Privacy and Personal Information Protection Amendment (Exemptions Consolidation) Bill 2015 (Proof)

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The Hon. DAVID CLARKE (Parliamentary Secretary) [5.18 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

At the outset, I indicate that the Government will move amendments regarding proposed section 19 (2) of the bill, which contains the trans-border disclosure provisions. These amendments will ensure that personal information disclosed outside of New South Wales will have similar protections as to disclosure within New South Wales. The amendments were requested by the Privacy Commissioner.

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

Leave granted.

The Government is pleased to introduce the Privacy and Personal Information Protection Amendment (Exemptions Consolidation) Bill 2015.

This bill helps to simplify and clarify the way New South Wales public sector agencies to manage personal information.

This bill represents the culmination of an extended process to address the fact that New South Wales public sector agencies have been relying on public interest directions that have been made by the Privacy Commissioner under section 41 of the Privacy and Personal Information Protection Act and renewed on a rolling basis.

Section 41 of the Privacy and Personal Information Protection Act allows the Privacy Commissioner, with the approval of the Attorney General, to make a written direction that a public sector agency is not required to comply with obligations under the Privacy and Personal Information Protection Act where the public interest in requiring the relevant agency to comply is outweighed by the public interest in making the direction.

There are currently 11 public interest directions in force. Seven of these public interest directions give exemptions from the Privacy and Personal Information Protection Act which are relied on by many public sector agencies in their day-to-day operations and are therefore needed on a long-term basis.

Public interest directions were intended to provide short-term exemptions until longer term solutions could be put in place. Relying on the rolling renewal of public interest directions made by the Privacy Commissioner has been identified as unsatisfactory on a number of occasions, including by the New South Wales Law Reform Commission in its report No. 127 titled "Protecting Privacy in New South Wales".

This bill implements the commission's view that "a statutory basis for long-term exemptions is vastly preferable to the use of [public interest directions]". In the commission's view, public interest directions should only be used as temporary measures. The New South Wales Privacy Commissioner, Dr Elizabeth Coombs, shares this view and has indicated she will not continue to renew long-term public interest directions, which would be better reflected in legislation. This aligns with the approach the Privacy Commissioner is now taking in relation to the making of new public interest directions.

The bill therefore moves the substance of seven existing long-term public interest directions either into existing legislation or to supplement the Privacy Code of Practice (General), which already contains a number of exemptions similar to existing directions.

Although incorporating these public interest directions into legislation and the Privacy Code of Practice requiring minor drafting changes to the terms of existing exemptions, the bill is not intended to introduce any significant policy changes. Rather, this bill aims to preserve the status quo in relation to the management of personal information by New South Wales public sector agencies in the areas in which the directions applied. This will ensure that New South Wales public sector agencies continue to be able to operate in the same way as when the directions were in place. However, it will also have the benefit that it is no longer necessary to rely on a fragmented and ad hoc approach to such exemptions.

The long-term public interest directions which the bill incorporates into other legislation or instruments are:

1. Direction on Processing of Personal Information by Public Sector Agencies in relation to their Investigative Functions

2. Direction on Information Transfers between Public Sector Agencies

3. Direction for the Department of Family and Community Services and Associated Agencies

4. Direction on the Collection of Personal Information about Third Parties by NSW Public Sector (Human Services) Agencies from their Clients

5. Direction on the Disclosure of Information to Victims of Crime

6. Direction on Disclosures of Information by the New South Wales Public Sector to the National Coronial Information System

7. Direction on Disclosure of Information to Credit Reporting Agencies.

I will address the substance of the directions and the amendments intended to replace them later.

The bill also introduces a new exemption for general research to replace the public interest direction on Disclosures of Information by Public Sector Agencies for Research Purposes, which I will discuss in more detail later, as it is proposed to update and clarify that public interest direction rather than merely incorporate its substance.

In other respects, the bill will improve privacy protections by addressing gaps in the application of the Privacy and Personal Information Protection Act.

The bill will insert new provisions regulating the disclosure of personal information outside of New South Wales and to the Commonwealth. Due to the way that the former Administrative Decisions Tribunal interpreted the relevant provisions of the Privacy and Personal Information Protection Act, in the decision of *GQ v New South Wales Department of Education and Training*, there are effectively no limits on the transfer of personal information outside of New South Wales.

