



Australian Government

Office of the Australian Information Commissioner

Janice Rafferty
Secretary
Standing Committee on Administration and Procedure
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Ms Rafferty

Inquiry into the feasibility of establishing the position of Officer of the Parliament

I welcome the opportunity to provide the following comments in response to the Committee's letter of 19 May 2011 to the Australian Privacy Commissioner, Mr Timothy Pilgrim.

May I first note that on 1 November 2010, the Office of the Privacy Commissioner was integrated into the Office of the Australian Information Commissioner (OAIC). The OAIC was established by the *Australian Information Commissioner Act 2010* (Cth) (the AIC Act) and is an independent statutory agency headed by the Australian Information Commissioner. The Information Commissioner is supported by two other statutory officers: the Privacy Commissioner and the Freedom of Information Commissioner.

The OAIC brings together the functions of information policy and independent oversight of privacy protection and freedom of information (FOI) in one agency, to advance the development of consistent workable information management policy across all Australian government agencies.

The Commissioners of the OAIC share two broad functions:

- the privacy functions, set out in s 9 of the AIC Act – protecting the privacy of individuals in accordance with the *Privacy Act 1988* (Cth) (the Privacy Act) and other legislation, and
- the FOI functions, set out in s 8 of the AIC Act – providing access to information held by the Australian Government in accordance with the *Freedom of Information Act 1982* (Cth).

The Information Commissioner also has the information commissioner functions, set out in s 7 of the AIC Act. Those comprise strategic functions relating to the Australian Government's information management policies and practices.

I read with interest the suggestion that statutory office holders such as the Auditor-General, the Ombudsman, and the Electoral Commissioner could be recognised in the ACT as officers of the Parliament. This step has been taken in some other jurisdictions, and is a concrete

way of recognising that those officers, both individually and collectively, play an important role in maintaining the integrity and accountability of government.

However, not all jurisdictions have adopted that approach. In the Commonwealth, for example, the Auditor-General is recognised in the *Auditor-General Act 1997* s 8 as 'an independent officer of the Parliament', but the same recognition has not been given to other statutory officers. When discussion of this issue has arisen (usually informally) the question is always posed as to whether statutory recognition of this kind is of practical benefit to the particular statutory office.

Generally speaking, the work of independent review officers is taken seriously by both the parliament and government agencies. This is seen in the responses to their investigations and reports and in the implementation of their recommendations. Given that the importance of statutory independence is accepted and respected in this context, it is not easy to see that there is an added practical advantage in making statutory office holders, such as the Commonwealth Ombudsman and the Electoral Commissioner, officers of the Parliament.

While there may be circumstances where it is necessary to tie these statutory office holders more specifically to Parliament to strengthen their status and emphasise the independent nature of the relationship, I consider that such office holders practically maintain their independence through other mechanisms. For example, the OAIC is established by statute as an independent statutory agency and its Commissioners are not subject to government direction in the exercising of their functions, including conducting investigations and providing reports independently of the Minister. This includes review of the administrative actions of government agencies and investigation of complaints from members of the public. I consider this to be an effective model which provides the Commissioners with the capacity to execute the role independently and free from influence.

An emerging suggestion in the Australian context is that the independent review agencies be viewed as a separate fourth branch of government – the accountability or integrity branch. This approach removes so-called integrity agencies from the executive branch of government and emphasises the principal focus of those agencies – setting a standard for government action that is higher than the established ideas of accountability, legality and procedural fairness. While the concept of an integrity branch is still being explored and may be considered in the future, there is scope within the current framework for integrity agencies to work collaboratively to support integrity and accountability in government.

I regret that I am unable to participate in the round table that you have foreshadowed and look forward to the Committee's report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John McMillan', with a large, stylized initial 'J'.

Prof John McMillan
Australian Information Commissioner

27 July 2011