

Summary of Recommendations

R

1. PRELIMINARY PROVISIONS



RECOMMENDATION 1

PAGE 30

The relevant changes in legislative drafting styles recently adopted by the Parliamentary Counsel Office should be applied throughout the Privacy Act. (See paras 1.2.13 - 1.2.15)



RECOMMENDATION 2

PAGE 32

The marginal notes and headings in the following principle, sections, Part and rule should be amended to make them more helpful, accurate and precise: principle 9; sections 7, 27, 28, 42, 45, 73, 95, 100, 101 and 105; Part X; information matching rule 8. (See paras 1.2.16 - 1.2.23)



RECOMMENDATION 3

PAGE 33

The present section notes concerning the official information legislation should be presented in a comparative table at the end of the Act. (See paras 1.2.26 - 1.2.28)



RECOMMENDATION 4

PAGE 33

The Parliamentary Counsel Office should be requested to arrange for a consolidated reprint of the Privacy Act following the implementation of reforms adopted as a result of this report. (See para 1.2.29)



RECOMMENDATION 5

PAGE 37

An appropriate committee of Parliament should consider whether it is desirable to grant individuals access rights to information held about them by the House of Representatives or to adopt rules similar to any of the 12 information privacy principles. (See paras 1.4.15 - 1.4.20)



RECOMMENDATION 6

PAGE 39

An appropriate committee of Parliament should consider whether it is desirable to:

- (a) adopt any measures to encourage members of Parliament to apply, or follow, any of the 12 information privacy principle; or
- (b) provide that MPs in their official capacities are agencies for some purposes of the information privacy principles. (See paras 1.4.27 - 1.4.28)



RECOMMENDATION 7

PAGE 40

Consideration should be given to whether it is appropriate to replace the total exemption for the Parliamentary Service Commission in subparagraph (b)(v) of the definition of “agency” with a partial exemption. (See paras 1.4.29 - 1.4.32)






RECOMMENDATION 8

PAGE 40

The partial exemption for the Parliamentary Service in subparagraph (b)(vi) of the definition of “agency” should be repealed, or further restricted, if this can be achieved in a manner that does not impact upon the exemption in subparagraph (b)(iv). (See paras 1.4.29 - 1.4.32)

-  **RECOMMENDATION 9** PAGE 42
 Consideration should be given to including a definition of “tribunal” limited to statutory tribunals forming part of the New Zealand administrative or judicial structure. (See paras 1.4.40 - 1.4.41)
-  **RECOMMENDATION 10** PAGE 43
 Subparagraph (b)(ix) of the definition of “agency” should be repealed so that the Ombudsmen are considered to be an “agency” for the purposes of the Act. (See paras 1.4.43 - 1.4.48)
-  **RECOMMENDATION 11** PAGE 48
 Consideration should be given to adopting a new definition of “document” in section 2 in conjunction with any redefinition of the term in the proposed Evidence Code. (See paras 1.4.71 - 1.4.73)
-  **RECOMMENDATION 12** PAGE 49
 Consideration should be given to amending the definition of “personal information” to clarify the position of information sourced from, but not contained in, the register of deaths. (See para 1.4.80)
-  **RECOMMENDATION 13** PAGE 50
 Consideration should be given to redefining or recasting “public sector agency”, “Minister”, “department”, “organisation” and “local authority”. (See paras 1.4.82 - 1.4.86)
-  **RECOMMENDATION 14** PAGE 51
 Consideration should be given to enacting a definition of “private sector agency”. (See paras 1.4.87 - 1.4.88)
-  **RECOMMENDATION 15** PAGE 52
 The definition of “statutory officer” should be moved from section 2(1) into section 3. (Refer para 1.4.98)
-  **RECOMMENDATION 16** PAGE 55
 Consideration should be given to the desirability of enacting a definition of “use” which will encompass the retrieval, consultation or use of information. (See paras 1.4.103 - 1.4.111)
-  **RECOMMENDATION 17** PAGE 55
 Section 2(2) should be replaced with a more concise provision. (See paras 1.4.112 - 1.4.113)

2. INFORMATION PRIVACY PRINCIPLES

-  **RECOMMENDATION 18** PAGE 66
 Section 46(4) should be amended to provide that a code of practice may require an agency to take all practicable steps to ensure that an individual may ascertain the agency’s policies and practices in relation to particular personal information. (See paras 2.5.5 - 2.5.8)
-  **RECOMMENDATION 19** PAGE 67
 Information privacy principles 1, 3(1) and 8 should be amended to substitute the phrase “purpose or purposes” for the word “purpose”. (See paras 2.5.10 - 2.5.12)
-  **RECOMMENDATION 20** PAGE 67
 Information privacy principle 3(4)(a) should be repealed. (See paras 2.5.17 - 2.5.19)

