Our Ref: 07/005/01
Your Ref: RSA

17 December 2014

Hon Kate Doust MLC
Chair
Legislative Council Standing Committee on
Uniform Legislation and Statutes Review
Parliament House
PERTH WA 6000

Dear Ms Doust

INQUIRIES INTO THE *GENE TECHNOLOGY (WESTERN AUSTRALIA) BILL 2014* AND THE *RAIL SAFETY NATIONAL LAW (WA) BILL 2014*

I refer to your letter dated 4 December 2014 inviting my written submissions for the purposes of the above-mentioned inquiries.

My submission to the Committee is set out in this letter.

In relation to the *Gene Technology (Western Australia) Bill 2014*, I note that it applies Commonwealth FOI and privacy laws (clause 4).

In relation to the *Rail Safety National Law (WA) Bill 2014*, I note that clause 8 provides that the Western Australian *Freedom of Information Act 1992* does not apply to the Law or the instruments made under it. Part 10 provides for the application of the South Australian *Freedom of Information Act 1991* (**SA FOI Act**), except to the extent that functions are being exercised under the Law by a State entity. It also provides that the national regulations may modify the SA FOI Act for the purposes of the Law.

For the purposes of these inquiries, the Committee may wish to consider the matters raised in my Issues Paper *'COAG Regulatory Reform Agenda: Potential Impact on State Oversight Laws and Mechanisms'* provided to the Committee with my letter dated 14 December 2011. A further copy of the Issues Paper is enclosed for the Committee's reference.

To the best of my understanding the matters identified in the Issues Paper have not been resolved.

I have no objection to my submission being made public.

Yours sincerely

Sven Bluemmel
INFORMATION COMMISSIONER
Enc.

WESTERN AUSTRALIA

Office of the Information Commissioner

COAG Regulatory Reform Agenda: Potential Impact on State Oversight Laws and Mechanisms

Issues Paper

Office of the Information Commissioner
13 December 2011

Purpose of this Paper

The purpose of this paper is to highlight concerns about the potential confusion and proliferation of oversight laws and bodies under national harmonisation schemes being developed under the Council of Australian Governments (COAG) regulatory reform agenda. These concerns are shared by Information Commissioners in other Australian jurisdictions and were raised in the 2010-11 annual report of the Office of the Information Commissioner (OIC).

For the reasons given in this paper, the Information Commissioner does not consider it appropriate for OIC to take a lead role in addressing these concerns. Instead, OIC considers that COAG should look at this issue holistically by commissioning a targeted body of work that examines the different models for applying oversight legislation (including freedom of information) to national harmonisation initiatives under the COAG national reform agenda.

The role of the Information Commissioner

The Western Australian Information Commissioner is appointed by the Governor under s.56 of the *Freedom of Information Act 1992* (the FOI Act) and reports directly to Parliament. The Commissioner's main function is to deal with complaints made under the FOI Act about decisions made by agencies in respect of FOI applications and applications for amendment of personal information. The Commissioner's functions also include ensuring that agencies are aware of their obligations under the FOI Act and ensuring that members of the public are aware of their rights under the Act.

The FOI Act does not expressly confer on the Information Commissioner any policy functions, nor is the Commissioner's office resourced or staffed to discharge such functions. Information Commissioners in some other jurisdictions have a broader policy function. This has allowed Commissioners in those jurisdictions to be more proactive about identifying and responding to the issues in this paper.

For these reasons, the Information Commissioner does not consider it appropriate to take a lead role in resolving the issues identified in the paper. Instead, the Commissioner has brought these issues to the attention of the Department of the Premier and Cabinet for further action.

It is also important to note that this paper reflects the views of OIC as an independent accountability agency. It does not necessarily reflect the views of the Western Australian Government.

The COAG Reform Agenda

OIC understands that COAG has prioritised 36 areas of law for harmonisation to address the regulatory burden and equity issues arising out of inconsistent regulation across Australia.

