

Privacy and Personal Information Protection Amendment Bill 2003

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* to transfer the Privacy Commissioner's functions under that Act to the Ombudsman. The Bill also amends a number of other Acts and regulations to remove references to the Privacy Commissioner and to generally replace those references with references to the Ombudsman.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Privacy and Personal Information Protection Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and regulations specified in Schedule 2.

Schedule 1 Amendment of Privacy and Personal Information Protection Act 1998

Schedule 1 [8] repeals Division 1 of Part 4 of the Act which provides for the appointment of a Privacy Commissioner and contains provisions relating to the staff of that office. **Schedule 1 [1], [2] and [23]** (to the extent that Schedule 1 [23] repeals Schedule 1 to the Act) are consequential amendments.

Schedule 1 [3] provides that the Minister may determine what is a relevant privacy law for the purposes of section 19 (2) of the Act (which relates to the disclosure of personal information to persons or bodies outside of New South Wales). This function is currently exercised by the Privacy Commissioner.

Schedule 1 [4] requires the Minister to consult the Ombudsman before making such a determination.

Schedule 1 [6] replaces certain references in the Act that relate to the Privacy Commissioner with references to the Ombudsman so as to transfer the Privacy Commissioner's functions under the Act to the Ombudsman. **Schedule 1 [5], [7], [9]–[12] and [15]** are consequential on the Privacy Commissioner's functions being transferred to the Ombudsman. Also, **Schedule 1 [16]** omits provisions relating to the Privacy Commissioner that would, on the transfer of the functions of that office to the Ombudsman, be duplicated in the *Ombudsman Act 1974*.

Schedule 1 [13] provides that the Minister, instead of the Privacy Commissioner, may make a direction under section 41 of the Act exempting a public sector agency from complying with an information protection principle or a privacy code of practice under the Act. **Schedule 1 [14]** requires the Minister to consult the Ombudsman before making such a direction.

Schedule 1 [17] enables the Ombudsman, if a complaint is made under the *Privacy and Personal Information Protection Act 1998* that relates to the conduct of a public sector agency, to decide not to deal with the complaint under the Act but deal with it instead as a complaint under section 12 of the *Ombudsman Act 1974*.

Schedule 1 [19] removes the Privacy Commissioner's role in undertaking internal reviews on behalf of the public sector agency. **Schedule 1 [18]** is a consequential amendment.

Schedule 1 [20] repeals Part 7 of the Act which provides for the establishment of a Privacy Advisory Committee. **Schedule 1 [23]**, to the extent that it repeals Schedule 2 to the Act, is a consequential amendment.

Schedule 1 [21] extends, by 1 year, the timeframe for the review of the Act that must be carried out by the Minister under section 75 of the Act. **Schedule 1 [22]** provides that the Minister, in undertaking the review of the Act, may not investigate certain matters or reconsider certain decisions in relation to the investigation of complaints under the Act.

Schedule 1 [25] enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act. **Schedule 1 [24] and [26]** insert Part headings into Schedule 4 to the Act.

Schedule 1 [27] inserts savings and transitional provisions consequent on the enactment of the proposed Act. In particular, provision is made for the abolition of the Privacy Advisory Committee and for references to the Privacy Commissioner to be construed as references to the Ombudsman.

Schedule 2 Amendment of other legislation

Schedule 2 amends the Acts and regulations listed below. The amendments are largely consequential on the transfer of the Privacy Commissioner's functions under the *Privacy and Personal Information Protection Act 1998* to the Ombudsman.

Children (Detention Centres) Regulation 2000

Crimes (Administration of Sentences) Regulation 2001

Crimes (Forensic Procedures) Act 2000

Defamation Act 1974

Freedom of Information Act 1989

Freedom of Information Regulation 2000

Health Records and Information Privacy Act 2002

Ombudsman Act 1974

Road Transport (Driver Licensing) Act 1998

Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999

Roads Act 1993

Statutory and Other Offices Remuneration Act 1975

In particular, **Schedule 2.8 [3]** amends the *Ombudsman Act 1974* to provide that the conduct of public authorities in relation to alleged violations of the privacy of persons is no longer conduct that is excluded from being the subject of a complaint under section 12 of that Act or of an investigation by the Ombudsman under that Act.