-  **RECOMMENDATION 21** PAGE 70
Information privacy principle 3(4)(f)(ii) should be repealed. (See paras 2.5.20 - 2.5.24)
-  **RECOMMENDATION 22** PAGE 71
Consideration should be given to establishing a judicial warrant process in relation to the use of covert video surveillance in the investigation of offences. (See paragraph 2.6.5)
-  **RECOMMENDATION 23** PAGE 74
Information privacy principle 5(a)(ii) should be amended by inserting the word “browsing” or “inspection”. (See paras 2.7.13 - 2.7.16)
-  **RECOMMENDATION 24** PAGE 76
Information privacy principle 7 should be suitably amended so that agencies are obliged to inform requesters, in cases where the agency is not willing to correct information, that they may request that a statement be attached to the information. (See paras 2.9.6 - 2.9.7)
-  **RECOMMENDATION 25** PAGE 78
Information privacy principle 7 should be supplemented with a right to prevent the use or disclosure of personal information for the purposes of direct marketing through the deletion or blocking of personal information held by the agency for direct marketing purposes. (See paras 2.9.8 - 2.9.15)
-  **RECOMMENDATION 26** PAGE 80
Consideration should be given to amending information privacy principle 8 to substitute the phrase “use or disclose” for “use” in the first line. (See paras 2.10.4 - 2.10.10)
-  **RECOMMENDATION 27** PAGE 84
Section 46(4) should be amended to provide that a code of practice may require an agency to retain specified information or documents for a specified period, not exceeding six years. (See paras 5.11.12 - 5.11.18)
-  **RECOMMENDATION 28** PAGE 91
In relation to the controls on reassignment of unique identifiers:
(a) information privacy principle 12(2) should be limited so that the prohibition is solely in relation to the reassignment of unique identifiers originally generated, created or assigned by a public sector agency; and
(b) section 46(4) should be amended to make it clear that a code of practice may apply the controls in principle 12(2) to the assignment of unique identifiers generated, created or assigned by any agency (not simply a public sector agency). (See paras 2.14.12 - 2.14.17)
-  **RECOMMENDATION 29** PAGE 92
Section 66(1) should be amended so that an interference with privacy may be established notwithstanding the absence of any harm or detriment of the type set out at section 66(1)(b) in cases of wilful breach of information privacy principle 12(2). (See paras 2.14.18 - 2.14.23)
-  **RECOMMENDATION 30** PAGE 95
Section 7(1) should be amended by transferring its content, in so far as it relates to information privacy principle 11, into principle 11 as a new exception. (See paras 2.15.15 - 2.15.19)

**RECOMMENDATION 31**

PAGE 95

Consideration should be given to transferring the content of:

- (a) section 7(4) into information privacy principles 1 to 5, 7 to 10, and 12 as exceptions; and
- (b) section 7(5) into Part VI. (See paras 2.15.15 - 2.15.19)

**RECOMMENDATION 32**

PAGE 96

The content of section 7(2) and (3), in so far as they relate to information privacy principle 6, should be relocated into Part IV. (See paras 2.15.20 - 2.15.21)

**RECOMMENDATION 33**

PAGE 98

Section 7(2) and (3), in so far as they relate to information privacy principle 11, should be repealed and replaced with a single provision, which may be relocated into principle 11 itself, to the effect that where another enactment imposes a more restrictive obligation of secrecy or non-disclosure than principle 11, the principle does not operate to provide additional grounds for disclosure. (See paras 2.15.22 - 2.15.30)

**RECOMMENDATION 34**

PAGE 99

A sunset clause should provide for the expiry of section 7(3) after a period of 3 years. (See paras 2.15.34 - 2.15.38)

**RECOMMENDATION 35**

PAGE 107

The Act should be amended to include express provision for controlling transborder data flows, consistent with clause 17 of the OECD Guidelines and the emerging international approach to data export. In particular consideration should be given to providing:

- (a) a mechanism which would enable mutual assistance to be extended to prohibit data exports in circumstances where New Zealand is being used as a conduit for transfers designed to circumvent controls in EU and other privacy laws;
- (b) mechanisms for imposing restrictions concerning categories of personal information for which there are particular sensitivities and in respect of which the recipient countries would provide no adequate protection. (See paras 2.18.6 - 2.18.20)

**RECOMMENDATION 36**

PAGE 108

Section 11 should be amended so that the entitlement under information privacy principle 6(1) to have access to information held by an agency is a legal right in circumstances where the agency is prosecuting the individual for an offence. (See paras 2.19.4 - 2.19.8)

3. **PRIVACY COMMISSIONER****RECOMMENDATION 37**

PAGE 111

There should be provision for the Commissioner to put a case for funding directly to Treasury and relevant Ministers. (See para 3.2.5)

**RECOMMENDATION 38**


PAGE 132


Section 15(3) should be amended to make clear that a deputy may be designated as an alternate Human Rights Commissioner with the concurrence with the Chief Human Rights Commissioner. (See para 3.5.4)


**RECOMMENDATION 39**


PAGE 134


Section 20(2) should be amended by substituting “Human Rights Act 1993” for the reference to the “Human Rights Commission Act 1977”. (See para 3.10.2)


