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Speech Notes

Welcome to Privacy Issues Forum 2003

Legislative Council Chamber
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Honourable and Distinguished guests

Good morning and thank you for inviting me to open this Privacy Issues Forum. This is not the first privacy forum I have addressed. But it is the first Forum I have addressed as the Minister responsible for privacy matters.

My interest in privacy legislation dates back to the passage of the Privacy Act 1993, when as a member of the Justice & Law Reform Select Committee, I gained an important insight into not only the range of academic views on the subject, but also the range of public opinion that continues to exist today. The history of NZ's legislation lies in part in the desire to be consistent with the OECD Guidelines, but we should not forget - the broader concept of privacy dates back to the Universal Declaration of Human Rights. And as a human right, it has never been more important than it is today with the technology making personal information more accessible. It was no accident that a Bill that began its passage through Parliament as the Privacy of Information Bill became the Privacy Act.

The legislation passed without too much controversy, both inside and outside Parliament. Doug Graham in moving the final reading said that:

“In so doing, I simply say to those people who have come to regard Parliament and its procedures as corrupt, and Parliament as being full of useless MPs who waste time, that I think if they look at the legislation they would gain some satisfaction from the way this very important measure has been handled by the House.”

The media, of course, spent their time editorialising over the fears they had that their news gathering would be affected by the legislation, which meant they did not focus on other aspects.

Since the passage of the Bill, there has been the occasional controversy, but often these controversies are occasioned by a misunderstanding of the legislation. The fact that this has reduced in volume is owed largely to the public face of privacy matters, Mr Bruce Slane, who was appropriately recognised in the New Year's Honours List for his outstanding contribution to the law and to New Zealand as a whole.

His dedication has been second-to-none, and it is to my great regret that his retirement matches my first year in the job. I want to publicly acknowledge and give my personal thanks to Bruce. His achievements have been significant, from the establishment of the Office of the Privacy Commissioner, to the development of various Codes of Practice. He has advised government on legislative and policy proposals, provided regular and frequent education sessions all over the country, and has been a calming influence in an area that could be fraught due to the interests of the media. He and his staff have worked hard to make New Zealanders aware that they have a right to privacy, that privacy is an important right and that it will be protected.

When the Privacy Act has come in for criticism it is often not the Privacy Act that is at fault. Mental health presents as a particularly potent example because of several tragic incidents in the last few years that have highlighted the difficulties that face that sector, with health professionals, families, and the community balancing the needs and rights of patients with those living around them. Of course in this are we are talking about the health Information Privacy Code that applies.

Some critics appear to misunderstand the key focus of the Act – namely that it is about individuals being able to access information about themselves, and to have some say over the flow of information about themselves to others.

Also, there are important exceptions to the rule contained within the Act and within the individual codes that access to other's personal information should not be given, and many of the mental health examples readily fall into those exceptions.

Due to the Office of the Privacy Commissioner's education programme more agencies and more individuals understand the operation of the Act, and this has led to more agencies being clear about the purpose for which information is collected.

If agencies are clear about their policies, then the Privacy Act works to enforce those policies. The example I always use is the sign that appeared on the airline counters after the law was passed. It indicated that the airline would not give out information about passengers due to the Privacy Act 1993. My view was that they should have said: 'Because we value our passengers right to privacy, we do not give out information about our passengers to anyone without their permission.' Saying that they had always followed this practice, even before the recent law change, would have wrapped up the reality of the situation.

The Privacy Act has been used as a convenient scapegoat, for a variety of reasons, and I expect that some of these issues will be further debated in some of the sessions today.

My appointment as Minister of Commerce has meant I have taken a particular interest in trade matters. Most recently, my officials have been working on the Privacy Commissioner's proposals to make changes so that we can advance our request to be granted a ruling that our data protection laws are "adequate" for the purposes of the European Data Protection Directive. The EU Directive is likely to prove highly influential outside the EU because of the data flow controls that it instigates. Our trading partners from Europe will obtain a measure of satisfaction from knowing that our data protection laws meet their standards for data protection. Accordingly, a ruling of "adequacy" will enhance New Zealand's position in world trade.

One of the topics for today is “Aspects of Genetics”. You will be aware that in 1997 UNESCO adopted the Universal Declaration on the Human Genome and Human Rights. This remains the only instrument of universal scope in the field of bioethics. We recently responded to an evaluation of the Declaration including information on what privacy or personal data protection laws exist in New Zealand that protect the disclosure of genetic information, and what exceptions apply. I look forward to seeing a copy of the results of the evaluation from UNESCO. This obviously impacts on some of the policy areas for which I have direct responsibility, such as proposals in the assisted human reproduction area. One of the key objectives of the proposed legislative amendments are to provide for a comprehensive information keeping scheme to ensure that children born as a result of assisted reproductive technologies have access to detailed information about their genetic heritage.

Closer to home, I hope sometime this year to be in a position to finally advance some of the recommendations made by Bruce Slane in his comprehensive statutory reviews of the Privacy Act since 1998. I think that would be the most significant tribute I could pay to his tireless work in terms of recommending changes to the Privacy Act.

You may also be aware that the Law Commission has also been considering privacy matters. Early last year it published a discussion paper raising a number of fundamental questions responding to the reference to consider the legal protection of personal information in New Zealand, including the public policy objectives behind the Privacy Act and the statutory machinery necessary to achieve those objectives.

My advice is that the overwhelming weight of the submissions received supported retention of the existing legislation, with some suggestions around practical application. I have asked the Law Commission to work with Justice officials to consider the next steps in light of the common themes raised by the submissions and the Privacy Commissioner’s recommendations

New Zealand can be very proud of its privacy tradition and the invaluable work of Bruce Slane and his office in maintaining our international reputation and in providing advice to improve the privacy protections in our domestic laws.

Today's Privacy Forum represents an important opportunity to discuss the variety of privacy issues from a range of perspectives.

The day will be enhanced by the involvement of the Australian & Hong Kong delegates who will add a global flavour to the discussions. I am also particularly pleased that the Honourable Justice Michael Kirby is here. His intellect and experience challenges us all to think about the issues.

As we draw to the end of the first ten years of the Privacy Act 1993, I believe we can reflect on a decade of achievement, and look forward to the future with confidence that the foundation that has been laid is strong.

I wish you an enjoyable and stimulating day, and look forward to learning of the results of your deliberations.