

## **SECOND READING SPEECH**

### **PERSONAL INFORMATION PROTECTION AMENDMENT** **BILL 2009**

Mr Speaker, in August 2008 the Premier, David Bartlett announced a ten point plan to strengthen trust in democracy and political processes in Tasmania. That agenda included a review of the *Freedom of Information Act 1991* with a view to improving transparency in the operations and decision making processes of the Government through better access to information for all Tasmanians.

That intensive, inclusive review has culminated in the development of the new right to information approach, which is part of another Bill I have/will bring before the House. That review also concluded that a single piece of legislation dealing with access to personal information was in keeping with an open and transparent approach.

This Bill amends the *Personal Information Protection Act 2004* by providing the mechanisms for access to and amendment of personal information in that Act. Currently the mechanism for access and amendment are in the Freedom of Information Act which will be repealed with the passage of the Right to Information Bill.

The construction of these amendments to the Personal Information Protection regime in Tasmania is the outcome of research and follows similar moves in other Australian jurisdictions.

It became clear from the consultation process that there is a significant need for a single piece of legislation to govern access to and amendment of personal information. Tasmanians have been unsure of their rights and unable to easily find out what to do with the dual rights which existed between the current Act

and the *Freedom of Information Act 1991*. The need for change was supported by the vast majority of contributors who commented.

The framework put to the House in this Bill moves the existing provisions from the Freedom of Information Act to the Personal Information Protection Act, with some changes to update the language to reflect the Right to Information Bill and clarification of the access provisions in line with the objects of the Right to Information Bill.

The Bill guarantees that Tasmanians have a right to access personal information held about them by public sector bodies without reference to any other legislation.

The Bill also provides that if a request for access is refused or not responded to then the individual can insist that the personal information custodian process the request for access as though it were an application for 'assessed disclosure' of information under the soon to be passed Right to Information Act. This then imports the rights to be afforded by that Act, including a statement of reasons for the decision to refuse the request and access to the Ombudsman to have the decision reviewed.

Having allowed for access to personal information the Bill also provides for a mechanism which provides Tasmanians with the ability to request amendment of that personal information if they believe it is misleading, wrong, out of date or incomplete. The Bill allows for review by the Ombudsman of a refusal to amend personal information.

The Bill allows for next of kin to take over the right of a deceased person in respect of personal information and for sensitive information of a medical or psychiatric nature to be released via a medical practitioner if that is in the best interest of the person applying for access. These are both important

features of the Right to Information Bill, which we have decided should also be applied to personal information.

The Bill also allows for complaints in relation to the access and amendment mechanisms to be made to, and investigated by, the Ombudsman as though they were complaints about public sector bodies.

The changes in this Bill are an important part of the package of reforms this Government is bringing before the House to strengthen Tasmanian Democracy.

I commend this Bill to the House.

## **CLAUSE NOTES**

### **PERSONAL INFORMATION PROTECTION** **AMENDMENT BILL 2009**

#### **Clause 1:**

This Act may be cited as the Personal Information Protection Act 2009.

#### **Clause 2:**

This Act will commence when proclaimed, proclamation will likely be when the Freedom of Information Act 1991 is repealed by the commencement of the Right to Information Act 2009.

#### **Clause 3:**

The Principal Act is defined as the Personal Information Protection Act 2004.

#### **Clause 4:**

The long title of the Principal Act is broadened to include “correction” as one of the objects, which reflects the nature of the changes, to the Principal Act, in this Bill.

#### **Clause 5:**

Makes changes to the interpretations in the Principal Act

- (a) changes the reference in the definition of “law enforcement information” from a reference to the Freedom of Information Act 1991 to a reference to the Right to Information Act 2009.
- (b) changes the definition of “personal information custodian” so that it uses the term “public authority” instead of public sector body, which is consistent with the Right to Information Bill 2009.
- (c) Inserts a definition of public authority by reference to the Right to Information Act 2009.