 **RECOMMENDATION 40** PAGE 134
 Consideration should be given to repealing section 21. Consequently section 13(1)(d) should be repealed and the content of section 21(1)(a) to (f) transferred to a rewritten section 22. (See paras 3.11.4 - 3.11.5)

 **RECOMMENDATION 41** PAGE 135
 Consideration should be given to the costs and benefits of having the Ministry of Justice include some of the information listed in section 21(1) in any future Directory of Official Information. (See paras 3.11.6 - 3.11.9)

 **RECOMMENDATION 42** PAGE 136
 Section 21(3) should be amended so that the Commissioner is obliged to have regard, in determining whether or not a directory of personal information should be prepared, to the compliance costs to agencies consequent upon such a determination. (See paras 3.11.10 - 3.11.11)


 **RECOMMENDATION 43** PAGE 137
 An appropriate amendment should be made to section 21(1) or 22 so that it is plain the Privacy Commissioner has the power to obtain from an agency the identity of the agency's privacy officer to enable the Commissioner to respond to enquiries from the public. (See para 3.12.5)


 **RECOMMENDATION 44** PAGE 138
 Section 23 should be amended to delete the words “within that agency”. (See paras 3.13.5 - 3.13.8)


 **RECOMMENDATION 45** PAGE 140
 Clause 2(3) of the First Schedule should be repealed so that the Minister does not have the function of determining how many staff the Commissioner engages whether generally or in respect of any specified duties. (Refer paras 3.15.4 - 3.15.6)


 **RECOMMENDATION 46** PAGE 140
 Clause 6(2) of the First Schedule should be repealed as being unnecessary. (See paras 3.15.7 - 3.15.8)












4. GOOD REASONS FOR REFUSING ACCESS TO PERSONAL INFORMATION












 **RECOMMENDATION 47** PAGE 148
 The existing reasons for refusal of requests set out in sections 27, 28 and 29 should be reorganised into an ungrouped list of reasons to make it easier for users of the Act to locate relevant provisions. (See paras 4.1.12 - 4.1.20)

 **RECOMMENDATION 48** PAGE 152
 Consideration should be given to the merits of redrafting the “maintenance of the law” withholding grounds to make more plain the constituent law enforcement interests protected. (See paras 4.2.8 - 4.2.19)












 **RECOMMENDATION 49** PAGE 153
 Consideration should be given to the desirability of enabling the withholding of information where there is a significant likelihood of harassment of an individual as a result of the disclosure of information. (See paras 4.2.20 - 4.2.24)

 **RECOMMENDATION 50** PAGE 155
 Section 28(1)(a) should be repealed as being unnecessary as a reason for withholding information. However if it is retained a straightforward definition of “trade secret” should be inserted into the provision. (See paras 4.3.3 - 4.3.8)

-  **RECOMMENDATION 51** PAGE 156
 Consideration should be given to amending section 28(1)(b) to provide for withholding of information where the disclosure would unreasonably prejudice the commercial position of the agency itself, particularly where the information requested would reveal the agency’s bargaining position in respect of negotiations involving the individual concerned. (See paras 4.3.9 - 4.3.13)
-  **RECOMMENDATION 52** PAGE 158
 Consideration should be given to providing statutory guidance on the withholding of information in the common cases of “mixed” information concerning the requester and other individuals. (See paras 4.4.2 - 4.4.7)
-  **RECOMMENDATION 53** PAGE 160
 It should be made clear that section 29(1)(b) is not available in relation to material that is provided by a person within the agency as part of his or her job. (See paras 4.4.13 - 4.4.15)
-  **RECOMMENDATION 54** PAGE 160
 Sections 43 and 44 should be amended so that the grounds in support of the reasons for withholding evaluative material be given, without the requester needing to expressly ask, unless the giving of those grounds would itself prejudice the interests protected by section 29(1)(b). (See paras 4.4.16 - 4.4.19)
-  **RECOMMENDATION 55** PAGE 161
 Section 29(1)(b) should be amended to clarify that the author of evaluative material may refuse an information privacy request in circumstances where the material may be withheld by the recipient agency. (See paras 4.4.20 - 4.4.22)
-  **RECOMMENDATION 56** PAGE 162
 Consideration should be given to amending section 29(1)(c) to provide for consultation with the individual’s medical practitioner or, in the circumstances of the case, the individual’s psychologist. (See paras 4.4.26 - 4.4.31)
-  **RECOMMENDATION 57** PAGE 164
 Section 29(1)(f) should be redrafted so that it provides a self-contained explanation of the meaning of legal professional privilege. (See paras 4.4.39 - 4.4.43)
-  **RECOMMENDATION 58** PAGE 170
 Section 29(2)(c) should be redrafted to make plain the link with the obligations to transfer a request. (See paras 4.4.79 - 4.4.80)
-  **RECOMMENDATION 59** PAGE 172
 Section 31 should be repealed. (See paras 4.6.1 - 4.6.5)
-  **RECOMMENDATION 60** PAGE 174
 Consideration should be given to extending the application of section 32 to information to which section 29(1)(e) applies. (See paras 4.7.5 - 4.7.7)
5. **PROCEDURAL PROVISIONS RELATING TO ACCESS TO AND CORRECTION OF PERSONAL INFORMATION**
-  **RECOMMENDATION 61** PAGE 180
 The standing requirements in section 34 should be abolished. (See paras 5.3.1 - 5.3.16)

