



Australian Productivity Commission
Trans-Tasman Study
GPO Box 1428
CANBERRA CITY ACT 2601

By email: transtasmanreview@pc.gov.au

To Whom It May Concern

Strengthening Economic Relations between Australia and New Zealand: A Joint Study

Introduction

The Office of the Australian Information Commissioner (the OAIC) refers to the Issues Paper 'Strengthening economic relations between Australia and New Zealand' ('the Issues Paper'), released by the Productivity Commissions of Australia and New Zealand.

The OAIC makes the following comments.

The Office of the Australian Information Commissioner

The OAIC was established by the *Australian Information Commissioner Act 2010* (Cth) and commenced operation on 1 November 2010.

The OAIC is an independent statutory agency headed by the Australian Information Commissioner. The Information Commissioner is supported by two other statutory officers: the Freedom of Information Commissioner and the Privacy Commissioner.

The former Office of the Privacy Commissioner (the OPC) was integrated into the OAIC on 1 November 2010.

The OAIC brings together the functions of information policy and independent oversight of privacy protection and freedom of information in one agency, to advance the development of consistent workable information policy across all Australian government agencies.

Trans-Tasman regulation

The Issues Paper refers to economic integration as the degree of freedom of exchange of goods, services, capital, technology and other information between countries, and the freedom of movement of people (including for work). The paper explores a number of benefits, costs and risks of economic integration, and proposes that Governments more closely align regulatory frameworks, including the possible establishment of regulatory agencies that cover both countries.

Such arrangements present challenges to administrative law arrangements and more specifically, information law oversight. Any trans-Tasman regulatory scheme will require careful consideration to ensure adequate provision for the application of privacy and freedom of information laws.

Proposals such as removing barriers to labour movement and the flow of knowledge will inevitably lead to the transfer of personal information between countries, and would require safeguards to be put in place in order to ensure that privacy is adequately protected. I see this issue as being particularly relevant in the context of the ongoing reforms to the *Privacy Act 1988* (Cth) (Privacy Act) and the Australian Government's commitment to working co-operatively with New Zealand on privacy issues, through a number of international forums and partnerships. Proposed reforms to the Privacy Act will introduce new obligations for both agencies and organisations in relation to cross-border disclosure of personal information.

The OAIC encourages the Productivity Commissions to give adequate consideration at an early stage to appropriate information law oversight arrangements, including what obligations will apply in each jurisdiction and how this will be regulated. For instance, it is the view of the OAIC that it may assist policy development in this area if the Productivity Commissions undertake a research project to explore the privacy implications of economic integration. Consideration should also be given to the way in which privacy and Freedom of Information laws could be integrated into any shared regulatory model. A paper of this kind would be a valuable resource at the initial development stage of trans-Tasman regulatory schemes. It would ensure that the attention of the governmental representatives developing the proposals was drawn to this issue at an early stage. Consultation with privacy and other bodies could also begin on an informed basis at an early stage.

I note that Professor John McMillan, the Australian Information Commissioner, has previously written to the Attorney-General in similar terms with regard to the Council of Australian Governments' national regulatory harmonisation agenda, which gives rise to similar issues in relation to administrative law oversight across multiple jurisdictions.

If the Productivity Commissions adopt this proposal, the OAIC would be happy to be consulted in relation to the recommendations emerging from the research project. I look forward to your favourable consideration of this suggestion.

I hope that these comments are of assistance to the Productivity Commissions.

Yours sincerely

[signed]

Timothy Pilgrim
Australian Privacy Commissioner

29 May 2012