



FINANCE AND ADMINISTRATION COMMITTEE

Members present:

Ms DE Farmer MP (Chair)
Ms VM Barton MP (via teleconference)
Mr MJ Crandon MP
Mr CD Crawford MP (via teleconference)
Mr DA Pegg MP (via teleconference)
Mr PT Weir MP (via teleconference)

Staff present:

Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO THE INDUSTRIAL RELATIONS (RESTORING FAIRNESS) AND OTHER LEGISLATION AMENDMENT BILL 2015

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 28 MAY 2015

Brisbane

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Committee met at 11.35 am

MEAD, Ms Jenny, Acting Privacy Commissioner, Office of the Information Commissioner

RANGIHAETA, Ms Rachael, Information Commissioner, Office of the Information Commissioner

CHAIR: Good morning, ladies and gentlemen. I declare this public departmental briefing of the Finance and Administration Committee's inquiry into the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 open. I am Di Farmer, the chair of the committee and the member for Bulimba. The other members of the committee are Michael Crandon, our deputy chair and member for Coomera, who is here in person; and on the line we have Ms Verity Barton, the member for Broadwater; Mr Craig Crawford, the member for Barron River; Mr Duncan Pegg, the member for Stretton; and Mr Pat Weir, the member for Condamine.

The purpose of this hearing is to receive information from the Privacy Commissioner in relation to the privacy aspects of the bill, which was referred to the committee on 7 May 2015. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today. The committee appreciates your assistance. You have previously been provided with a copy of the instructions for witnesses, so we will take those as read. Hansard will record the proceedings and you will be provided with the transcript. This hearing will also be broadcast. I remind witnesses to speak into the microphones.

I remind all of those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. I remind committee members that officers are here to provide factual or technical information. They are not here to give opinions about the merits or otherwise of the policy behind the bill or alternative approaches. Any questions about government or opposition policy that the bill seeks to implement should be directed to the responsible minister or shadow minister or left to debate on the floor of the House.

I request that mobile phones be turned off or switched to silent mode, and remind you that no calls are to be taken inside the hearing room. Jenny, I invite you to make an opening statement. You may also like to introduce the Information Commissioner for the purposes of Hansard. Perhaps you would also like to comment in your opening statement about your jurisdiction.

Ms Mead: I am Jenny Mead, the Acting Privacy Commissioner, and with me today is Ms Rachael Rangihaeata, who is the Information Commissioner. As you would probably be aware, the Office of the Information Commissioner is an independent statutory body, and we have various responsibilities including matters under the Information Privacy Act. The Information Commissioner's functions include commenting on issues relating to the administration of privacy in the Queensland public sector environment. We are, of course, only able to comment on matters that are within our specific areas of expertise, knowledge and jurisdiction.

I note for the committee's information that the Information Privacy Act operates subject to the provisions of other legislation. The act establishes a general scheme for the handling of personal information in the public sector but recognises that legislation may provide for specific exceptions or, in many cases, tighter restrictions. I understand that the committee has some questions. I have nothing further by way of an opening statement.

CHAIR: The committee has been provided with copies of some legal advice which was obtained by one of our submitters regarding the matter in hand, which is the union encouragement clause in the bill. I think you are familiar with the clauses that we are talking about—31 and 32. The legal advice is in two parts. One part refers to advice from senior counsel in July 2012 when the

current act was in place and also refers to advice that was obtained this week in order to summarise and update the 2012 advice of that expert counsel. It was in relation to the provision of personal information within the definition of the Information Privacy Act 2009 of public servants by public sector agencies to the union.

We have also been provided with information from the department about the consultation that it undertook from the time of the introduction of the Information Privacy Act in 2009 and again in 2011 about the consultation it undertook. This was raised in a public hearing with departmental officers several weeks ago, and they advised us that the PSIER team provided advice to the government about whether this clause—clause 31—actually met the requirements of the Information Privacy Act. We are interested in your view in particular about clause 31 and whether it is your judgement that this is an infringement of the privacy legislation.

