

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [3.30 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

Last year, the Government introduced the *Government Information (Public Access) Act 2009*, which is to commence on 1 July this year. That Act delivers on the Government's commitment to improve the transparency and integrity of Government in New South Wales. It does so by promoting greater access to Government information. With that Act, the Government also introduced the *Government Information (Information Commissioner) Act 2009*, which establishes the independent Office of the Information Commissioner (OIC), led by the Information Commissioner, who will be an independent "champion of open Government".

NSW also has a unique record in relation to privacy. In 1975 it was the second jurisdiction in the world to enact privacy legislation. And in 1998 the Labor Government introduced the *Privacy and Personal Information Protection Act 1998* which established the first enforceable standards for the New South Wales public sector when collecting, using and disclosing individuals' personal information. The Privacy Commissioner, a statutory office holder under the Act, is the "champion of privacy", who provides authoritative advice on privacy-related matters.

Questions about the privacy of personal information and access to Government information will naturally overlap. They both involve rights to access information and impose obligations on Government in the way that it deals with information. They are both concerned with transparency and with holding Government accountable. They may also be in tension with each other, for example where a person seeks access to Government information which includes a third party's personal information. There will sometimes be a need to strike a balance between the importance of disclosure, in the interests of open Government, and the importance of protecting individuals' privacy.

In recognition of this relationship between the values underpinning privacy legislation and legislation about open Government, this bill merges the Office of the Information Commissioner and Privacy NSW to create a significant new body, the Information and Privacy Commission. The new Information and Privacy Commission will be a "one-stop shop" for the people of New South Wales in matters involving access to Government information, privacy and personal information. The creation of this single office gives effect to the view of the NSW Law Reform Commission, set out in its 2009 Report number 125, *The Offices of the Information and Privacy Commissioners*, that a single office should administer legislation about privacy and access to Government information.

As the Law Reform Commission pointed out, the creation of a single office will help to ensure that agencies and individuals receive consistent information and advice. It will also allow for co-ordinated training and assistance to be provided to agencies. By providing one point of contact for these matters, "referral fatigue" should be reduced. Also, shared corporate services should result in operational efficiencies.

I turn now to the key features of the bill.

Part 4.3 of schedule 4 creates the Information and Privacy Commission, replacing the Office of the Information Commissioner. The Information Commissioner will be the Head of the Commission, with responsibility for managing its budget and administration, and employing and allocating staff. Item [23] of schedule 1 transfers the existing staff of the Privacy Commissioner to the Information and Privacy Commission, where they will be employed alongside the staff of the Information Commissioner.

The Privacy Commissioner will be located in the Information and Privacy Commission, and will no longer be administratively dependent on the Department of Justice and Attorney General. This will strengthen the ability of the Privacy Commissioner to fulfil his or her statutory functions.

Given the importance of the position of Privacy Commissioner, and to ensure consistency of appointments in the Information and Privacy Commission, item [3] of schedule 1 amends the *Privacy and Personal Information Protection Act 1998* so that the Privacy Commissioner is to be appointed and removed in the same manner as the Information Commissioner. This implements one of the Law Reform Commission's recommendations. Like the Information Commissioner, the Privacy Commissioner will be appointed subject to veto by a joint parliamentary committee and will only be eligible to be re-appointed once. The Commissioner will only be able to be removed from office following a resolution of both Houses of Parliament.

The NSW Law Reform Commission recommended that the Privacy Commissioner should be a Deputy Information Commissioner. The Commission's view was that the Information Commissioner rather than the Privacy Commissioner should report to Parliament on the operation of privacy legislation and that the exercise of certain functions of the Privacy Commissioner should require the approval of the Information Commissioner.

The Government has decided instead that there will be an office with two Commissioners of equal status. This will maintain the status and role of the Privacy Commissioner as an independent privacy advisor and champion. However, the Information Commissioner will have additional responsibilities as Head of the Commission. This model has the strong support of the Acting Privacy Commissioner and the Information Commissioner.

To ensure that there are strong and unbiased advocates for both privacy and for access to Government information, the bill provides that the Privacy Commissioner cannot be the same person as the Information Commissioner, and vice versa.

Each Commissioner will report to Parliament on their respective functions and the operations of their respective legislation. These reports will be included within the annual report of the Information and Privacy Commission. Item [12] of schedule 1 creates a new obligation on the Privacy Commissioner to report to Parliament on the operation of the *Privacy and Personal Information Protection Act 1998*. This reporting requirement aims to ensure that Government agencies are complying with that Act. The reporting obligations of each Commissioner will ensure also that there is transparency and accountability regarding the distribution of resources in the Information and Privacy Commission. Currently, the Privacy Commissioner makes his or her annual report to the Minister rather than to Parliament. Providing for the Privacy Commissioner to report directly to Parliament will enhance the independence of the Privacy Commissioner and place them in the same position as the Information Commissioner.

Item [6] of schedule 1 extends the functions of the Joint Committee on the Ombudsman and the Police Integrity Commission, consisting of members of Parliament, to include oversight not only of the Information Commissioner but also of the Privacy Commissioner. This will assist in ensuring that the Information and Privacy Commission functions effectively as a single office, rendering both Commissioners subject to the same accountability mechanism.

Item [11] of schedule 1 establishes an Information and Privacy Advisory Committee, as recommended by the NSW Law Reform Commission, and abolishes the existing Privacy Advisory Committee. This new advisory committee will advise both the Information Commissioner and the Privacy Commissioner on matters relating to the performance of their functions. A key advantage of having a single advisory committee is that it will be able to consider the areas of overlap and interaction between privacy legislation and open Government legislation.

