



Australian Government

Media Release

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Australian Law Reform Commission

ALRC proposals to wind back federal secrecy laws

The Australian Law Reform Commission (ALRC) today released a Discussion Paper for its current inquiry into federal secrecy laws—*Review of Secrecy Laws* (DP 74, June 2009)—which makes 65 proposals for reform. The ALRC is seeking community feedback about how to balance a growing commitment to increased openness and transparency in government with the legitimate need to maintain the secrecy and confidentiality of some Commonwealth information.

ALRC President, Professor David Weisbrot, stated “Secrecy provisions are generally found in laws relating to national security and in areas in which citizens have a right to expect that their sensitive personal information will be protected from unauthorised disclosure—such as the information provided to the Tax Office or Medicare. That’s appropriate and unsurprising. However, the ALRC’s ‘mapping’ of the federal statute book has identified 507 secrecy provisions scattered across 175 pieces of legislation, including 358 distinct secrecy offences carrying a wide variety of criminal penalties. That’s more reflective of the old culture of secrecy than the current preference for openness.”

“Information handling, management and protection by the Commonwealth should be seen as part of a continuum. At the ‘open government’ end, there’s information that should be disclosed as a matter of course. Most departments and agencies now maintain websites that provide an enormous amount of information. This is desirable, both in the interests of promoting open and accountable government, as well as being efficient—the more information that’s publicly available, the fewer requests, questions and FOI applications departmental officers have to handle.

“At the opposite end, there is the information that is strictly secret and closely protected—most obviously, information relating to national security. Even at this end of the spectrum, however, the system allows for information-sharing among government agencies and private partners where necessary, and there may be circumstances in which secret information should be revealed through prescribed ‘whistleblower’ mechanisms.”

ALRC Commissioner in charge of the Inquiry, Professor Rosalind Croucher, commented “In trying to shift the system towards a more open and ‘pro-disclosure culture’, the ALRC proposes a substantial decrease in the use of criminal sanctions—limiting prosecutions to those unauthorised disclosures in which it is alleged that harm has been caused, or was likely to be caused, to a compelling public interest. These include harm to: national security, defence or international relations; law enforcement operations; the physical safety of a person; or public health. Of course, the offence is more severe where the person intends to cause harm or is recklessly indifferent to the consequences. Mostly, however, it seems preferable to deal with these issues through better education and training, improved information handling practices, and by utilising public service disciplinary procedures.

“The key focus of the ALRC’s proposed reforms is on achieving much greater clarity for the public servants and others who handle Commonwealth information. This involves creating a new general secrecy offence applicable to Commonwealth officers; substantially consolidating the scattered specific offences, based on a common set of principles; and imposing a rationalised penalty structure. Importantly, we also propose recasting the Australian Public Service Code of Conduct in this area to clarify the duty owed by officers.

“Finally, in doing all of this, we must be careful to fit in with the surrounding matrix of laws on Freedom of Information, privacy and whistleblower protection—areas which are also currently under review.”

Submissions on the ALRC’s proposals are due by 7 August 2009. The final report and recommendations in this Inquiry will be provided to the Attorney-General at the end of October.

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