Ms Mead: Clause 31 refers to the right to inspect and request information by an authorised industrial officer. I understand from reading the explanatory notes that it reinstates the version of the section that existed prior to the amendments in 2013—

CHAIR: Yes, that is right.

Ms Mead:—but the way the Information Privacy Act operates, as I said, is that it is subject to other legislation. So this will override the privacy principles with respect to disclosure in these circumstances. Indeed, the privacy principles themselves talk about disclosure being permitted where it is authorised by law. Because this provision appears in the Industrial Relations Act, it is authorised by law and permitted under the Information Privacy Act. The types of things we are interested in are if we are asked about privacy protections, and we note that there is an opt-out provision in the section that allows employees to opt out of these provisions and that there is a provision in the Industrial Relations Act that prohibits further unlawful disclosure of that information.

CHAIR: Would you mind if I take you to some of this advice? The public sector employee information requested by the union from public sector agencies is not in breach or conflict with the IPA because (a) the information sought is available to the union through other means and therefore the public sector agency providing the information is not engaging in a disclosure for the purposes of the IPA; (b) the information privacy principles do not apply where the personal information has been published or given for the purposes of publication by the individual; and (c) as per the state government's union encouragement policy the state government requires that the public sector agencies provide this information to unions pursuant to this—the disclosure of routine personal work information to a union will likely be for a legitimate agency purpose under guidelines issued by the Information Commissioner.

Ms Mead: Yes. If the information is available by other means or if it is published, it is not a disclosure under the Information Privacy Act.

CHAIR: There is reference in this material, and I appreciate you have not seen this material, that similar information is available, for instance, through the public gazetting of—

Ms Mead: Yes.

CHAIR: So I think that is probably the most obvious point.

Ms Mead: Yes.

Mr WEIR: I am having a lot of trouble hearing the answers.

Ms Mead: I will speak up. Is that better?

Mr WEIR: Yes, that is better.

CHAIR: Would you like to comment any further on that, Jenny?

Ms Mead: No, I don't think so.

CHAIR: Michael, would you like to ask a question?

Mr CRANDON: No, pass it over to Verity. She is the one whom I think we should devote the next 15 minutes to. I think we just about spent 15 minutes on that one. Over to you, Verity.

CHAIR: I note that a number of members have questions.

Miss BARTON: Thanks very much, Di. I wonder whether or not you have been contacted by any of the industrial organisations themselves and whether or not they have proactively sought your advice as the Privacy Commissioner or whether or not they have sought a meeting with you so they are able to ensure that there are appropriate safeguards in place with regard to people's private information.

Ms Mead: When you say 'industrial organisations', are you referring to unions?

Miss BARTON: Yes, whether or not unions have proactively sought your advice as the Privacy Commissioner in Queensland with regard to their storage and maintenance of the personal and private details of public sector employees in Queensland.

Ms Mead: The short answer is no. They have not contacted us but our role is to provide advice to public sector organisations. Whilst it is about public servants information, we would have to consider whether we would be in a position to give that advice, but we have not been contacted in any case.

Miss BARTON: Just a quick follow on to that then: have any of the departments or their directors-general sought your advice about the management of personal information that they would be giving to third parties external of government?

Ms Mead: Not about this bill, we have not been contacted but that is not unusual. Agencies have privacy contact officers within their agencies. They would liaise with the Department of JAG, which is the lead agency for information policy. If agencies do contact us, we are happy to give advice about proposals, but in this instance we were not contacted. But as the legal advice that was referred to earlier pointed out, we do have a guideline about some of these matters, such as routine work information, names, work designation and location of work. It falls within that category.

CHAIR: Could I follow on with that and just an extension of what you are asking, Verity. I understand that the unions are bound by the national privacy regulations, so one would assume because that is a Commonwealth jurisdiction that they would actually be referring to the Commonwealth, your counterpart I assume, rather than to a state privacy commissioner.

