



ADMINISTRATIVE REVIEW COUNCIL

18 October 2006

Senator the Hon Chris Ellison
Minister for Justice and Customs
Parliament House
Canberra ACT 2600

Dear Minister

Thank you very much for your letter of 19 September 2006 enclosing a copy of the discussion paper released by you in relation to Australia's mutual assistance regime under the *Mutual Assistance in Criminal Matters Act 1987* (the Mutual Assistance Act).

The Council was delighted to comment earlier this year on a related discussion paper concerning Australia's extradition regime. We have considered this latest discussion paper with interest and were pleased to see the reference to the Council at paragraph 6.4.5 in relation to judicial review of mutual assistance decisions.

Issue for comment

The Council has recently been considering information flows between agencies in the context of its project on coercive information-gathering powers. In view of this, our substantive comments on the discussion paper relate to paragraph 6.4.3 concerning how the Mutual Assistance Act should allow for appropriate information sharing.

The discussion paper notes that while the *Privacy Act 1988* Information Privacy Principles provide that personal information cannot be used or disclosed except for the purpose for which it was collected, there are a number of exceptions.

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These circumstances include where disclosure is reasonably necessary for the enforcement of the criminal law or where it is required or authorised under law.

However, the paper states that under the mutual assistance regime, ‘criminal law’ may also include the law of non-Australian jurisdictions.

The paper suggests that the Mutual Assistance Act could be amended to expressly identify and authorise personal information flows in the mutual assistance process to make sure that information flows clearly fall within the ‘required or authorised by or under law’ exception.

Council comment

The Council agrees with the suggestion in the discussion paper that if this were to be done, the legislation would need to be couched in specific terms and should not simply authorise information sharing generally.

The collection and disclosure of personal information can represent a significant intrusion on individual rights. If the correct balance is not achieved, attempts to foster greater efficiencies within government may cause people to become more circumspect in the information that they are prepared to provide to government agencies and threaten the implicit endorsement that exists for the collection of personal information.

In our view, the greater the distance between the original purpose for collecting the information and the reason for its release, the greater the legislative specificity would need to be. We consider this to be particularly important where information obtained under a low threshold trigger is sought to be disclosed for use in law enforcement or penalty proceedings against the original information provider or a third party.

In such cases, the Council believes that disclosure of information should be subject to a threshold test equivalent to that which would apply if the information were obtained directly from the relevant entity by the receiving agency.

Thank you once again for seeking the Council’s views on the discussion paper. We have forwarded a copy of this letter to the Extradition and Mutual Assistance Review Team in the Attorney-General’s Department.

We would be happy to speak with the Review Team about our work in the area of coercive information-gathering powers if that would be of assistance. The contact officer for that purpose would be the Council’s Executive Director,

Margaret Harrison-Smith on tel. no. 6250 5801 or by e-mail at margaret.harrison-smith@ag.gov.au.

Yours sincerely

Jillian Segal

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