-  **RECOMMENDATION 62** PAGE 181
Public sector agencies should be entitled to make a reasonable charge, of the type permitted by section 35, for making information available to an individual overseas who is neither a New Zealand citizen nor permanent resident. (Refer paras 5.3.19 - 5.3.21)
-  **RECOMMENDATION 63** PAGE 181
If the general standing requirement in section 34 is removed then section 13(3) of the Adoption (Intercountry) Act 1997 should be repealed. (See para 5.3.22)
-  **RECOMMENDATION 64** PAGE 184
Section 35 should be redrafted in a simpler fashion. (See paras 5.4.2 - 5.4.3)
-  **RECOMMENDATION 65** PAGE 185
Section 35(3)(b)(i) should be repealed. (See paras 5.4.4 - 5.4.6)
-  **RECOMMENDATION 66** PAGE 188
The Commissioner or the Tribunal should be empowered to exempt an agency from having to deal with a particular individual's access request for a fixed period where it can be shown that the individual has lodged requests of a repetitious or systematic nature which would unreasonably interfere with the operations of the agency and amount to an abuse of the right of access. (See paras 5.4.9 - 5.4.16)
-  **RECOMMENDATION 67** PAGE 190
Section 37 should be amended to make it clear that in cases where a request for urgency has been substantiated, an agency is obliged to make reasonable endeavours to process the request with priority. (See paras 5.6.1 - 5.6.7)
-  **RECOMMENDATION 68** PAGE 193
Section 39 should be amended so that:
(a) an agency is relieved of the obligation to transfer a request in circumstances where it has good reason to believe that the individual does not wish the request to be transferred; and
(b) the agency duly informs the requester, together with information about the appropriate agency to which any future request should be directed. (Refer paras 5.8.2 - 5.8.3)
-  **RECOMMENDATION 69** PAGE 194
Consideration should be given to clarifying the meaning of the phrase "time limit fixed" in section 66(3) so as to emphasise the primary obligation to give access "as soon as reasonably practicable". (See paras 5.9.2 - 5.9.7)
-  **RECOMMENDATION 70** PAGE 195
Section 40(3) and (4) should be repealed. (See paras 5.5.98 - 5.9.11)
-  **RECOMMENDATION 71** PAGE 196
Complexity of the issues raised by a request should be added to the grounds for an extension of time under section 41(1) (See paras 5.10.6 - 5.10.7)
-  **RECOMMENDATION 72** PAGE 197
Section 41(3) should be amended by replacing the phrase "within 20 working days" with "as soon as reasonably practicable, and in any case not later than 20 working days". (See para 5.10.9)

6. CODES OF PRACTICE AND EXEMPTIONS FROM INFORMATION PRIVACY PRINCIPLES

-  **RECOMMENDATION 73** PAGE 209
Section 46(2)(aa) should be amended by deleting all of those words in parentheses, that is “but not all of those principles”. (See paras 6.2.9 - 6.2.11)
-  **RECOMMENDATION 74** PAGE 210
Section 46(4) should be amended by adding a paragraph acknowledging that a code may provide for such other matters as specified in any other Act. (See para 6.2.15)
-  **RECOMMENDATION 75** PAGE 211
Section 46(6) should be replaced with a provision which empowers the Privacy Commissioner to include in a code of practice a provision applying principle 11 to an agency, or a class of agencies, to health information about any deceased person for a period specified in the code beyond any such person’s death. (See paras 6.2.17 - 6.2.21)
-  **RECOMMENDATION 76** PAGE 212
Consideration should be given to amending section 47(3) to make it clear that a body can apply for a code whether it represents the whole of a class of agencies, industry, profession etc or just a substantial section. (See paras 6.3.1 - 6.3.8)
-  **RECOMMENDATION 77** PAGE 213
There should be provision for the Commissioner to require a representative body applicant to undertake notification under section 47(4) in terms directed by the Commissioner. (See paras 6.3.9 - 6.3.12)
-  **RECOMMENDATION 78** PAGE 214
Section 47(5) should be repealed. (See paras 6.3.13 - 6.3.17)
-  **RECOMMENDATION 79** PAGE 220
Section 54(1) should be amended to enable the Commissioner to grant an exemption to enable information to be kept notwithstanding that this would otherwise be in breach of principle 9. (See paras 6.10.6 - 6.10.7)
-  **RECOMMENDATION 80** PAGE 220
Section 54 should provide that the Commissioner may require the applicant to publicly notify an application in appropriate terms. (See paras 6.10.8 - 6.10.9)
-  **RECOMMENDATION 81** PAGE 222
Consideration should be given to the desirability of narrowing section 55(b) so as to enable access requests by the individual concerned to evidence given, or submissions made, to a Royal Commission prior to the report to the Governor-General where that evidence was given, or the submissions made, in open public hearing. (See paras 6.11.6 - 6.11.10)
-  **RECOMMENDATION 82** PAGE 224
Section 56 should be amended so that an individual cannot rely upon the domestic affairs exemption where that individual has collected personal information from an agency by falsely representing that he or she has the authorisation of the individual concerned or is the individual concerned. (See paras 6.12.5 - 6.12.11)
-  **RECOMMENDATION 83** PAGE 229
The exemption for intelligence organisations in section 57 should be narrowed so that principles 1, 5, 8 and 9 apply to information collected, obtained, held, or used, by an intelligence organisation. (See paras 6.13.1 - 6.13.24)