It appears that, in order to implement these national legislative schemes, an 'applied laws' process is generally being used where a host jurisdiction enacts the national law in that state or territory's Parliament and other states and territories then adopt that law or pass corresponding legislation. The national laws are not Commonwealth laws. OIC's

understanding of the current status of a number of the national regulatory schemes is set out in the Appendix.

Potential Impact on State Oversight Laws and Mechanisms

This paper uses the term 'oversight laws' to include legislation dealing with freedom of information, privacy, public record keeping and the role of Ombudsmen. In some contexts, this may also include laws relating to public audit and public sector management. However, given the role of the Information Commissioner, the main focus of this paper is limited to freedom of information legislation and mechanisms.

The recently introduced national schemes have not adopted a consistent approach to how oversight laws apply to the people and organisations which play a role under the national schemes. Instead, different oversight models have been developed for education and child care services, occupational licensing and health practitioner regulation. It appears likely that a further variety of models will follow in other legislative reforms including national rail safety and heavy vehicle licensing. OIC is concerned that the use of different oversight models in different national regulatory schemes will increase the complexity and fragmentation of oversight laws and will result in inefficiencies and unnecessary duplication of effort and expenditure. The problem appears to have arisen inadvertently as a result of various Ministerial councils each deciding on different oversight models for the areas of national law reform for which they are responsible.

The Australian Information Commissioner, Professor John McMillan, has publicly noted[1] that it appears that *"...the application of FOI and Privacy laws to the national schemes has not been properly thought through...This lack of clarity concerning the application of FOI and Privacy Acts is a great concern, as those laws are regarded nowadays as a fundamental feature of democratic government in Australia. There is likely to be strong public criticism of any scheme of government regulation that does not make adequate or sensible provision for privacy and FOI laws to apply".*

The adoption of the national laws by participating jurisdictions has generally resulted in certain Commonwealth oversight laws, including the *Freedom of Information Act 1982* ('the Commonwealth FOI Act'), being applied as state law for the purpose of the schemes in place of jurisdiction-specific FOI and privacy legislation. OIC understands that this approach has been adopted to ensure *"matters relating to privacy and freedom of information are managed consistently across all State and Territories.*[2]

However, this approach raises a number of issues including which body should be responsible for administering the Commonwealth FOI Act as a state law. OIC understands that the main options in this regard are as follows:

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[1] In his submission to the COAG Business Regulation and Competition Working Group Secretariat on 24 October 2011, publicly available at http://www.oaic.gov.au

[2] Page 12, Explanatory Notes to the *Educational and Care Services National Law (Queensland) Bill 2011* available at http://www.parliament.qld.gov.au

- the Australian Information Commissioner performs the oversight role;
- existing state bodies, such as OIC, perform the oversight role on a territorial basis;
- the oversight role is conferred on a single existing state oversight body which would provide oversight for all participating jurisdictions; or
- a dedicated stand alone oversight body is created.

OIC understands that the Commonwealth opposes the first option on the basis that it would face constitutional difficulties and would in any event be inappropriate.

OIC considers that the option of state oversight agencies, such as OIC, performing the oversight role and applying the Commonwealth FOI Act would be problematic. The application and interpretation of both state and Commonwealth FOI legislation could create conflicting obligations.

Of great concern is that some of the national law schemes - notably the *Health Practitioner Regulation National Law 2009* and the *Education and Care Services National Law Act 2010* - have adopted the fourth option outlined above. Those schemes have established new separate national oversight bodies (not Commonwealth bodies) – the National Health Practitioner Ombudsman and the National Education and Care Services Freedom of Information Commissioner, respectively – who have responsibility for FOI regulation specifically for that scheme.