Such a situation is anomalous in light of the protections placed on the management of personal information within New South Wales. Consequently, the bill proposes to address this anomaly by placing some parameters on such disclosures and providing clarity to both New South Wales public sector agencies and individuals in New South Wales about when such disclosures are permitted.

The bill also confirms the extraterritorial application of the terms "law enforcement purposes", "offence" and "public revenue" as used in the Privacy and Personal Information Protection Act. This amendment will provide certainty to public sector agencies sharing law enforcement information interstate.

I wish to emphasise that the Privacy Commissioner has been consulted throughout the drafting process of this bill, and she has indicated that she is satisfied with the bill and the amendments it proposes and is pleased that it is being introduced today. I wish to join the Attorney General in thanking the Privacy Commissioner for her contribution to the development of this bill.

I turn now to the provisions of the bill.

Schedule 1 provides for amendments of the Privacy and Personal Information Protection Act to incorporate a number of the public interest directions and clarify other aspects of the Act's operation.

Clauses 1 and 5 extend the meaning of an "investigative agency" to include certain additional public sector agencies with investigative functions or that conduct investigations on behalf of other public sector agencies with investigative functions. They will allow an agency undertaking a lawful investigation to:

· use personal information for the purpose of exercising its complaint handling functions or other investigative functions, or

· disclose such information to a complainant for certain purposes. These amendments transfer the provisions of the Direction on Processing of Personal Information by Public Sector Agencies in relation to their Investigative Functions into the Act, subject to minor amendments to streamline the Direction into the Act's existing exemptions.

New section 27A will provide an exemption to allow public sector agencies to exchange information to allow them to deal with correspondence from Ministers and members of Parliament or other inquiries and for auditing purposes. This transfers parts of the Direction on Information Transfers between Public Sector Agencies into the Act. The remaining substance of Direction on Information Transfers between Public Sector Agencies relates to certain transfers of information for law enforcement purposes. Clause 3 of schedule 1 adds this to the law enforcement exemptions already contained in section 23 of the Act.

New section 27C will provide exemption to allow certain public sector agencies to share information with certain credit agencies about whether a person is or was a debtor under a default judgment. This transfers the content of the direction relating to the Disclosure of Information to Credit Reporting Agencies into the Act.

Schedule 2.1 amends the Coroners Act 2009. The proposed amendments enable the Attorney General, on behalf of the State, to enter into information sharing arrangements with certain kinds of persons or bodies responsible for the creation or maintenance of databases under which specified New South Wales coronial information can be provided and included in the databases. The amendment also allows New South Wales coronial information to be provided in accordance with such an arrangement despite any prohibition in or the need to comply with any requirement of any Act or law.

The amendment will replace the Direction on Disclosures of Information by the New South Wales Public Sector to the National Coronial Information System (NCIS) with some additional safeguards modelled on equivalent provisions which apply in other Australian jurisdictions.

The bill also amends the Privacy Code of Practice (General) to transfer the substance of two directions relating to information transfers by human services agencies into the Privacy Code. These provisions permit human services agencies to collect personal information about individuals other than their clients if the information is reasonably relevant and reasonably necessary to enable the agency to provide services to a relevant client.

Additionally, they update which agencies are covered by the exemptions to reflect changes in agency composition and responsibilities since the relevant directions were drafted. They transfer the provisions of the Direction on the Collection of Personal Information about Third Parties by New South Wales Public Sector (Human Services) Agencies from their Clients and the Direction for the Department of Family and Community Services and Associated Agencies to be incorporated into the General Privacy Code.

Schedule 2.3 amends the Victims' Rights and Support Act 2013 to allow certain public sector agencies to:

· disclose information to which a victim of crime or family victim is entitled under the Charter of Victims' Rights, or to collect, use or disclose information that is incidental to that purpose, or

· disclose information that is reasonably necessary to inform a victim of crime or a family victim about the general location or movements of a serious offender of which they were the victim.

These amendments transfer the provisions of the Direction on the Disclosure of Information to Victims of Crime into the Victims' Rights and Support Act 2013.

In addition to replacing the long-term public interest directions, the bill aims to clarify the Privacy and Personal Information Protection Act in relation to research and the disclosure of personal information across jurisdictional borders.

