

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Privacy and Personal Information Protection Act 1998 (PPIPA), the Government Information (Information Commissioner) Act 2009 (GIICA), the Government Information (Public Access) Act 2009 (GIPAA) and other Acts to provide for the following:

- (a) an Information and Privacy Commission (the Commission) will be established by merging the Office of the Information Commissioner and Privacy NSW (with the Information Commissioner to be head of the Commission and responsible for the management of the staff of the Commission),
- (b) the staff of the Information Commissioner and the Privacy Commissioner will be employed in the Commission,
- (c) the Privacy Commissioner will be appointed and removed in the same manner as the Information Commissioner (with the same person not being permitted to hold both offices),
- (d) the Privacy Commissioner will report to Parliament on the operation of PPIPA,

Explanatory note page 2

Privacy and Government Information Legislation Amendment Bill 2010

Explanatory note

- (e) the Privacy Advisory Committee under PPIPA will be replaced with an Information and Privacy Advisory Committee having the function of advising on matters relevant to the functions of the Privacy Commissioner and the Information Commissioner,
- (f) the Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (the Joint Committee) will be responsible for oversight of the Privacy Commissioner's functions (in the same way as the Committee is currently responsible for oversight of the Information Commissioner's functions),
- (g) the Information Commissioner will be required to consult with the Privacy Commissioner before issuing guidelines about a privacy-related public interest consideration against disclosure under GIPAA,
- (h) the Privacy Commissioner will be required to consult with the Information Commissioner before issuing guidelines about the information protection principle that limits the disclosure of personal information by a public sector agency,
- (i) the Information Commissioner will be required to consult with the Privacy Commissioner before making a recommendation about a decision of an agency that concerns a privacy-related public interest consideration against disclosure under GIPAA,
- (j) a right of appearance in proceedings before the Administrative Decisions Tribunal on a review under GIPAA or PPIPA will be conferred on the Privacy Commissioner (in relation to privacy-related public interest considerations against disclosure) and on the Information Commissioner (in relation to the provision of access to government information),
- (k) the Minister will be required to consult with the Privacy Commissioner before a regulation is made under GIPAA that concerns the protection of individual privacy or a privacy-related public interest consideration against disclosure,
- (l) the Joint Committee will be required to consult with the Privacy Commissioner on any review of the public interest provisions of GIPAA that concern a privacy-related public interest consideration,
- (m) Part 6A of PPIPA (which relates to the obligation of government agencies to

amend their records) will be repealed, leaving section 15 of PPIPA as the only mechanism in that Act for the alteration of personal information in government records.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Explanatory note page 3

Privacy and Government Information Legislation Amendment Bill 2010

Explanatory note

Schedule 1 Amendment of Privacy and Personal Information Protection Act 1998 No 133

Privacy Commissioner

Schedule 1 [3] aligns the procedure for the appointment, removal and staff of the Privacy Commissioner with the procedure for the appointment, removal and staff of the Information Commissioner. Schedule 1 [5] and [15] make consequential amendments.

Schedule 1 [12] requires the Privacy Commissioner to report on his or her work and activities and the operation of PPIPA to Parliament each year. Schedule 1 [13] is a consequential amendment.

Schedule 1 [2] provides that the Privacy Commissioner's guidelines may make provision with respect to requests for the alteration of personal information held by a public sector agency, which includes a Minister and a Minister's personal staff.

Schedule 1 [4] requires the Privacy Commissioner to consult with the Information Commissioner before preparing guidelines about the information protection principle concerning limits on disclosure of personal information.

Schedule 1 [6] makes the Joint Committee responsible for the oversight of the Privacy Commissioner's functions, as well as the Information Commissioner's functions as is currently the case.

Information and Privacy Commission

Schedule 1 [23] provides for the transfer of staff of the Privacy Commissioner (who are currently employed in the Department of Justice and Attorney General) to the Information and Privacy Commission. The Commission is established by Schedule 4.3, which renames the Office of the Information Commissioner as the Information and Privacy Commission. The Information Commissioner is the head of the Commission. The Commission is a merger of the Office of the Information Commissioner with Privacy NSW.

