Privacy Commissioner
Te Mana Matapono Matatapu

Report of the Privacy Commissioner

for the year ended 30 June 1999

Presented to the House of Representatives pursuant to Section 24 of the Privacy Act 1993

Letter to Minister

November 1999

Hon Tony Ryall MP
Minister of Justice
WELLINGTON

I tender my report as Privacy Commissioner for the year ended 30 June 1999.

B H Slane
Privacy Commissioner

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I. Introduction

REVIEW OF THE ACT

The most challenging undertaking for the year was the completion of the review of the operation of the Act. Considerable resources were put into this because it was considered that the first such review should be a thorough one. It had always been intended that there would be wide consultation. This indeed took place. I visited a number of centres and arranged meetings with people who had made submissions and brought them together so that there was an exchange of views among those attending the meetings. These meetings were fruitful from my point of view and revealed very little underlying dissatisfaction with the idea of the Act or in the general way it was implemented.

The review of the Act resulted in a large number of recommendations to bring the Act up to date, enhance individual rights, reduce compliance costs, and to help New Zealand meet the adequacy test of the European Union data protection directive and to make the Act more accessible and easier to use. These proposals were made available to the Ministry of Justice in draft form early in the year. I was disappointed that, because of the shorter legislative year for the election, it was expected it might be difficult to give priority to any work on the recommendations. I felt however that there were some urgent matters which could be attended to in relation to the EU adequacy which could probably have been dealt with in non-controversial legislation by agreement with all parties in the House. Unfortunately the green light was not given to move in this direction.

I also suggested that concern for personal safety and home invasion could support action being taken to protect people at risk whose address details were accessible on public registers. Some families will be at risk. Allowing easy access by those with criminal intentions enables the ready location of the target. It is therefore sensible to provide for the removal of such address details from public search in appropriate cases. This accords with a strong public feeling that databases such as the motor vehicle register should not be accessible to criminals who want to get the address of a vehicle to steal, or to violent people wanting to trace someone or to stalk or intimidate. I believe that New Zealanders do not think that their information on public registers should be generally made available

in bulk for use for marketing purposes. All these recommendations would have accorded with current public safety concerns but none was taken up. I am confident that when time is available for consideration of the recommendations the need for some action will become evident.

The review report, *Necessary and Desirable: Privacy Act 1993 Review*, has been purchased by a number of agencies as the commentary on comparative provisions overseas and on almost every section in the Act have made it useful for those who work with the Act who want some insight as to the reasons for a particular section and why it is drafted the way it is. I believe the office has produced a resource that is unequalled in the review of any other legislation and I am grateful for the dedication of Blair Stewart in pursuing and completing the project. The report, which is valuable now, will be valuable for a long period. Funding for the carrying out of the review and the publication of the report was declined.

Electronic commerce

Strong leadership by OECD Ministers and business leaders was a boost for international recognition of information privacy issues. In October 1998 the OECD Ministerial Declaration on the Protection of Privacy on Global Networks made it abundantly clear that privacy issues are real. The OECD guidelines are not some sort of politically correct obstruction to good information practice but a sound basis for defining it. They are seen by OECD nations as promoting the free flow of information. Furthermore they recognise the concerns of consumers about the risks to their personal information in electronic commerce. People do understand the importance of information privacy. It is remarkable how many people correctly identify a privacy issue for themselves when something has gone wrong.

This seems to show that the New Zealand law, firmly based on the guidelines, accords with normal notions of privacy of one's personal information. Privacy may be hard to define but loss of it seems to be readily recognised. Increasingly agencies have come to recognise these rights in relation to their staff and customers and make a feature of them.

People oriented organisations recognise that individuals do not want surprises about what happens to their personal information. Openness, frankness and clarity of purpose are also hallmarks of

successful organisations. It is however important that privacy be regarded as an ingredient in the development of policy, the design of systems and the development of software.

Development of policy proposals

I am concerned that there have now been some examples in the public sector of the development of policy without privacy considerations being identified at an early stage and taken into account. Putting policy forward at a high level of general principle for Cabinet approval without indicating that there were important unresolved issues which were not to be tackled until a later stage should not occur.

The devil, of course, is in the detail. When these proposals do reach me and I, or the Assistant Commissioner, start to ask about the way in which the information will be collected, what information will be required, the purposes to which it will be put, who will have access to it, what will be publicly accessible, we are met with a statement that these matters are to be sorted out later. I do not believe that this is a valid method of policy making. The implications for people need to be identified from the start. It is essentially undemocratic in my view for a department or ministry to ask ministers to determine policy without flagging the privacy and other impacts on individuals. Certainly to put this forward without highlighting the possibility of trouble later is not a satisfactory basis for Cabinet to make decisions. I think it is therefore necessary to factor privacy issues into the policy making. This will generally result in little change in the attainment of the objectives of the policy but may affect radically the way in which that policy is to be implemented.

I have been impressed however in general with the willingness of Government agencies in contact with our office to address issues in a helpful way and to try and develop an approach which will meet privacy considerations without affecting the free flow of information essential for the purpose of the proposal.

Early discussion of proposals is welcomed and a good deal of time is spent on discussing matters which may not arise again in the form of legislation for some years. The office will always be interested in the amount of personal information that is being collected and will test whether all the information is needed for the purposes of the project. I cannot accept that with the Privacy Act

in place it is appropriate to collect information on the basis that it might be useful to have the information for unspecified uses later on.

Visit of Bruce Phillips

During the year the Canadian Privacy Commissioner, Bruce Phillips, visited New Zealand for the purposes of speaking at the Privacy Issues Forum. Mr Phillips has spent a lifetime as a reporter and was Chairman of the press gallery in the House of Commons as well as the political editor for a television channel after a lifetime of newspaper work. I therefore thought it was a useful opportunity to bring him to New Zealand where there had been a long-standing campaign by the newspaper industry to discredit the Privacy Act and to suggest that privacy considerations should always come second to what they considered to be freedom of speech. In his annual report this year Mr Phillips set out his views:

> "Defenders of a private life are often accused of interfering with an "open" society, as if freedom of information and a free press obliges everyone to live in metaphorical glass houses. Certainly government must be open and accountable to its citizens, allowing us to draw conclusions about the quality of government policy and administration. And the media has the right and responsibility to report on matters of public interest, guided (one fervently hopes) by a concern for accuracy and fairness. But there is no obligation in a free society for individuals' lives to become an open book for government, the media, or their neighbours. Some evidently choose to bare more than many of us care to know – witness some prime time TV. But what we can share about our lives, and with whom, are choices only the individual can make. Respect for one another's boundaries is the hallmark of free societies..."

> "Perhaps not enough people yet realize that privacy and freedom are inextricably linked; one cannot exist without the other. Those who doubt the proposition are invited to consider this: if you would measure the degree of freedom extant in a society, look first to the degree of privacy enjoyed by its inhabitants. The relationship is striking..."

> "Is privacy dead? Assuredly it is struggling, but struggle is the eternal and unchanging fate of all freedoms. Freedoms, once lost, can only be regained at the cost of great effort and pain.

None can say with certainty that freedom will not be lost here. But if freedom survives at all, so too will privacy, because by definition freedom cannot exist without the right to a life free of surveillance and regimentation."

Mr Phillips was invited by the National Press Club to speak at a luncheon in Wellington and was subsequently interviewed by Radio New Zealand. However, no reporters were sent to cover his speech to the National Press Club, and only one Wellington paper had a reporter telephone him for an interview while he was at the forum in their city – to establish how a journalist could possibly be a Privacy Commissioner. The interview did not appear.

I am disappointed that given an opportunity to confront these issues the New Zealand newspapers failed to report Mr Phillips' views, although individual journalists met him and enjoyed his discussions of the issues.

During the Forum the Minister of Justice and Attorney General, the Hon Doug Graham also set out his views on the Privacy Act:

"After five years of the Privacy Act it is useful to reflect upon our experiences of the Act. When the Government introduced the Privacy of Information Bill into Parliament in August 1991 it met with considerable opposition. Concern was expressed by many sectors that did not think that they could work with the proposed information privacy principles. It is interesting to note that many of those who were opposed at that time have since managed to incorporate the Act's approach into their business practices. The Act continues to come in for a lot of criticism. However, the frequent wrongful citing of the Privacy Act is not a criticism of the Act itself rather an indicator of poor training or bad public relations. Critics often miss the key focus of the Act – namely that it is about individuals being able to access information about themselves, rather than being concerned with preventing the flow of information..."

"The Act's principled approach is unusual but it provides guidance for agencies in establishing good information handling practices. The protection of individual privacy interests can have some positive spin-offs for business if approached in a sensible and constructive manner. The information privacy principles encourage fair and open dealings with customers and clients which must be seen as positively enhancing service levels. Some

sectors in particular have benefited from the implementation of good information handling practices…"

"If there were no Privacy Act, business would still need to deal with privacy concerns and information handling issues but these would be addressed in a haphazard and ad hoc manner. Arguments can be made that compliance with the Privacy Act is cheaper than having no Act and having to respond to public concerns without a proper mechanism to do so."

The Privacy Act does enhance personal freedom and autonomy increasingly at risk from the intrusive society. With some changes I have proposed, the Act is well-placed to continue to protect the personal freedom of the individual as we leave the Nineties. But it will require all the vigilance and all the determination of the Office of the Privacy Commissioner and of its talented staff and such resources as can be mustered.

Co-operation

My office maintains close and courteous relationships with a number of crown agencies and Parliamentary offices. The consequent exchange of information is useful for all concerned. Co-operative activities are also undertaken with the Human Rights Commission, the Race Relations Conciliator and the Ombudsmen. The Ombudsmen have developed a case management system which they have made available to other agencies. The system is one that has proved itself over the years and is well suited to the work of this office.

I want to record my appreciation of the permission so readily granted by the Chief Ombudsman, Sir Brian Elwood, to use the software in this office when our new computers are installed.

II. Office and functions of the Privacy Commissioner

GENERAL

The Privacy Commissioner is independent of the Executive. This means I am, and can be seen to be, free from influence by the Executive when investigating complaints. This is important because I am from time to time called on to investigate complaints against Ministers or their departments and ministries. My independence is also important for some of my other roles, such as examining the privacy implications of proposed new laws and information matching programmes.

I have a responsibility to report to Parliament through the Minister of Justice, and am accountable for my functions as a crown entity under the Public Finance Act.

When exercising my functions, the Privacy Act requires me to have regard to the information privacy principles and to the protection of the human rights and social interests that compete with privacy. This includes the general desirability of a free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way. I must also take account of international obligations accepted by New Zealand, including those concerning the international technology of communications, and consider any developing general international guidelines which are relevant to the better protection of individual privacy.

One of my functions is to receive and investigate complaints and provide an independent opinion as to whether there has been an interference with privacy. I do not act as an advocate for either party: my role is impartial and investigative. My role also includes acting as an conciliator to try to resolve complaints. Complaints made to my office may be referred to the Proceedings Commissioner (appointed under the Human Rights Act), who may bring civil proceedings before the Complaints Review Tribunal. I refer very few complaints to the Proceedings Commissioner, as most of them are resolved satisfactorily during my investigation process.

I also have a function of promoting by education and publicity

an understanding and acceptance of the information privacy principles. I have had an enquiries team available to answer questions and have for several years maintained a toll free enquiries line so that people may make enquiries without charge from anywhere in New Zealand. This service has had to be restricted and many callers must now leave messages, which are usually responded to within one or two days.

As part of my educative role, I have maintained a website from which people may download information about the Privacy Act at no charge. My website contains many publications, including codes of practice, casenotes, fact sheets, speeches and reports. The website was rebuilt during the year to bring it into line with users expectations. It is a powerful tool for my office, and many enquirers are directed to it for the information they require.

I also conduct workshops and seminars and maintain open communication with the news media.

Another of my responsibilities is to monitor government information matching programmes which must be carried out in accordance with the provisions of the Privacy Act.

I have a function of issuing codes of practice which can modify the information privacy principles by:

- prescribing more stringent or less stringent standards than are prescribed by the principles;

- exempting any action from a principle, either unconditionally or subject to any prescribed conditions.

A code may also prescribe how the information privacy principles are to be applied or complied with.

One of my functions is to make public statements on matters affecting privacy. Speaking publicly on issues I may act as a privacy advocate, but must have regard to wider considerations. One of my most significant roles is to comment on legislative, policy or administrative proposals that have some impact on the privacy of the individual or classes of individuals. Many of my recommendations are adopted by government departments, cabinet committees or by select committees in the course of their consideration of policy and legislative proposals. In every case I have had to balance privacy

interests against the interests that compete with privacy.

Other functions of the Privacy Commissioner are found in section 13 of the Act. They include:

- monitoring compliance with the public register privacy principles;

- making suggestions to any person in relation to the need for, or the desirability of, action by that person in the interests of the privacy of the individual;

- reporting to the Prime Minister on any matter that should be drawn to her attention and, particularly, the need for and the desirability of taking legislative, administrative or other action to give protection or better protection to the privacy of the individual.

REVIEW OF THE OPERATION OF THE ACT

Section 26 requires the Privacy Commissioner to review the operation of the Act as soon as practicable after it has been in force for three years. The findings of the review are reported to the Minister of Justice along with any recommendations about necessary or desirable amendments. The review was a major undertaking during last year and the first six months of this.

In last year's report I mentioned some of the preparatory steps and consultation that had been undertaken. At the start of this year much of the report had been written but I continued consultations with organisations that might be affected by proposed recommendations or that had specialist knowledge of matters affected by such recommendations. In July 1998 I passed a virtually complete draft report to the Ministry of Justice so that the Ministry might become familiar with it prior to the time that I submitted the finalised report to the Minster. This was designed to assist the Ministry in its task of offering preliminary advice to the Minister on matters raised in the report.

