

7 November 2014

Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600



By email: legcon.sen@aph.gov.au

Dear Ms Dunstone,

Inquiry into the Freedom of Information Amendment (New Arrangements) Bill 2014

Thank you for your invitation of 31 October to provide a submission to the inquiry into the Freedom of Information Amendment (New Arrangements) Bill 2014 (the Bill).

While the Law Council appreciates the opportunity to provide input to the inquiry, it notes that the timeframe for providing feedback by 6 November is regrettably short, and the reasons for the apparent urgency imposed on the Committee are unclear. We request the Committee consider this submission.

The Explanatory Memorandum notes that the Bill would abolish the Office of the Australian Information Commissioner (OAIC) and largely restore the system for the management of privacy and Freedom of Information (FOI) issues that were in operation before the OAIC was established in November 2010. It notes these changes will streamline arrangements for exercising privacy and FOI functions by removing a level of external merits review, improve efficiencies and achieve savings of over ten million dollars, over four years.

The Bill seeks to amend the *Freedom of Information Act 1982* to move functions relating to FOI matters to the Administrative Appeals Tribunal (AAT), the Attorney-General's Department and the Commonwealth Ombudsman.

The Law Council considers that the OAIC has served an important role as an independent reviewer of FOI decisions. It would be concerned about any:

- reduction in the capacity of individuals to access information from government freely;
or
- reduction of rights of review of decisions by government agencies to refuse or limit access.

Vesting sole responsibility for the investigation of FOI complaints with the Commonwealth Ombudsman and sole jurisdiction for external merits review of FOI decisions in the AAT may increase costs to individuals who seek external review of decisions in FOI matters. It

may diminish efficiency savings achieved through a specialist, independent commissioner in FOI applications.

The Bill also seeks to amend the *Australian Human Rights Commission Act 1986* and *Privacy Act 1988* to provide for an Australian Privacy Commissioner as an independent statutory officer holder within the Australian Human Rights Commission (AHRC). The Law Council is concerned to ensure that the Privacy Commissioner retains the powers currently held if it were be transferred to the AHRC.

As previously, noted the timeframe permitted for this Inquiry has not allowed sufficient opportunity to examine the Bill more closely. The Law Council recommends that the Senate Committee request an extension of the timeframe for the inquiry, by at least two months, to enable such an examination to occur.

Should you require any further information please contact Ms Emma Hlubucek on 02 6246 3726 or by email emma.hlubucek@lawcouncil.asn.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Hagan', written in a cursive style.

MARTYN HAGAN
SECRETARY-GENERAL