7. PUBLIC REGISTER PERSONAL INFORMATION

-  **RECOMMENDATION 84** PAGE 239
Public register privacy principle 1 should be amended so that search references be required to be consistent with the purpose of a particular register. (See paras 7.4.5 - 7.4.11)
-  **RECOMMENDATION 85** PAGE 240
As new public register provisions are enacted, or existing ones reviewed or consolidated or amended, consideration should be given to including statutory statements of purpose. (See paras 7.4.14. - 7.4.17)
-  **RECOMMENDATION 86** PAGE 241
Consideration should be given to establishing in the Act a regulation-making power to specify, in respect of any particular public register, the purposes for which the register is established and is open to search by the public. (See para 7.4.21)
-  **RECOMMENDATION 87** PAGE 243
Public register privacy principle 2 should be re-enacted with a structure which more clearly leads users to identify its elements. (See paras 7.5.6 - 7.5.7)
-  **RECOMMENDATION 88** PAGE 245
Public register privacy principle 3 should be amended by adding “in New Zealand” after the words “a member of the public”. (See paras 7.6.12 - 7.6.13)
-  **RECOMMENDATION 89** PAGE 246
If recommendation 88 is adopted, there should be a power in the Act to make regulations, after consultation with the Privacy Commissioner, in respect of any public register to authorise and control the electronic transmission of personal data which is not limited to members of the public within New Zealand. (See paras 7.6.12 - 7.6.13)
-  **RECOMMENDATION 90** PAGE 247
Public register privacy principle 4 should be amended so that the constraints upon charging for access to personal information from a public register apply only in relation to the making available of information to the individual concerned. (See paras 7.7.1 - 7.7.4)
-  **RECOMMENDATION 91** PAGE 251
A further public register privacy principle should be enacted that provides that personal information containing an individual’s name, together with the individual’s address or telephone number, is not to be disclosed from a public register on a volume or bulk basis unless this is consistent with the purpose for which the register is maintained. (See paras 7.8.1 - 7.8.15)
-  **RECOMMENDATION 92** PAGE 252
Section 7(6) should be replaced with a subsection in section 8 providing that the information privacy principles apply in respect of a public register only to the extent specified in section 60 and 63(2)(b). (See paras 7.9.6 - 7.9.8)
-  **RECOMMENDATION 93** PAGE 253
Section 60 should be amended as follows:
- (a) in subsection (1) omit the phrases “subject to subsection (3) of this section” and “so far as is reasonably practicable”;
 - (b) the content of subsection (3) should be moved adjacent to subsection (1) and redrafted in plainer fashion;
 - (c) in subsection (2) “person” should be replaced by “agency”. (See paras 7.9.9 - 7.9.11)

**RECOMMENDATION 94**

PAGE 253

Section 60(2) should be amended:

- (a) by omitting the words “as far as is reasonably practicable”; and
- (b) by substituting an exception based upon the authorisation of the individual concerned. (See paras 7.9.12 - 7.9.13)

**RECOMMENDATION 95**

PAGE 254

The public register privacy principles should be enforceable in a similar manner to the information privacy principles by amending, as necessary, sections 61(3)-(5) and 66. (See paras 7.10.4 - 7.10.6)

**RECOMMENDATION 96**

PAGE 258

The Order in Council process in section 65 should be utilised to add existing register provisions in enactments to the list in the Second Schedule. The Ministry of Justice should commence work to identify the relevant enactments, and to consult with the relevant agencies, so that the first Order in Council is ready to be issued during the 1998/99 year with the completion of the project by the end of the following year. (See paras 7.14.1 - 7.14.7)

**RECOMMENDATION 97**

PAGE 258

The Ministry of Justice should, in carrying out the exercise to bring register provisions into the Second Schedule pursuant to section 65, also consider in respect of each register the desirability of issuing regulations under section 121 of the Domestic Violence Act 1995. (See paras 7.14.9 - 7.14.11)

**RECOMMENDATION 98**

PAGE 264

A new public register privacy principle should be created which obliges agencies maintaining public registers to adopt a process to hold details of an individual's whereabouts separately from information generally accessible to the public where it is shown that the individual's safety or that of the individual's family would be put at risk through the disclosure of the information. An exception is to be provided where alternative safeguards exist to ensure that such information is not disclosed to the public for purposes unrelated to the purposes for which the information was collected or obtained. (See paras 7.15.1 - 7.15.21)

