Submission to the Review of the operation of the *Freedom of Information Act 1982* (FOI Act) and the *Australian Information Act 2010* (IC Act)

Australian Library and Information Association response
7 December, 2012

1. About us

The Australian Library and Information Association (ALIA)[1] is the professional organisation for the Australian library and information services sector. With 5,500 members across Australia, we provide the national voice of the profession in the development, promotion and delivery of quality library and information services, through leadership, advocacy and mutual support.

2. Our core values

ALIA is committed to:

1. Promoting the free flow of information and ideas in the interest of all Australians and a thriving culture, economy and democracy;
2. Promoting and improving the services provided by all kinds of library and information agencies;
3. Ensuring the high standard of personnel engaged in information provision and foster their professional interests and aspirations;
4. Representing the interests of members to governments, other organisations and the community; and
5. Encouraging people to contribute to the improvement of library and information services through support and membership of the association.

3. Our position on government information

Access to government information – both publications and information related policy – is vital to a successful democracy.

ALIA has been a strong advocate of freedom of information legislation and welcomed the creation of the Office of the Australian Information Commissioner and strengthening of the legislation in 2010. The commitment to administrative access schemes and oversight by a

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[1] http://www.alia.org.au/

national agency strengthen the potential for Australians to have both access to documents that relate to them and to establish transparency for government decision making.

4. Access to government publications

While the establishment of the Office of the Australian Information Commissioner and legislative changes are commendable, there is a deplorable situation in terms of long term access to publications.

Government agencies have adopted publishing on the web with alacrity. Over a decade ago government web sites typically were relatively simple, containing brochures and basic documents. Now they provide data, interactive services, multimedia and access to a range of documents. As yet the community is without a framework that enables access beyond machinery of government changes or changes in government.

Ministers Wong and Gray have announced recently that publishing online is a priority. It is factored into the budget with a saving of $6 million per year planned. Online is not only here to stay it is the only way that information released in many government publications will be available to the public.

At the 30th anniversary of the *Freedom of Information Act* 1982 seminar, Alan Rose, former Secretary of the Attorney-General's Department, emphasised that government information is a national resource. He described its importance in supporting industry, innovation and public policy. Publications contain evidence of the development of and decisions on public policy issues, across all areas.

What has happened over the past decade in government publishing? The number of what would be called government publications – substantial documents and product – has halved in the past decade. In 2001 and 2002 around 6,000 to 7,000 new publications, not including annual reports and issues of regular serials, were produced annually. The community benefited from substantial policy documents and reports available for the most part in print and online. In 2010 and 2011 this was around 3,000 annually.

Deeper analysis of two agencies show trends that suggest community access, other than in the immediate period after online publication, is uncertain.

For one central agency, subject to a number of machinery of government changes, the fate of publications released online in 2001 was:

- 29% were no longer accessible online, either on the agency website or external archives
- 28% remained accessible on the agency's website

- 24% were accessible only through the archive of websites maintained by the National Library of Australia, Pandora
- 19% were available through an external website (such as a research centre at a university)

The percentage of publications released online had increased from 23% to 91% in the last decade.

For another central agency which had seen a greater number of machinery of government changes and was an earlier adopter of online publishing, the fate of their publications released in 2001 was:

- 79% were no longer accessible online, either on the agency website or external archives
- 29% remained accessible either through the agency's website, Pandora or an external website.

The percentage of publications released online in 2001 by this agency was 75%.

The question raised by these results is whether the right mechanisms and policy framework exist for long term access to government publications. At present all publishing responsibility is devolved to agencies. They are responsible for content and release, whether online, in print or other formats. The nature of the work of agencies is such that they are focused on current rather than historic programs. Ensuring access to online publications archive has not been a central role for agencies.

With changes in machinery of government and indeed governments themselves, history of policy making and service delivery is inevitably weeded to focus on current programs and policy issue. The most obvious case of removing historical information comes with the caretaker periods where the press releases of Ministers are removed from websites and the public record.

Is this an adequate solution to support access to information?

The OAIC paper *Towards an Australian Government Information Policy* emphasises the importance of access to government information, including publications. The first principle "Open access to information – a default position" is not yet met by Commonwealth Government publications

What are the mechanisms that could provide the community with access? There are two areas where better policy could result in long term access to publications.

5. Copyright

Copyright has been an impediment to providing access. Two reports have recommended amendment of the *Copyright Act* so that the Crown is on the same footing as other users and creators of copyright material, to accord with principles of open government[2]. These recommendations have not been adopted. Crown copyright prevents an archive to be established without seeking the approval of each agency, something that is unlikely to ever be achieved and imposes unreasonable costs on anyone seeking to create such an archive. The Gov2.0 report recommended government agencies voluntarily adopt Creative Commons BY licences. While a small number for agencies have taken this step the wide range of licences, many of which prevent reuse without permission, has limited uptake.

A devolved responsibility does not lead to a clear whole of government approach. The US Government has taken a much simpler and clearer approach. Government works are not covered by copyright and are thus in "the public domain" (17 USC § 105). While there are some exceptions, this means that archives of government publications can be created cost effectively.

6. Roles and responsibilities

The second impediment is a lack of a single agency with responsibility for making government publications accessible and storing them. The National Archives of Australia has responsibility through the Archives Act for records of government, which include versions of publications. It is now working with agencies to make records available after 20 years, a policy parameter that will not meet the community's need for access to documents that established practices and services that were being delivered in the recent past. The National Library of Australia has created a digital archive, but does not have a policy mandate. Both the Attorney-General's Department and the Department of Finance and Deregulation arguably have a policy role in this area.

On top of this, a federal election is due next year. Whether the result is a change of government or not, there are likely to be machinery of government changes which will result in government publications, records of policy decisions and research, becoming "digital dust".

It is vital that new policy mechanisms be found to create a solution to enable the community to have long term access to government publications. Information can only truly be a national resource when this is achieved.

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[2] Copyright Law Review Committee, *Crown Copyright* (2005), xix, xxii; Intellectual Property and Competition Review Committee, *Review of Intellectual Property Legislation under the Competition Principles Agreement* (2000), 114

7. Public awareness

The second issue ALIA raises is that many in the community are unaware of the availability of information through the FoI scheme. Public libraries (together with state and national libraries) have more service points than McDonalds. Over 114 million customer visits occur annually, more than 9 million per month[3] . They are the face for access to many government services. We encourage consideration of broader outreach to the community through national state and public libraries.

8. Recommendations

In summary, we recommend:

1. Amendments to the *Copyright Act 1968* (Cth), as it applies to government information, in order to promote freedom of access.
2. Nominating a single agency and providing it with the funding and resources to store government information and make it accessible to the public.
3. Recognise and develop the role of national, state and public libraries in connecting every Australian with the information generated by government.

This submission has been produced by the ALIA Public Sector Information Advisory Committee.

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[3] http://www.nsla.org.au/sites/default/files/publications/Aust_Pub_Lib_Stats_2010-11.pdf