Although it may be considered that the creation of new stand alone oversight bodies will create nationally consistent oversight within each scheme, OIC is concerned that the potential proliferation of new scheme-specific oversight bodies across the national regulatory scheme raises issues of efficiency and duplication of resources with the existing Commonwealth and state oversight bodies, and will result in a highly fractured oversight framework. An increase in the number of oversight bodies is likely to create confusion for the public, as well as increasing overall bureaucracy.

This approach will also result in multiple bodies applying and interpreting the same law, that is, the Commonwealth FOI Act, currently administered by the Australian Information Commissioner. This is likely to lead to confusion. Also, the national laws generally provide that state review and appeal bodies will fulfil the role of the Administrative Appeals Tribunal and the Federal Court under the Commonwealth FOI Act and the Commonwealth *Privacy Act 1988* ('the Commonwealth Privacy Act'). OIC understands that in Western Australia this role will be performed by the State Administrative Tribunal and the Supreme Court, which means those bodies will be required to interpret and apply the provisions of the Commonwealth Privacy and FOI Acts. This model creates potential for inconsistency in the application and interpretation of the Commonwealth FOI Act by different bodies. As the Queensland Office of the Information Commissioner (Queensland OIC) has noted, *"...the certainty the common law delivers through judicial oversight would be frayed"*[3].

[3] See page 13 of Submission October 2011 re '*Future COAG Regulatory Reform Agenda Stakeholder Consultation Paper*'

The Australian Information Commissioner has publicly noted[4] that the establishment of a new national oversight body for the National Rail Safety Scheme *"...would add to the existing multiple layers, fragmentation and lack of consistency in information law regulation. Multiple regulators can lead to confusion about to whom to complain, differing legislative interpretations and complaints outcomes, and unnecessary duplication of effort and expenditure..."* and that there is a *"...distinct risk of inconsistency, confusion and disharmony" "if, under each scheme, a separate regulator* [is] *appointed with responsibility for interpreting and applying the FOI and Privacy Acts to that scheme"*[5]. OIC agrees with Professor McMillan that it is doubtful that the values of independence, impartiality, accessibility and expertise that underpin the schemes of OIC and of other oversight bodies *"can be truly met by the substitute regulators adopted for some of the schemes"*[6], who may have limited experience administering FOI legislation.

Another issue of concern is that the national regulatory schemes have adopted different approaches regarding the application of Commonwealth and state oversight laws under the national laws. For example, some schemes such as occupational licensing, rail safety and heavy vehicle regulation provide that the Commonwealth FOI Act applies for the purpose of the national law except to the extent that functions are being exercised under the national law by a state entity, whereas under the National Education and Care Services Scheme, the Commonwealth FOI Act applies to state and territory Regulatory Authorities and to the national authority established under that scheme.

State agencies will potentially be required simultaneously to comply with both the State and Commonwealth FOI Acts and in some circumstances it will be unclear and confusing as to which Act applies to any given situation. Accordingly, the application of State and Commonwealth FOI Acts needs to be readily ascertainable and precisely defined in the national laws.

For example, consideration should be given to the potential overlap in application of the Commonwealth and State FOI Acts to documents held by Western Australia's Regulatory Authority under this State's equivalent of the Education and Care Services National Law (for example, to the extent that the Regulatory Authority will exercise functions outside the scope of the national law). This issue of overlapping application of FOI legislation in this scheme has been extensively examined by the Queensland OIC[7] and the subsequent Queensland bill adopting the national law – the *Education and Care Services National Law (Queensland) Bill 2011*, which was passed by the Queensland Parliament on 16 November 2011 – includes a clause[8] which provides that the provisions of the law which exclude the operation of Queensland privacy and FOI legislation[9] do not affect the operation of the those acts in

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[4] In his submission to the National Transport Commission 'Draft National Rail Safety Law 2011', August 2011 available at http://www.oaic.gov.au

[5] See above n 1

[6] Ibid

[7] In its submission *'Education and Care Services Regulation 2010'* dated 13 April 2011 publicly available at http://www.oic.qld.gov.au

[8] Clause 30

[9] Sections 5(1)(b) and (c)

relation to the *Child Care Act 2002 (Qld)* or instruments made under that Act. OIC understands that clause was included "*to remove any doubt that applications may continue to be made under the* Information Privacy Act 2009 *and* Right to Information Act 2009 *about matters pertaining to the* Child Care Act 2002" [10].