The composition of the Information and Privacy Advisory Committee adopts the recommendation of the NSW Law Reform Commission and draws on the model for the Commonwealth's Information Advisory Committee. The new Committee will consist of:

- § the Information Commissioner, who will be the chair;

- § the Privacy Commissioner; and

- § the following part time members:

- ° two senior officers from Government agencies, nominated by the Minister in consultation with relevant Ministers;

- ° four people, not from Government agencies but nominated by the Minister:

- § two of whom have a special knowledge of, or interest in, matters affecting access to Government information; and

- § two of whom have special knowledge of, or interest in, matters affecting the privacy of persons.

The two Commissioners will continue to exercise discrete functions in relation to privacy and access to Government information. In accordance with the recommendations of the NSW Law Reform Commission, the bill creates obligations for the Commissioners to consult each other in relation to certain aspects of their responsibilities which may overlap. This will assist in ensuring that both privacy objectives and the objectives of open Government are taken into account so that an appropriate balance is struck between the two when they are in tension.

§ The Information Commissioner has the power to issue guidelines about public interest considerations against the disclosure of Government information, including some which are privacy related. In doing so, item [1] of schedule 3 requires that the Information Commissioner consult with the Privacy Commissioner.

§ The Information Commissioner also has the power to review certain agency decisions and then to make recommendations to agencies in relation to those decisions, including decisions to provide or refuse access to Government information. Item [2] of schedule 3 requires the Information Commissioner to consult with the Privacy Commissioner before making a recommendation that involves a privacy-related public interest consideration against disclosure.

§ Item [4] of schedule 1 requires the Privacy Commissioner, when exercising his or her power to issue guidelines about the Information Protection Principle relating to limits on disclosure of personal information, to consult with the Information Commissioner.

To further assist decision-makers to strike the right balance where privacy and open Government considerations are in tension:

§ Item [3] of schedule 3 gives the Privacy Commissioner the right to appear and be heard in any proceedings before the ADT in relation to a review under Part 5 of the Government Information (Public Access) Act 2009, where such proceedings involve a privacy-based public interest consideration against disclosure. Item [9] of schedule 1 gives the Information Commissioner the same rights in respect of a review under the Privacy and Personal Information Protection Act 1998 involving the provision of access to Government information.

§ Further, when the Minister exercises his or her power to recommend the making of a regulation under the Government Information (Public Access) Act 2009, item [4] of schedule 3 requires the Minister to consult with the Privacy Commissioner when the regulation concerns the protection of individual privacy or a privacy-based public interest consideration against disclosure.

The Joint Committee is currently required to keep under review the public interest considerations against disclosure, set out in the *Government Information (Public Access) Act 2009*. Its role is to ensure that their policy objectives remain valid and the content of the relevant provision remains appropriate for securing those objectives. Item [7] of schedule 3 requires the Joint Committee to consult with the Privacy Commissioner on any review of those public interest considerations against disclosure that concern a privacy-based public interest consideration.

Apart from these important reforms in relation to the role of the Privacy and Information Commissioners and the new Information and Privacy Commission the bill also simplifies and streamlines the right to correct one's personal information held by Government agencies. The right to correct one's personal information is a crucial component of privacy protection. It allows a person to go to an agency and, if the person believes the agency has recorded their information incorrectly, to seek to amend that information. This gives individuals some control over what personal information is held about them.

At present, there are two ways that a person may amend their personal information: one in the *Privacy and Personal Information Protection Act 1998* and another in the *Freedom of Information Act 1989* (to be transferred into Part 6A of the *Privacy and Personal Information Protection Act 1998* on 1 July 2010). Item [10] of schedule 1 removes the latter option, preventing the persistence of two separate regimes for amending personal information which overlap and potentially conflict.

The *Freedom of Information Act* method of amending personal information provides detailed and prescriptive rules for written applications, with a fee, 21 days for determination or deemed refusal, and review procedures. The second method of amending personal information, under section 15 of *Privacy and Personal Information Protection Act 1998*, is much simpler and more flexible. It simply requires public sector agencies to amend an individual's personal information, at the request of the individual, to ensure that it is accurate. This applies to all "personal information," not just documents. If the agency is not prepared to amend the information (for example, if the agency considers the information is already accurate), the agency must take reasonable steps to attach a Statement from the relevant individual to the information.

The bill abolishes the *Freedom of Information Act* option for amending personal information, as recommended by the NSW Law Reform Commission, and leaves the simpler method as the sole mechanism for amending personal information. This reform acknowledges that there is no necessity or utility in maintaining two separate, and potentially inconsistent, regimes.

Item [2] of schedule 1 provides for amendment of personal information contained in Ministers' records as well as agencies' records. Items [7] and [8] of schedule 1 make clear that in relation to decisions of Ministers or their staff about amending records, internal review will not be available but review will still be available in the Administrative Decisions Tribunal.

The merger of Privacy NSW with the Officer of the Information Commissioner will co-ordinate the activities of the Privacy Commissioner and the Information Commissioner. It will create a one-stop shop for individuals and agencies to seek advice and redress in relation to access to Government information and the protection of the privacy of personal information. It will also create administrative and operational efficiencies. Finally, it acknowledges that privacy legislation and open Government legislation sometimes overlap, and sometimes come into tension, and creates mechanisms for these competing values to be balanced where such tension exists.

I commend the bill to the House.