**RECOMMENDATION 99**

PAGE 265

A mechanism should be established in Part VII of the Act, with the details set out in a new schedule, enabling individuals to obtain suppression directions in relation to public registers which would replace Part VI of the Domestic Violence Act but be applicable to a wider range of circumstances concerning personal safety and harassment. (See paras 7.15.22 - 7.15.26)

**RECOMMENDATION 100**

PAGE 266

The official information statutes should be excluded from questions of release of personal information from public registers. (See paras 7.16.1 - 7.16.5)

8. COMPLAINTS

**RECOMMENDATION 101**










PAGE 271

Section 66(1) should be amended by deleting the words “and only if”. (See paras 8.2.1 - 8.2.7)

**RECOMMENDATION 102**

PAGE 272

Section 67(2) and (3) which provide for the lodging of complaints under the Privacy Act with the Ombudsmen, and for the transfer of such complaints, should be repealed. (See paras 8.3.2 - 8.3.3)

-  **RECOMMENDATION 103** PAGE 273
Section 70(2) should be amended so that the Commissioner is obliged to advise of the procedure to be followed only where he has decided to investigate a complaint so as to avoid overlap with the obligations in section 71(3). (See paras 8.6.2 - 8.6.4)
-  **RECOMMENDATION 104** PAGE 275
Section 70 should be amended to recognise that a decision to investigate a complaint, or to take no action on a complaint, may be postponed until preliminary inquiries are made of the complainant for the purpose of determining whether:
(a) the Commissioner has power to investigate the matter;
(b) the Commissioner may, in his or her discretion, decide not to investigate the matter; or
(c) the complainant wishes to proceed with the complaint. (See paras 8.6.6 - 8.6.11)
-  **RECOMMENDATION 105** PAGE 275
Consideration should be given to establishing a process whereby a decision by the Commissioner that a complaint is beyond jurisdiction can, on this question alone, be referred by the complainant to the Complaints Review Tribunal for its decision on the matter. (See paras 8.6.12 - 8.6.14)
-  **RECOMMENDATION 106** PAGE 278
Provision should be made in Part VIII of the Act for the Commissioner to defer action, or further action, on a complaint where:
(a) the complainant has not complained to the agency concerned and the Commissioner considers that the complainant should do so in an attempt to directly resolve the matter; or
(b) the complaint concerns an agency in respect of which there is an independent, expeditious and appropriate procedure for addressing such complaints available through an industry body which the complainant has not used. (See paras 8.7.5 - 8.7.16)
-  **RECOMMENDATION 107** PAGE 280
Sections 72, 72A and 72B should be combined into a single section providing for the referral of complaints to the Ombudsmen, Health and Disability Commissioner and Inspector-General of Intelligence and Security, and consideration should be given to listing other statutory complaints bodies. (See paras 8.8.1 - 8.10.2)
-  **RECOMMENDATION 108** PAGE 282
Adequate funding should be made available so that the volume of complaints received at the Office of the Privacy Commissioner can be processed, as required by section 75, “with due expedition”. (See paras 8.13.1 - 8.13.5)
-  **RECOMMENDATION 109** PAGE 282
Section 77(1)(a) should be amended so that the Commissioner is required to continue endeavouring to secure a settlement only where it appears to the Commissioner that settlement is possible. (See paras 8.15.1 - 8.15.2)
-  **RECOMMENDATION 110** PAGE 283
Section 78 should be broadened to encompass all charging complaints. (See paras 8.16.1 - 8.16.3)
-  **RECOMMENDATION 111** PAGE 285
Consideration should be given to including in, or following, section 81(5) a provision that the Prime Minister may refer a report given under section 81(4) to the Intelligence and Security Committee. (See paras 8.19.4 - 8.19.6)

**RECOMMENDATION 112**

PAGE 288

Provision should be made by amending section 82(2), or otherwise, to allow Tribunal proceedings to be brought by the Proceedings Commissioner where there is a breach of an assurance given to the Privacy Commissioner under section 74 or 77. (See paras 8.20.10 - 8.20.13)

**RECOMMENDATION 113**

PAGE 290

Section 88(2) and (3) should be more closely aligned with section 88(2) - (6) of the Human Rights Act 1993. (See paras 8.26.3 - 8.26.5)

9. PROCEEDINGS OF COMMISSIONER

**RECOMMENDATION 114**

PAGE 294

Section 92 should be amended so that the Commissioner may require an agency to comply with a requirement made pursuant to section 91 within a shorter period than 20 working days where the urgency of the case so requires. (See paras 9.4.1 - 9.4.5)

**RECOMMENDATION 115**

PAGE 295

Section 92(3) should be repealed. (See paras 9.4.7 - 9.4.9)