The application of Commonwealth laws to state entities may raise complex jurisdictional issues and will increase the regulatory burden on State agencies, requiring affected officers to have an adequate understanding of both state and Commonwealth FOI Acts and to apply and comply with two different laws. While there are similarities between the WA FOI Act and the Commonwealth FOI Act, there are substantial differences. In particular, the Commonwealth FOI Act has recently adopted a 'push model' in which agencies proactively make more information available to the public and are required to publish in a 'disclosure log' information that has been released in response to each FOI access request, subject to certain exceptions. In comparison, Western Australia has a more reactive or 'pull' model by which agencies disclose information in response to FOI requests. There are also substantial differences in the exemptions, the imposition of charges and the relevant timeframes under both Acts.

As the Queensland OIC has noted[11], the application of both Commonwealth Privacy and FOI Acts to state agencies will require participating jurisdictions to, among other things, identify similarities and differences between their laws and the Commonwealth Acts and train officers in two additional bodies of law and their precedents, which will come at a financial cost. The regulatory burden in relation to privacy will be high in Western Australia because State agencies, not currently subject to state privacy legislation, will be required to become familiar with and comply with the Commonwealth Privacy Act.

Another issue of concern is that the application of the Commonwealth FOI Act under the national laws can generally be modified by regulations to be made by the relevant ministerial council. This approach could result in the potential dilution of the current provisions in the Commonwealth FOI Act and the fragmentation of oversight arrangements. It can also be argued that this allows regulations to make legislative determinations of a kind that should properly be the preserve of Parliaments.

OIC is also concerned at the limited level of consultation which has taken place with existing oversight bodies, including OIC, about the proposed schemes, a concern which is also shared by other jurisdictions. As the Australian Information Commissioner has publicly noted:

"Though we have a substantial interest in the oversight arrangements for national schemes, our experience is that we are either not consulted or contacted late in the development of the scheme. The same concern has been expressed by our state and territory counterparts. We are left with the feeling that information law issues are treated as a minor technical issue to be resolved in the closing stages of deliberation" [12].

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[10] See above n 2, page 53. The Explanatory Notes includes useful consideration of oversight issues under the national law

[11] See above n 3, page 10

[12] See above n 1

Next Steps

The Australian Information Commissioner has made the following suggestion to address the oversight issue:[13]

"A better framework for consultation is required to ensure that the attention of the governmental representatives developing national regulatory schemes is drawn to [oversight laws and mechanisms] *at an early stage of development. It may assist policy development in this area if COAG commissioned a research paper that sets out the different models for national intergovernmental regulatory schemes and the options for applying privacy, access to information and ombudsman legislation to each model. Such a paper could serve to guide the development of future regulatory proposals and ensure that appropriate information law oversight arrangements are applied".*

OIC considers that it is vitally important that the application of oversight laws to the national regulatory schemes is given adequate and proper consideration. Failing to do so runs the real risk of any benefits of national harmonisation being outweighed by an increase in the complexity, cost and opacity of oversight legislation and mechanisms.

To that end, OIC considers that COAG should look at this issue holistically by commissioning a targeted body of work that examines the different models for applying oversight legislation (including freedom of information) to national harmonisation initiatives under the COAG national reform agenda.

[13] Ibid

APPENDIX

The National Health Practitioner Scheme

This scheme has been operational since 1 July 2010 and provides national regulation of health practitioners from ten professions under the *Health Practitioner Regulation National Law 2009* (enacted in Western Australia as the *Health Practitioner Regulation National Law (WA) Act 2010*).