The proposed amendment to section 19 will allow New South Wales public sector agencies to disclose personal information with interstate persons or bodies or Commonwealth agencies for certain purposes, as well as clarify the basis on which disclosures of information outside New South Wales can occur. These are both areas in which there is currently some uncertainty. Adoption of provisions equivalent to those in the Health Records and Information Privacy Act will aid to clarify how personal information can be managed in these two situations and to provide for greater consistency between the two Acts.

When it was initially enacted, section 19 of the Privacy and Personal Information Protection Act was intended to allow disclosure of personal information by New South Wales public sector agencies to someone outside of New South Wales and to Commonwealth agencies where another recognised privacy law would apply to protect the information, or where disclosure would be permitted under a privacy code of practice made by the New South Wales Privacy Commissioner. However, no such code of practice has been made by the Privacy Commissioner.

As I noted earlier, the former Administrative Decisions Tribunal interpreted section 19 of the Privacy and Personal Information Protection Act in such a way that it found there are no restrictions on the disclosure of personal information by New South Wales public sector agencies to someone outside of New South Wales or to a Commonwealth Agency. Consequently the existing regime for the trans-border disclosures of personal information is ineffective.

To address this gap in the protection of personal information transferred outside of New South Wales, this bill repeals the existing ineffective provisions governing trans-border disclosures—namely sections 19 (2) to (5)—and instead replaces them with provisions modelled on the approach taken in the Health Records and Information Privacy Act 2002. These are also similar to provisions governing the trans-

border disclosure of personal information in the privacy legislation of Victoria, Queensland and the Commonwealth.

The amendment will impose some additional requirements upon New South Wales public sector agencies when disclosing personal information outside of New South Wales (as originally intended) compared with current practice, where there are presently no restrictions. This will increase the level of protection for the personal information of New South Wales citizens when it is transferred out of New South Wales, whilst ensuring New South Wales public sector agencies retain flexibility to share information across borders.

Schedule 1 clause 4 is intended to clarify the situation in relation to extraterritorial transfers of personal information in relation to law enforcement. These are not subject to the provisions of section 19 but instead fall within the scope of the law enforcement exemptions in section 23 of the Act. It will ensure that agencies may share information for law enforcement purposes, for investigation of an offence or for the protection of the public revenue where, for example, an offence has occurred outside of New South Wales.

For example, it would allow the disclosure of registration information to the police in Queensland or Victoria where a New South Wales-registered vehicle is involved in the commission of an offence in Queensland. These changes will ensure New South Wales public sector agencies can assist interstate agencies with law enforcement investigations without contravening the Privacy and Personal Information Protection Act.

This clarification is required due to the former Administrative Decision Tribunal's comments in the GQ decision potentially limiting the extraterritorial application of these exemptions due to interpretive presumptions that they are only intended to apply within New South Wales, in the absence of any explicit contrary intention.

The insertion of proposed section 27B into the Privacy and Personal Information Protection Act will permit public sector agencies to collect, use and disclose personal information for certain research purposes, based on existing exemptions applicable to health information under the Health Records and Information Privacy Act 2002. These provisions will replace the existing Direction on Disclosures of Information by Public Sector Agencies for Research Purposes.

Currently, the Direction on Disclosure of Information for Research Purposes facilitates access to personal information for research provided certain safeguards are in place. However, the direction is obscurely drafted. It is also inconsistent with the equivalent exemption in the Health Records and Information Privacy Act, which applies to health information and is much simpler and clearer in the requirements it contains.

Rather than incorporating this public interest direction into legislation or regulation like the other seven public interest directions I have already referred to, the bill inserts a new exemption to the collection, use and disclosure principles in the Privacy and Personal Information Protection Act for research purposes, in circumstances consistent with those described in the Health Records and Information Privacy Act. Such an amendment will simplify policy and practice for those public sector agencies that handle both personal information and health information. The proposed research exemption is equally appropriate for non-medical research and has the benefit of being simpler and clearer than the current public interest direction.

In closing, this bill will reduce the fragmentation and complexity of New South Wales privacy law. It will make the substance of the exemptions that are currently regulated by public interest directions more accessible and will assist to promote greater transparency in the operation of the privacy law regime in New South Wales.

I commend the bill to the House.