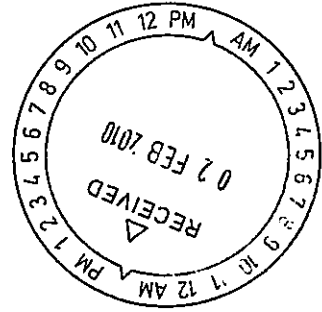


Senator the Hon. Helen Polley,
Chair
Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia



COMMENTS ON INFORMATION COMMISSIONER BILL 2009

The Privacy Advisory Committee (PAC) is a standing committee established under section 82(1) of the Privacy Act. The PAC is comprised of members from a diverse cross-section of the community, representing sectors including but not limited to; health, business, information technology, academia, trade unions and public advocacy.

The PAC met in late March 2009 and including other matters, considered the Freedom of Information (FOI) package released by Senator the Hon. John Faulkner, on 24 March 2009. The PAC made a short submission to the Department of the Prime Minister and Cabinet at that time, highlighting some areas of concern with the above Bill.

The PAC met again in December of 2009 and the undersigned members of the PAC resolved to bring the following matters to the attention of the Senate Finance and Public Administration Committee, in its review of this Bill.

There are three matters we wish to comment on and are appreciative of the opportunity to bring them to your attention:

1) Inclusion of Privacy in the name of the new organisation

We believe that the word 'privacy' should be in the name of the organisation to reflect the importance of FOI, privacy and information. We note the government has publicly stated it does not intend to devalue the importance of privacy in any structural change to the way privacy is protected in Australia. Retaining the name in the new organisation is critical to public perception regarding the continued importance of this human right.

In his 'Introduction to the Government's response to the Australian Law Reform Commission's (ALRC) Review of the Privacy Act 1988', Senator the Hon Joe Ludwig stated that

"...While our personal information is becoming more difficult to control, people are becoming more aware of their right to privacy...

The Rudd Government recognises that we now need a robust and adaptable privacy framework ... Such a framework must meet community expectations of fairness, transparency, security and individual participation in the handling of personal information ..."

With the development of the National Privacy Principles (NPP's) and the extension of the Privacy Act 1988 to the private sector in 2000, community expectation regarding the management, control and safeguarding of their personal information has increased exponentially. The OPC has been instrumental over the past decade in promoting privacy. Stripping out any reference in the first instance to privacy – an important catch all word with relation to management of personal information, will indeed de-value the "brand" of privacy in the Australian marketplace.

A potentially dangerous side-effect is that business generally may demote privacy as a risk factor in their business operations, expending less effort and resource in this area as a result of a perception that privacy is no longer such an important consideration.

2) Powers of the Commissioners

The members are concerned about the possibility of 'Commissioner shopping' if all three Commissioners have the same powers over information and privacy. We are also concerned regarding the potential for slightly different interpretations of the law and the flow on confusion or misunderstanding this might create.

We note the designation of the Information Commissioner as having the ultimate responsibility over matters such as the allocation of resources and acknowledge this is critical to the appropriate management of the Office.

In Part 2, Office of the Information Commissioner,
Division 1 – Introduction, 4 Guide to this Part,

It is stated that all of the Information Officers (Information Commissioner, Privacy Commissioner, Freedom of Information Commissioner) may perform the freedom of information functions and the privacy functions. Only the Information Commissioner may perform the Information Commissioner functions.

In addition to our above concern, we also believe this tri-part "sharing" of functionality in a practical setting will rely on extraordinarily close working relationships between all three information officers. The potential for duplication of effort, inconsistency in application and confusion around role responsibility is significant.

3) Membership of the Statutory Information Advisory Committee

Based on our own experience, we believe it is important to include on the committee people outside of government. As currently drafted, it would appear agency representatives are the first and primary source of consideration for committee positions. External perspectives from the community, business, academic and technology sectors would add value to the development of information policy. Further, the balance between government and non-government members should be an important consideration in the composition of the committee. It would also seem to be unusual to have a statutory committee that was comprised only or even predominantly, of government representatives.

The committee has reached no final view about how points two and three could be resolved, but believe they should be subject to further consideration before the final draft legislation is submitted to Parliament.

The committee thanks you for the opportunity to have our views heard.

Ms Robin Banks

Ms Suzanne Pigdon

Professor Christine O'Keefe

Assoc. Professor

John O'Brien Dr William Pring

28 January

2010