The national law established the Australian Health Practitioner Regulation Agency (AHPRA), the Agency Management Committee and national boards for ten regulated health professionals.

The scheme applies the Commonwealth FOI and Privacy Acts for the purpose of the national law. However, it did not adopt the significant changes that were made to those Acts in 2010 nor does the Australian Information Commissioner provide FOI or privacy oversight for the scheme. Instead, the scheme has created new national oversight bodies with responsibility for FOI and privacy regulation specifically for the scheme (the National Health Practitioner Privacy Commissioner and the National Health Practitioners Ombudsman). OIC understands that this arrangement was intended to be temporary (until June 2012) and there is concern about the appropriateness of this arrangement continuing.[14]

The National Occupational Licensing Scheme

In 2008 COAG agreed to establish a national licensing system for certain occupations. Victoria is the host jurisdiction for the scheme and passed the *Occupational Licensing National Law Act* (2010) on 17 September 2010 ('the national law').

The scheme creates a new 'National Occupational Licensing Authority' ('NOLA') to administer the national occupational licensing system. NOLA was established on 1 January 2011 and is based in New South Wales.

OIC understands that the national law was drafted along similar lines to the Health Practitioner Scheme. However, unlike that scheme, this is a 'delegated scheme' whereby NOLA may delegate all regulatory functions for licensing to existing jurisdictional regulatory agencies (for example, the issuing of licences).[15]

Under the national law, the Commonwealth Privacy and FOI Acts apply for the purposes of the national licensing system, except to the extent that functions are being exercised under the national law by a state entity.[16] State privacy and FOI laws apply only when functions are being exercised under the national law by a state entity and do not relate to national registers

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[14] See draft policy options paper dated 31 October 2011 prepared by the National Heavy Vehicle Regulator Project Office entitled *"Oversight arrangements under the Heavy Vehicle National Law – Policy options paper (issue number 049)"*

[15] Section 102 of the national law

[16] Section 135 and 137 of the national law

kept under the national law.[17] It is not clear from the national law who is proposed to administer the FOI oversight role and OIC understands this issue will be addressed in the national regulations.

The national licensing scheme is scheduled to commence operation from July 2012 for the following occupations: property; electrical; plumbing and gas fitting; and refrigeration and air conditioning. The national law has been adopted by New South Wales, Queensland, South Australia, Tasmania and the Northern Territory but OIC understands but that the Australian Capital Territory is still in discussions about its participation in national licensing.[18]

In Western Australia, the *Occupational Licensing National Law (WA) Bill 2010* ('the Bill') is currently before the Parliament. On 25 November 2010, the Bill was referred to the Standing Committee on Uniform Legislation and Statutes Review. The Committee tabled its report on 14 April 2011, concluding that the Bill was *"too uncertain to be good law"* and recommended that the Bill should not be passed.[19] In relation to the oversight issue, the Committee noted at paragraphs 3.11 and 3.12:

> *"The Bill provides that Commonwealth Acts - the Privacy Act 1988, Freedom of Information Act 1982 and Archives Act 1983 - apply to the Occupational Licensing National Law applied by the Bill. Equivalent State Acts are excluded except to the extent that functions are exercised by State entities. On each occasion of application of a Commonwealth Act, power is conferred for regulations to be made amending the primary legislation as it applies to the national law.*
>
> *This raises two issues: uncertainty in where the lines will be drawn when records are both State and national and Henry VIII clauses".*

The Committee considered that there is uncertainty in clause 6 of the Bill as to whether the WA FOI Act or the Commonwealth FOI Act will apply to documents.[20]

National Education and Care Services Scheme

In December 2009 COAG agreed to establish a National Quality Framework (NQF) for early childhood education and care. The NQF is established by the Education and Care Services National Law and the Education and Care Services National Regulations. Under the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care, the states and territories agreed to enact as applied law the legislation establishing a national system enacted by the host jurisdiction – in this case Victoria – with the exception of Western Australia which will pass its own corresponding legislation.

