

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into review of the Members of Parliament (Register of Interests) Act

Melbourne — 21 July 2009

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Witnesses

Ms H. Versey, Victorian privacy commissioner, and

Mr S. May, policy and compliance officer, Office of the Victorian Privacy Commissioner.

The CHAIR — I welcome to the hearing this morning Helen Versey, the Victorian privacy commissioner, and also Scott May; thank you very much for attending. Thank you for your submission, which we have received and looked at. We will go through the formalities first and then I will hand it over to you. I introduced the committee members and staff. I think you are aware that this hearing operates under parliamentary privilege and the Parliamentary Committees Act and so the comments you make here are protected under that regime, but if you make remarks of some type outside the confines of this hearing you will not be afforded that privilege. Hansard will record our discussions this morning and you will be provided with a copy of the transcript afterwards. You can make such minor amendments to that as to clarify the meaning but obviously not change the content of it. We have about 45 minutes. Thank you again for your submission. We will hand it over to you to set it up and talk about the terms of reference, after which we will have a general discussion.

Ms VERSEY — Perhaps I will just mention the presence of Scott May, who is one of my staff. He did the research and drafted the submission; that is why he is present today.

The CHAIR — Thank you.

Ms VERSEY — What I just wanted to put into context was my submission. As I am sure you are all aware, Victoria has privacy protection under the Information Privacy Act, which I administer, which applies to the Victorian public sector handling of personal information but not health information. Health information is regulated by the Health Records Act. Of course parts of the private sector are regulated by the commonwealth Privacy Act, and we also have the Charter of Human Rights and Responsibilities Act section 13 which protects the broader notion of privacy. The Information Privacy Act that I administer regulates the handling of recorded personal information — all the information that the government collects about individuals.

One of my functions — I seem to have 27 functions — is to examine legislation for any adverse impact on an individual's privacy and to advise the minister. As you know, the Scrutiny of Acts and Regulations Committee of Parliament also has a role in ensuring legislation does not adversely impact on an individual's privacy as well as looking at charter rights. That is the context in which I make submissions to Parliament.

When I was looking at this submission, obviously I was conscious that all the privacy regulation, including the Charter of Human Rights and Responsibilities, requires a balancing act between an individual's right to privacy and the public interest in the free flow of information and also other public interest rights. The charter itself requires a balancing of the right to privacy with all the other rights. So one particular right does not take precedence over any other.

I was conscious, when we were looking at this and making this submission, that there is a strong public interest in members of Parliament having to declare their interests. That is perhaps why my submission was as confined as it was.

One provision I would mention under the Information Privacy Act is that of the generally available publication — personal information that is contained in generally available publications. Those publications are exempt from the Information Privacy Act. That would include, normally, public registers. As you know, governments have many public registers, and I think we can say that the MPs interests would be regarded as a public register. But what the act says about public registers is that a public register should be administered, as far as is reasonably practical, in accordance with the Information Privacy Act and the 10 information privacy principles. I bore that in mind when I was looking at this act and whether I thought there should be any changes. As you know, it requires MPs to provide information not only about themselves and their interests but also information about their families who are living with them — so their spouse and children — and the summary which is tabled in Parliament is accessible to the public in the form of a public register. As I say, I recognise that one has to balance the need for accountability, in that MPs have a high responsibility for accountability, but I do not think that means that MPs should not also have privacy rights which are protected, so there needs to be that balance.

The main thrust of my submission is in relation to residential address. When this committee is looking at what should be included and what should not be included on the register, it is worth looking at what information is necessary, what information you need to meet that public interest need for accountability, as compared to protecting members' privacy. It seemed to me that residential address was one area where the act was unclear and that there is a differential. I can say that Scott came and inspected the register and we found that there was a

differential between how MPs reported. Some reported the whole of their residential address, others did it in terms of just location. It raised in my mind the query as to whether it was really necessary to protect that public interest of accountability to have the full residential address in the register which is available to the public, and that this would become an especially important question if Parliament moves to put this register online. Because of course a lot of public registers were created at a time when there were all paper records, so you had to go into an office, pay your fee and look in a book.

