



Australian Productivity Commission  
Trans-Tasman Study  
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Dear Commissioners,

### **Strengthening trans-Tasman economic relations – a joint study**

Thank you for the opportunity to provide comments on the discussion draft *Strengthening trans-Tasman economic relations – a joint study* (the discussion draft) published by the Productivity Commissions of Australia and New Zealand on 18 September 2012.

The Office of the Australian Information Commissioner (OAIC) made a submission to the preceding Issues Paper. In that submission, the Australian Privacy Commissioner, Timothy Pilgrim, outlined the OAIC's observations regarding information law oversight of regulatory schemes applying to multiple jurisdictions and issues that may arise from shared regulatory arrangements.

I wish to reiterate those observations and encourage the Productivity Commissions to give greater prominence to some of the practical difficulties arising from information law oversight of trans-Tasman regulatory bodies. This will help to ensure that future initiatives advancing closer economic relations (CER) between Australian and New Zealand give early consideration to this issue.

### **Applying independent oversight mechanisms to a trans-Tasman regulatory scheme**

The discussion draft describes the wide-ranging initiatives on foot to advance CER and deepen trans-Tasman regulatory integration. Regulatory integration can take many forms. According to the discussion draft, it may involve cooperation between domestic regulators, shared rules and establishment of a single institution to regulate both countries (p 44). Examples of single trans-Tasman institutions include Food Standards Australia New Zealand (FSANZ) and the proposed Australian and New Zealand Therapeutic Products Agency (ANZTPA). Given the number of initiatives underway to enhance regulatory integration (pp 64-65), it is likely that other joint bodies will be established in future.

Government agencies in both Australia and New Zealand are subject to laws relating to information access, privacy protection, Ombudsman oversight and independent review of administrative action and decisions. It is essential that these oversight arrangements continue to apply to the regulatory bodies and arrangements that are established under a joint Australian and New Zealand regulatory scheme. To do otherwise would weaken the accountability and oversight arrangements that have been developed in both countries over

many decades and are seen as being an integral feature of democratic accountable government.

The manner in which those oversight laws apply to a joint regulatory scheme can vary according to the nature of the scheme. Some of the challenges in applying information laws to a single regulator covering both countries were noted by the Privacy Commissioner in his earlier submission. A central issue is the nature of the information law obligations that will apply to the regulator and how compliance will be monitored. For example, which oversight agency will have responsibility for monitoring compliance with privacy and access to information laws and to which tribunal or court will their decisions be appealable? The answers to these complex questions may vary from one CER scheme to another. If there is more than one regulatory scheme, and different oversight arrangements apply to each scheme, there is a distinct risk of fragmentation and lack of consistency in information law regulation.

I suggest that these issues could usefully be raised in the 'Harmonisation is challenging' section of the discussion draft (p 90). This would support the Productivity Commissions' finding that flexible integration models, such as the FSANZ example, have been more successful than more far-reaching models for regulatory harmonisation, such as the ANZTPA project (p 90).


These challenges mean that administrative law arrangements need to be considered early in new proposals. It is pleasing that my office has recently been invited to participate in discussions on the application of an information law framework to ANZTPA. However, with the possibility of other trans-Tasman bodies being established in future, it makes sense to take a more strategic approach to the issue.

### **Further research**

I support the Privacy Commissioner's suggestion that a research project be undertaken to address the way that privacy and access to information laws are integrated into any shared regulatory model. Such a research project could smooth the way for the establishment of other trans-Tasman bodies and ensure that appropriate information law oversight arrangements apply to their operations. In this way, CER initiatives can avoid the development of unsystematic and inconsistent information law arrangements and the associated regulatory complexity entailed. A research project along these lines could also consider the application of ombudsman and merit review arrangements to joint regulatory schemes.

I look forward to engaging further with the Productivity Commission on this important issue.

Yours sincerely

  
PROF JOHN MCIVILIAN  
Australian Information Commissioner

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