I submitted my 437 page report, *Necessary and Desirable: Privacy Act 1993 Review*, to the Rt. Hon. Sir Douglas Graham in December 1998. It was tabled in Parliament on 15 December and made publicly available for sale. I am sure that the attractively presented and durable report will prove useful in the coming years, both as a refer-

ence work and as a resource in relation to any proposed amendments that might result.

At the same time, I released a 40 page highlights booklet explaining certain themes in the report and setting out all 154 recommendations. The text of the highlights booklet and recommendations were also made available immediately on my website. Some themes of the review as noted in the highlights booklet included:

- public registers, direct marketing and unrelated uses
- personal safety and protection from harassment
- computer crime
- convictions and medical records
- third party demands
- browsing confidential databases
- rethinking the exceptions: Parliament, Ombudsmen, Royal Commissions, news media and international
- intelligence organisations: reducing exemptions
- information privacy principles, withholding of information, codes of practice and offences
- data matching.

In each of these areas and others, the report canvassed the issues, options, submissions and offered recommendations for improvement. A number of the recommendations will have significance for the better protection of privacy and efficient operation of the Act. However, many of the others are minor in nature and could be characterised as fine tuning to make a good Act better.

Much of the initial print media coverage following the release of the report concentrated on proposals concerning:

- public registers;
- direct marketing.

I offered 16 recommendations in relation to public registers. Among those catching the news media's attention were proposals to protect people who fear for their safety if details of their whereabouts are released from public registers. There was also considerable media interest in ideas to constrain bulk release of register information for secondary purposes, such as profiling and direct marketing.

Direct marketing was the subject of a specific recommendation. I proposed that information privacy principle 7 be amended to provide a new entitlement to individuals: to have their details removed from, or blocked on direct marketing lists. This suggestion was based on a requirement in the data protection laws of all 15 European Union countries.

Among other mass media coverage were articles discussing the need for new laws to criminalise hacking into personal information on computers. The media also covered the desirability of applying further privacy principles to the country's intelligence agencies.

Beyond the mass media, there was also coverage in specialist publications. The Australian journal *Privacy Law & Policy Reporter* devoted its entire December 1998 issue to the report. This underlines the significance the New Zealand Privacy Act assumes in discussion of data protection issues in our region. *Human Rights Law and Practice* also devoted considerable space to discussing aspects of the report.

In early 1999, I gave a series of briefings in Auckland, Wellington and Christchurch to people interested in the report's recommendations. Participants were mainly drawn from those who had made submissions or purchased the report. Specialist briefings were also given to agencies involved in data matching and consumer protection.

The report remains with the Minister. It is up to the Government to decide which of the recommendations it wishes to implement. I would encourage it to consider the issues, and make its decisions concerning implementation, as soon as possible. Parliament has required, through the enactment of section 26, that there be periodic reviews of the operation of the legislation. The matter is not meaningfully completed until Government decisions are taken on the desirability of implementing change.

I particularly urge action in respect of the few small issues that call into question New Zealand's case for "adequacy" in terms of the European Union Directive on Data Protection. It would be a great pity if a lack of government action on fairly minor issues were to jeopardise the advantages that might otherwise accrue to New Zealand data processors, and businesses engaged in electronic commerce. There is a possibility that New Zealand will miss out on inclusion in any initial "white list" of countries offering adequate data protection. I am confident that implementation of certain recommendations in the report would strengthen New Zealand's case.

STAFF

Staff are employed by the Privacy Commissioner in the Auckland and Wellington offices. The manager for investigations is based in the Auckland office and is assisted by a complaints team leader in each office. The Assistant Commissioner reports directly to the Commissioner and has an officer reporting to him.

The enquiries officers, executive officer and accounts clerk report directly to the Privacy Commissioner.

As in previous years, the volume and nature of the work required a great deal of all who were employed. Although the number of incoming complaints has dropped, the increasing length of the queue has put considerable pressure on the Manager Investigations, the Complaints Team Leader and the investigating officers. They have maintained high standards in their work and have maintained a rapport with the agencies they commonly come into contact with.

The enquiries team has dealt with a significant increase in enquiries with patience and dedication.

The office has again been well served by its support staff, without whom the work of managers and staff would be considerably more difficult.

At 30 June 1999 the following staff were located in offices in Auckland and Wellington.

Susan Allison	Librarian (part-time)
Marilyn Andrew	Support staff (part-time)
Eleanor Cooley	Support staff
Heather Day	Investigating officer
Michelle Donovan	Investigating officer
Margaret Gibbons	Support staff
Sandra Kelman	Investigating officer
Sarah Kerkin	Executive officer
Kristin Langdon	Complaints team leader
Eve Larsen	Support staff
Ian MacDonald	Enquiries officer
Tania Makani	Enquiries officer
Deborah Marshall	Manager, Investigations
Sharon Newton	Support staff
Glenda Osborne	Accounts clerk (part-time)
David Parry	Investigating officer
Wendy Proffitt	Privacy policy officer
Amir Shrestha	Support staff
Silke Simon	Complaints team leader
Blair Stewart	Assistant Commissioner

I have also been well served by **Gary Bulog, Susan Pilgrim, Robert Stevens** and **Graham Wear** who have been engaged in legal, advising, investigative or publication work for me.

III. Report on Activities

GENERAL

Information matching

One of the first activities of the Privacy Commissioner under the Privacy Commissioner Act 1991, which preceded the passing of the Privacy Act 1993, was responsibility for monitoring information matching between Government agencies. In the first full year there were three authorised information matching programmes operative. This year the report is on 19 information matching programmes of which two are being discontinued. This is the first time the report of those activities could be regarded as optimistic. Previous criticisms of the unreliability of figures supplied by the Department of Social Welfare were almost invariably dismissed by Ministers as of no importance. This year I am happy to be able to report on the considerable efforts made to improve the quality of data supplied to me and consequently the quality of reports made to Parliament by me under the Act.

There is still some way to go. In particular I think it is unfortunate that figures relating to the collection of overpayments detected by information matching are not fully reliable. This is important in retrospect because great promises were made as to the savings which would be achieved by information matching. The calculation of amounts overpaid is only one step. The real benefit should be the elimination and reduction of overpayments by early detection, by information directed to beneficiaries, by the deterrent effect of the programmes and by good administrative practice within departments.

I do not believe that mere awareness of information matching is a sufficient deterrent. For instance, the number of significant overpayments to people on the unemployment benefit who commence work really needs analysis and action to ensure that by direct information to beneficiaries, those who are moving on to employment are aware that they must notify the Department of the date of commencement of employment and be clear that amounts overpaid will have to be recovered. It may well be that such people need some bridge to employment having regard to the delay in receiving the first pay. I am pleased to observe that some overpayments of less than one-week are no longer being established

as overpayments for subsequent recovery action. A more formalised approach to bridging the return to employment could result in substantive administrative savings and a better relationship with beneficiaries who may more willingly approach the department before commencing work so that benefits can be terminated on time. The administrative costs thus saved and the avoidance of the collection costs and of unrecovered debt would be substantial.

I am also concerned at the continued description of overpayments as benefit crime or benefit fraud, as I believe that these terms do not accurately characterise some of the situations which occur with overpayments. The Department chooses to credit accounts rather than pay by cheque, so there is no cheque to be returned if it is not properly payable. If the system later identifies the amount overpaid and notifies the individual, use of the term "benefit fraud" or "crime" is premature. One wonders what is achieved by stigmatising beneficiaries as criminals in these circumstances and whether it does not have an adverse effect.

Growth of data matching

The monitoring of data matching which has grown five fold has been conducted in my office at the expense of other operations. We understand that is in accordance with Treasury policy that such "core" activities should not receive any increased vote. However, in a small office reordering of priorities simply means that some important functions are not carried out. In my case this is a factor which has led to my inability to develop codes of practice which are awaiting my attention.

A proposal has been before the Minister of Justice for funding the assessment and monitoring activities of my office in relation to information matching, and indeed in appraising and reporting to Parliament on new proposals. It is proposed that the monitoring costs should be met by those departments that are proposing to carry out the information matching activities and who will benefit from them. In most cases large sums are involved in setting up the programme and then to operate it. The monitoring costs are by comparison very small. Monitoring is comparable to auditing and it is usual for the organisation being audited to pay the cost of the auditors.

I believe this approach will receive a sympathetic response from both Ministers and departments. Departments are aware how

difficult it is for my office to drop other activities in order to take up urgent assessments of proposed information matching programmes, and the limited help which I have been able to offer agencies in developing better reporting techniques and setting up appropriate reporting programmes.

Allied to this is the need for my office to be able to employ suitably qualified contractors to provide technical expertise both in relation to information matching and in relation to information technology issues which arise in other major sectors of concern such as health.

Capital equipment

It was heartening however to receive advice from the Ministry of Justice that a long standing request for funding to replace computers and to establish a management information system had been approved in the supplementary estimates. This amount of $180,000 was made available at the end of the financial year and will be spent in the first six months of the new year. It is worth noting that this is the first capital provided to the Privacy Commissioner. The office has never received any funding for working capital or for the purchase of assets. It has always seemed remarkable that a Crown entity can be set up without capital and expected to fund itself out of current grants and provide its own working capital by not spending grants calculated as necessary for the carrying out of its function.

Complaints funding

Lack of funding for complaints had a profound effect on the office this year. Once it was clear from the 1998 budget that no further funding would be made available to my office during the year it became necessary to reduce the resources expended on complaints to a level for which funds were provided. In fact complaints functions had partly been funded out of accumulated funds and this could no longer continue because the funds were exhausted. During the year departing complaints investigating staff were not replaced. Similarly support staff were reduced.

The office has taken an open and frank approach with complainants by making it clear that full investigations cannot be commenced in all but the most urgent of cases until an investigating officer becomes available. The alternative was to allocate work which would

be carried out inefficiently by over burdened staff. This is not an acceptable way of managing the work.

The formation of the "queue" has however highlighted an additional cost. A great deal of time is taken in dealing with people about the fact that their complaint is not being dealt with and discussing alternatives for action. I estimate that the cost of administering the queue is equivalent to the employment of another investigating officer.

By informal means it has been possible in the last year to bring to a conclusion some 46% of complaints without their being allocated to an investigating officer for formal investigation. Fifty-four per cent remain in a queue awaiting an investigating officer. This process has put an enormous strain on the Manager Investigations and the Complaints Team Leader and cannot continue indefinitely. The consequence is that we now have a growing core of serious complaints that require investigation which will be longer and more difficult to resolve. The apparent clearance rate is therefore misleading and gives an impression that the office is coping better than it is.

At the end of the year I received advice that additional annual funding of $200,000 plus GST would be made available from 1999/2000 for the purpose of reducing the backlog of complaints. This showed a lack of understanding of the actual situation which I had thought had been made clear. The extra $200,000 will not have any effect on the arrears as it is insufficient to allow me to meet the current level of complaints.

A strategy was therefore developed for the coming year which will involve taking selected complaints which would normally be investigated and, after consultation with parties, declining to investigate them so the complainant can issue civil proceedings in the Complaints Review Tribunal. I expect this will mean that some complainants who feel inadequate in such a forum will not take the case any further and others will proceed there where the process is more expensive. This will be more costly for respondent agencies - nearly half of which are taxpayer funded. Some legal aid requests will be made. If enough people can be persuaded to forego their rights to an investigation under the Act (including businesses seeking to be vindicated) it may be possible to reduce the queue over a number of years. It is, however, a fact that the additional $200,000 together with the funding normally available for com-

plaints, will not meet the current level of complaints being received. It is therefore necessary for me to identify cases which would otherwise warrant investigation to see if it is possible for them to also be dealt with by litigation. I appreciate that the costs to the taxpayer of a three person tribunal hearing will be higher than the cost of my investigation in most cases, but I cannot continue with a queue that is so long as to deprive both complainants and respondents of their rights to have their disputes resolved.

It is my view that this office being required to adopt this procedure is unfair to those who have complaints before this body. Substantially larger sums are available for investigation of complaints in the Human Rights Commission, the Office of the Ombudsmen, and the Health and Disability Commissioner. It seems strange to me that comparable funding is not available for this office. I cannot believe that Parliament could have expected Governments to have allowed this situation to develop.

I regret that these actions will result in a higher level of compliance costs. Other unfortunate effects can be that businesses and public agencies that genuinely thought they were entitled to withhold documents or to defend a case, will find that the passing of time has increased the loss suffered by the complainant and, on losing the case, will be faced with additional damages and probably an award of costs as well as having to pay for legal representation.

The Consumers Institute has highlighted this office as being the worst office for arrears and I am unable to explain why this office's complaints functions have been so inadequately funded other than its comparatively recent jurisdiction.

Enquiries

During the year a number of situations arose where it was clear that investigation of a particular complaint would not necessarily be the best approach to deal with what appeared to be a problem with an agency's handling of personal information. I have increasingly made use of the power to have a Commissioner initiated investigation, or to conduct an enquiry under section 13(1)(m). In this way I intend to use these provisions both to enquire into particular events that have occurred, as well as to ascertain what is planned in relation to the handling of personal information in certain situations. I am hopeful that this approach will reduce the need for complaints later. While costly initially, it should in the

end help to keep the complaints level down.

My office does not lightly take up a complaint and considerable time is taken with some complainants to explain that their complaint is unlikely to bring about the result that they desire. This is a long-standing policy and as precedents developed it was more readily a solution to dealing with some complaints. While usually a complaint is promptly notified, in some cases if the complaint is not pursued after initial discussion with my office, the agency would not be aware it had been made. I believe this is a useful way to reduce compliance costs for industry. I believe that the approach of the office is appreciated. There is no complaint which is pursued without thought as to the desirability of doing so and without frequent review as to whether or not complaint investigation should continue. I have appreciated, along with my staff, the ready cooperation of the vast majority of agencies which have complaints lodged against them and their willingness to approach these matters in a conciliatory way. I believe that most agencies are willing to accommodate reasonable complaints and to try to come to some resolution of them. Some are willing also to try and accommodate unreasonable complaints as well.