Information and Privacy Advisory Committee

Schedule 1 [11] replaces the Privacy Advisory Committee with an Information and Privacy Advisory Committee. The Committee will consist of the Information Commissioner, the Privacy Commissioner and 6 part-time members who are appointed by the Governor. Schedule 1 [16]–[21] make consequential amendments to Schedule 2 to PPIPA, which contains provisions relating to the members and procedures of the Committee. Schedule 1 [14] is a consequential amendment.

Amendment of records

Schedule 1 [10] repeals a Part of PPIPA that will be transferred from the Freedom of Information Act 1989 when that Act is repealed on 1 July 2010. The Part gives a person the right to apply for the amendment of government records that concern the

Explanatory note page 4
Privacy and Government Information Legislation Amendment Bill 2010

Explanatory note

person's personal affairs and that are incomplete, incorrect, out of date or misleading. Section 15 of PPIPA provides for the making of corrections to government records for similar purposes.

Other provisions

Schedule 1 [7] and [8] provide that a person aggrieved by the conduct of a Minister or a Minister's personal staff in relation to the alteration of personal information is not entitled to an internal review of the conduct but is still entitled to seek a review of the conduct by the Administrative Decisions Tribunal (the ADT).

Schedule 1 [9] requires the Privacy Commissioner to be notified by the ADT of any applications for reviews made to the ADT and allows the Privacy Commissioner to appear and be heard in any review proceedings. The Information Commissioner must also be notified of any review that relates to the provision of government information by an agency and is entitled to appear and be heard in those proceedings.

Schedule 1 [1] inserts a definition of Information Commissioner.

Schedule 1 [22] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Government Information (Information Commissioner) Act 2009

No 53

Schedule 2 [2] provides that the same person is not entitled to hold both the office of Privacy Commissioner and the office of Information Commissioner.

Schedule 2 [3] provides that a person acting in the office of the Information Commissioner, during the illness or absence of the Information Commissioner, is also taken to be the Chairperson of the Information and Privacy Advisory Committee during that period.

Schedule 2 [4] provides that the annual report of the Information Commissioner is to be included as part of the annual report of the Information and Privacy Commission. Schedule 2 [5]–[7] are consequential amendments.

Schedule 2 [1] inserts a definition of Privacy Commissioner.

Schedule 3 Amendment of Government Information (Public Access) Act 2009 No 52

Schedule 3 [1] requires the Information Commissioner to consult with the Privacy Commissioner before issuing guidelines about a privacy-related public interest consideration against disclosure.

Schedule 3 [2] requires the Information Commissioner to consult with the Privacy Commissioner before making a recommendation about a decision of an agency that concerns a privacy-related public interest consideration against disclosure.

Explanatory note page 5

Privacy and Government Information Legislation Amendment Bill 2010

Explanatory note

Schedule 3 [4] requires the Minister to consult with the Privacy Commissioner before a regulation is made under GIPAA that concerns the protection of individual privacy or a privacy-related public interest consideration against disclosure.

Schedule 3 [3] gives the Privacy Commissioner a right to appear and be heard in ADT proceedings in relation to a review of a decision concerning a privacy-related public interest consideration against disclosure.

Schedule 3 [5] requires the statutory review of GIPAA to include a consideration of the relationship between GIPAA and PPIPA. Schedule 3 [6] requires the Minister conducting the review to consult with the Privacy Commissioner, in addition to the Information Commissioner.

Schedule 3 [7] requires the Joint Committee to consult with the Privacy Commissioner on any review of the privacy-related public interest considerations against disclosure.

Schedule 3 [8] inserts a definition of Privacy Commissioner.

Schedule 4 Amendment of other Acts

Schedule 4 contains consequential amendments and amendments relating to the merging of the Office of the Information Commissioner and Privacy NSW into the

new Information and Privacy Commission.