When Parliament was drafting the legislation, as it did with this in 1978, that was the sort of register we were looking at. Parliament still has that. But it has been our experience in our office that when organisations just put a register online all sorts of things that obviously the legislators had never thought of come up. One real example that I vividly remember, from before I became privacy commissioner and when I was deputy, was that the law practitioners' register was put online and had to be taken down within 24 hours because there were all sorts of problems. There were judges' home addresses and there were people's dates of birth. You really have to be careful when you are moving to put a public register online as to exactly what it contains.

With regard to residential address, I obviously could not help hearing the comment of Mrs Kronberg regarding safety. What is always a consideration when we are looking at an organisation having come for advice about putting registers online is the issue of the safety of the individuals who are on that register and whose personal information is being published.

We did look at what other jurisdictions did, and at the commonwealth level it is clear that location is limited to just disclosing suburb and area. In the UK the register requires them to be specific as to the nature of the property but they can again be general as to location. In other words, there are two examples where the issue is dealt with — —

The CHAIR — This is just the place of residence you are talking about?

Ms VERSEY — Yes, it is just place of residence where they do not have to disclose the actual street address. It seems to me that that is perhaps something that the committee might look at as being a sensible compromise, and certainly one that may be necessary if you do move to put the register online. The other issue is that I would say that, again, if you are putting information online, think carefully about the fact that you are also collecting information about third parties but not necessarily direct from them. One of the principles under privacy laws is that you normally try to collect information direct from people and they are also given notice as to what is going to be done with that information, so you need to think about that. If you are thinking of adding information on to the register which is in fact third-party information and you then move to go online, is the individual aware that their information is going to be published? Going online means it is published to the world and if you make a mistake it is very difficult to retrieve. That is probably all I would like to say in my opening comments.

The CHAIR — Thank you very much. Can I perhaps just start off on that? Just extending that slightly, what is your view in the first instance on spouses of members of Parliament? I know this goes beyond the family home. Let us take that as clear; I understand that others might have questions about the family home and how specific you get, but clearly the act covers more than that and the register covers more than that. Have you given any consideration to that issue?

Ms VERSEY — No. I suppose that I approached it on the basis that really the policy or the decisions about what information should be collected to make MPs accountable was really not my business. I guess I just would say that if you were going to collect from third parties, how do you ensure those third parties are aware that their information has been put into a public document and is going to be published, especially if you move online? I can perfectly understand — obviously as an individual — that it is necessary in terms of the accountability of MPs and a register of interests that you would take into account such people as spouses, children, those interests of people who are close to the member of Parliament. So I can understand the rationale as to why you would include spouses and children.

The CHAIR — All right.

Mr CLARK — Could I follow on from that Chair's question? I fully take your point: it is a broad public policy question about the extent to which spouses and partners and other family members' interests are disclosed. That is one of the aspects on which we have received various representations in other submissions.

Looking at that purely from a sort of privacy act and privacy policy point of view, if you were asked to scrutinise the existing act and the provision that requires a member to disclose any other substantial interests of a member of his family which might appear to raise a material conflict, how would you apply the privacy principles to assessing that provision? Would you regard that provision, as it is in our existing act, as raising concerns from a privacy point of view?

Ms VERSEY — Obviously any provision that requires the collecting and then publishing of personal information will raise privacy issues, but as I said privacy is not absolute, so it has to be balanced against other public interests. I thought that it was a perfectly reasonable provision, probably because I also have to provide the same information because I have to register any interests of mine.

However, the only thing that I would say is, as I have said before, if you are collecting any information that is third-party information, one of the principles under the Information Privacy Act is data quality, so how do you ensure you have got accurate information, and also, especially if you are going online, do third parties know that their information will be published? I suppose it is always as well to do a check as to whether the collection of that information and the publication is necessary, whether it is necessary for the purpose that you are wanting to achieve. From a personal point of view, I would say it seems to me a quite reasonable one; it is quite narrow in its operation, so that I did not myself think there was a concern about limiting it in the way it was because it did seem to me to be quite limited.