When alternative disputes resolution systems are being evaluated, I believe this inquisitorial approach will be shown to be more effective than one based on adversarial proceedings whether before an informal tribunal or a court. Analysis of the complainants before this office have shown that with 839 complaints closed within jurisdiction this year, only some 13 dissatisfied complaints have referred their complaint to the Complaints Review Tribunal. I consider that is an indication of the effectiveness of the complaints process. I think it is also a credit to the Act itself that critics are able to point to only two or three cases out of some 4,500 now completed where a controversial conclusion has been arrived at. I know of no similar legislation that has not brought about some controversy.

Major databases

It is necessary for practical business reasons to operate some databases containing personal information on the basis of ready accessibility by a large number of staff. These situations can occur in banks, hospitals, social welfare organisations and police.

Principle 5 of the Privacy Act requires agencies to ensure that

information is protected by such security safeguards as it is reasonable in the circumstances to take against loss or unauthorised access, use, modification, or disclosure or in fact any other misuse.

I indicated at the commencement of the Act that the security standards to be applied have to be flexible initially because the Act had come in to force at short notice. I also indicated that over the years when enhancements were being made to computer systems, care should be taken to bear the requirements of principle 5 in mind. Many agencies have taken practical steps such as establishing the means to detect who has had access to individuals' accounts. Providing adequate audit trails gives me confidence that it would be possible to deal with browsing or the obtaining of information for wrongful uses.

I was perturbed however to learn that there have been examples of the sale of information from Government owned databases. In some cases it has been said that consideration was given to providing adequate audit trails and the means to detect unauthorised access to particular information, but these have been rejected on the grounds of cost. I believe New Zealanders are entitled to a better attitude in these cases. Efficiency gains have been made by the institution of computer handling of personal data. These savings should not be at the cost of the people whose intimate personal details are held there.

I have drawn attention in my review of the Act to the need to take measures to deal with browsing and have made some recommendations for amendments to the Privacy Act in that respect. In the meantime, I believe it behoves every institution that is developing an enhancement to its computer operational systems or developing new ones, to take the legal requirement of principle 5 seriously. In my opinion it is also necessary to make provision for particular cases where information is particularly sensitive. A number of agencies categorise certain types of information and keep it where it is not available for general search. In a small country it may be necessary to take particular steps to protect people's information from friends and relatives working in the same institution, or to recognise that some information about some people will be of particular interest to those unscrupulous enough to access it for gossip or more sinister purposes. Computer professionals in my experience are aware of these issues and it is to be hoped that they will receive a sympathetic and understanding ear from management. In the absence of satisfactory steps being taken, substantial losses

may be incurred should such data be improperly dealt with. An example might be the sale of address information which could be extensive and could give rise to claims from large numbers of individuals. While the satisfaction of individual claims might not be costly, collectively organisations may regret that they did not take preventive steps early enough.

Workshops

I have been pleased with the development of the health information workshops and particularly of the mental health information workshops. I have found that when workshops are taken to health and hospital services there is an immediate improvement in the way in which the Act is applied. I appreciate that hospitals have been under considerable pressure regarding funding and this has caused training programmes to fall behind. However, I am also concerned that the quality of training in some of those organisations is such that the staff are still attributing to the Privacy Act, policies which they have the right to establish themselves. For instance, in relation to mental health information, agencies can develop their own reasonable policies on making information available to members of a patient's family, caregivers or others. It is therefore inappropriate for such agencies to declare that they were bound not to hand over information "because of the Privacy Act" with the implication that, but for the Act, they would have handed over that information. Investigation in a number of cases has shown that the policy was not to hand out such information. Reference to the Act was inappropriate. Health agencies should accept responsibility for the agency's own policies in relation to patient information. The availability of the *Guidance Notes for Agencies in the Mental Health Sector* has made a considerable difference, although it was disconcerting to find as a result of a survey by the Mental Health Commission, that distribution of these notes is uneven in such institutions.

Heartened by the response to this publication, my office had at the end of the year almost completed the preparation of a similar publication for all health agencies. Both publications concentrate on grouping certain types of information together so that those with a problem can look and find the answer to their question within two or three pages of the text.

I hope to accompany this new publication with a programme of training for hospitals and to persuade them that it would be appro-

priate to fund a video which could be used more informally by a number of agencies to keep professional staff up to date. It is clear that in the health sector there is a tendency to cite a belief in the provisions of the Health Information Privacy Code that is not based on having read it. The fault does not lie in the Code or in the Act or in my office, but with the lack of training that is being given. I also have concerns that failure to continue education is placing some major health agencies at risk of substantial claims.

CODES OF PRACTICE

Under Part VI of the Privacy Act I may issue codes of practice in relation to agencies, information, activities, industries, professions or callings. Codes may also be issued under Part VII in relation to public registers. I issued no new codes of practice during the year but the following codes, issued under Part VI in previous years and reported on in earlier annual reports, remained in force:

- Health Information Privacy Code 1994;
- Superannuation Schemes Unique Identifier Code 1995;
- EDS Information Privacy Code 1997;
- Justice Sector Unique Identifier Code 1998.

Amendments to, and review of, Health Information Privacy Code 1994

In last year's report I mentioned that I had released two proposed amendments to the Code, primarily to address technical issues. The consultation on both sets of amendments continued into the beginning of this year and in August I issued a composite amendment.

A number of the small changes introduced by the amendment simply corrected errors, provided clarification, or reflected health sector reforms or amendments to relevant legislation. However, there were also several more substantive amendments including:

- expressly providing that a health agency is permitted to disclose to an individual's principal caregiver the fact that the individual is released from compulsory status under mental health legislation;
- removing provision for notices to be issued by the Director-General of Health permitting agencies to reassign a National Health Index number as a unique identifier. This follows my concern at the expansion of common numbering systems throughout the health sector and beyond, and the unsatisfactory nature of the notice procedure.

Back in 1994, I included a provision in the Code requiring a review by July 1999. I did this to reassure the health sector that

such a significant code would be reassessed after a period to ensure that it remained appropriate, relevant and effective. In fact, my attitude throughout the Code's five years of operation has been to encourage stakeholders to contact me if they perceived the Code warranted amendment. I have been willing to use the amendment procedures where appropriate without waiting for this five year review.

In February I publicly invited comments on the Code. Very few submissions were received, and in June I announced that I did not intend to make any changes to the Code as a result of the review. Nonetheless, I took note of the comments made in submissions and will utilise some of them in a revision of the commentary which I plan for later in the calendar year. It is my impression that there has been general satisfaction in the health sector with the drafting and operation of the Health Information Privacy Code, and that it has appropriately tailored the requirements of the Act to the needs of the sector. That is not, in any sense, to suggest that there are few privacy problems in the health sector - there clearly are - merely that the legal framework established by the Code offers a satisfactory set of rules.

I remain willing to consider changes to the Code at any time. It is likely that changes will also be necessary to deal with other changes in the law such as accident compensation.

Notices under EDS Information Privacy Code 1997

This code established processes to be followed if certain specified personal information held by EDS on behalf of certain government entities (called "designated agencies"), is transferred off-shore for processing. The code requires notice to be given by the relevant designated agency to the Privacy Commissioner of any proposed transfer. The first notice from a designated agency was received during the year about the occasional, but routine, transfer of data to the USA following processing problems. Essentially, a "machine dump" of data is sent to overseas experts for investigation and analysis. Although no further notices were received during the year, I understand that several further designated agencies were in the same position as the agency which had given notice to me. Accordingly, my office pursued the matter with EDS and all the specified agencies. EDS undertook not to transfer further information from other agencies until the authorisation and notice processes had been completed.

Regulations Review Committee Inquiry into Instruments Deemed to be Regulations

During the year the Regulations Review Committee of Parliament conducted an inquiry into forms of delegated legislation, which although not issued by the Executive Council and published as "regulations" in the ordinary series, are nonetheless deemed to be "regulations" for the purpose of the Regulations (Disallowance) Act 1989. Codes of practice that I issue under the Privacy Act fall within this category. (As a result, codes are tabled in Parliament, subject to review by the Regulations Review Committee, and could be disallowed by the House of Representatives - as if they were "regulations").

The Committee's inquiry was timely: non-traditional forms of delegated legislation have become very popular in recent years. In my evidence to the Committee I explained how the Privacy Act addresses some of the issues of interest to the Committee in relation to codes of practice, and detailed the practical procedures for consultation and publication that I have adopted. I outlined the interaction between various pieces of delegated legislation and the requirements of the Privacy Act itself. I also drew the Committee's attention to the fact that the Cabinet Office Manual requires explicit consideration of the matter of compliance with the information privacy principles when issuing traditional regulations. No similar formal requirement applies when making other forms of delegated legislation, and this can be problematic if the resulting laws inadvertently, or unreasonably, intrude upon privacy. It is desirable, in my opinion, for any information privacy problems to be identified before delegated legislation is issued, rather than being discovered after the event through complaints to my office or the Regulations Review Committee.

COMPLAINTS

Complaints received

Table 1 shows the complaints received and closed during the year. I received slightly fewer complaints than last year but this is not entirely surprising. The Act has been in force for over six years and agencies should now be aware of their obligations, and have staff and processes in place to deal with privacy issues as they arise. I had always expected that a plateau would be reached after some years of increasing levels of complaints. The plateau is, in my view, about 1200 to 1300 complaints per annum.

As I will discuss later in this report, the lack of resources provided to my office has meant that complaints have to be placed in a "queue" system and it can be over 12 months before an investigating officer will be assigned to a complaint. This delay is another reason for falling complaint numbers: some people are discouraged from lodging a complaint. They effectively give up their rights. Although some complaints are treated with urgency, I have to limit the number so treated otherwise some complainants would never get to the front of the queue.

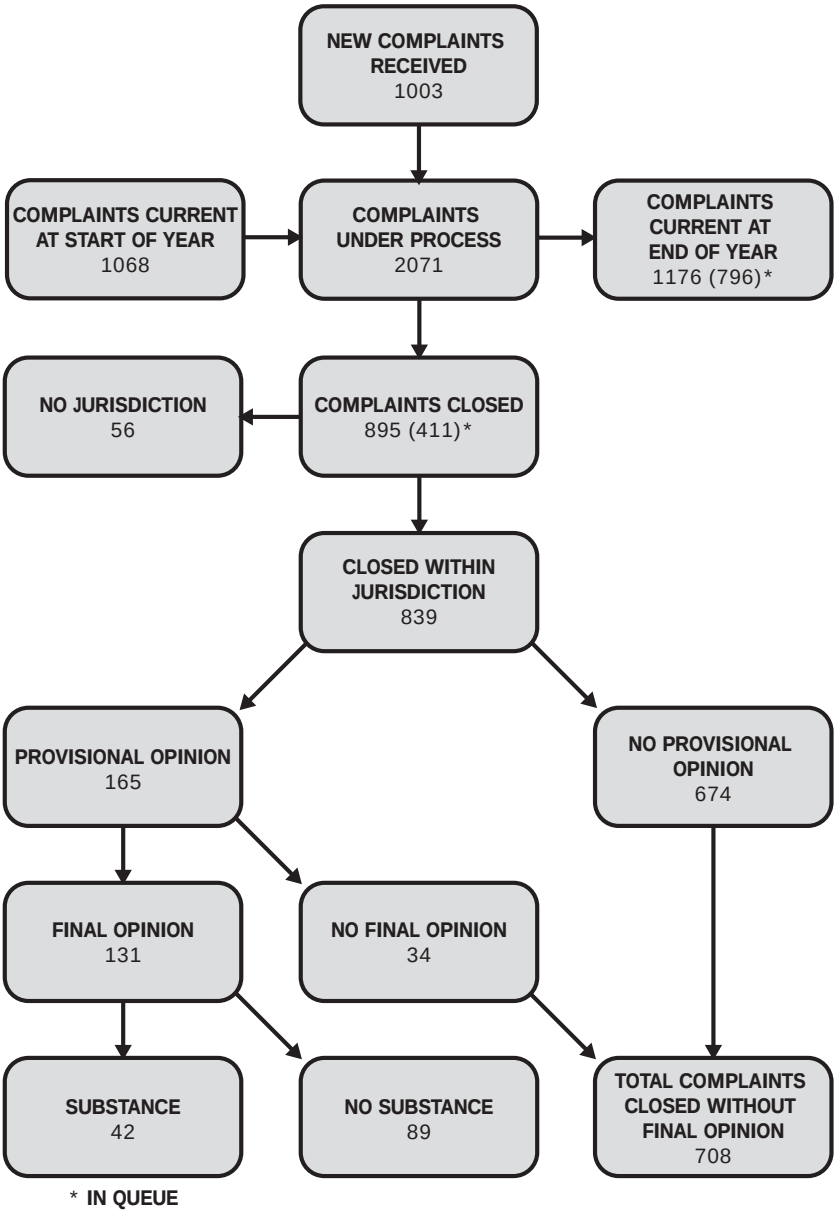
On the experience of longer established bodies overseas, complaints tend to increase in complexity as they steady or reduce slightly in numbers. That has occurred in New Zealand. They require more time and effort and fewer of them are being handled now.

TABLE 1: COMPLAINTS RECEIVED AND CLOSED 1995-99

	1994/95	1995/96	1996/97	1997/98	1998/99
Complaints received	877	993	1200	1088	1003
Complaints closed	633	972	870	804	895

Figure 1 represents the flow of incoming complaints and the complaints disposed of during the financial year.