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[17] Section 5 of the national law and clause 6 of the *Occupational Licensing National Law (WA) Bill 2010*

[18] see http://nola.gov.au/legislation-2/

[19] See page ii and paragraph 1.8 of *"Report 61 Standing Committee on Uniform Legislation and Statutes Review Occupational Licensing National Law (WA) Bill 2010"* available at http://www.parliament.wa.gov.au

[20] Ibid, page 25

In October 2010, Victoria enacted the *Education and Care Services National Law 2010 (Vic).*

According to information on the Department for Communities website[21] "[i]*n Western Australia the law will be introduced through corresponding legislation. This means there may be some local variation due to Western Australia's specific needs, but that it will be consistent with the national law".*

The national law establishes a joint national body - the Australian Children's Education and Care Quality Authority (ACEQA) - to oversee the implementation of the NCF and provides that state and territory Regulatory Authorities will have primary responsibility for the approval, monitoring and quality assessment of services. OIC understands that in Western Australia the Regulatory Authority is proposed to be the Child Care Licensing and Standards Unit of the Department for Communities.[22]

Under the national law, the Commonwealth FOI Acts applies as a law of a participating jurisdiction for the purposes of the NQF. [23] However, this scheme has adopted the Health Practitioner Scheme approach and modified the application of the Commonwealth Act by creating a new national oversight commissioner, the National Education and Care Services Freedom of Information Commissioner.[24] The same approach has been used for privacy oversight.

On 14 October 2011 the Ministerial Council for Education, Early Childhood Development and Youth Affairs approved for publication "Draft Education and Care Services National Regulations". [25]

Under the Regulations, the Commonwealth FOI Act applies to both ACEQA and to each Regulatory Authority in each participating jurisdiction.[26]

According to the Department for Communities website[27], *"*[t]*hese National Regulations will serve as a template for the Western Australian corresponding version which will be developed shortly."*

National Rail Safety Scheme

The National Rail Safety Scheme establishes the National Rail Safety Regulator which will have responsibility for regulatory oversight of rail safety across all of Australia.

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[21] http://www.communities.wa.gov.au/childrenandfamilies/NQFEECS/Pages/default.aspx

[22] Ibid

[23] Sections 264 of the *Education and Care Services National Law 2010 (Vic)*

[24] Ibid

[25] Publicly available at http://www.eduweb.vic.gov.au/edulibrary/public/earlychildhood/childrensservices/draft-edu-care-regs.pdf

[26] Clause 208 of the Regulations

[27] See above n 22

At the inaugural Standing Committee on Infrastructure and Transport (SCOTI) on 4 November 2011, Australia's transport ministers approved the laws which underpin the scheme, the Rail Safety National Law Bill and the Rail Safety National Law Regulations 2011. According to information on the National Rail Safety Regulator Project Office's website[28], *"the legislation will now be progressed through the South Australian parliament during the first half of next year, allowing all other jurisdictions to pass their applying laws in time for the National Rail Safety Regulator to commence operations in January 2013"*.

The Bill establishes the Office of the National Rail Safety Regulator (ONRSR)[29] which consists of a person appointed as the National Rail Safety Regulator (the Regulator) and two non-executive members.[30] Both the ONRSS and the Regulator may delegate its and his or her functions under the law to a person or body.[31] In addition, the ONRSR may enter into a service agreement with a State or Territory that makes provision for the State or Territory to provide services to ONRSR that assist ONRSR in exercising its functions[32] and the Regulator may appoint authorised persons (such as rail safety officers) which appointment may be limited to a part of a particular jurisdiction.

Clause 263 of the Bill provides that the Commonwealth Privacy and FOI Acts apply as laws of a participating jurisdiction for the purposes of the law, except to the extent that functions are being exercised under the national law by a state entity.

