

Schedules

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“Schedules are used to improve readability. The removal of certain minor administrative or technical matters to schedules allows the substantive provisions to be presented more conspicuously”- The Law Commission, *Legislation Manual: Structure and Style*, 1996

“The contents of schedules can be of equal importance to or even greater importance than material in the body of the Act.”
- The Law Commission, *Legislation Manual: Structure and Style*, 1996

“If frequent amendments are likely, then it may be appropriate to draft an empowering provision in the main body of the Act that allows the schedule to be amended by Order in Council. However, such a provision should not be included without a clear understanding of its possible consequences.”
- The Law Commission, *Legislation Manual: Structure and Style*, 1996

“The publishing of the Fifth Schedule adds transparency providing the public with an assurance that there is some control over the use of the information.”
- Department for Courts, submission S33

13.1 INTRODUCTION

13.1.1 The Privacy Act 1993 has eight schedules. Removing certain administrative or technical matters to the schedules has allowed the substantive provisions in the Act to be presented more conspicuously. It is hoped that users of the Act can find their way through the sections in the Act in a more straightforward way because of the removal of some detail to the schedules. However, the schedules are just as much a part of the Act as the sections which precede them and some contain important provisions.

13.1.2 Aspects of the schedules have already been discussed in relation to the relevant sections. Recommendations for amendment to the schedules are placed with the applicable sections. This part of the report briefly canvasses each schedule, notes some relevant developments and refers to the relevant recommendations.

13.1.3 In terms of structure and layout I have already recommended that certain changes in legislative drafting styles adopted by the Parliamentary Counsel Office from 1 January 1997 should be applied throughout the Privacy Act.¹ Changes of particular note in this context are:

- numbering schedules 1, 2 instead of first, second etc;
- including the text of schedule headings in the analysis.

13.2 FIRST SCHEDULE

13.2.1 The First Schedule sets out provisions applying in respect of the Commissioner and is discussed above in relation to section 25.² Changes recommended are that:

¹ See recommendation 1 and Appendix E.

- the power for the Minister to determine the number of persons to be employed be dropped;³
- the reference to the provision of office accommodation and services by the Human Rights Commission be changed or dropped.⁴

13.2.2 The First Schedule was amended in 1994 to insert a new clause 10A providing that the annual financial statements of the Commissioner must be audited by the Audit Office.⁵ I supported this change.

13.3 SECOND SCHEDULE

13.3.1 The Second Schedule lists the public register provisions and documents deemed to be public registers. It is discussed above, at paragraphs 7.2 and 7.14, in relation to sections 58 and 65. It has been amended several times to add further register provisions to the list. The current list of public register provisions, with the registers to which they relate, is set out in Appendix I.

13.4 THIRD SCHEDULE

13.4.1 The Third Schedule sets out a list of information matching provisions and is discussed at paragraph 10.2 in relation to section 97. It is proposed that a further column be included so that it is made plain which specified agencies are involved with each programme.

13.5 FOURTH SCHEDULE

13.5.1 The Fourth Schedule sets out the information matching rules and is discussed in relation to sections 97, 99 and 107.⁶

13.5.2 It is fair to say that people who have to use the information matching rules often find the provisions of the Fourth Schedule somewhat confusing. Some of the specific issues have been discussed already and are the subject of recommendations. Others revolve around phraseology, definition and structure, which need further study before attempting to make any changes. It may also be that some of the material in the schedule might be easier to follow if supplemented with a flow-chart. I have no specific suggestion to make in that regard, since I have explained elsewhere the matter requires more study than I have been able to devote as part of this review, but I do wish to recommend that the study be made and change adopted if practicable.



RECOMMENDATION 154

The Ministry of Justice, together with the Privacy Commissioner and the specified agencies, should study the Fourth Schedule to consider whether:

- the information matching rules might be expressed more clearly;**
- the clarity or effectiveness of the rules would be enhanced by the use of new concepts, which might be defined, or by defining existing concepts that are used;**
- the use of flow-charts would improve presentation.**

13.6 FIFTH SCHEDULE

13.6.1 The Fifth Schedule concerns law enforcement information and is discussed at paragraphs 11.3 and 11.5 in relation to sections 111 and 113. It has been amended

² See paragraph 3.15.

³ See recommendation 45.

⁴ See recommendation 46.

⁵ The amendment was made by the Health and Disability Commissioner Act 1994.

⁶ See paragraphs 10.2, 10.4 and 10.12.

several times to reflect restructuring in the justice sector and changes in information sharing arrangements.

13.7 SIXTH SCHEDULE

13.7.1 The Sixth Schedule sets out enactments amended by the Privacy Act 1993. The Schedule is referred to in section 129(1) and requires no further comment.⁷

13.8 SEVENTH SCHEDULE

13.8.1 The Seventh Schedule lists the enactments repealed by the Privacy Act 1993. It mainly reflects the consolidation of the Privacy Commissioner Act 1991 and the repeal of the Wanganui Computer Centre Act 1976. The Schedule is referred to in section 129(2) which is mentioned at paragraph 12.18.5

13.9 EIGHTH SCHEDULE

13.9.1 The Eighth Schedule sets out orders made under the Wanganui Computer Centre Act which were revoked by the Privacy Act 1993. The Schedule is referred to in section 129(3) which is discussed above.⁸

13.10. NEW SCHEDULES

13.10.1 Elsewhere in this report I have recommended the creation of two new schedules. The proposals are for schedules:

- consolidating aspects of the consultation provisions in sections 117, 117A and 117B;⁹
- establishing mechanisms for granting suppression directions in relation to public registers.¹⁰

13.10.2 I have also, at several places, mentioned the possibility of placing material in new schedules while stopping short of recommending this option over any other. For example, consideration could be given to:

- consolidating, in a schedule, the content of sections 72, 72A and 72B which provide for the transfer of complaints;¹¹
- transferring the good reasons for withholding personal information into a schedule.¹²

7 Section 129 is discussed at paragraph 12.18.

8 See paragraphs 12.18.6 - 12.18.13.

9 See recommendation 145.

10 See recommendation 99.

11 See paragraph 8.10.3 and recommendation 145.

12 See paragraph 4.1.17 and recommendation 47.