FIGURE 1: COMPLAINTS 1998/99



During the year, 1003 new complaints were received. At the end of the year, 1176 complaints were current (under investigation). Of those, 796 were in the queue waiting to be assigned to an investigating officer. This figure has increased from last year, despite fewer incoming complaints and a higher closure rate. This figure is expected to increase over the next twelve months as the more readily resolvable complaints are closed, leaving a core of more difficult and complex complaints for investigation.

Only 6 per cent of the closed complaints were outside my jurisdiction, indicating that most complainants are aware of the nature of my jurisdiction.

The proportion of complaints closed by investigating officers is lower (54%) than last year (66%), due in part to budgetary constraints which did not allow for replacement of staff members who left. It also indicates that the more readily resolved complaints are being closed in the queue, leaving the investigating officers with complaints that are more complex and more difficult to resolve. This trend is expected to continue over the next 12 months.

It was possible to resolve 84% of complaints without forming a final opinion. This is consistent with figures from previous years. It indicates the willingness of parties to reach a conclusion acceptable to both with the assistance of my investigating staff. This "alternative" dispute resolution process is not often acknowledged in the plethora of material on dispute resolution.

Queued complaints

Complaints have been received for some years at a greater rate than I could investigate with the resources provided to me. To assign new complaints immediately to investigating officers would result in an unmanageable workload for those officers who each handle on average 40 to 50 complaints at a time. Investigating officers also contribute to the education function of the office. While some complaints had to be dealt with urgently, most were placed in a queue to be allocated as existing complaints were closed. At the end of this year 796 complaints were in the queue and a complainant would have to wait about 14 months for an investigating officer to be assigned.

However, the queue is not left idle. Investigations Manager, Deborah Marshall, and senior staff attempt to resolve as many

queued complaints as possible before they are assigned to investigating officers. The complaint is first assessed and on some occasions it is possible to resolve the matter immediately with the parties, especially if the complaint is similar to one previously investigated by the office. The outcome of that complaint can be explained and often the complainant advises they do not wish to proceed with the matter. Very often liaison between the complainant and the respondent agency will result in settlement of the complaint. This year 411 (46%) complaints were closed in the queue before being assigned to an investigating officer.

Examples of complaints closed while in the queue:

- A local authority sent a questionnaire to its tenants and included questions about their physical disabilities and mental health. The complainant considered the questions were unnecessary and intrusive. The local authority explained that its housing service was targeted and based primarily on socio-economic factors. Further, it was contracted to the local Health Funding Authority to provide support and some supervision to allow tenants to live independently. The questions were designed to assist in developing policies and criteria. I decided that further investigation of the complaint would not be a good use of my resources.

- A seafarer requested access to a doctor's report held about him by a government agency. The agency refused to provide him with the information as it considered it had been supplied under a 'promise of confidentiality.' After contact from my office the agency contacted the doctor concerned and he advised he had no objection to the information being supplied. The complainant received the information and was satisfied with that outcome.

Investigation of complaints

Complaints not resolved while in the queue are eventually assigned to an investigating officer.

Many of the complaints investigated can be settled without the need for me to form an opinion on the substance of the complaint. Section 74 of the Privacy Act provides that I may attempt to secure a settlement between the parties, where it appears possible, and I have incorporated this into my investigation procedure. Where appropriate, I may also attempt to obtain a formal assurance against the repetition of the action which is the subject matter of the complaint.

Settlement can be achieved in a number of ways. In some cases an explanation of some action is given or an apology is offered and, if the complainant is satisfied, I may close the file. Other cases may involve the payment of compensation or some other restorative action being undertaken. Complaints involving access to information are often resolved once the individual receives the information requested. In other cases, the delay in getting access may have caused some loss to the requester.

In some cases I may establish that the facts given by the complainant are inaccurate and conclude that further investigation of the complaint is unnecessary or unwarranted in the circumstances. In other cases the agency realises it is in breach and takes steps to resolve the complaint. In such cases I may discontinue my investigation without forming a provisional opinion.

If settlement is not achieved I may give my provisional opinion on the complaint. That may serve to resolve the complaint so that settlement can be achieved at this stage. If not, I may give my final opinion on whether the complaint has substance. I will usually try to obtain a settlement at this stage.

Of the 839 complaints which were closed within my jurisdiction, 708 were resolved without my having to form a final opinion on the substance of the complaint.

The following are examples of the sort of settlements offered during the year:

- An employer had suspicions that his employee (the complainant), had been stealing from the firm. The employer disclosed his suspicions about the complainant to the complainant's wife, who was a relative of the employer. The employer had not mentioned his suspicions to the complainant. The employer admitted that the disclosure should not have taken place and offered grocery vouchers in settlement. This was just before Christmas and the complainant accepted the vouchers as satisfactory settlement of his complaint.

- A bank offered an airline luxury mystery weekend for two for a disclosure of information from the complainants' bank account to one of their children.

- A man who had been covertly videotaping women in a chang-

ing room (and who had been investigated previously for such an action before the Privacy Act came into force) offered a financial settlement to the women involved and also gave a written undertaking to me not to repeat the action. Should the action reccur I would consider referring the matter to the Complaints Review Tribunal.

- A government department changed its forms to collect extra information from requesters in order to satisfy itself that requests for criminal conviction lists were being made by the individual concerned.

Complaints involving access

The right of access to personal information is an important right. It increases accountability in public and private sector agencies. Use of the right of correction helps to ensure that decisions affecting people are made on the basis of accurate and up to date information.

Access complaints are often simply calls for review of a decision not to make available some or all of the personal information to a requester. Figures for access complaints are taken from those complaints that are closed within jurisdiction and involve access. Complaints that involved breaches of other principles as well as principle 6 have also been included. Many access complaints are resolved after further information has been made available. Forty-three percent of complaints received this year involved an access review.

TABLE 2: COMPLAINTS INVOLVING ACCESS AS A PERCENTAGE OF TOTAL COMPLAINTS 1995-99

	1994/95 (%)	1995/96 (%)	1996/97 (%)	1997/98 (%)	1998/99 (%)
Access	42	36	40	32	43
Non access	58	64	60	68	57

TABLE 3: COMPLAINTS INVOLVING ACCESS BY SECTOR 1995-99					
	1994/95 (%)	**1995/96 (%)**	**1996/97 (%)**	**1997/98 (%)**	**1998/99 (%)**
Private Sector	41	49	55	49	41
Public Sector	59	51	45	51	59
	1994/95	**1995/96**	**1996/97**	**1997/98**	**1998/99**
Private Sector	150	176	256	170	148
Public Sector	218	181	206	179	212
Total	**368**	**357**	**462**	**349**	**360**

Access outcomes

Where I consider an agency has a proper basis for the decision to withhold information requested I form the opinion that the complaint has "no substance." Nine per cent of access complaints had no substance. In 63 per cent of access complaints the investigation was discontinued.

TABLE 4: ACCESS COMPLAINTS BY OUTCOME 1998/99	
Outcome	**Number**
Opinion - substance	19
Opinion - no substance	31
Settlement	84
Investigation discontinued	226
Total	360

The "investigation discontinued" figure includes complaints in which:

- I have exercised my discretion to discontinue the investigation;
- the individual was satisfied with action taken by the respondent and did not want any further action taken;
- there were other outcomes, including no further contact from the complainant or referral to another agency.

It must be borne in mind that requesters have no way of telling whether they have received all the information about themselves or, in many cases, of telling whether a withholding ground has been correctly applied. It is only the intervention of my office, which views the files and considers the withholding grounds, that can establish whether or not the review was justified. In many of the cases listed as "discontinued", my intervention has resulted in further information being made available, or an explanation has been given for the lack of further information. In such cases I do not usually find it necessary to make a final finding of substance.

Respondent agencies are becoming more aware of the entitlements to access which the Privacy Act provides to individuals. They are also becoming more familiar with the grounds under the Act to withhold information. However, I still receive a number of complaints alleging that agencies are not responding to requests within the 20 working day period required by the Act. Some examples of access complaints investigated during the year are:

- An animal welfare organisation investigated the complainant for cruelty to animals. The complainant wanted access to the informant information held by the organisation which had led them to commence the investigation. The organisation had found in the complainant's favour. The organisation supplied a summary of the information received, but withheld information which would identify the informant. I formed the final opinion that in this case the information could be withheld, as the organisation relied on the free flow of information to carry out its statutory function of protecting animals. Disclosure of informant information could have a chilling effect on the supply of information in the future.

- The Police advised the complainant and my office that all the information relating to the criminal charges the complainant was facing had been provided under the 'discovery' process. After the proceedings had been completed, however, they wrote to the complainant supplying 72 documents not previously provided.

Complaints involving disclosure

These complaints involve allegations of disclosure contrary to information privacy principle 11. Disclosure complaints form a significant proportion of the complaints received by me.

TABLE 5: COMPLAINTS INVOLVING DISCLOSURE AS A PERCENTAGE OF TOTAL COMPLAINTS 1995-99					
	1994/95 (%)	1995/96 (%)	1996/97 (%)	1997/98 (%)	1998/99 (%)
Disclosure	53	38	43	39	38
Non disclosure	47	62	57	61	62

Figures for disclosure complaints are taken from those complaints that are closed within jurisdiction and involve disclosure. Complaints that involved breaches of other principles as well as principle 11 have also been included.

TABLE 6: COMPLAINTS INVOLVING DISCLOSURE OF INFORMATION BY SECTOR 1995-99					
	1994/95 (%)	**1995/96 (%)**	**1996/97 (%)**	**1997/98 (%)**	**1998/99 (%)**
Private	67	71	73	65	59
Public	33	29	27	25	41
	1994/95	**1995/96**	**1996/97**	**1997/98**	**1998/99**
Private	206	250	271	195	186
Public	103	102	100	105	130
Total	**309**	**352**	**371**	**300**	**316**

Some typical complaints about disclosure are as follows:

- A Church official disclosed information about the complainant to a congregation, asking the congregation to pray for the complainant and the complainant's spouse. Information disclosed included details about their marital difficulties. The Church agreed to apologise.

- A psychiatrist disclosed sensitive health information about the complainant to four separate agencies, including the complainant's children's school. The hospital concerned admitted the disclosures were too wide and made a monetary settlement of $8,000 to the complainant.

Disclosure Outcomes

TABLE 7: DISCLOSURE COMPLAINTS BY OUTCOME 1998/99	
Outcome	**Number**
Opinion - substance	18
Opinion - no substance	45
Settlement	31
Investigation discontinued	222
Total	**316**

The "investigation discontinued" figure includes complaints in which:

- I exercised my discretion to discontinue the investigation;
- the individual did not want any further action taken;
- there were a number of other outcomes, including no further contact from the complainant or referral to another agency.

Other alleged breaches

The information privacy principles are concerned with the collection, use, storage and disclosure of information. Individuals may find that information held about them is inaccurate and request correction (principle 7). Complaints may arise due to the nature of the information collected (principle 1) or the means by which the information is collected (principle 4). Some agencies are subject to complaints when it appears that they have not taken adequate steps to safeguard information they hold (principle 5).

This table includes complaints made about breaches of the principles and Health Information Privacy Code rules other than principle 6 (access) and principle 11 (disclosure). It includes complaints made under s 22F of the Health Act and complaints made about breaches of information matching provisions. The figures are taken from complaints that are closed within jurisdiction.

TABLE 8: ALLEGED BREACHES OTHER THAN ACCESS / DISCLOSURE 1997-99		
Provision *	**1997/98**	**1998/99**
principle 1	30	45
principle 2	36	43
principle 3	39	40
principle 4	39	41
principle 5	62	52
principle 7	25	25
principle 8	62	59
principle 9	10	8
principle 10	23	31
principle 12	2	1
s 22F Health Act	4	6
information matching	-	3
*** includes complaints under Health Information Privacy Code**		

Principle 1

- The new driver licence application form requested details of certain medical conditions of which the applicant had been made aware in the last five years. In fact, the information collected should have been those conditions which affected the applicant's ability to drive, and an undertaking was made to correct the form accordingly.

Principle 4

- An electrician had been asked by ACC for information about clients he was doing work for in their home. He decided to tape record (without their knowledge) a conversation he had with them about the sort of work they had been undertaking themselves. ACC had not asked for any tape recording to be done and accepted that the conversation was recorded by unfair means. It refused to use the contents of the recording for its investigation.

Top 10 respondents

It would not be wise to look at the number of complaints received against individual agencies and conclude that those agencies must be lacking in Privacy Act compliance. Some agencies will, by the very nature of their dealings with the public and the sensitive nature of the information they hold, be subject to more complaints than other agencies.

The complaints included in these tables comprise the complaints made against these agencies which were closed within jurisdiction in the 1998/99 financial year.

The complaints against the Department of Social Welfare include complaints against NZ Income Support Service (prior to becoming part of WINZ) and the Children, Young Persons and their Families Agency.

The outcome table (table 10) shows the total number of complaints received together with the outcome of the complaint. Some of the results are self-explanatory but others could benefit from some explanation:

- "Investigation discontinued" indicates that I exercised my discretion to discontinue under s 71.

- "Other resolution" indicates that the complaint was resolved to the parties' satisfaction, although a settlement was not reached.

- "Other" is a catch-all category which includes a number of outcomes. Most frequently the complaints in this category were closed because the complainant did not wish to continue. Other outcomes include no further contact from the complainant or referral to another agency.

It is important to note the outcomes of complaints to the top 10 respondents, especially where complaints have been settled or where individuals do not require any further action from me. These outcomes indicate the willingness of the organisation to admit fault, where appropriate, and to address the issue to the satisfaction of the complainant.

