



**Australian
Privacy
Foundation**

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9 November 2011

Mr Hamish Hansford
Secretary
Senate Legal and Constitutional Affairs Committee
LegCon.Sen@aph.gov.au

Dear Mr Hansford

**Re: Telecommunications Interception and
Intelligence Services Legislation Amendment Bill 2010
Supplementary Submission**

We note that Submission (no. 13) from the OAIC has now appeared on the Committee's Submissions page.

We are very disappointed with the OAIC's Submission.

We request the opportunity to make a Supplementary Submission, attached.

Thank you for your consideration.

Yours sincerely

Roger Clarke
Chair, for the Board of the Australian Privacy Foundation

**Australian Privacy Foundation
Submission to the Senate Legal and Constitutional Affairs Committee**

9 November 2010

**Telecommunications Interception and
Intelligence Services Legislation Amendment Bill 2010**

Supplementary Submission

Preamble

We note that Submission (no. 13) from the Office of the Australian Information Commissioner (OIA) has now appeared on the Committee's Submissions page.

The Public's Reasonable Expectations of the OAIC

The APF is very disappointed to read the OAIC's Submission.

We had expected the Privacy Commissioner to provide a much more rigorous, vigorous and critical review of the proposed amendments.

The OAIC suggests that a former Privacy Commissioner's '4A framework' for assessing law enforcement proposals be used "to assist in ensuring the proposed amendments contained in the Bill only apply in circumstances where it is necessary and proportionate". While we accept that the 4A framework is a potentially useful tool, we are not aware of it having been applied in practice in relation to any Commonwealth law enforcement initiative since it was first proposed more than 8 years ago.

Once again, this suggestion appears to have been put forward far too late and far too timidly.

In the context of a Senate Inquiry into a Bill that has already been introduced to the Parliament, the framework would only be valuable if the Privacy Commissioner applied it and made a judgement about whether the proposed amendments are 'necessary and proportionate'. By failing to provide the Committee with an independent assessment, the OAIC is failing to adequately perform its statutory functions – specifically Privacy Act 1988 s.27(1)(b), (f) and (r).

We note, however, that a major part of the problem is the apparent failure of the agencies that sponsored the Bill to consult with the Privacy Commissioner, coupled with their failure to consult with civil society, during the Bill's development, and prior to submitting the Bill for tabling.

The OAIC's Minor Suggestions

The OAIC submission makes some useful suggestions in relation to marginal safeguards, guidance, etc. The APF supports those suggestions; but they are quite secondary to the critical issues that arise from the Bill, and about which the OAIC has failed to offer the Committee robust advice.

Reiteration

The APF reiterates the serious concerns expressed in its Submission. We further note that the APF's original Submission has been endorsed by the QCCL, that the concerns have been separately voiced by all of NSW CCL, the Law Council of Australia, and the Castan Centre for Human Rights Law, and that this Supplementary Submission is supported by QCCL and NSWCCCL.

The separation of national security / intelligence (NSI) functions from mainstream law enforcement is vitally important, as is assurance that the extraordinary powers granted to the small number of specialised NSI agencies do not become, either directly or indirectly, available to any other agencies for any other purposes.