Mr CLARK — It may be academic in 99 per cent of instances but would a right of a third party to seek correction of information be something that should be dealt with?

Ms VERSEY — I think that that is an issue that you should consider, because again that is always one of the privacy principles that where you collect people's personal information normally you would collect it from that person but if you do not they should at least have the right to access the information and correct it if necessary. When you are dealing with a public register, it should be available to them to be able to access in any event. But you perhaps might want to think about having a provision whereby they can correct it if it is inaccurate.

Mr FOLEY — Scott's viewing of the register would have shown that it is a summary and the actual form itself is different and far more detailed. As I understand it, when looking at other jurisdictions that do publish material on the internet, the actual source document is the document that is on public display. Does that cause any issues in your mind?

Ms VERSEY — Yes. I think that if you are going to publish online, you should actually consider perhaps having a layered approach because you can protect privacy online by having a layered approach. You may collect more information than appears online, and I would suggest that a summary is quite a good way of going, but perhaps consider whether there should be an arrangement whereby people can access more detailed information on application so that you perhaps protect the information from simply going out online. While online is a wonderful benefit to ensuring that as much of the public as possible can get access to information, because of course it is a public document and the whole intention is that members of the public should be able to access it, nevertheless you do have to consider the fact that it goes out to the whole world. It is very different from someone being able to come into the office and have a look. You can do it in a layered way so that you do not put in all the detail.

The CHAIR — I know it might seem like it is self-evident, but could you talk about why it is different?

Ms VERSEY — Because if you make a mistake, if you put out the wrong information online, you have lost it. It is very difficult to retrieve and correct, or retrieve because you may have put someone for example in danger. So let us consider my example of the legal profession: they put the register up for 24 hours and then because there was so much outcry they pulled it back down and rethought what they were doing. But the search engines pick up and cache that information, so it is always there. That often happens when we get complaints where inadvertently personal information has gone out on to the web that should not have, such as names and addresses. It is very, very difficult to then retrieve it.

The CHAIR — Sorry, Martin. I know I have cut across you. So in the first instance it is the accuracy of the information you have to take great care about?

Ms VERSEY — Yes.

The CHAIR — Is there a problem in the spread of it in itself, even if the information is accurate?

Ms VERSEY — You have to remember you cannot control it. Once you put it online, you have lost control of it basically. When you have got a hard copy public register, you have got an element of control about it. Someone comes in, pays their fee, looks through it. They cannot copy it, they cannot disseminate it — or they may be able to purchase a copy of it — but it is much more controlled.

If you put something online, you have lost control of it. It can go anywhere. That is why you always have to be very considered about what information you are going to put online. It does not just go to members of the public who have a legitimate purpose for looking at it; it goes to everyone who chooses to look. You should therefore be considering perhaps a layered approach, perhaps putting on controls whereby people cannot just download it — that it is a see-only provision.

Mr FOLEY — Does that need practical training and assistance, particularly for the people responsible for that layering around privacy principles?

Ms VERSEY — I think you would need technical advice for a start. I have to confess I am no technology person, but I do know it can be done. You can put in access controls, for example.

The CHAIR — It is interesting what you say, because part of what you just said before was that in itself, by losing control, there is a hierarchy, if you like, of legitimacy around interests. You are implying that people who have bad motives or who do not come to that information in the proper way could do something bad with it. That is an inherent danger in it. Is that what you mean?

Ms VERSEY — You would have to consider whether it is information that should properly just go to anyone, because, as I say, when you have a hard copy register there is an inherent control over who gets access to it, because if someone is going to try to access the information in bad faith because they want to make use of knowing what an MP is worth, for example, there is an inherent control over someone having to go into Parliament and apply to look at the register.

The CHAIR — So putting in all the information, spread as far as possible to everybody, is a good thing in itself?

