

10 December 2018

Ms Lucy Manderson
Acting Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: eesbc@parliament.qld.gov.au

Dear Ms Manderson

**Working with Children (Risk Management and Screening) and Other Legislation
Amendment Bill 2018**

The Office of the Information Commissioner (**OIC**) would like to make a brief submission on the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 (**the Bill**).

Specifically, OIC would like to comment on the drafting of section 344B of the Bill *Use of information obtained under s344A about a person*. OIC notes that new section 344B provides for the confidentiality or information given or accessed by an authorised entity under section 344A. It provides that the person must not use the information, or disclose or give access to the information to anyone else, unless it is permitted under section 344B(3).

Section 344B(3)(e) provides that:

the person may use the information, or disclose or give access to the information to another person, if the use, disclosure or giving of access -

if the person, or an entity that employs or engages the person, is required by a privacy law to comply with information privacy principles – complies with the information privacy principles.

Section 344(B)(4) provides that:

Subsection (3)(e) applies despite the operation of the Information Privacy Act 2009, section 7(2).

Section 344B(5) defines ‘*information privacy principles*’ to mean the Australian Privacy Principles (**APPs**) under the *Privacy Act 1988* (Cth) (**Privacy Act**) or the privacy principles or National Privacy Principles under the *Information Privacy Act Qld 2009* (**IP Act**). ‘*Privacy law*’ is also defined to mean the Privacy Act or the IP Act.

OIC submits that inclusion of subsections (3)(e), (4) and (5), in the drafting of section 344(B), leads to a lack of certainty and clarity about the circumstances in which the person receiving information under section 344A may use, disclose or give access to this information and the interaction of s344B with Commonwealth and state privacy legislation.

The IP Act will defer to any other Act which provides for the collection, storage, handling, management, use, disclosure and transfer of personal information (section 7(2) of the IP Act). In addition, requirements to use or disclose personal information under another Act override the relevant privacy principles by the action of IPP 10(1)(c), 11(1)(d) and NPP 2(1)(f).

Similarly, the APPs set out standards, rights and obligations in relation to handling, holding, accessing and correcting personal information. For example, APP6 requires entities to only use or disclose personal information for the purpose for which it was collected, unless the individual has consented or an exception applies. As such, the privacy principles in the Commonwealth Privacy Act and the IP Act are not authorising provisions for the use and disclosure of personal information.

OIC notes that Section 344B(3) prescribes the circumstances in which a person may use, disclose or give access to the information to another person. Accordingly, the IP Act will defer to use and disclosure provisions in the Bill. In OIC's view, inclusion of s344B(3)(e) referencing compliance with Commonwealth and state privacy legislation, including the relevant privacy principles, is redundant.

OIC recommends:

- removal of subsections (3)(e), (4) and (5) to avoid uncertainty and confusion about the interaction of relevant privacy legislation with section 344B(3); and
- s344B(3) of the Bill explicitly prescribe the circumstances a person is able to use, disclose or give access to the information should there be additional permissible circumstances not already contemplated by the Bill.

Yours sincerely



Rachael Rangihaeata
Information Commissioner