Ms Mead: Yes, that would be right.

CHAIR: Thank you. Verity, did you want to add anything else?

Miss BARTON: I do have a series of other questions, but I guess it is up to you, Madam Chair, how you want to manage the questioning. I am just conscious that I have somewhere else to be at 12 and I made that very clear at the start.

CHAIR: Yes. I apologise that we started a little bit later this morning. We will come back with some written questions as well. Verity, can I give you one more question and then I might go over to Craig. Would you like to ask one more question?

Miss BARTON: Thanks very much. The question that I want to ask at the moment is whether or not the privacy commission adopts the Fair Work Ombudsman's definitions of 'workplace privacy' and 'personal information'. Depending on the answer, I do have a quick follow-up question.

Ms Mead: We are bound by the terms of our legislation. We have definitions of 'personal information' in our legislation that we are required to apply. The information privacy principles and the NPPs, the health privacy principles, are quite detailed. So we would not look to Commonwealth legislation.

CHAIR: Just one follow-up, Verity.

Miss BARTON: Are you able to provide us with those definitions? I am just conscious that I am out in public at the moment so I am not in a position to quickly have a look at them in your act. Are you able to provide a brief precis of what those definitions are?

Ms Mead: The definition of 'personal information'?

Miss BARTON: Yes. My understanding is that the Fair Work Ombudsman's definition of 'personal information' is even a person's name, so I am just looking to see whether or not there are the same standards of what 'personal information' is.

Ms Mead: The definition in the Information Privacy Act is—

Personal information is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

So, yes, a person's name would normally be regarded as personal information, but then the information privacy principles talk about when that information is available and when it can be disclosed. There are a lot of instances in which that information is disclosed. Public servants routinely have their names disclosed in email communications and their official correspondence to external parties.

CHAIR: Verity, do you mind if I ask a question. I am just looking at some of the legal advice that was provided in 2012. They were actually going to the matter of personal information and they touched upon the point that the information which is provided—which is essentially the name, the

location and the position description, and perhaps phone numbers but certainly the first three—in these lists of starters is not information touching upon the personal affairs of the individuals concerned, nor is it information of a private, intimate or sensitive nature, rather it is information about the public roles of employees in the Public Service who are paid from the public purse. What would be your comment on that?

Ms Mead: Yes, we would agree with that. It is about the nature of the information and the sensitivity of the information concerned. As well as being responsible for information privacy, we are also responsible for right to information and the release of information, and that is our view in that instance as well. We do routinely release public servants' names, their job descriptions and their phone numbers, although not routinely their mobile phone numbers. That is information that is classified as routine work information and, as I think the legal advice identified, we do have a guideline relating to that.

CHAIR: Verity, I am conscious of the time. Do you want to fit another one in and we can come back to you if Craig's is short?

Miss BARTON: As Privacy Commissioner, obviously as detailed by the chair, there is a vague opportunity for an opt-out provision. I am just concerned whether or not it clears the public sector workers when they begin their employment. What is your view on whether or not there should be a clear opt-in or opt-out provision and employees being made aware in writing when they first begin employment with the public sector that personal information is being given to a third party?

CHAIR: Verity, could I just ask you to rephrase that question because I do not want to verge on inviting the Privacy Commissioner to comment on government policy. I thank you for providing your questions beforehand and I did seek advice from the Clerk this morning on this. Perhaps you might be able to rephrase it to ask about whether it is in accord with privacy principles or such.

Miss BARTON: Is it in accordance with privacy principles that public sector employees would see their personal information be given to third party organisations external of government, at the commencement of their employment—

CHAIR: Verity, you are fading out. Are you able to go to a different spot so we can hear you again?

Miss BARTON: Can you hear me now?

CHAIR: Yes, thank you.

Miss BARTON: As Privacy Commissioner, do you believe it is in accordance with privacy principles that public sector employees at the commencement of their employ, would see their personal information given to an external third party organisation without them being given the opportunity to provide consent, either written or oral, as to the provision of that personal information to the third party external of government?