Ms VERSEY — I am not saying whether it is good or bad. I guess what I am saying is you need to consider that when you are putting something online. That is what you have to take into account. If you put the wrong information out there, then you have lost it. Or if you find, for example, you have published someone's residential address and in fact they have been subject to threats and they should have a higher level of protection, if you put it out there, you have lost it.

Mrs VICTORIA — Helen, in your recommendation in your submission it says:

The current method of accessing the Summary of Returns is retained.

If residential addresses continue to be included in the Summary of Returns, no move is made to provide online access to the Summary of Returns.

I understand we are talking about layering now and saying perhaps if it is a layered approach, we could provide it, provided that full disclosure was not made and that sort of thing. If people wanted to access more information they would have to go in and approach the office.

For the layman out there who puts politicians — I do not know whether it is above or below sex workers in reputation and the fact that we are all supposedly dodgy and we are all on the take, how do we sell that concept of not making this information fully available to any Tom, Dick or Harry who wants it?

Ms VERSEY — I suppose what I am looking at is residential addresses. The question I would ask is: provided that you have disclosed the fact that you own property in this suburb and maybe you can even disclose the value, is there really any necessity for members of Parliament's residential addresses to be disclosed online to whoever — those who wish them ill as well as those who simply are looking for other legitimate purposes?

Mrs VICTORIA — So you would say we could go ahead with going online if residential addresses were not included. Were there other provisions?

Ms VERSEY — I guess what I am saying is, and perhaps my submission put it the wrong way around, if you are going online, think what information you are putting online. The one piece of information which I have felt should not go online perhaps and could be done in another way was residential addresses. People's circumstances may change. They may have felt perfectly safe at the time the residential address went online but their circumstances may change. There may be a situation where it is no longer really safe for them to have their residential address disclosed online.

Mrs KRONBERG — Thank you very much for your comments and underscoring of my earlier comments about personal safety. If we could go to the concept of layering information, are you aware of any system where a layering process actually works and can be prevented from hacking? It seems to me that there is no system on earth that, if somebody wants to get into it, over time somebody in a very focused way cannot get into it anyway.

Ms VERSEY — I confess to not being a technology expert; I have other people who advise me about it. But I confess that I do not think anyone would be able to say we can make sure a system is totally secure. I think all my technology advisers would say to me, 'You can't ever guarantee a system is secure'.

Mrs VICTORIA — If I can add something in here, Jan, just for clarification's sake, when we are talking about the layering, we are talking about, if you like, having just a very brief summary online, but the rest all being held.

Mrs KRONBERG — Cached?

Mrs VICTORIA — No, no, on paper — in an office where people would physically have to go in and do a search, rather than somebody has access to this, somebody has access to that online, so only the summary would be what is published. Is that what you are saying?

Ms VERSEY — Yes. I was not suggesting that you have layers of access so only limited people can have access to certain information online. I was suggesting more that you layer it by having information online, but if you want to have more detailed information which people could still have access to, yes, you perhaps have that kept in a way that the register is kept at the moment, because already you do only produce the summary in any event. If the committee feels there should be more information available, I am just saying, 'Be careful what you decide to put online'. Perhaps one way is that if you feel that there should be more information available to the public, you do not necessarily put it all online. You have a summary, but then you have a different system where not everything goes out online.

Mrs KRONBERG — So it is at least a boom gate or a bump in the road.

Ms VERSEY — It is an indication of what may be available if someone wishes to then go and search further to get more details of information. That is just one suggestion of how you might do it to try to get that balance.

The CHAIR — Helen, in the act there is a code of conduct. It currently says that members ought not to use confidential information that they have gained in their capacity as a member of Parliament for their own personal advantage.

Ms VERSEY — The act does not actually have a code of conduct for MPs. I am not sure that the code of conduct has ever been adopted by Parliament.

Ms RISELEY — Sorry, we are talking about our act — the Members of Parliament (Register of Interests) Act.

Ms VERSEY — Your act. Sorry. I thought you may be plagiarising.