TABLE 9: TOP 10 RESPONDENTS BY ALLEGED BREACHES 1998/99										
	Collection	**Security**	**Access**	**Correction**	**Accuracy**	**Retention**	**Use**	**Disclosure**	**Information matching**	**Total***
Department of Social Welfare#	1	2	40	6	5	-	1	18	3	76
NZ Police	5	4	36	2	2	-	3	21	-	73
ACC	8	-	14	2	6	-	-	8	-	38
Department of Corrections	1	5	14	1	-	-	-	7	-	28
Inland Revenue Department	2	5	4	-	1	-	-	11	-	23
Telecom New Zealand Ltd	6	2	4	-	1	1	1	7	-	22
Baynet CRA Ltd	1	-	2	2	7	3	-	2	-	17
Department for Courts	2	2	4	-	2	-	1	6	-	17
NZ Immigration Service	-	-	10	-	-	-	-	1	-	11
ANZ Bank	-	-	2	2	-	-	1	5	-	10

* Total number of alleged breaches may exceed the number of complaints received as one complainant may allege a number of breaches.
# Includes NZ Income Support (prior to amalgamation into WINZ) and Children, Young Persons and their Families Agency

TABLE 10: TOP 10 RESPONDENTS BY OUTCOME 1998/99							
	Settlement	**Investigation discontinued**	**Opinion - no substance**	**Opinion - substance**	**Other resolution**	**Other**	**Total**
Department of Social Welfare #	4	9	11	5	-	36	65
New Zealand Police	4	5	9	3	3	34	58
ACC	2	3	4	3	-	19	31
Department of Corrections	7	2	1	3	-	10	23
Inland Revenue Department	1	2	5	-	-	10	18
Telecom New Zealand Ltd	3	2	2	1	-	7	15
Baynet CRA Ltd	3	5	1	-	1	4	14
Department for Courts	1	1	2	-	-	7	11
NZ Immigration Service	2	1	2	-	2	3	10
ANZ Bank	2	2	-	-	1	4	9
# Includes, Children, Young Persons and their Families Agency and NZ Income Support (prior to amalgamation into WINZ)							

Complaints Review Tribunal

If my staff have not brought about a settlement, I may refer complaints which in my opinion have substance to the Proceedings Commissioner with a view to instituting proceedings before the Complaints Review Tribunal. If I do not do this, I tell complainants of their right to take their own proceedings in the Complaints Review Tribunal.

Last year I referred two complaints to the Proceedings Commissioner to consider whether civil proceedings should be issued.

Thirteen complainants commenced proceedings in the Tribunal after I:

- concluded that the complaint did not have substance; or
- concluded that the complaint had substance and could not be settled but I decided not to refer them to the Proceedings Commissioner for civil proceedings; or
- discontinued my investigation.

All but one of those complaints have been disposed of during the year:

- 6 claims were dismissed;
- 1 claim established a breach;
- 2 claims were settled;
- 3 claims were struck out.

EDUCATION AND PUBLICITY

Seminars, conferences and workshops

As in previous years, I received a number of requests from agencies for seminars and conference addresses. I attended eleven conferences through the year and gave a number of speeches to other organisations.

The fifth annual Privacy Issues Forum was held in Wellington in September and was attended by 171 people. It attracted a number of international speakers including the Privacy Commissioners of Canada and Hong Kong. It was followed by a day of problem-solving workshops for privacy officers, and both days were warmly received. I look on the events as useful and important for those working with the Act. They bring together people working in the field, from policy analysts, students and lobbyists, to privacy officers, departmental legal advisers and my own staff. They provide an opportunity to network, to discuss problem issues and to hear about international developments.

As in previous years, I continued to answer enquiries from the media. In doing so, I have given guidance on the proper way to frame official information requests and to identify situations where the Privacy Act is wrongly given as a reason for non-disclosure of personal information. I am pleased to provide this service to the Press. Newspapers continue to report refusals of reporters' requests by public sector agencies as based on the Privacy Act (when actually I find the Act was not referred to) in ignorance of the fact that such a request must be considered under the Official Information Act. There is a lack of understanding that that Act has always had powers to protect the privacy of individuals. When these are invoked by an agency an assumption is made that "privacy" must mean "the Privacy Act" and another urban myth about the Privacy Act is born.

Forty-one seminars and workshops were presented during the year by qualified and experienced staff from my office.

A full day workshop aimed specifically at the mental health sector was developed to complement the mental health guidance notes and provide clear and practical help to mental health professionals confronting privacy issues. The workshop was presented three times as part of my workshop programme in Auckland and Wellington.

It was also presented six times as an in-house workshop at a number of health agencies that sought training for their mental health staff. Generally when the courses have been held a much better understanding of the Code results. Agencies cease blaming the Privacy Act for their own disclosure policies and take responsibility for their information practices.

I also organised a series of health and mental health workshops in Christchurch, which were presented by Kathryn Dalziel a Christchurch-based lawyer. Those workshops were very well received.

The workshops have been a success this year in terms of participant satisfaction. My staff consistently receive good evaluations as presenters and the workshops consistently meet participants' expectations. I have been pleased with the growth in demand for in-house training. I particularly like sending my staff into organisations to provide in-house training. By developing materials and exercises specifically for the organisation concerned, they gain a better insight into the particular issues the organisation has, which means they can give more specific help to resolve those issues. They also build up good rapport with employees there, which means issues are more likely to be addressed at an early stage before they become complaints.

Printed resources

I continued my practice of releasing compilations of materials produced by my office. Two general compilations were released comprising papers, submissions and speeches.

During the year I released thirteen case notes on complaints I had investigated. Work was completed on a cumulative index of case notes. The index has been a useful resource to people working with privacy on a day to day basis. Case notes are indexed in a number of ways, including sector and provision, making it easy to find relevant precedent.

The objective of the case notes is to report some of the opinions I have reached on complaints, or to illustrate the types of complaints I receive and the approach I took on them. Some record a conclusion I reached for the first time on an interpretation of the Act. In other cases, the application of the law might have been quite straightforward but the principles were being applied to a new

set of facts, or in a setting that demonstrated a facet of the application of the Act that may not otherwise have been understood. Other case notes have been issued to provide a representative illustration of the opinions I have reached.

My case notes are widely distributed to law journals, media, privacy officers and others interested in privacy issues. They are often published in *Private Word* and are available free of charge from my office and on my website.

This year I also released a compilation of decisions of the Complaints Review Tribunal from 1997-1999, including two High Court judgments on appeal. As these decisions will not necessarily be reported in law reports, but will have an impact on my approach to complaints, I felt it important for people to be able to readily access the Tribunal's decisions.

Publicity

Privacy issues continued to generate much publicity during the year.

A Court of Appeal case found that the New Zealand Security Intelligence Service had no power under the current law to break into private homes. This led to new legislation being passed authorising such activities.

The new accident insurance regime generated much publicity and concerns were expressed about the collection of sensitive health information by private insurers. Likewise, aspects of the new driver licence regime were widely reported.

The criminal "discovery" process was highlighted when a Court of Appeal judge warned that cases could be dismissed for abuse of process if defence lawyers were not given full discovery of relevant information held by the Police. I received complaints from defendants, and solicitors acting on their behalf, alleging that information was being withheld prior to Court proceedings or after proceedings, when the individuals concerned were collating information for possible appeals.

In the information technology area the use of biometrics, for example fingerprint scanning for identification purposes, generated some publicity. Publicity about the privacy implications of the Internet, including "e-commerce" was also topical.

With the exception of two newspapers, editorials based on errors of fact seemed to diminish with my review of the Act recommending continuation of the exemption for the media. Most newspapers are more careful in such comment. I believe there is a realisation by some editors that privacy of information has a real value and past policies of ridiculing privacy concerns and suggesting the Act produced incongruous outcomes was simply no longer credible.

Newsletter

Private Word, the newsletter, has continued to be an effective forum to discuss privacy issues and publicise the activities of the office. Due to increasing demand, the average print run has increased to 5,100 copies and I had to limit *Private Word* to bi-monthly issues to curb the increasing costs of production and distribution. It has gone a long way to counter mischievous editorial comment and inaccurate representations of privacy law and practice in the press.

Private Word is available on my website and can be downloaded free of charge. I am happy for *Private Word* to be copied and for the written content to be republished in other magazines providing the source is acknowledged.

ENQUIRIES

I have two full time enquiries officers who answer written and telephone enquiries made to my office. Many enquiries are from individuals seeking information about their entitlements under the Act, for example, whether or not they are able to view notes held about them by their GP. I also receive enquiries from agencies holding information seeking clarification of their obligations under the Act. Agencies that may collect information often seek advice prior to the collection and Government agencies often enquire about the interaction of their relevant statute with certain provisions of the Privacy Act.

Enquiries can turn into complaints where, for example, individuals have sought advice as to their entitlements and claim that agencies have disregarded those rights. However enquiries are also an efficient way of reducing complaints: in many cases an enquiries officer is able to provide information to an individual and the agency concerned which allows the privacy issue to be resolved between the parties.

Enquiries received

TABLE 1: ENQUIRIES 1995 - 1999				
	1995/96	**1996/97**	**1997/98**	**1998/99**
Telephone	*	8440	10,606	6356
Written	*	595	535	615
Total	**10,200**	**9035**	**11,141**	**6971**
Av. per month	850	753	928	580
* figures not available				

Due to funding constraints I was unable to replace an enquiries officer who left last year and therefore my enquiries section was reduced from three to two full time staff. As a result, many telephone enquiries were diverted to an answerphone system which means there is no longer a fulltime “on demand” telephone enquiries service. This accounts for the substantial drop in telephone enquiries made last year. I received 6,356 telephone enquiries and 615 written enquiries last year. This is a total of 6,971 enquiries, down from 11,141 for the year 1997-1998 (the high point for enquiries so far). The figures for last year therefore show an average of

580 enquiries received per month. Of the 6,971 enquiries received last year 6,955 were answered during the year.

Enquiry topics

As in previous years, enquiries covered a very wide range of topics. Early in the year I received a number of enquiries from individuals concerned about Government departments and consumer satisfaction surveys carried out for the departments by outside agencies. In particular, individuals who had confidential telephone numbers were concerned that their contact details had been passed to contractors acting on behalf of Government departments.

As in previous years I received a number of enquiries from individuals who had been told that certain actions were done, or could not be done "because of the Privacy Act." My staff are instructed to ring the agency concerned to clarify which particular part of the Privacy Act requires them to do an action or prevents them from doing an action. In many cases the agency advised that it was the agency's own policy that governed the action to be taken but that it was easier to blame the Privacy Act than to explain the policy to the individuals. In other cases the agencies were genuinely confused as to the relevance of the Privacy Act to their particular situation and the enquiries staff were able to assist them. In other cases reference to the Act was incorrect: public sector agencies must respond to requests by third parties for personal information under the Official Information Act.

In March 1999 I received a number of enquiries from individuals who alleged their complete medical history had been sent to their employer by ACC. In some cases the individual concerned had sought a review of an ACC decision and they alleged that instead of sending health information relevant only to their work related injury, complete files had been sent.

Other enquiries concerned a Council's policy of referring all of its six year old library debts to a debt collection agency. Many of the enquirers alleged they were not aware they had a debt to the library until contacted by the collection agency.

A number of enquiries were received about information held on the Motor Vehicle Register. Enquirers expressed concern that the information was so readily available to members of the public and that there were only limited circumstances in which individuals could have

their personal information protected under the policy of the Registrar.

The new Accident Insurance regime prompted enquiries about the level of information being collected by employers and private insurers.

In June of this year there were a number of enquiries about the new driver licence legislation with enquirers expressing concern about having:

- to apply for the new licences
- to pay for the new licences
- to allow a photograph to be taken
- a photograph stored digitally
- a signature stored digitally.

As in previous years we continued to receive enquiries about:

- employment
- credit reporting
- accessing health files
- informant information

Website

The website operated by my office has continued to be a popular means of obtaining information. Fact sheets, case notes, reports on proposed legislation, speeches and *Private Word* are all available on the website.

Many written enquiries are also received and returned by email. Fact sheets and other information can be attached to such responses.

My enquiries staff, along with the investigating officers, are also involved in the education function of the Office.

SECTION 54 AUTHORISATIONS

Section 54 allows me to authorise certain actions that would otherwise breach information privacy principles 2, 10 or 11. I am required to consider whether, in the special circumstances of the case, any interference with the privacy of an individual that could result from the action in question is substantially outweighed by either:

- the public interest in that action; or
- the clear benefit to the individual concerned which would result from the action in question.

Detailed guidelines are available upon request from my office for any agency considering applying for an authorisation. Three applications for authorisations were carried over from last year, with seven new applications received this year. One of the ten remained under consideration at the end of the year.

I suspended action on one of the completed applications. While seeking more information the applicant reached an interim solution that obviated the immediate need for an exemption. However the applicant noted that the need could arise again in the future.

One application was withdrawn after I pointed out a number of problems with granting it, and I declined three of the applications.

In one, the applicant had asked for an exemption from information privacy principle 5, which I am not empowered to grant. An exemption was also requested from principle 11 but I took no further action after my request for further information to allow me to assess the application was not responded to.

The second applicant sought an exemption from information privacy principle 2 which it wanted to operate retrospectively. I was not minded to grant this. The applicant also sought an exemption under information privacy principle 10, but I was not satisfied that it would have been breached in the circumstances.

The third applicant asked for an authorisation to allow another agency to disclose information to it. In declining the application, I noted that the agency did not jointly apply and did not appear to be willing to disclose the information to the applicant in any case. An authorisation cannot be used to compel disclosure of desired information.

I also noted that it was not clear that the disclosure would involve a clear benefit to the people concerned that would outweigh any interference with their privacy that could result. Nor did there appear to be any public interest in disclosure that would outweigh to a substantial degree any interference with privacy that could result. For these reasons, I declined the application.

I granted four applications.

Auckland Healthcare Ltd

Auckland Healthcare requested an authorisation to allow it to disclose information to ACC so that ACC could establish the patients on Auckland Healthcare's waiting list for whom it had to take financial responsibility. I initially authorised the data match on 1 October 1996, but it never took place. Auckland Healthcare proposed to disclose more updated information and required a new authorisation to allow it to do so.