Ms Mead: I think what I said earlier is that it relates to it is authorised by law and because this is part of an award and chief executives are required to comply with these provisions, under the privacy principles we would say that the disclosure is permitted. There are aspects of implementation that individual organisations might undertake with respect to making people aware at the time of their appointment that would be of assistance.

CHAIR: And I understand just on that, Jenny, that when the employees start employment they are actually informed that that information will be used, and then there is an allowance in clause 31 that the employee can make 'a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer'. So they are informed up-front, which goes to the legal advice about disclosure, but also then they have an opportunity to actually say they do not want that to happen.

Ms Mead: Yes, and that would be in accordance with our approach with privacy.

CHAIR: Right. Verity, do you have to go now or do you want to ask one more question?

Miss BARTON: I will have to go very shortly. I am conscious that there are other members of the committee who would like to ask questions. I know that Pat and Michael had some questions as well, so perhaps Pat or Michael want to ask the questions.

CHAIR: We might go to Craig now. But if you have any outstanding questions, once you see the transcript, then we will provide those in writing to the Information Commissioner. We are at 12 o'clock. Are you able to give us a bit more time?

Ms Mead: Yes.

CHAIR: Thank you very much.

Miss BARTON: With due respect, Chair, given there was a time designated for the hearing, I would actually respectfully ask that all further questions then at 12 o'clock be placed on notice. I am conscious that it provides an imbalance in the committee numbers, and if there are any motions that may arise at the end of this hearing, I am disadvantaged by having given notice that I need to leave at a certain time.

CHAIR: We are actually not in a meeting, Verity; we are in a public hearing so we cannot pass any motions at this hearing. I appreciate what you are saying about there being any imbalance, but there will not be any opportunity for imbalance. I leave this open to the other members of the committee if they would like to continue asking questions, including on your behalf, Verity, from the list or we can submit the rest in writing. Michael, do you have any questions?

Mr CRANDON: I do have a view. I think we should bring it to an end at 12 o'clock. As far as the opposition members of the committee are concerned, we do have some written questions for the Privacy Commissioner. There was one in fact referring to the document that you were referring to, Madam Chair. I note all the way through the document it talks about 'where relevant their union or unions'. This advice—which you have not had an opportunity to see—talks about words to the effect that 'the employer shall notify the employees who may be affected by the proposed changes, and where relevant their union or unions', and it continues on all the way through—'where relevant', 'where relevant'. It leads me to my question in relation to—

CHAIR: Sorry, I am just saying it is 12 o'clock and Verity has asked that we actually not ask any more questions. Do you have to go, Verity?

Mr CRANDON: It is not 12 o'clock. It is 11.59.

CHAIR: It is actually—

Mr CRANDON: Can I finish the question?

CHAIR: No. It was actually the turn of a government member to ask a question so—

Mr CRANDON: So you are closing me down?

CHAIR: No. I am just asking if Craig would like to ask a question.

Mr CRAWFORD: My question is probably a pretty quick one. I think you have answered part of it already with some of your statements. In relation to this particular bill that is going before the House and particularly around clause 32, which removes section 691E from the current act from 2013, and clause 31, which puts in everything about the right to inspect and request information—and I am assuming that you have that information sitting in front of you. I am sorry, but I am a thousand kilometres away.

Ms Mead: Yes, I do.

Mr CRAWFORD: Do you have any concerns that the bill that we are introducing will impact on that Privacy Act?

Mr CRANDON: Madam Chair, it is 12 o'clock. Pat, if you can hang up, Verity, if you can hang up, I am leaving the room now. Thank you.

CHAIR: I apologise to the commissioner for this. Craig, we will forward your question in writing. That will be included in our list of questions. Thank you very much. The time allocated for this public briefing has expired. If members require any further information, we will contact you and that will be the case. I declare this briefing closed.

Committee adjourned at 12.01 pm