**RECOMMENDATION 116**

PAGE 298

Section 95(3) should be amended to specify that:
(a) the Prime Minister, in respect of paragraph (a); and
(b) the Attorney-General, in respect of paragraph (b);
personally may exercise the power to prevent disclosure of information to the Privacy Commissioner. (See paras 9.7.1 - 9.7.4)

10. INFORMATION MATCHING

**RECOMMENDATION 117**

PAGE 307

The definition of “adverse action” in section 97 should be supplemented by a paragraph relating to decisions to impose a penalty and to recover a penalty earlier imposed. (See paras 10.2.7 - 10.2.9)

**RECOMMENDATION 118**

PAGE 309

Consideration should be given to amending the definitions of “authorised information matching programme” and “information matching programme” in section 97 so as to exclude manual comparison from their scope. (Refer paras 10.2.14 - 10.2.20)

**RECOMMENDATION 119**

PAGE 309

Consideration should be given to replacing references in Part X and elsewhere to “information matching” by “data matching”. (See para 10.2.21.)

**RECOMMENDATION 120**






PAGE 310

The definition of “specified agency” in section 97 should be amended so that the agencies are listed in the Third Schedule alongside the information matching provisions to which they relate. (See paras 10.2.26 - 10.2.29)

**RECOMMENDATION 121**

PAGE 312

Consideration should be given to:
(a) including in section 97, in addition to the definition of “specified agency” (which could be renamed “participating agency”), definitions of “source agency”, “matching agency” and “user agency”; and
(b) utilising these newly defined terms in Part X and the Fourth Schedule as appropriate. (See paras 10.2.30 - 10.2.34)

-  **RECOMMENDATION 122** PAGE 313
Section 98(c) should be amended so that alternative means of achieving the objective of a proposed matching programme are examined with a view to considering whether they would be more, or less, privacy intrusive. (See paras 10.3.9)
-  **RECOMMENDATION 123** PAGE 315
Section 98(e) should be amended so that in considering whether a programme involves information matching on a scale that is excessive, regard is also had to:
(iii) the amount of detail about an individual that will be disclosed as a result of the programme; and
(iv) the frequency of matching. (See paras 10.3.10 - 10.3.13)
-  **RECOMMENDATION 124** PAGE 316
Section 98(f) should be amended so that the information matching guideline refers not only to the information matching rules but also to Part X of the Act. (See paras 10.3.14 - 10.3.18)
-  **RECOMMENDATION 125** PAGE 316
Section 99 should be amended to require the parties to review any information matching agreement at least once every three years and to report the results of that review to the Privacy Commissioner. (See para 10.4.4)
-  **RECOMMENDATION 126** PAGE 319
Consideration should be given to limiting the Inland Revenue Department's exemptions in section 101(5) and information matching rule 6(3) so that IRD is exempted from obligations to destroy information only where this is an intended objective of the programme. (See paras 10.6.3 - 10.6.4)
-  **RECOMMENDATION 127** PAGE 320
Section 102 should be amended to make clear that it refers to both the 60 working day time limit in section 101(1) and the 12 month time limit in section 101(2). (Refer paras 10.7.4 - 10.7.6)
-  **RECOMMENDATION 128** PAGE 320
Section 103(1) should be amended by substituting a 10 working day period for the present 5 working day period. (See paras 10.8.1 - 10.8.2)
-  **RECOMMENDATION 129** PAGE 323
Section 103(1A) should be repealed. (See paras 10.8.3 - 10.8.6)
-  **RECOMMENDATION 130** PAGE 324
Consideration should be given to amending section 104(2)(e) to adopt aspects of the clause 12(v) of the Australian Data-matching Program (Assistance and Tax) Guidelines. (See paras 10.9.4 - 10.9.6)
-  **RECOMMENDATION 131** PAGE 325
Section 105 should be amended so that the annual information matching report may be submitted separately from the annual report required under section 24. (See paras 10.10.1 - 10.10.5)
-  **RECOMMENDATION 132** PAGE 326
Consideration should be given to funding the Privacy Commissioner's information matching monitoring activities by charges on specified agencies involved in carrying out information matching programmes. (See paras 10.10.6 - 10.10.10)

**RECOMMENDATION 133**

PAGE 329

Information matching rule 1 should be retitled “Openness and public awareness concerning operation of programme” and consideration should be given to enhancing the rule by detailing mandatory requirements, and a variety of discretionary methods, by which agencies may ensure that individuals who will be affected by a programme are made aware of its existence and effect. (See paras 10.12.5 - 10.12.9)

**RECOMMENDATION 134**

PAGE 330

Information matching rule 2 should be amended by deleting the phrase “unless their use is essential to the success of the programme” and replace it with provision for agencies to apply to the Commissioner for approval to use unique identifiers where the Commissioner is satisfied that their use is essential to the success of the programme. (See paras 10.12.10 - 10.12.16)

**RECOMMENDATION 135**

PAGE 332

A more informative heading should be given to information matching rule 5 and consideration should be given to redrafting the rule in a clearer fashion possibly drawing upon the Australian approach and using defined terms. (See paras 10.12.23 - 10.12.25)

