

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [3.40 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Government Information (Public Access) Amendment Bill 2011, which introduces minor amendments to the Government Information (Public Access) Act 2009. The 2009 Act repealed the Freedom of Information Act 1989 and marked a significant break with the structure of that Act, with the aim of achieving greater openness and transparency in government. The Government Information (Public Access) Act 2009 has been in effect for approximately one and a half years. In these early stages, users of the Act identified some minor issues with its operation in practice. The bill seeks to address those issues. It has been developed in consultation with government agencies and with the Office of the Information Commissioner.

I now turn to some of the key provisions of schedule 1 to the bill. The Act currently provides that agencies must have a publication guide that contains information about matters including the structure and functions of the agency, the kinds of information the agency holds, and how to access that information. Item [2] changes the name of the guide from "Publication Guide" to "Agency Information Guide" to better reflect its content. The bill clarifies certain aspects of the process for applying for access to government information. Item [8] of schedule 1 removes the requirement that the postal address accompanying an application must be an Australian postal address. That will allow people living overseas to make an application under the Act without having to rely on the address of an Australian contact to do so.

Item [10] clarifies that any decision by an agency to waive, reduce or refund an application fee does not prevent the application from being valid. Item [13] clarifies that existing capacity of agencies to require an applicant to provide evidence about the personal factors of an application includes the capacity to require proof of identity when this is relevant to the agency's decision about the application. That is important in situations in which people apply for access to personal information. If the information relates to the applicant, there is a public interest in favour of disclosing it to that person. If the information does not relate to the person, privacy considerations mean there is a public interest against one person gaining access to another's personal information. So it is important that agencies are able to establish an applicant's identity.

Item [19] permits agencies to determine an application by deciding that the information is already available to the applicant because another agency has provided it to them. Item [30] clarifies how agencies are to send notices under the Act. That may be done by post, or by another method agreed between the agency and the person in question. The bill also makes several changes in relation to agencies' disclosure logs. A disclosure log contains information about access applications that agencies have granted when the agency considers that that information may be of interest to the public.

Item [5] clarifies the timing for agencies to place information on their disclosure logs. If no-one objects to information being placed on the disclosure log, the agency can place information on the log when the access application is decided. If there is an objection, there is no requirement for an agency to record information on the log until they have decided that

there was no right to object or, if there was a right to object, until review rights have expired. Currently agencies are not required to place personal information about an access applicant on their disclosure log. Item [6] of the bill extends this protection to the personal information of any individual.

Item [14] makes clear that where information affects a third party's interests in certain ways—for example, where the information includes personal or financial information about them—they have a right to object to an agency placing that information on the agency's disclosure log. The bill also clarifies the operation of the provisions in the Act that allow people to seek review of decisions. At present, if an aggrieved person, other than the applicant, wishes to seek review by the Information Commissioner, an internal review is required beforehand. However, in the case of decisions made by a Minister, a member of a Minister's staff, or an agency's principal officer, internal review is not available. Item [23] clarifies that an internal review is a precondition to third parties seeking review by the Information Commissioner only when internal review is available.

When review is not available, people in this position can seek review directly from the Information Commissioner. At present, if a person seeks to have the Information Commissioner review an agency's decision, and the commissioner recommends that agency should itself conduct an internal review, the person has to pay a \$40 fee for that internal review. Item [25] in the bill removes the requirement to pay this fee. This makes effective the free right of review to the Information Commissioner. The bill also standardises references to time, and updates references to agencies and departments, where restructuring has occurred. Item [37] also provides that the regulations may declare certain entities to be separate to another agency. This will enable the Act to apply in a more practical manner—for example, when a particular branch of an agency operates quite separately to the main agency. If they are prescribed as a separate agency, they will be able to manage their obligations under the Act separately.

The bill also changes the position with regard to spent convictions. At present there is an overriding public interest against disclosing this information under the Government Information (Public Access) Act and it is an offence under the Criminal Records Act 1991 to disclose this information without lawful authority. Item [32] of schedule 1 and schedule 2.2 change the position so that agencies can give spent conviction information to the person to whom it relates. Finally, schedule 2.4 to the bill includes a power to make regulations under the Privacy and Personal Information Protection Act 1998 to permit an entity to be declared a separate agency for the purposes of the Act, or to permit entities to be declared part of the same agency in respect of particular functions under the Act. This is similar to the regulation-making power under the Government Information (Public Access) Act. Again, this will permit a more practical and flexible approach to administering the Act. For example, when entities are not part of the same agency, they may be treated as one agency for the purposes of handling complaints and internal reviews.

The Government Information (Public Access) Act is due for a statutory review as soon as possible after five years from the date of assent, which means as soon as possible after 26 June 2014. That five-year review is the time to consider whether the Act is meeting its policy objectives and whether more significant policy changes are required. That review will involve broad consultation and detailed analysis. This bill has more modest aims—to tidy up and clarify certain minor aspects of the Act and to keep it operating smoothly. In the meantime, the Government is also pursuing Goal 31 in State Plan NSW 2021 to improve government transparency by increasing access to government information. One aspect of Goal 31 is to make sure that agencies comply fully with the mandatory proactive release

requirements under the Government Information (Public Access) Act. The Information Commissioner currently is conducting a review of agencies' open access websites and will soon deliver a report to Parliament outlining the results. This report will act as a significant benchmark indicating the extent of agency compliance.

Another commitment the Government has made as part of Goal 31 is to create better access to online information and to make real-time information about government services available to the public. For example, the emergency wait website now delivers real-time information about emergency department waiting times in major New South Wales public hospitals. People can now access live traffic information on the Live Traffic website. This bill finetunes procedures that underpin the substantive rights to access to government information. The Government's commitment to transparency of government information also is demonstrated by other steps we have taken to make government information more accessible to the people of New South Wales in a more useful format and in a more timely fashion. I commend the bill to the House.

Debate adjourned on motion by the Hon. Adam Searle and set down as an order of the day for a future day.