



THE LAW SOCIETY  
OF NEW SOUTH WALES

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18 November 2015

The Hon Senator George Brandis QC  
Attorney-General  
PO Box 6100  
Senate, Parliament House  
Canberra ACT 2600

By email: [senator.brandis@aph.gov.au](mailto:senator.brandis@aph.gov.au)

Dear Attorney-General,

**Office of the Australian Information Commissioner**

I write on behalf of the Human Rights Committee of the Law Society of NSW ("Committee") which is responsible for considering and monitoring Australia's obligations under international law in respect of human rights; considering reform proposals and draft legislation with respect to issues of human rights; and advising the Law Society accordingly.

The Committee has been watching with concern changes in the last 18 months affecting the Office of the Australian Information Commissioner ("OAIC"). The Committee writes to query the Government's intentions in respect of the OAIC, and in respect of its commitment in-principle to the Open Government Partnership. The Committee understands that the Law Council of Australia and the Attorney-General's office has exchanged correspondence in relation to the changes affecting the OAIC earlier this year.

The Committee understands that in May 2014, the Australian Government made a budget decision to disband the OAIC, although the relevant legislation has not yet passed the Senate.

Since this announcement, the Freedom of Information Commissioner, Dr James Pople, resigned in January 2015; and Professor John McMillan AO left the position of Australian Information Commissioner in July 2015. Currently, the positions of Privacy Commissioner and Freedom of Information Commissioner remain vacant, and Mr Timothy Pilgrim PSM is acting in the position of Australian Information Commissioner. The Committee understands that the OAIC received transitional funding for 12 months in May 2015 and continues to conduct Information Commissioner reviews. The Commonwealth Ombudsman now has responsibility for freedom of information complaints, but there is no funding for activities in the area of information policy.<sup>1</sup>

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<sup>1</sup> That is, in respect of how government handles and uses the information that it holds (public sector information).

The Committee notes that Article 19 of the *International Covenant on Civil and Political Rights* provides for freedom of expression and opinion. This right includes a right of access to information (Article 19(2)), which requires States to maintain a functioning freedom of information system.

The UN Human Rights Committee's *General Comment no. 34, Article 19, Freedoms of opinion and expression* provides:

To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant.<sup>2</sup>


The Committee is concerned that following the May 2014 budget announcement, the OAIC may have experienced significant organisational damage, including the ongoing vacancies in respect of both the freedom of information and privacy commissioners. The Committee is further concerned that the temporary nature of funding provided does not allow the OAIC to properly plan, nor does it allow the OAIC to fulfill all of its functions.

The principle of open government is becoming a global policy position. The Committee notes that in Australia, the Commonwealth Government has committed to the Open Government Partnership. This is an international platform for making governments more open, accountable and responsive to citizens. There are currently 66 participating countries. Comparable jurisdictions such as the United Kingdom, Canada and the USA have developed and committed to National Action Plans with the active engagement of citizens and civil society.<sup>3</sup> It should be noted that of the participating countries, Australia, Malawi and Croatia are the only countries that have not developed action plans.<sup>4</sup>

The Committee would be grateful for advice on how the Government intends to fulfil its obligations under Article 19(2) of the ICCPR, and on how the Government intends to further its commitment to the Open Government Partnership.

Thank you for considering these issues. If you have any questions, please contact Vicky Kuek, policy lawyer for the Committee, at [victoria.kuek@lawsociety.com.au](mailto:victoria.kuek@lawsociety.com.au) or on (02) 9926 0354.

Yours sincerely,

  
John F Eades  
President

<sup>2</sup> UN Human Rights Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, [19], available at: <http://www.refworld.org/docid/4ed34b562.html> [accessed 29 October 2015]

<sup>3</sup> See Open Government Partnership, online at: <http://www.opengovpartnership.org/how-it-works/develop-a-national-action-plan#sthash.IYV4G9Ts.dpuf> [accessed 29 October 2015]

<sup>4</sup> See Open Government Partnership, online at <http://www.opengovpartnership.org/> [accessed 29 October 2015]