I granted the new authorisation for the same reasons and under the same conditions as the original authorisation.

The remaining three authorisations were granted under section 54(1)(b). This section allows me to authorise an agency to disclose personal information, even though that disclosure would otherwise be in breach of principle 11, if I am satisfied in the circumstances of the case that the disclosure involves a clear benefit to the individual concerned that outweighs any interference with the privacy of the individual that could result from that disclosure.

New Zealand Meat Board

The New Zealand Meat Board requested an authorisation on behalf of 23 meat processors, which would allow them to disclose their levy payer list to the Board. The Meat Board is a statutory body established under the Meat Board Act 1997, and one of its functions is to account to livestock farmers on the Board's activities and its use of levy money and other resources. Other statutory obligations on the Board include the obligation to make reasonable efforts to consult livestock farmers, in accordance with its statement of strategic and consultative intent, about the Meat Board's activities, and to hold meetings of livestock farmers - both regional and annual.

The Board was also required to submit a plan based on its operation, without specific statutory backing, as a result of the producer board amendment legislation. The Board planned to conduct a referendum on the issue but had only a very small number of farmers on its mailing list. It tried, unsuccessfully, to increase the numbers of farmers on its mailing list using other methods. The Board proposed to use the levy payer lists to give all eligible livestock farmers the opportunity to register on the Board's electoral roll.

The 23 meat processors had agreed to disclose to the Board their levy payers lists via an intermediary, provided that was authorised by the Privacy Commissioner. The intermediary would compile a single mailing list of levy payers and forward that to the Meat Board.

I considered that there was a benefit to the farmers concerned in being alerted to their entitlement to vote. I also considered there was a benefit to those farmers in being allowed to express a view on the producer board's reform. The Meat Board undertook to remove the names of any of the farmers who did not wish to be on its mailing list and to regularly give them the opportunity to have their names deleted from the mailing list. I considered this would mitigate any interference with privacy that could occur. I was satisfied that there was a clear benefit to the individuals concerned that outweighed any interference with their privacy that could result from the disclosure.

I granted an authorisation to each of the 23 meat processors who had indicated their willingness to participate in this process. I granted the authorisation on a number of conditions, including limitations as to the purpose of the disclosure and a requirement that the intermediary sign an undertaking to securely destroy all copies of the levy payers lists together with the compiled list.

Age Concern Auckland Inc

Age Concern Auckland Inc requested an authorisation to allow it to advertise by name and last known address, for former and current clients who were entitled to a share of money paid in restitution by a former employee. Age Concern did not have current addresses for the former clients and did not have contact details for next of kin, welfare guardians or other persons legally authorised to act on behalf of a few current clients, none of whom were legally competent.

Age Concern made largely unsuccessful attempts to contact the former clients. It sought my authorisation under section 54 to place an advertisement in the *New Zealand Herald* and suburban newspapers in the Auckland region. The advertisement would include the name and last known address of each former and current member for whom details were sought.

I accepted that there was a clear benefit to the individuals concerned in being alerted to the fact that they had entitlements to a proportion of the sum paid in restitution. I considered this benefit outweighed any interference with the privacy of those individuals.

I granted an authorisation to allow the disclosure on the condition that, if Age Concerned learned of the whereabouts of any of the former or current clients before the advertisement was placed, it would take all reasonable steps to ensure that information relating to those people would not be included in the advertisement.

BOC Gases New Zealand Retirement Plan

The trustees of the BOC Gases New Zealand Retirement Plan requested an authorisation to allow them to advertise for former employees who were entitled to a lump sum from the staff pension fund. The trustees did not have current addresses for some 84 people who had left the company prior to the restructuring of the staff pension fund to a new superannuation scheme. Each of those former employees was entitled to a lump sum out of the surplus of the fund.

The trustees proposed to place advertisements in newspapers in Auckland, Wellington, Christchurch and such other regional newspapers as were deemed appropriate. The regional newspapers to be selected were based on the number of employers whose former addresses were in a particular region. There was to be one advertisement in each newspaper which would include the names and last known address (in the form of suburb and city or town) of each of the former members, the year in which they left the company, and the fact that it would be to their financial advantage if they responded. The trustees proposed to advertise on a regional basis rather than disclosing the full list in each newspaper. The trustees had already taken some steps to contact the former members.

I accepted that there was a clear benefit to individuals concerned in being alerted to the fact that they had certain entitlements un-

der the pension fund. If the money remained unclaimed it was to be paid to the company and would be held in trust for a further three years, but the company would be under no obligation to search for the former member. Without the advertisement the individuals would be unlikely to receive a benefit to which they were entitled. I was satisfied that this was a clear benefit that outweighed any interference with their privacy that could result from the disclosure.

I granted an authorisation to allow the disclosure on the condition that the advertisement be placed only after the trustees had taken certain specified steps - which would not involve publication - to trace former employees. I also required that the trustees make reasonable efforts to ensure that the information about any former employee who was located in the interim would be removed from the text of the advertisement before it was placed.

Use of the section

This provision is important as a safety valve because it allows me to authorise actions that might otherwise be a breach of certain principles. It can be useful when some disclosure ought to be made in the public interest when there is a duty under the Act not to disclose, perhaps because of a failure on the agency's part to provide for all eventualities.

LEGISLATION

Legislation has significant potential to impact on the privacy of individuals - frequently detrimental in effect, occasionally beneficial. One of my functions is to examine any proposed legislation that may affect the privacy of individuals and to report to the Minister of Justice the results of that examination. During the year I submitted 10 formal reports to the Minister on bills then before Parliament. These reports are available from my office and are posted on my website. They are often followed up with an appearance before a select committee. Occasionally I submit reports directly to select committees, often at the explicit request of a committee. On one occasion, on a matter concerning the Accident Insurance Bill, I formally complained directly to the Regulations Review Committee, which has a special function under the Standing Orders of Parliament to receive complaints.

The Cabinet Office Manual requires Departments to signify compliance with the principles and requirements of the Privacy Act when seeking the introduction of a bill into Parliament or when proposing the issue of regulations. Accordingly, I am frequently consulted by Departments concerning new proposals. I mention below a small selection of the legislative matters upon which I have commented during the year.

Accident Insurance Bill

This bill, which privatised workers' compensation, was one of the most significant, and controversial, pieces of legislation during the year. Unfortunately, for a small office such as mine it is difficult to scrutinise the many features of a large piece of legislation such as this during a busy period. I have little doubt that there are significant privacy issues that will arise from the new law which have not yet been subject to study. Nonetheless, I was involved in scrutinising, and drawing attention to, some aspects of the bill, one of which I mention here. Two other aspects, concerning an information matching programme established under the bill, and the Accident Insurance (Insurer Returns) Regulations issued under the legislation, are mentioned elsewhere in this report.

In November I reported my concerns to the Minister about a clause in the bill, which would make it an offence not to provide requested information to an insurer. I was concerned that such a potentially broad ranging offence provision should be created. I

questioned whether it was needed at all and suggested that, if it was, it should nonetheless be narrowed or modified.

The clause was modelled upon a provision in earlier accident compensation legislation. However, the earlier provisions were limited solely to requests for information made by a public body, the ACC, whereas the new provision has been broadened to encompass demands made by private insurance companies. I was unaware of insurance companies, in respect to the rest of their business, needing offence provisions of this sort. The explanatory note to the bill provided no reason for why the provision was needed. It is generally undesirable to create an offence based on a discretionary requirement to produce information exercised by persons who are not subject to statutory controls. The Select Committee tinkered with the clause but left it fundamentally the same. I will follow with interest how insurance companies utilise their coercive powers in practice.

Accident Insurance (Insurer Returns) Regulations 1999

These regulations were made under the Accident Insurance Act 1998 that privatised workers' compensation. Employers are required under the statute to take out insurance policies for their workforce with an approved insurance company. The Act authorises the establishment of an accident insurance database furnished with information from the approved insurers as specified in regulations. Among other things, the regulations specify the returns required on every insurance claim in relation to persons who suffer personal injury. One of the requirements was that the person's ethnicity be given.

I was consulted in relation to the making of the regulations. Concerns that I held in relation to ethnicity were not assuaged in the process and my reservations were explicitly recorded in the relevant Cabinet committee paper. I also took up my concerns directly with the Chief Executive of the Department of Labour and the Minister of Justice. I was concerned that the regulations would compel the collection of ethnicity on all relevant claim forms by private insurers. I questioned what purpose the details were needed for. I was not satisfied that the requirement was consistent with the approach of the information privacy principles and preferred that details of race not be collected at all. As an alternative, I suggested that individuals be given the option to refuse to answer any questions concerning ethnicity.

I noted that information about ethnicity would be collected by insurers on claim forms that would be copied to the individual's employer. Ethnicity information is not actually obtained for insurers or employers, or intended to be used by them, but the method of collection would mean that both would have the information. The possibility therefore arose of the use of the information for purposes other than the one intended - including discriminatory purposes. I was also concerned that a refusal to supply ethnic information might lead to a denial or delay in medical services, accident compensation, or the opportunity for rehabilitation. Experience in other collections of ethnic information suggested that many New Zealanders object to providing details of their ethnic origin. Such concerns are strongly held by some individuals in both majority and minority racial groups.

The regulations were duly made and immediately brought into force. I therefore urgently lodged a complaint with the Regulations Review Committee of Parliament alleging that the regulations unduly trespassed on personal rights and liberties because of their effect on individual privacy. The Race Relations Conciliator supported my complaint.

The matter had not been determined by the end of the reporting year. However, shortly afterwards the Regulations Review Committee took evidence on the complaint. In August the Committee delivered its report upholding my complaint that the regulations trespassed unduly on personal rights and liberties. In an extremely rare move, the Committee recommended that the Government revoke the offending clause in the regulations.

Assisted Human Reproduction Bill

Rapid advances in biotechnologies have, over the last decade, given rise to a variety of new legal and ethical challenges. There have been gradual advances in assisted human reproductive (AHR) technology over a generation and rapid advances in recent years. Many would argue that society has not reacted sufficiently quickly even to the older, and more easily understood, technologies such as donor insemination. Far more challenging are the sophisticated techniques such as in-vitro fertilisation. Practices such as surrogacy also trouble many people.

I was first consulted in relation to these issues by the Ministerial Committee on Assisted Reproductive Technologies in 1993. I had

discussions with, and made submissions to, that Committee and promoted public discussion of the issues through the 1994 Privacy Issues Forum. I was consulted by the Ministry of Justice in the development of the bill, which attempts to address some of the difficult issues in this area while seeking to respect information privacy principles.

The bill provides for an information scheme intended to promote a policy of openness with respect to children born from procedures involving donated gametes. The scheme implemented by the bill contained the following features of note:

- donors of gametes and recipients of AHR services will be made aware, as a precondition to donating and receiving services, that information will be selected and retained so that the children born as a result of donated materials ("donor children") will have access to their genetic origins;

- providers of AHR services will be required to collect certain information from donors and about donor children and to retain this information for a period of 50 years unless their business ceases to continue in some form;

- where a donor child is born, providers will forward specified information to the Registrar-General which will be held indefinitely and accessed via a central register;

- donor children will be entitled to have access to identifying donor information held by providers and the Registrar-General upon turning 18;

- donors will be entitled to find out if a donation has resulted in a birth, but will not have access to identifying information about a donor child until the child turns 25, unless the child expressly consents to donor access after turning 18;

- donor children and donors will have access to non-identifying information about each other prior to the child attaining the age of 18 years;

- the Privacy Commissioner will have jurisdiction to deal with complaints relating to matters such as denial of access or wrongful disclosure of personal information.

I generally supported the approach of the bill. Nonetheless, I had some remaining concerns and provided a report to the Minister in January 1999. Among other recommendations, I suggested that the matter of AHR service providers going out of business be more closely addressed. It seemed to me that if the object of the legislation is to be achieved, there ought to be a duty upon such providers to make arrangements for their records to be appropriately maintained for the specified period of 50 years regardless of whether they continued to provide AHR services. By way of analogy, lawyers who practice on their own account are expected to make arrangements to ensure continued secure storage of wills and deeds in the event that they die or are unable to continue to practice. The bill remained before a select committee at the end of the year.

Broadcasting Amendment (No 2) Bill

Broadcasting legislation since 1976 has enabled complaints to be laid against broadcasters for breach of privacy. Since 1989, these complaints have been received by the Broadcasting Standards Authority. This bill proposed empowering the BSA to issue codes of practice in relation to privacy. This would bring the framework for setting privacy standards for broadcasters and complaints processes, into line with the framework existing for some other types of complaint handled by the BSA.

The bill provided for consultation between the BSA and Privacy Commissioner to encourage the development and observance of codes of broadcasting practice relating to matters of privacy. In a report to the Minister, I noted my support for this process since it would assist in ensuring satisfactory interaction between two pieces of legislation, both of which touch upon privacy and, in different ways, the actions of broadcasters. Furthermore, consultation provides an effective and straightforward way to ensure that the specialist privacy expertise of the Privacy Commissioner and this office is utilised to best effect in contributing to the development of privacy standards set and administered by another body.

I was therefore perplexed by the Select Committee's decision to delete the consultation requirement from the bill. It was especially puzzling given the public concern about the broadcast media's handling of privacy matters in a series of incidents during the year - several of which involved the exploitation of children. I am also aware that there has been some dissatisfaction expressed about the coher-

ence and approach of the BSA's articulation of privacy standards in its existing non-statutory "privacy principles". I was confident that statutory consultation offered some promise for the development of effective and appropriate privacy standards for broadcasters.

