**Agreement in Principle**

**Mr NATHAN REES** (Toongabbie—Premier, and Minister for the Arts) [4.42 p.m.]: I move:

That these bills be now agreed to in principle.

It is my privilege to introduce the Government Information (Public Access) Bill, the Government Information (Information Commissioner) Bill and the Government Information (Public Access) (Consequential Amendments and Repeal) Bill, legislation that will vastly improve the transparency and integrity of Government in New South Wales. In October 2008, I addressed this House on the issue of the transparency and accountability of Government and made clear my view that the old culture of Government secrecy has to end and that the public's right to know should be respected. Members of the public should be able to have access to the widest possible range of information to give them confidence in Government decision making. And that means a total revamp of the system. I gave a commitment that I would introduce new legislation to reform freedom of information [FOI] in the first half of this year, once the outcomes of the Ombudsman's review of the Act were known. And today we are delivering on that commitment.

These bills together represent the first comprehensive overhaul of the freedom of information regime in 20 years. These bills do just what we undertook to do. They turn the freedom of information regime on its head. The bills establish a framework to actively promote the release of Government information and they offer the opportunity for a fresh start. The new legislation shifts the focus toward proactive disclosure. The legislation requires that certain "open access information" must be published. This includes details of an agency's structure and functions, its policy documents, and its register of significant private sector contracts. In addition, agencies are authorised to release other information unless it is sensitive personal information or there is some other overriding public interest reason why it cannot be disclosed. There is a significant amount of information that can and should be released without the need for a formal application.

The Government Information (Information Commissioner) Bill creates a new, independent champion of open Government. The Information Commissioner will have robust investigative powers, including the inquiry powers of a royal commission. The Information Commissioner's roles will include: reviewing decisions of agencies in relation to access applications; receiving and investigating complaints about agencies in relation to their information disclosure obligations; promoting open Government, and promoting public awareness and understanding of the legislation; providing information, advice, assistance and training to agencies and the public; and reporting and recommending proposals for future legislative and administrative changes to further the object of open Government.

The Information Commissioner will be a fully independent office. The commissioner will report directly to Parliament and will be subject to oversight by a joint parliamentary committee. Appointments will be subject to veto by a joint parliamentary committee. The commissioner will only be eligible to be reappointed once. The Commissioner will only be able to be removed from office following a resolution of both Houses of Parliament. The Ombudsman recommended that the Information Commissioner be established in his office. The Government has decided instead to establish the new commissioner as a separate Government agency. Although there may be some marginal cost savings associated with the Ombudsman's proposal, the Government considers that these reforms are too important to be driven by cost considerations alone. Establishing a new independent office will give greater prominence and emphasis to the role of the commissioner. It will also give the commissioner greater scope to act as a true champion of open Government.

I note that the establishment of a separate Office of Information Commissioner has the strong support of the New South Wales Law Reform Commission, the Privacy Commissioner and the New South Wales Law Society. Importantly, the commissioner's office will be adequately resourced to ensure that it can deliver on these functions. A final budget for the Information Commissioner will be developed once the Information Commissioner is appointed. Given the independence of the office, it is important that the commissioner be involved in planning decisions around the structure and staffing. I can however advise the House today that the Government has provided a level of funding to ensure the Information Commissioner can operate effectively. The Information Commissioner will receive at least $3 million for 2009-2010 and $4 million a year thereafter, a guaranteed minimum commitment. This is well in excess of the current funding for FOI functions performed by the Ombudsman, estimated to be less than $500,000.

This new funding commitment therefore represents a significant increase. It recognises that the new Information Commissioner's role is to extend far beyond mere complaints handling, underlining the Government's commitment to genuine reform in this area. As well as the focus on proactive disclosure, the bills enhance the rights of the public to apply for particular information under formal application processes. The new legislation makes clear that an agency should release the requested information unless there is an overriding public interest against disclosure. This is supported by an explicit presumption in favour of disclosure. Of course, the legislation recognises that the public interest in favour of disclosure may, in some cases, be outweighed by particular public

interest considerations against disclosure.

The bills continue to ensure that the confidentiality required in respect of Cabinet information, law enforcement and safety information, sensitive commercial information and private information will be adequately protected. The new legislation specifies some information for which it is conclusively presumed that there is an overriding public interest against disclosure. Apart from these prescribed cases, agencies will be required to apply a public interest test on a case-by-case basis. The requirement to apply a public interest test applies even in respect of information that is prohibited from release under some other Act.

Currently, there are secrecy provisions in over 100 different Acts. Under the current Freedom of Information Act, if a document is subject to one of these secrecy provisions then it is automatically exempt. Under the new legislation, there is a list of around 20 secrecy provisions, which conclusively establish an overriding public interest against disclosure. These include the obvious things such as details of witnesses under witness protection legislation, the identity of jurors, details on the child protection offenders register and so on. However, information that is subject to any other secrecy provision will now need to be subject to the public interest test on a case-by-case basis. The fact that a secrecy provision applies will be a relevant consideration but it will no longer of itself be conclusive. If the agency decides that the information can be released the Government Information (Public Access) Bill will override all other legislation and ensure that the information can be released under the protection of the law.

