

Submission 8

To: Standing Committee on Social Policy and Legal Affairs
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From: Mr. Yau Hang CHAN

[REDACTED],
[REDACTED]

Re: s.59AB (Disclosing information to private sector bodies)
as in Schedule 2 (Part 2 starting on p.23) of
Crimes Legislation Amendment (Powers and Offences) Bill 2011

Date: 9 February 2012

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4. You may contact me at my home address.
5. If you post to me, I would prefer you put your letter (if any) in an Express Post envelope and keep the identification sticker of the Express Post envelope on a copy of your correspondence posted to me. This is because some letters posted to me can go missing during the mailing process.

Submission (No. 1)

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1. On The Australian of 20 January 2012, Mr. Robin Speed published his objection to the Crimes Legislation Amendment (Powers and Offences) Bill 2011 (“Bill”) in its current form.
2. The objection of Mr. Speed has included “the incompatibility between the presumption of innocence of the employee and the assumption in the Bill that the view of the ACC as to the guilt of a person is conclusive and that the information disclosed is complete, accurate, admissible in court and has been independently verified”. Mr. Speed then referred to the current safeguards of the presumption of innocence and wrote:

“Inherent in the Bill is the risk of bypassing these safeguards, sweeping away the presumption of innocence, having the employee damned as a ‘rogue employee’ and having the private sector do the dirty work of ‘dealing’ with the employee; and all behind closed doors. No proper protections are provided to the employee. Nor is an employer protected who dismisses an employee when it turns out the ACC was wrong or its information defective or it failed to disclose information in that discloses innocence. The Bill needs to be withdrawn and rethought.”

3. Although Mr. Speed did not identify which part of the Bill he was writing about, he was probably referring to s.59AB (Disclosing information to private sector bodies) as in Schedule 2 (Part 2) of Crimes Legislation Amendment (Powers and Offences) Bill 2011. If so, I agree with Mr. Speed that the said s.59AB needs to be withdrawn. I agree with Mr. Speed’s reasons as cited above.
4. However, I do not think it would be necessary for said s.59AB to be “rethought” because said s.59AB has bypassed all “these safeguards” as mentioned by Mr. Speed. No amount of rethinking by any “thinker” will prevent an alternative form of s.59AB from bypassing “these safeguards”. In fact, it is the true objective of s.59AB to bypass all “these safeguards”. It is a conspiracy of the promoters of s.59AB to bypass all “these safeguards”. Therefore no alternative forms of s.59AB can really be conceived by any “thinker” to give up on this true objective to bypass “safeguards”.
5. To avoid confusion as to what s.59AB is being promoted by the conspirators, their s.59AB has included the following subsections:
 - (1) The CEO may disclose ACC information to a body corporate that is prescribed, or is included in a class of bodies corporate that is prescribed, by the regulations for the purposes of this section if:
 - (a) the CEO considers it appropriate to do so; and
 - (b) the CEO considers that disclosing the information to the body is necessary for a permissible purpose; and
 - (c) the body has undertaken, in writing, not to use or further disclose the information except:

- (i) as referred to in subsection (3); or
 - (ii) as required by a law of the Commonwealth, a State or a Territory;
and
 - (d) the body has undertaken, in writing, to comply with any conditions the CEO specifies under subsection (4) or (5); and
 - (e) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.
- (2) The CEO may disclose ACC information to a body corporate under subsection (1) only if:
- (a) for information that is personal information (within the meaning of the Privacy Act 1988)—the CEO considers that disclosing the information is necessary for the purposes of: (i) preventing criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or (ii) detecting criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or (iii) facilitating the collection of criminal information and intelligence in relation to criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); and
 - (b) in any case—the information is not confidential commercial information relating to another body or person.
- (3) The CEO must specify, in writing, any permissible purpose for which the ACC information may be used or further disclosed.
- (4) If the CEO discloses ACC information that is personal information (within the meaning of the Privacy Act 1988) to a body corporate, the CEO must specify, in writing:
- (a) one or more conditions that the body corporate must meet in relation to monitoring and controlling any further disclosure of that information by an employee or officer of the body corporate; and
 - (b) a condition that the information is not to be disclosed to a person who is not an employee or officer of the body corporate, other than in any circumstances specified.
- (5) The CEO may specify, in writing, any other conditions that the CEO considers appropriate in relation to ACC information that is disclosed under, or in accordance with, this section (whether in relation to personal information or any other ACC information).
- (6) An instrument made under subsection (3), (4) or (5) is not a legislative instrument.
6. Please acknowledge receipt of this Submission (No. 1) which is an attack on s.59AB only. This Submission (No. 1) is not about any other part of the same Bill. Do not hesitate to ask me questions (e.g. to clarify) or to attend your hearing/meeting (if necessary).