It is not clear from the Bill which body will have responsibility for FOI oversight. Part 8 of the draft Regulations headed *"Application of certain Commonwealth Acts to the Law"* currently says *"Drafting note – Details as to how the oversight arrangements will work are still being developed"*. Further, regulation 36 in Part 8 headed *"Application of FOI Act"* says *"For the purposes of section 263(3)* (Application of certain Commonwealth Acts to this Law) *of the Law, this Division sets out modifications of the Freedom of Information Act 1982 of the Commonwealth as it applies as a law of a participating jurisdiction for the purposes of the national rail safety scheme"*.

National Heavy Vehicle Regulator Scheme

The scheme establishes the National Heavy Vehicle Regulator which will be responsible for regulating all vehicles in Australia over 4.5 tonnes and is proposed to become operational by 1 January 2013.

The National Transport Commission's website[33] notes as follows.

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[28] See http://www.nrsrproject.sa.gov.au/news

[29] Section 12

[30] Section 16

[31] Section 45

[32] Section 15

[33] http://www.ntc.gov.au

> *"In November 2011, Australia's transport ministers approved the laws to underpin the new National Heavy Vehicle Regulator at the inaugural Standing Committee on Infrastructure and Transport (SCOTI) meeting.*
>
> *The NTC is working with the National Heavy Vehicle Regulator Project Office and stakeholders to prepare a second Bill to resolve minor issues raised by industry and government during consultation. This second Bill will amend the Heavy Vehicle National Law that was submitted to SCOTI".*

The law establishes the National Heavy Vehicle Regulator as a body corporate.[34] The Regulator may delegate any of its functions to, among others, the chief executive of an entity or a department of government of a participating jurisdiction or the Commonwealth.[35] OIC understands that certain functions of the Regulator are proposed to be contracted to State road and traffic authorities[36]and that the Regulator may appoint employees of the State or local government authorities as 'authorised officers' who are given compliance and enforcement powers.[37]

Clause 619 of the Bill provides that the Commonwealth Privacy and FOI Acts apply for the purposes of the national licensing system, except to the extent that functions are being exercised under the national law by a state entity. However, OIC understands that the Queensland OIC has viewed a discussion paper commissioned by the National Transport Commission (after release of the Bill for comment) wherein it is proposed that the Commonwealth Privacy and FOI Acts should apply to all functions under the national law, including those exercised by state entities. It is the Queensland OIC's understanding that the National Transport Commission is currently considering this proposal, and that a second Bill will provide further detail regarding oversight arrangements.

The National Heavy Vehicle Regulator (NHVR) Project Office recently sought comments from jurisdictional transport offices, oversight bodies and industry in response to a draft policy options paper entitled *"Oversight arrangements under the Heavy Vehicle National Law – Policy options paper (issue number 049)"* which outlined four different oversight models under consideration. These can be summarised as follows:

1. New, dedicated oversight bodies such as a HVNL Information Commissioner and a HVNL Ombudsman are created.

2. Existing jurisdictional bodies perform the oversight role on a territorial basis, which would involve each jurisdiction's oversight body retaining their oversight role for the matters that relate to the administration of the HVNL in their jurisdiction.

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[34] Sections 597 and 598

[35] Section 602

[36] See section 599

[37] See Part 9.1 of the Bill

3. One state oversight body administers the oversight role on a national basis, which would involve a single existing jurisdictional oversight body administering the oversight function for all parties under the HVNL scheme.

4. A model suggested by the Queensland OIC, which would involve one jurisdiction providing oversight for the new Regulator's activities, using that jurisdiction's existing oversight laws and mechanisms, while local jurisdictional laws and bodies would continue to provide oversight for activities of jurisdictions, including where the Regulator's functions are performed by an authorised officer or delegate/subdelegate employed by the jurisdiction.

While OIC considers that each of these models has drawbacks, the model suggested by the Queensland OIC in option 4 has considerable merit which warrants closer consideration.