- (d) Deletes the definition of public sector body as it is a term defined by reference to the Freedom of Information Act which will be repealed by the commencement of the Right to Information Act 2009.
- (e) Replaces a full stop with a semi colon to allow for an additional definition to be added.
- (f) Inserts a definition of 'State Archivist' by reference to the Archives Act 1983. This definition is required as the State Archivist is referred to in the new Part 3A.

#### **Clause 6:**

This Clause inserts two new sections in the Principal Act, namely:

- Section 3A, which will allow for the next of kin of a deceased person to exercise the rights of the person in relation to both access and amendment of personal information. This is a right next of kin have under the Freedom of Information Act 1991 and it is important to preserve this by these amendments.
- Section 3B, which will allow for personal information custodians who are holding information of a medical or psychiatric nature who receive applications for access to the information, to release the information through a medical practitioner if they conclude that release to the person may be prejudicial to the person mental health or wellbeing. Again this preserves a process available in the Freedom of Information Act 1991.

#### **Clause 7:**

This clause amends a reference to a "public sector body" (which will no longer be defined) to the new term "public authority".

#### **Clause 8:**

This Clause inserts a new Part into the Principal Act. The Part consists of 9 Sections all of which are modified sections which

currently exist in the Freedom of Information Act 1991. The modifications are to the language to ensure consistency with the Right to Information Act 2009. The new sections are:

- Section 17A, which allows for request for amendment to be made to personal information custodian by the person to whom the information they hold relates.
- Section 17B, defines the form in which the request for amendment is to be made.
- Section 17C, allows the personal information custodian to amend the information.
- Section 17D, provides that a notation is to be made by the personal information custodian to the information to give effect to the amendment.
- Section 17E provides for a 20 working day timeframe for the personal information custodian to respond to the request to amend the personal information.
- Section 17F, requires that if a personal information custodian refuses to amend personal information then the applicant must be provided with a written notice of the decision and a statement of reasons for the decision.
- Section 17G, allows for a applicant who has had their request to amend personal information refused to have their opinion as to the reason for the amendment notated with the information.
- Section 17H, provides for the form of the notation under 17G.
- Section 17I, provides that the notations made under this Part are not to delete, expunge or destroy information which may be subject to the Archives Act 1983.

### **Clause 9:**

This clause amends Section 18 of the Principal Act, which currently allows for complaints to be made to the Ombudsman, but does not provide for complaint about a

refusal to amend information as that is in the Freedom of Information Act 1991. This clause inserts the complaints provisions which exist in the Freedom of Information Act 1991 into the Principal Act as Subsection (5A) of Section 18.

**Clause 10:**

This clause amends Schedule 1 Clause 6 of the Principal Act which currently allows for access and amendment of personal information only by way of an application under the Freedom of Information Act 1991.

- Subclause (a) provides for Schedule 1 Clause 6 to be changed to allow for access under the Principal Act and if access is refused or unduly delayed then the individual can make a further application and the Right to Information Act 2009 will apply.
- Subclause (b) provides for Schedule 1 to be changed to provide for the process for amendment to be as defined in Part 3A of the Principal Act. (see Clause 8).

**Clause 11:**

This clause provides for the Bill to be repealed 90 days after it commenced, in accordance with current practice for amendment Bills.

## **FACT SHEET**

### **Personal Information Protection Amendment Bill 2009**

In August 2008 the Premier, David Bartlett announced a ten point plan to strengthen trust in democracy and political processes in Tasmania. That agenda included a review of the *Freedom of Information Act 1991* with a view to improving transparency in the operations and decision making processes of the Government through better access to information for all Tasmanians.

That intensive, inclusive review has culminated in the development of the new right to information approach, which is part of the Right to Information Bill. The review also concluded that a single piece of legislation dealing with access to personal information was in keeping with an open and transparent approach.

That conclusion is reflected in this Bill which amends the Personal Information Protection Act 2004 by providing the mechanisms for access to and amendment of personal information in that Act. Currently the mechanism for access and amendment are in the Freedom of Information Act which will be repealed with the passage of the Right to Information Bill.

This Bill also provides for further actions if access to information, or a request to amend information, is refused, for instance a refusal may mean the provisions of the Right to Information legislation can be used to gain access and/or a right to apply to the Ombudsman for review.