The new Act makes it clear that decisions by agencies are to be made independently of political considerations. Among other things, the legislation expressly prohibits decision makers from taking into account any possible embarrassment to the Government that might arise if information is released. And for the first time, the legislation also makes clear that public servants are not subject to ministerial direction and control in dealing with an application to access government information. The new legislation also creates offences for public officials who deliberately make decisions they know to be in contravention of the legislation. It will also be an offence to destroy, conceal or alter a record in order to prevent the disclosure of government information. And it will be an offence for any person knowingly to direct or influence a public official to make an unlawful decision—a landmark change to public policy. The new legislation will not increase fees or charges.

Responding to freedom of information applications is costly for Government, as the fees currently levied go nowhere near recovering the full cost. The Ombudsman recommended that applicants continue to be required to make at least some contribution to those actual costs incurred by agencies in dealing with applications. However, in the spirit of these new bills, the Government will not increase freedom of information application fees and the current discounts for those on low incomes will continue to apply. The fees and charges under the current Freedom of Information Act have not increased for 20 years, and they are not about to increase now.

In fact, the new bill expressly prescribes the fees and charges in the legislation itself. This means that no future government can increase those fees and charges without the approval of Parliament. The new legislation implements the Ombudsman's recommendations to provide short and realistic turnaround times for freedom of information applications, namely, that the time frames for dealing with access applications should be 20 working days for an application and 15 working days for an internal review. There is also clear guidance to agencies and applicants as to when time periods can be suspended or extended, including allowing for extension with the agreement of the applicant. All extensions will be required to be notified formally to the applicant. The legislation provides that the failure of an agency to decide an application within the required time frame will be taken to be a refusal which will, in turn, trigger the applicant's review rights. The applicant will also be entitled to a full refund of the application fee and any advance deposit already paid.

It is currently the case that around two-thirds of all applications for information under the Freedom of Information Act concern personal information. Various government agencies routinely collect and hold private information about individuals such as medical records and vehicle registration details. The public's right to know and the public's right to privacy are complex and intimately related. The intersection between them is a delicate balance. The New South Wales Law Reform Commission is currently involved in a comprehensive review of existing privacy statutes. The Attorney General recently asked the commission to extend its work to consider explicitly how privacy laws interact with public access laws. The outcome of this work will inevitably lead to further reforms in this area. However, the Government does not consider that these reforms to freedom of information should be delayed while the Law Reform Commission continues to do its work.

There is a general consensus that the Freedom of Information Act is broken and needs to be fixed. I agree. The new legislation will therefore put in place a framework based around the principles of proactive disclosure, a presumption in favour of public interest disclosure, and oversight by an independent champion of open government in the form of a new Information Commissioner. Just as importantly, the new legislation ensures that—pending future reforms to privacy legislation—the right of an individual's privacy will continue to be protected. New South Wales already has an independent Privacy Commissioner to monitor and promote issues concerning personal and information privacy. The current commissioner, the Hon. Ken Taylor, has done an excellent job working with government departments to ensure that they adequately protect the private information they hold. The Government is committed to the maintenance of that role.

As part of the future reform of privacy legislation, the Government intends to bring the Privacy Commissioner and the Information Commissioner together within a single office. The two roles will remain functionally independent within a combined office. It makes sense to have a single body overseeing both the key issues relating to government information—privacy and public access. The Law Reform Commission has already signalled its support for bringing privacy and information access functions together within the same office. It was also something that was flagged by the Ombudsman in his report. Both Queensland and the Commonwealth are also proposing a similar approach. The precise details of the merger will be developed once the Law Reform Commission has finalised its review and made its formal recommendations.

Landmark legislation like the bills I am introducing today cannot occur without extensive consideration and discussion. The Ombudsman's report, which was received in February, has been carefully considered. In preparing that report, the Ombudsman undertook a thorough public consultation process. The Ombudsman's recommendations have taken on the views of many individuals and organisations. The Government has also undertaken a further public consultation process in developing these bills via draft exposure bills, which I tabled on 6 May earlier this year. The Government received over 50 submissions in response, and the overwhelming majority of them supported the general direction of the proposed reforms. We have carefully considered the submissions in drafting the legislation, and changes have been made to the exposure draft bills where appropriate.

One change is that we are going to fix the complex overlap of disclosure provisions applying to local councils. This was recommended by the Ombudsman and has been supported in the submissions. Under the new legislation, all applications for council information will be brought under the umbrella of the new legislation. In so doing, we will minimise any reduction in the availability of information, or any increase in costs. We have also listened to submissions and included new provisions in the bills relating to information held by private sector bodies that perform functions under contract for government agencies.

The bills provide that agencies that engage private sector contractors to provide public services on their behalf must ensure that they, and therefore the public, have a right to access relevant information about the delivery of those services. In addition, the bills provide that public sector bodies who perform what may be described as government functions can be declared to be agencies in their own right. This approach has already been applied in respect to private managers of correctional facilities, who have been brought within the scope of the Freedom of Information Act. As well as listening to the Ombudsman and stakeholders in New South Wales, we also considered the reforms that are being proposed in Queensland and the Commonwealth. These are historic reforms, and we want to get them right.

These bills constitute a fundamental freedom of information revolution. With these bills New South Wales will gain the nation's best freedom of information laws. The public's right to know must come first. As well as comprehensively responding to the Ombudsman's report, they pick up reforms arising from the Solomon review in Queensland and recently proposed changes to Commonwealth legislation. The bills mark a paradigm shift. Our public sector must embrace openness and transparency and governments must forever relinquish their habitual instinct to control information. This is generational change and reform that is long overdue. I commend these bills to the House and to the people whose interests they will so effectively serve.