Computer crimes

During consultation on the review of the operation of the Privacy Act, I raised the question of the adequacy of New Zealand's criminal laws as they related to computers. In many overseas privacy or data protection laws there are specific "computer crimes". I concluded that the Privacy Act was probably not the appropriate place for new computer crime offences, but that there was a strong case to legislate in respect of persons who hack into computer systems to review information to which they are not entitled and, occasionally, to cause mayhem. My calls for new computer crime provisions have been echoed by the Law Commission and it appears that attention may now be given to the matter. However, similar recommendations were made eight years ago by the Crimes Consultative Committee without any resulting law change. In addition to any risk to privacy, New Zealand business may be prejudiced by the absence of computer crime offences as we move more rapidly into an era of electronic commerce.

Immigration Amendment Bill

At the request of the Social Services Committee of Parliament, I prepared a report in relation to this bill and appeared before the Committee to give evidence. The bill inserted a new part into the Immigration Act 1987 establishing special procedures in cases involving serious security concerns. The explanatory note to the bill stated that:

> "The immigration decision-making process and fairness generally require the individual concerned to have access to any information held about them. This requirement sometimes stops the NZ Security Intelligence Service from providing classified security information on an immigration applicant for decision even though the information may have a direct bearing on the matter. The bill therefore establishes a special security process to allow such classified security information to be considered in immigration decisions without putting the classified nature of that information at risk, while ensuring that the rights of the individual are protected through a process of independent scrutiny."

The bill brought into sharp relief a classic information privacy dilemma: the conflict between an individual's desire to know the information held about him or her which will be used to base a decision affecting his or her interests and the State's desire to use such information against the individual while keeping it secret from him or her. The stakes are high since the individual's liberty is directly at issue. National security may also be at stake.

In terms of information handling, the proposal essentially was that:

- a new class of information is defined, known as "classified security information";

- classified security information will be provided by the NZSIS and will be used in making certain decisions with important consequences for the individual (freezing legal proceedings, taking into custody etc);

- classified security information will be withheld from the individual despite being used in decisions in relation to that individual.

The proposal was of concern to me. Placing an individual in custody in reliance upon certain information, and using that same information in an expedited process to take significant and adverse decisions affecting that individual, while at the same time withholding that information from the individual and thereby denying him or her the opportunity to challenge or explain it, are fundamentally at variance with normal fair information practices.

Notwithstanding the clear information privacy implications, and indeed an explicit reference to the Privacy Act, I was not consulted on the proposal in advance of the bill being introduced into Parliament. I was not, for example, briefed by the Department of Labour as to the perceived risks, or the shortcomings in the existing law or how the new law was intended to operate. I therefore urged caution about such a dramatic proposal. It fell to Parliament, as always, to be fully satisfied as to the need for the law and the encroachment upon individual liberties.

I offered my view of the matters that the Committee ought to consider. I recommended that the Committee satisfy itself as to the existence of a serious risk and that it should also consider any avail-

able alternatives that do not trespass so significantly on personal liberties. I criticised an aspect of the definition of "classified security information" which would have allowed information sourced from New Zealand government departments to be withheld under a blanket of national security, simply by passing the information first to the NZSIS. My recommendation to remedy that particular concern was accepted by the Committee, but otherwise the law was largely enacted as introduced. No provision was made to compensate innocent individuals harmed by the operation of the provisions.

Mental Health (Compulsory Assessment and Treatment Amendment Bill

In my work as Privacy Commissioner I have a number of dealings involving the mental health sector. This is unsurprising given that health and disability information is generally very sensitive, and information about individuals' mental health especially so. The information privacy principles, as modified by the Health Information Privacy Code 1994, govern the collection, holding, retention, use and disclosure of health information by health agencies. Accordingly, unless specially overridden by another law such as the mental health legislation, the Code will be relevant to the handling of health information by mental health service providers and professionals.

In February I reported to the Minister in relation to this bill. My comments concerned the process of consultation with a person, family or whanau in relation to the exercise of powers under the Act. Consultation inevitably involves a disclosure of information in the process of seeking input. Although the involvement of family is often appropriate and I expect, usually beneficial, I nonetheless held some concerns about a new clause which sought to make consultation compulsory. My report canvassed a number of issues from privacy, practical and drafting perspectives and recommended that the clause in question be deleted or, at the very least, its intended application be made more certain and the practical implications sorted out. My concerns were echoed by a number of bodies involved in mental health issues and the Select Committee did drop the clause. It was replaced with a more limited provision.

The bill also amended the Victims of Offences Act to allow victims to be notified of the escape or release of compulsorily detained persons from hospital. I welcomed the change, which was a pro-

portionate response to a particular problem. Typically, a victim may have been the subject of violence, or threatened violence, and the matter has been taken up with the police. However, at some point in dealing with the matter, the offender has quite properly been diverted into the mental health system rather than to prison. Some victims who have spoken with my office have welcomed such offenders being diverted for treatment, rather than simply being punished, but remain fearful nonetheless concerning the person's release. When the release is planned, such victims wish to prepare themselves rather than, say, unexpectedly confronting the person on the street. Unplanned release is an added fear that may differ little, from the victim's perspective, whether the escape is from a prison or a mental health facility.

New Zealand Security Intelligence Service Act

In 1999 I had the unusual experience of submitting two reports on Bills amending the 1969 statute under which the Security Intelligence Service operates.

Both bills concerned the power of the SIS to intercept private communications. The particular reason for the first bill was a finding by the Court of Appeal that it would be unlawful for the SIS to break into premises in order to intercept communications or seize documents. In my report I made a number of recommendations, including that the process for obtaining ministerial interception warrants should be replaced by a judicial warrant process. Judicial warrants are currently used for law enforcement interception and I believe this would also be appropriate for interceptions for the purpose of national security. The Government was not willing to go that far but, in a significant move which I applauded, it introduced a second bill to establish a Commissioner of Security Warrants (being a retired Judge of the High Court) who would grant interception warrants jointly with the Minister in charge of the SIS.

In addition to recommendations touching upon other matters, I presented a case in both reports for enhanced reporting to Parliament in relation to interception and other activities by the SIS. In recommending enhanced reporting, I continued a theme in a number of my reports touching upon interception of private communications in the area of telecommunications, radiocommunications and law enforcement. While some investigative and intelligence gathering activities necessarily have to be kept secret while they are ongoing, it nonetheless seemed desirable to me that there

be some general level of public reporting to enhance accountability. Furthermore the SIS's activities do not begin and end at covert surveillance. For example, the Service also undertakes vetting of hundreds of civil servants annually. This is an activity having an importance for the privacy of the individuals concerned which ought to be reported on each year.

I was pleased that the Intelligence and Security Committee accepted my recommendation concerning enhanced public reporting. After 44 years of existence the NZ Security Intelligence Service will, for the very first time, produce an annual report next year. The SIS will deliver the report to the Prime Minister and an edited version, excluding material that is sensitive for security reasons, will be tabled in Parliament and made public. Together with other new accountability requirements introduced by the two bills amending the 1969 Act, public reporting is an important step in enhancing Open Government.

Personal Property Securities Bill

This bill proposed combining three existing public registers into a single "super register" of personal property securities. I took a close interest in the proposal since the character of the existing registers would significantly alter as a result, and the effect on privacy was likely to be detrimental. For example, under existing law a search could be made of a motor vehicle to see if it is subject to a charge. The new register might, conversely, have allowed a search in relation to an individual to see which vehicles (and other chattels) that person owned that are subject to charges. Furthermore, it became apparent fairly late in the proposal's development that officials wanted the register to be available for accessing through the Internet - which raised novel information privacy and security issues.

The Select Committee studying this bill put considerable effort into addressing the privacy issues. At the Committee's request, I provided a report on some of the issues. I also obtained informed comments from a variety of Canadian provincial Information and Privacy Commissioners and Ombudsmen on the position with similar Canadian registers. These were forwarded to the Committee to assist its work.

The Select Committee had not reported back at the end of the period under review. In the report presented shortly afterwards,

the Committee amended the statutory scheme to better define the purpose of the register, the arrangements for releasing personal information from it, and to place constraints upon incompatible uses. Notwithstanding the work undertaken by officials and the Select Committee on the bill, this project provides an example of how policy processes sometimes fail to be utilised to best effect. In particular, the policy work on the significant privacy issues raised by the project ought to have been undertaken by the Ministry of Commerce before the introduction of the bill. I urged that it do so, but the bill was nonetheless introduced with many questions unanswered. An example of a fundamental question which was not able to be answered by the Ministry at the time that the bill was introduced, related to the proposed content of the register. This was not apparent from the bill but was intended to be set out later in regulations. It is extremely difficult to sensibly comment on major proposals when only the high level principles are known and not the down-to-earth fundamentals.

Once a proposed framework to address the privacy issues was developed by the Select Committee, there was no opportunity for submissions to be taken. Had the amendments been introduced by a Government Supplementary Order Paper, it would have been possible to seek public submissions. This might have led to more thoroughly considered and better law. It is remarkable how proposals such as this can languish for many years, but once before Parliament a pressing case can suddenly be made to fast-track a bill for some perceived reason of urgency. It remains to be seen how effective this measure will be in reconciling expectations of privacy with a desire for business efficiency. With more business and government being conducted electronically, it is essential for policymakers to get to grips with social interests that compete with efficiency - one of which is privacy. There is a danger that officials can become over enthusiastic about the merits of particular technology and downplay the consequences or alternatives to their preferred plans.

Roads Bill

During the year the Ministry of Transport released a discussion document and a draft Roads Bill, raising ideas for reforming road funding. This built upon work by a committee concerning road pricing, to which I had earlier made submissions. The proposals will, if adopted, have major significance for all New Zealanders. Robust debate on the proposals was continuing at the end of the year. There were two matters of special interest in relation to indi-

vidual privacy related to:

- electronic road tolling and;
- the Register of Motor Vehicles.

In a system that has been in operation since the 1920s, roads with national significance are funded through general taxation, while local roads are the responsibilities of districts, and are funded from property rates. "User pays" is a feature of our system since significant revenue is collected through road user charges levied on diesel vehicles, and through petrol tax paid by other motorists. There has generally been no "user pays" link to particular sections of road, except in the case of a few bridges and tunnels.

Proponents of change advocate a funding system, which would link particular parts of the roading network to the vehicles that use them. A variety of payment arrangements are under consideration. Some, such as regional petrol taxes, have no privacy implications. However, close attention is being paid to more sophisticated techniques known as "electronic road tolling" or "intelligent transportation systems". These technologies monitor the road use of motor vehicles and collect a charge for that use. As the road tolling is done electronically, rather than by traditional cash payment, there are significant privacy issues concerning the tracking of movement of individuals, the loss of privacy and anonymity, and the creation of vast new databases of interest to third parties.

The Ministry of Transport is aware of privacy concerns and is considering ways in which they can be addressed in the legal framework for any new road funding system. Central to this is a proposed legal requirement that roading organisations offer an anonymity option in any electronic road tolling system that is established. I continue to take a close interest in the Ministry's proposals.

The other aspect of the Roads Bill concerns the Register of Motor Vehicles. New Zealand is unusual in having this government register open for search for a nominal fee over the counter at any Post Shop. Many countries keep their equivalent register tightly closed. I continue to get many expressions of concern from worried or annoyed people at having their personal details so easily accessible by strangers. The draft bill proposes reforming the law applying to the register in a way that better protects privacy while retaining its generally open character.

Sale of Liquor Amendment (No 2) Bill

This bill implemented the report of an advisory committee that had reviewed the liquor laws. In 1996, I made a submission to that committee touching upon the matter of identification cards, which had been raised in a discussion paper in the context of the purchase of liquor, or consumption of liquor on licensed premises, by underage persons. The committee rejected a national ID card as a proportionate response to the issue but suggested better use of proof-of-age documents. In November 1998 I reported to the Minister of Justice in relation to the bill in which I discussed the information privacy implications of the proof-of-age document approach. I explained that while I had significant concerns about the establishment of a de facto national ID card I was not opposed to the establishment of single purpose identification or proof-of-age documents. I was concerned that the new photo driver licence not be proposed as the sole identification document and instead urged the recognition of a reasonable choice of available proof-of-age documents.

Spent convictions

In New Zealand there is no legislative regime that enables former offenders to put their convictions behind them by placing limits on the disclosure and use of criminal record information. Many other countries have regimes to allow convictions for certain offences to become "spent" after a specified period during which the person has not been convicted of any further offence. Such "spent conviction regimes" have a number of positive benefits in terms of protecting the privacy interests of persons and ensuring the criminal justice system does not operate in a way that is unduly harsh. They also contribute to the rehabilitation of offenders, which is of benefit to society.

During the year officials gave further study to crafting a possible regime suitable for New Zealand. Unfortunately consideration was discontinued at the end of the year. I urge the Government to address the issue as the absence of a spent convictions regime means that unwarranted hardship continues to be visited upon certain persons many years after an event. Sometimes the effect of the disclosure, or use, of conviction information in particular cases years after the event can have serious consequences. Further, it does not serve any useful purpose in terms of protecting society or legitimate punishment of the original offender. The existence of a spent convictions regime would also give useful guidance to the depart-

ments that maintain records of criminal convictions.

This matter inter-relates with another problem that I reported on in my review of the operation of the Privacy Act. This is the practice, which has grown spectacularly since 1993, of third parties requiring individuals to authorise the release of a "Wanganui Computer" printout of their criminal history (or lack thereof). Such coerced access requests were unlawful until 1993, and a number of problems have resulted from the lifting of the prohibition. What is required is a more controlled process enabling recent relevant convictions to be fed into suitably controlled national vetting processes, rather than the wholesale coerced disclosure of recent and old criminal convictions of all types - whether relevant to a particular position or not.

Tax Administration Act

The secrecy clause in the legislation under which the Inland Revenue Department operates is an important protection for the confidentiality of taxpayer records. However, because the existing clause appears in a very broad form, it has the incidental effect of largely ousting individual taxpayers' rights of access under the Privacy Act. If a taxpayer seeks access to personal information held about him or her by IRD, the Commissioner of Inland Revenue is not obliged to release it, but may exercise discretion within the terms of the secrecy provision to release the information to the individual concerned.