**RECOMMENDATION 136**

PAGE 334

Information matching rule 8(2) should be repealed or, if retained, its purpose and effect made plain. (See paras 10.12.31 - 10.12.33)

**RECOMMENDATION 137**

PAGE 334

Provision should be made for terms used in Part X, and the information matching rules, to be able to be defined in the information matching rules themselves. (See paras 10.12.34 - 10.12.36)

**RECOMMENDATION 138**

PAGE 335

Section 108 should be amended to replace the reference to “subclause (2)(d)(i) of principle 2 or paragraph (e)(i) of principle 11” with a reference to all of the exceptions to principles 2 and 11. (See paras 10.13.1 - 10.13.4)

11. LAW ENFORCEMENT INFORMATION**RECOMMENDATION 139**

PAGE 345

Section 112 providing for local authorities to be authorised to have access to law enforcement information should be repealed together with the definition of “local authority” in section 110 and the references to local authorities in the Fifth Schedule. (See paras 11.2.4 - 11.2.5, 11.4.1 - 11.4.7)

**RECOMMENDATION 140**

PAGE 346

If section 112 is not repealed in its entirety then the reference to local authorities in the Fifth Schedule relating to the national register of drivers’ licences should be repealed. (See paras 11.4.8 - 11.4.10)

**RECOMMENDATION 141**

PAGE 346

All existing approvals given under section 4E of the Wanganui Computer Centre Act 1976 should be reviewed and:

- (a) any that are unnecessary should be revoked;
- (b) any which need to be continued should be replaced, within a reasonable time, with a new notice carrying appropriate conditions issued under section 112. (See paras 11.4.11 - 11.4.12)

**RECOMMENDATION 142**

PAGE 347

Provision should be made to allow the Fifth Schedule to be amended by Order in Council subject to a five year sunset clause. (See paras 11.5.1 - 11.5.7)

12. MISCELLANEOUS PROVISIONS

**RECOMMENDATION 143**

PAGE 351

Consideration should be given to the merits of making consistent amendments to:

- (a) section 115 of the Act;
- (b) section 48 of the Official Information Act 1982; and
- (c) section 41 of the Local Government Official Information and Meetings Act 1987;

to meet the perceived difficulties of interpretation raised by the distinction in the first and second subsections of each of these provisions between “the making available of information” and the “making available of, or the giving of access to, information”. (See paras 12.2.1 - 12.2.4)

**RECOMMENDATION 144**

PAGE 352

Section 96, or the First Schedule, should be amended so that the obligation of secrecy clearly extends to former Commissioners and persons formerly engaged or employed in connection with the work of the Commissioner. (See paras 12.3.3 - 12.3.5)

**RECOMMENDATION 145**

PAGE 353

Sections 117, 117A and 117B should be combined into a single consultation section with consideration given to placing the details of the officer with whom consultation is to be undertaken and the purposes of such consultation in a new schedule. (See para 12.6.2)

**RECOMMENDATION 146**

PAGE 353

Consideration should be given to making provision, along the lines of sections 117 to 117B, for consultation with other statutory bodies such as the Police Complaints Authority. (See para 12.6.3)

**RECOMMENDATION 147**

PAGE 357

Sections 124 and 125 should be repealed and replaced by a single brief provision providing that the relevant delegation provisions in the Local Government Act 1974 and Local Government Official Information and Meetings Act 1987 apply. (See paras 12.13.1 - 12.13.5)

**RECOMMENDATION 148**

PAGE 359

There should be an offence provision created concerning any person who intentionally misleads an agency by:

- (a) impersonating the individual concerned; or
- (b) misrepresenting the existence or nature of authorisation from the individual concerned;

in order to make the information available to that person or another person or to have the personal information used, altered or destroyed. (See paras 12.16.5 - 12.16.8)

**RECOMMENDATION 149**

PAGE 360

There should be an offence created of knowingly destroying documents containing personal information to which the individual concerned has sought access in order to evade an access request. (see paras 12.16.9 - 12.16.12)

**RECOMMENDATION 150**

PAGE 362

Section 107 should provide that every information for an offence must be laid within 12 months from the time when the matter of the information arose. (See paras 12.16.17 - 12.16.19)

**RECOMMENDATION 151**

PAGE 366

A provision should be included to prohibit employers, prospective employers, and providers of services, requiring individuals to exercise their access rights to obtain criminal history information as a condition of obtaining employment, continuing employment, or obtaining services. (See paras 12.18.6 - 12.18.17)

**RECOMMENDATION 152**

PAGE 367

Provision should be made to constrain contractual requirements that oblige individuals to supply copies of health records. (See paras 12.18.18 - 12.18.19)

**RECOMMENDATION 153**

PAGE 368

Section 132 should be repealed. (See paras 12.21.1 - 12.21.3)

13. SCHEDULES

**RECOMMENDATION 154**

PAGE 370

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

- (a) the information matching rules might be expressed more clearly;
- (b) 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;
- (c) the use of flow-charts would improve presentation. (See para 13.5.2)