



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES
INFORMATION COMMISSIONER BILL 2009

Second Reading

SPEECH

Thursday, 26 November 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Thursday, 26 November 2009
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Questioner
Speaker Byrne, Anthony, MP

Source House
Proof No
Responder
Question No.

Mr BYRNE (Holt—Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Trade) (9.27 am)—I move:

That this bill be now read a second time.

The purpose of the Information Commissioner Bill 2009 is to establish the Office of the Information Commissioner.

The bill will implement the structural reforms outlined in the government's election commitment, Government information: restoring trust and integrity. Together with the Freedom of Information Amendment (Reform) Bill 2009, it constitutes the second stage of the Rudd government's overhaul of FOI.

The new Office of the Information Commissioner will bring together the independent oversight functions for privacy protection (principally regulated by the Privacy Act 1988) and for access to government information (regulated by the Freedom of Information Act 1982). The government considers that the co-location of privacy and FOI policy will enhance oversight and allow for consistent information policy.

For this purpose, the bill creates two new independent statutory positions of Information Commissioner and Freedom of Information Commissioner. It also makes provision for the appointment of the Privacy Commissioner in this legislation instead of under the Privacy Act 1988.

The absence of an independent statutory monitor for FOI was identified as an impediment to effective administration of the FOI Act in the joint 1995 Australian Law Reform Commission and Administrative Review Council *Open government* report and later by the Commonwealth Ombudsman. To correct that deficiency, the Information Commissioner and FOI Commissioner will have broad-ranging FOI functions. They will ensure a constant voice which not only addresses poor FOI practices, but also addresses attitudes that are not conducive to the presumption of openness which is intended by the government's FOI reforms.

The nature of the FOI functions and privacy functions are too extensive for one office holder to effectively manage. Conversely, the appointment of multiple statutory officers of equal standing does not present an effective governance model. The bill establishes the Information Commissioner as head of the office for both strategic and administrative purposes. It is intended that the FOI Commissioner will be mainly responsible for the FOI functions, and that the Privacy Commissioner will be mainly responsible for privacy functions.

While the government expects that the three office holders will work together cooperatively, the bill makes provision for the Information Commissioner's view to prevail in any disagreement on matters which involve substantial policy decisions. Provision is also made to ensure that there is no duplication in the performance of essential determination functions.

The FOI functions include those functions that will make the information and FOI commissioners strong advocates for FOI, such as promoting awareness, issuing guidance, monitoring compliance and providing training and assistance. It is intended that the Office of the Information Commissioner will be a resource for agencies as well as for the public. The commissioners will also be given a function of undertaking merits review of access decisions and investigating complaints. The comprehensive nature of the commissioners' FOI functions is in keeping with the government's intention to provide a central clearing house for FOI matters.

The privacy functions are those functions now performed by the Privacy Commissioner. The government is currently embarking on reforms to the Privacy Act by preparing draft legislation for release for public consultation early next year. Any changes that are made to the functions and powers of the Privacy Commissioner following the government's privacy reforms will of course be aligned with the new structure created in this bill.

The bill also gives the Information Commissioner a discrete function of advising the government on information management policy. That function reflects the capacity for the new structure to generate strategic

advice to government on broader information management policy and practice, including in the use of systems employed in information management. Consistent with the objective of achieving a coordinated approach to information management policy across government, the Information Commissioner is to be assisted by an Information Advisory Committee. The committee will be chaired by the Information Commissioner and will comprise senior executives from key agencies and other persons outside government who have suitable experience or qualifications.

The establishment of an Office of the Information Commissioner not only supports the important outcome of promoting a pro-disclosure culture and revitalising FOI, but also lays new, stronger foundations for privacy protection and improvement in the broader management of government information.

Debate (on motion by **Mr Lindsay**) adjourned.