The CHAIR — I could see you thinking, 'Oh dear!'. It is this act. This act has a code of conduct and it says in it that you should not use information.

Ms VERSEY — Sorry, you confused me.

The CHAIR — I am sorry about that.

Ms VERSEY — I thought my act had suddenly changed colour.

The CHAIR — We have preoccupations with different acts, don't we? But coming to this one, it says under that code of conduct section that members ought not to use confidential information for their own advancement. I understand that in 2002 the Scrutiny of Acts and Regulations Committee prepared a voluntary privacy code for members of Parliament. I just wanted to ask you if you could throw any light on this. Do think the code in the act should include guidance about the way that MPs handle personal information by members — how they should do that?

Ms VERSEY — Obviously I, as the privacy commissioner, am somewhat disappointed that the code of conduct that the Scrutiny of Acts and Regulations Committee drafted has not been adopted, bearing in mind the history — when the information privacy act first went into Parliament it actually covered MPs. It was a house amendment that removed the coverage of the act to MPs in their handling of personal information, which includes general public information, and then the Scrutiny of Acts and Regulations Committee got in consultants and they produced a draft code of conduct. The government gave its response, but as far as I am aware there it lay and it has never been adopted by Parliament or MPs. I am disappointed that there is not a more general code of conduct so that members of Parliament can at least voluntarily sign up to a code of conduct to protect personal information generally. As we know, MPs collect an awful lot of personal information about the general public as well as each other.

The CHAIR — So your view is that that should be resurrected and we should have a good look at that?

Ms VERSEY — I would very much like to see it resurrected, because we do get inquiries from the general public who often query when MPs clearly have got information about them, such as when they get a birthday card on a significant birthday. We do get quite a lot of inquiries, and the public are often very surprised that the MPs are not covered by the act. That is how I came to be aware that the code of conduct did not appear to have ever progressed from the government response, because we did have a look so that we could at least point a member of the public in that direction — that MPs have a code of conduct that was not there.

The CHAIR — And on the birthday cards, they should look to their own relatives who ring us up and ask us to send them!

There is another matter I wanted to ask you about. We have had it put to us through other submissions that additional interests should include debts and liabilities of members of Parliament, rather than focusing, as it does at the moment, on their assets. Do you have a view on that at all?

Ms VERSEY — No. Again, it is a public policy view as to whether that should be included. All I would say would be to reiterate that if you do that again you may be collecting personal information about third parties, so I suppose my same comments would apply — about the publishing of that third-party information.

The CHAIR — Lastly, it has also been raised with us that the problem with the current register is that it is not cumulative, so it does not enable a person who is interested in looking at a particular MP's assets to see what has been bought and sold and what the history of ownership and divestment of assets could tell them. Do you have a view on that? I know you have talked in the broad about those things.

Ms VERSEY — I probably do not have a particular view about that. Again, I guess what you are looking at is what the purpose of this register is. If that would meet one of the purposes of the register, then obviously I would not have a problem with it. One of the principles is data quality. Of course if it was cumulative it would not matter, because it would simply be showing the updating. I probably do not have a particular view on that.

Mr CLARK — I am not sure if you could shed any light on this from your experience of other instances. You have referred, quite rightly, to the fact that once material is published online it is available to the whole world. One key aspect of that these days is data mining, where people are ferreting out information and matching it up against other information. Do you have in mind any particular instances where there might be data mining or other harvesting of the data that is in the members register if it were put online? Are there any particular examples of how that could be potentially open to abuse or misuse?

Ms VERSEY — I cannot give you a particular example, but I am certainly conscious that any information that goes online is going to almost certainly be picked up somewhere in the world and mined and accumulated.

There will be someone somewhere making profiles and that information will inevitably end up on that profile. I think you can guarantee that if it goes online it will be used somewhere for profiling and data mining.

The CHAIR — Thank you both very much. As I said at the outset, you will be provided with a copy of the transcript and you can make some minor adjustments to that — and that will go online! Thanks very much.

Witnesses withdrew.