

**OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER RESPONSE TO
QUESTION ON NOTICE**

**Extract from Hansard, Senate, Legal and Constitutional Affairs Legislation
Committee, Thursday 11 November 2010, page 8.**

Senator BARNETT—So I would like to know how far you want to push this guideline, whether it should be a legislative instrument of sorts or whether it should just be a guideline that will assist and help the relevant stakeholders.

As I noted in my opening remarks to the Senate Standing Committee on Legal and Constitutional Affairs Hearing into the Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010 (the Bill), the application of the *Privacy Act 1988* (Cth) to the Australian intelligence agencies, Australian Government law enforcement agencies and State law enforcement agencies that are covered by the proposals in the Bill varies, thereby leading to the possibility of gaps in privacy protection.¹ The Office of the Australian Information Commissioner's (OAIC) submission to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Bill stated there are various privacy regimes in place in other jurisdictions, as well as rules and guidelines covering the information handling practices of Australian intelligence agencies.² Those regimes may not apply to all entities handling personal information under the Bill.

The OAIC supports having consistent and uniform privacy protections in place across all jurisdictions to reduce regulatory fragmentation and ensure that there are appropriate privacy protections applicable to the handling of personal information under the Bill. As noted in the OAIC's submission on pages 2-3 at paragraphs 2, 3, 4 and 5, it may be appropriate for guidelines to be developed in relation to various aspects of the Bill. This approach reflects the Australian Law Reform Commission's recommendation in its Report 108: *For Your Information: Australian Privacy Law and Practice* (ALRC Report)³ that consistent privacy rules and guidelines be developed for Australian intelligence agencies.⁴

¹ See page 6 of Hansard, Senate, Legal and Constitutional Affairs Legislation Committee (Reference: Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010), Thursday 11 November 2010.

² See paragraphs 8-14 of the OAIC's submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into Telecommunications Interception and Intelligence Services Legislation Committee Bill 2010.

³ <http://www.austlii.edu.au/au/other/alrc/publications/reports/108/>.

⁴ ALRC Recommendation 34-1.

There are various mechanisms that could be adopted to achieve consistent and uniform privacy guidelines across all jurisdictions. The Bill could contain in the applicable Schedules a clause specifically requiring the creation of privacy guidelines. Such a provision could identify those privacy issues to be covered in the guidelines and specify the accountability mechanism. Adopting this approach would provide Parliament with an express role in determining privacy protections. Alternatively, guidelines could be prescribed by way of regulation.

Another option could be for the development of a set of guidelines that could build upon existing privacy frameworks. These existing frameworks may need to be reviewed and amended to ensure they are best able to address any privacy issues arising out of the Bill and are consistent across jurisdictions. These guidelines could also apply through memorandums of understanding in those jurisdictions where there is no comparable privacy framework.