

Australian Privacy Foundation Inc.

P.O. Box 1196 Sydney NSW 2001

6 November 2003

Versions to most N.S.W. Legislative Council cross-benchers, and the Opposition

Dear X,

We are writing to suggest that you oppose the passage of the government's Privacy and Personal Information Protection Amendment Bill 2003. The Bill will scrap the NSW Privacy Commissioner and transfer most of his functions to the Ombudsman, and give some further exemption powers to Ministers.

We are making this submission on behalf of the Australian Privacy Foundation <<http://www.privacy.org.au/>>, the leading privacy advocacy organisation in Australia since 1987. I am a Board member of the Privacy Foundation.

We have prepared an analysis of the details of the Bill entitled 'NSW to scrap Privacy Commissioner, reduce privacy protection' which can be found at http://www2.austlii.edu.au/~graham/publications/2003/NSW_Bill_article.html. This has been endorsed by the Privacy Foundation as its policy position on the issue.

Some of the worrying consequences of the Bill that we detail in the article are:

- The NSW Privacy Commissioner has powers, which are used frequently, to investigate the private sector. They are quite important given all the limits of the Federal Privacy Act. Investigating the private sector is an uncomfortable role for an Ombudsman.
- The role and powers of the NSW Privacy Commissioner, if fully utilised, require him to be a privacy advocate, not merely a complaint mediator. Again, an odd role for an Ombudsman and one that may be uncomfortable to exercise. The broader policy advocacy role of Privacy Commissioner is likely to suffer, and is inconsistent with the role of an Ombudsman.
- Despite government claims, an Ombudsman as Privacy Commissioner is unprecedented in Australia or overseas. That is because it is inappropriate. A specialist Information Commissioner combining FOI and privacy roles is quite a different thing from throwing privacy into an Ombudsman's myriad other responsibilities.
- The office of Privacy Commissioner is abolished, not transferred, and with it the requirement for any separate Annual Report, any separate section of the Ombudsman's office, and probably any separate accounting for privacy complaints.

Privacy is likely to become invisible in NSW, which it is not at present despite the deficiencies of the PPIPA.

- The PPIPA already gives too many exemption powers to Ministers - this Bill worsens that.

An Ombudsman determined to be a privacy advocate could possibly make this Bill work, but is this likely to happen?

There is no crisis needing urgent legislation. The current Act requires a review of the PPIPA to start now (November 2003), and that is the best way to determine whether a better model than a stand-alone Privacy Commissioner is needed, and if so what. A short term appointment of a new Privacy Commissioner is needed in the meantime. This Bill should be rejected - it is not a question of amending it, because the Ombudsman model at its core is simply inappropriate.

We hope you will give these points your consideration and oppose the Bill.

Yours sincerely,

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Former deputy Federal Privacy Commissioner