



Privacy and Personal Information Protection Amendment

Bill.

Second Reading

The Hon. HENRY TSANG [Parliamentary Secretary] [6.05 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate my second reading speech in *Hansard*.

Leave granted.

The main purpose of this bill is to transfer responsibility for privacy protection to the Ombudsman. Since the Privacy and Personal Information Protection Act was introduced in 1998 the former Privacy Commissioner and his office, Privacy NSW, have been responsible for implementing the new legislation. Privacy NSW has overseen the development of privacy management plans for public sector agencies and provided advice to agencies on compliance with the Act. It has also monitored the conduct of internal reviews by agencies and investigated complaints about alleged breaches of privacy. The Government believes that conferring the functions of the Privacy Commissioner on the Ombudsman will further enhance privacy protection in New South Wales.

Privacy protection, complaints handling, and accountability within public sector agencies will be improved for a number of reasons. First, the Ombudsman has the capacity to further improve privacy outcomes by drawing on his high public profile and expertise in public administration. The Ombudsman's recommendations are afforded considerable respect by agencies and the public generally. The Ombudsman's expertise in handling complaints and improving standards of administration is well recognised. Second, the Ombudsman has extensive experience in considering issues relating to information management, including privacy management. The Ombudsman, through his role in monitoring agencies' compliance with freedom of information laws, has developed substantial knowledge about the collection, use and disclosure of personal information by agencies.

The Ombudsman already has responsibility for promoting the protection of privacy in some areas. Under the Community Services (Complaints, Reviews and Monitoring) Act, the Ombudsman has a role in ensuring that service providers uphold the legal and human rights of persons who receive community services, including their need for privacy and confidentiality. Under the Telecommunications (Interception) (New South Wales) Act, the Ombudsman is responsible for ensuring that law enforcement agencies comply with accountability procedures when documenting intercepted telephone conversations. The Ombudsman has also been instrumental in ensuring the development of proper procedures for the protection of privacy. For example, the Ombudsman has had significant input into the development of guidelines for monitoring improper access by police officers to the police computer system.

The third reason why privacy protection will be improved by this bill is the Ombudsman's dual role in relation to privacy and freedom of information will promote an integrated and coherent approach to information handling. This will foster a proper balance between the right to privacy and other important rights and interests. The right to privacy, as honourable members know, is not an absolute right. No-one would suggest that reliance on the right to privacy should unduly compromise other important rights and interests, such as public safety or government accountability. The right to privacy must be balanced with the need for a safe and open society. Integrated oversight of information handling is being increasingly adopted by countries with the Westminster system of government. The United Kingdom and the Northern Territory are two recent examples where responsibility for freedom of information and privacy is invested in a single independent regulator. Many Canadian provinces have also adopted this model. The Governments of Western Australia and Tasmania are currently considering the adoption of a single regulator to oversee freedom of information and privacy.

A recent survey by Privacy NSW has confirmed that agencies adopt an integrated approach to information handling. More than 60 per cent of privacy contact officers are also freedom of information officers, and the overwhelming majority favour joint freedom of information and privacy meetings. Moving privacy protection to the Ombudsman will reduce duplication, complexity, and confusion for the public and agencies. The bill does not diminish the protection of privacy. No amendments are made to information protection principles. The bill will see privacy protection moved to the pre-eminent public sector administration watchdog and given a more central role in Government accountability. The resources of Privacy NSW will be transferred to the Ombudsman to ensure that he is adequately resourced to perform the new role.

I turn now to the key provisions of the bill. The bill transfers the functions of the Privacy Commissioner under the Privacy and Personal Information Protection Act, the Health Records and Information Privacy Act and other legislation to the Ombudsman, subject to some minor modifications. The minor modifications are as follows. The bill transfers the

function of the Privacy Commissioner to issue written directions under section 41 of the Privacy and Personal Information Protection Act and section 62 of the Health Records and Information Privacy Act to the Minister, rather than the Ombudsman. Likewise, the function of the Privacy Commissioner to determine a relevant privacy law under section 19 of the Privacy and Personal Information Protection Act for the purpose of authorising disclosure of personal information to persons outside New South Wales is transferred to the Minister, rather than the Ombudsman.

These modifications are consistent with the role of the Ombudsman to recommend, rather than direct, a course of action. The Minister will have a statutory responsibility to exercise each of these functions in consultation with the Ombudsman. The function of the Privacy Commissioner to issue guidelines under the current Health Records and Information Privacy Act must be exercised with the approval of the Minister. The direct transfer of this function to the Ombudsman with the requirement for Ministerial approval is not appropriate in light of the independence of the Ombudsman from the Government. To address this concern, the bill distinguishes between the two types of guidelines issued under the Health Records and Information Privacy Act. Under the bill the Ombudsman will assume the power to issue guidelines under section 58 of the Health Records and Information Privacy Act 2002, without ministerial approval. These are best practice guidelines relating to the protection of health privacy and other privacy matters. Although the approval of the Minister to issue these guidelines will no longer be required, consultation will occur.

Guidelines that determine the scope and applicability of exemptions to health privacy principles under the Health Records and Information Privacy Act are distinguished from best practice guidelines by the bill. These guidelines will be made by the Minister. The Minister will be required to consult with the Ombudsman and seek public comment on the draft guidelines before they are made. The Minister is best placed to determine the scope of such exemptions, following consultation. The statutory review of the Privacy and Personal Information Protection Act is required by the current Act to commence on 30 November 2003. The bill extends the time frame for the conduct of the statutory review by 12 months. This is to ensure that the Ombudsman has sufficient time to consider the operation of the legislation, and provide informed input into the review.

Decisions by the Ombudsman in individual cases will be excluded from the scope of the review. This is to preserve the independence of the Ombudsman and is consistent with the powers of review exercised by the parliamentary committee on the Ombudsman. The Privacy Advisory Committee is abolished by the bill as oversight of the exercise of privacy functions will be provided by the parliamentary committee on the Ombudsman. I take this opportunity to thank current and former members of the Privacy Advisory Committee for their valuable contribution to privacy protection. The transfer of privacy functions to the Ombudsman will enhance privacy protection, complaints handling, and accountability of public sector agencies. I commend the bill to the House

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