to the Minister on Commonwealth Government policy and practice. While this is a necessary and useful function, it is unlikely that these functions will directly influence the administrative behaviour and performance of agencies.

There is a strengthening view that fundamental improvement will require the clear imperative of administrative legislation, along the lines of that implemented for the effective management of public financial resources and assets held by the

Australian Government (FMA Act, Audit Act). There is some evidence that agencies would welcome this development, and that agency heads and their executives are unwilling to invest significant and sustained effort in information management initiatives in the absence of clear and consistent central direction.

A key question for consideration is whether or not the Information Commissioner should be provided with comparable functions and powers to direct agencies in their management of information. My view is that this would create a significant conflict of interest for the Information Commissioner, who would be assuming greater responsibilities for both the 'supply' and 'demand' sides of the information relationship between government and the public.

My firm view is that the Government should implement separate administrative legislation for information, broadly modelled on the FMA Act – an Information Management and Accountability (IMA) Act.

The FMA Act is a model act for the effective governance and management of public resources and assets held by government, and could readily be adapted to establish an effective companion act for the management of information. Carriage of an IMA Act would be assigned to a Chief Government Information Officer, focused on the effective and efficient governance and management of information and data resources held by the Australian Government.

This approach would provide agencies with a clear non-discretionary imperative, direction and approach for improved governance, management and accountability for information. It would provide a strong and effective complement to the Information Commissioner Bill, enabling the Information Commissioner to focus on the performance of improved administrative arrangements for information – not their development and implementation.

The functions, powers and resources of the Information Commissioner must be clearly and strongly focused on legitimate public access to information held by the Government and its agencies. They should also be focused on the legitimacy of information demands placed by the Government and its agencies on citizens and organisations.

Under current arrangements government agencies frequently treat organisations (both profit and non-profit) as a 'free' source of information, with little or no consideration for the significant costs imposed or accountability for the subsequent use of the information.

The Information Commissioner should be provided with the requisite functions, powers and resources to oversight and mediate the legitimate public information requirements of the Government and its agencies.