I have consistently taken the view that the individual concerned ought to have a right to information held by IRD in the same way that individuals have such rights against other agencies in the public and private sectors. It seems to me that the purpose of the secrecy clause was not to deny the individual a right of access, but to prohibit unnecessary disclosures to third parties. It also provides an essential safeguard to taxpayer secrecy by enabling the IRD to resist demands for access to individual taxpayer records under the Official Information Act or other statutory powers.

I first took up the matter when the child support legislation administered by IRD was under review in 1994. I raised the matter in a further report to the Minister of Justice when the Tax Administration Act 1994 was before Parliament. Again I took the matter up in relation to the enactment of an information matching provision providing for information exchange between another department

and IRD. In that last case, Parliament enacted a specific subsection preserving Privacy Act access rights.

This year, I have once again pursued the matter. First, I wrote to the Minister of Revenue in the context of a controversy reported in the media in which the secrecy provision had been publicly raised by the Department. Later in the year I was invited by the Finance and Expenditure Committee to provide input to its Inquiry into the Powers and Operations of the IRD. I provided a report to the Committee in May and followed this with an appearance before the Committee in June.

In my opinion a reform to the provision to facilitate individual access, and normal review of the withholding of information, will enhance individual rights while continuing to ensure fundamental taxpayer secrecy. Individual access is also an important tool to ensure that powerful departments of state are accountable to the individual citizens whose lives they affect.

Late in 1999, outside the reporting period, the Finance and Expenditure Committee completed its inquiry and recommended an amendment to IRD's secrecy provision in order to allow for access under information privacy principle 6.

Transport Accident Investigation Bill

In my 1996 Annual Report I mentioned that the Transport Select Committee asked me to submit a report on the use of cockpit voice recorder data in the context of the Civil Aviation Law Reform Bill then before the Committee. While there is a good case for CVR, normal expectations of privacy require that aircrew be made aware of the purposes for which the recording equipment is established and that the resultant use of the recordings is limited to those purposes.

During this year, the Transport Accident Investigation Amendment Bill was introduced to control the disclosure and use of CVR recordings and certain other records. The overwhelming objective was to enhance aviation safety and to encourage the full co-operation with transport accident investigations by all parties. With one reservation, I fully supported the legislation. The bill was consistent with, and implemented, the International Civil Aviation Organisation Convention. The bill remained before a select committee at the end of the year. However, later in 1999 it was reported

back with a number of improvements that addressed my concerns and it ultimately passed into law.

Rating Valuations Act 1998

I mentioned in last year's annual report that a constant stream of letters is received in my office expressing concern at the release of bulk information from government and local body registers for commercial use – primarily direct marketing. Concerns have been expressed to me not only by individuals and community groups but also by the agencies maintaining public registers themselves.

I offered a recommendation in my review of the operation of the Privacy Act to directly address the issue. This would involve a new public register privacy principle constraining the bulk release of addresses and telephone numbers from public registers for any purposes other than those for which the register is maintained. However, pending any general resolution of this issue, I continue to pursue the issue as new laws are passed establishing, consolidating or continuing public registers. In this vein, I raised the matter with the Government Administration Committee that was studying the Rating Valuations Bill in mid-1998. As a result, the Select Committee recommended, and Parliament enacted, a provision in the Rating Valuations Act 1998 empowering the making of regulations:

> "Prescribing limitations or prohibitions on the bulk of provision of district valuation roll information for purposes outside the purposes of the Act or the Rating Powers Act 1988 or related legislation, or to persons not having responsibility for the relation to the administration of this Act or the Rating Powers Act 1988 or related legislation."

I believe this offers a promising solution to the problems that have been manifested previously in relation to the bulk sale of valuation data. Unfortunately, regulations addressing this matter were not included in the implementation stage of the new Act. I am somewhat concerned that even by the end of the year no such regulations have been issued.

INTERNATIONAL DIMENSION

Section 14 of the Privacy Act directs me in the performance of my functions, and the exercise of my powers, to:

- take account of international obligations accepted by New Zealand, including those concerning the international technology of communications;

- consider any developing international guidelines relevant to the better protection of individual privacy.

The two principal sets of international obligations accepted by New Zealand are those contained in the United Nations International Covenant on Civil and Political Rights and in guidelines developed by the Organisation of Economic Co-operation and Development (OECD). Indeed, the Privacy Act is described in its long title as an Act to promote and protect individual privacy in general accordance with the 1980 OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.

The main international and transnational bodies involved in setting or applying international standards for privacy and data protection are the OECD, Council of Europe and European Union (EU). The UN is also involved through the General Assembly, the Human Rights Committee, and its specialised agencies such as the International Labour Organisation and International Civil Aviation Organisation. In the last couple of years the International Standards Organisation has been examining whether the standards approach can be suitably adapted to data protection and the protection of privacy. Various other international organisations and groupings have been studying, or addressing, privacy issues as an aspect affecting global electronic commerce. For example, APEC and the World Trade Organisation have both considered aspects of data protection in this context.

Developments during the year have included a continuation of work on the OECD Guidelines on Consumer Protection in Electronic Commerce. Although the focus of those guidelines lies elsewhere, the protection of consumers' privacy in accordance with the OECD Guidelines of 1980 is explicitly acknowledged as necessary in electronic commerce. There is evidence that a lack of consumer trust in the protection of personal data in transactions undertaken on the Internet is presently inhibiting the take-up of e-commerce.

Consistent and enforceable privacy rights are seen as a key element in any strategy to facilitate commerce on the Internet. Input was also given by my office to the OECD in relation to the development of an easy-to-use privacy policy generator suitable for businesses to use with their web sites.

Periodically New Zealand reports to the UN Human Rights Committee on the measures it has taken to ensure the protection of human rights, including the right to respect for privacy. Comments were made during the year to the Ministry of Foreign Affairs and Trade in relation to a draft report covering the years 1994-96.

EU Directive on Data Protection

I have written about the EU Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data many times in past annual reports. The EU is a powerful and affluent trading bloc whose standards cannot be ignored by a small country like New Zealand. Most relevant in this respect are the data export controls which are now mandatory in all 15 EU countries. These require EU to prohibit transfers of personal data to "third countries" (that is, countries outside the European Economic Area) which do not provide "adequate protection" to data received from Europe.

New Zealand, through the farsighted enactment of the broadly based Privacy Act, has been placed in a favourable position with respect to the adequacy test in the EU Directive compared with competitor trading countries such as Australia and those in Asia and North America (not to mention other jurisdictions in the Pacific, South America and Africa). However, while the fundamentals are in place in the Privacy Act to secure a prompt ruling from the EU that New Zealand's data protection controls are "adequate", there remain two shortcomings. These were identified in my review of the operation of the Act and highlighted in a study completed for the European Commission during the year which examined several jurisdictions, including New Zealand.

The first shortcoming in our law is clear cut. It is a minor matter which could be put right quickly and simply by a small legislative amendment to section 34 of the Act. This section limits access rights under information privacy principle 6 to New Zealand citizens and permanent residents and anyone else in New Zealand. As a consequence, Europeans living in Europe have no enforceable rights to

access their personal information while they remain outside New Zealand.

That small matter jeopardises our claim to adequacy under the EU Directive, and should be put right urgently. This is an issue which I addressed directly in a report to the Minister of Justice in December 1998 and raised with the Ministry of Justice six months earlier. It is of significant concern to me that virtually no action has been taken on the matter by the Ministry or Government other than to open a limited dialogue, at my urging, with the EU.

The second matter is somewhat less straightforward, but nonetheless needs to be faced up to by the Government. It relates to a concern by the Europeans that data transfers could be routed through jurisdictions with adequate privacy laws to jurisdictions without those protections. Accordingly, the EU considers that to offer adequate protection to personal data, a country's privacy law must *itself* prohibit export of personal data to jurisdictions providing no adequate protection. The New Zealand Privacy Act, although containing general controls on disclosures of personal information, contains no data export controls of the type expected by the EU.

To be confident of securing EU recognition as offering "adequacy", and to avoid impediments in transfers of data from the EU and the growing number of countries which also have data export controls, the New Zealand Government will have to address this matter. It appears that both Canada and Australia are poised to enact privacy laws covering the private sector which will include data export controls. It would be better if the matter is addressed earlier rather than later if we are not to squander our competitive advantage in this area sooner than we need to. There is room to consider broader or narrower data export controls, but I am disappointed that the examination of options does not even appear to have commenced since my report in December 1998.

Regional and international gatherings

The international conference of Privacy and Data Protection Commissioners is valuable to my work. The annual conference is an opportunity to learn of developments in other countries with privacy laws based upon similar principles. In September 1998, I attended the meeting held in Santiago de Compostela at which I presented a paper on the commercial use of public register data.

The office was represented at a meeting of the Privacy Agencies of New Zealand and Australia (PANZA) in Adelaide at which information of interest was shared on a wide variety of topics. The Assistant Commissioner also participated in a meeting of the British and Irish Data Protection Authorities.

During the year I participated, at the request of the Hong Kong Privacy Commissioner for Personal Data, on the programme committee for the 21st International Conference of Privacy and Data Protection Commissioners scheduled to be held in Hong Kong in September 1999. This will be the largest, and most important, privacy gathering ever to have been assembled in the Asia Pacific region. For that reason, my office in conjunction with the Australian Federal Office of the Privacy Commissioner, worked during the year on preparing the Second Asia Pacific Forum on Privacy and Data Protection. The forum will be held in Hong Kong immediately preceding the international conference.

I consider it important to bring developing countries in our region, particularly those from the Pacific Islands, into the debate concerning global data protection given the potential implications of the EU Directive on their economies and the increasing importance of electronic commerce to successful trading nations. The regional forum and international conference will be ideal opportunites for that to occur.

In October 1998 the OECD convened a meeting of Ministers in Ottawa to consider electronic commerce.

This was notable for the acceptance of privacy concerns as a significant barrier to the development of electronic commerce. This was accepted not only by Governments but by large international corporations who were also represented at the meeting. The Ministers concluded a Declaration on the Protection of Privacy on Global Networks that reaffirmed the OECD Guidelines which form the basis of the New Zealand information privacy principles. It was particularly significant that business could see the advantages of some uniformity in approach among countries to ensure that privacy concerns were dealt with in a consistent way. However there was no unanimity on how this ought to be achieved. The result was acceptance of both self-regulation and laws to deal with such issues. Heavy lobbying pressure from the United States made the mention of privacy laws almost unacceptable. In fact, neither the Canadian Prime Minister nor the Minister of Industry who was pre-

siding over the conference referred in their opening remarks to the fact that the Federal Government of Canada had introduced an electronic commerce privacy bill to the House of Representatives only a week earlier.

Nevertheless consumer and other business interests acknowledged that privacy issues were real, and that the failure to deal with them would inhibit the development of electronic commerce. Although there were further promises from the United States to have effective self-regulation privacy, experts were agreed that this had so far been a failure and American business was not addressing the issue of an independent complaints mechanism and a satisfactory set of remedies where breaches of individual information privacy occurred. New Zealand is fortunate in avoiding the prescriptive detailed laws of early European countries' data protection legislation. We enjoy a considerable advantage in uniform law which operates horizontally over the whole of the economy rather than inconsistent sectoral legislation which is to be found throughout the United States.

The OECD is not a human rights organisation. The fact that it finds privacy values genuine and a barrier to the development of electronic commerce unless they are adequately met should be a strong indicator to New Zealand burgeoning e-commerce web sites to promote their privacy protective policies and the consumer protection available under the Privacy Act.

In fact many have not yet published a privacy statement and I expect to take steps in the coming year to promote the use of the OECD's Privacy Policy Generator. I have worked with the Secretariat of the OECD in Paris on this project and consider it will be a unique educational tool for the development of privacy policies for businesses.

FUNCTIONS UNDER OTHER ENACTMENTS

A number of functions, powers and duties are conferred or imposed upon me by enactments other than the Privacy Act. The statutory provisions in question tend to be of four types:

- complaint mechanisms;
- requirements for my approval to agreements;
- obligations to consult with me; and
- my appointment to other bodies.

It can be convenient for a Government, or for Parliament, to confer functions on the Privacy Commissioner in another law for several reasons. For example, a proposal contained in that law might raise public concerns. Without abandoning the basic proposal, conferring a special "watchdog" role upon the Commissioner may allay public concern and allow the proposal to proceed. Typically, this might involve requiring a public agency to consult with the Privacy Commissioner in the implementation of a new scheme. A complaints role might be conferred upon the Commissioner in anticipation of exceptional circumstances if there is a worry that new powers might be used in an unexpected or unreasonable way or that something might go wrong. Placing a complaints function with the Commissioner is cheaper than creating a special new procedure, or complaints body, especially when complaints are expected to arise only rarely.

Complaints under other legislation

Although comparatively few complaints were received under my alternative complaints jurisdictions, each fulfils an important check on the exercise of particular statutory powers. The mere existence of a right to complain about the effect on privacy from the exercise of another statutory function can lead to additional care being taken by statutory officials in the exercise of their powers - including developing processes and safeguards to ensure that complaints do not arise.

I am empowered to receive complaints under section 22F of the Health Act 1956 about a failure or refusal to transfer health records between health agencies or to an individual's representative. This

function has been discussed in more detail in earlier annual reports. Twelve complaints alleging refusal to provide health records under section 22F were received this year.

Part VI of the Domestic Violence Act 1995 gives me jurisdiction to investigate complaints against refusals by registrars to suppress residential details on certain public registers following an application from someone who has had a protection order and fears for his or her personal safety if those details were to be released. No complaints under the Domestic Violence Act were received this year.

Section 11B of the Social Security Act 1964 provides that a person may complain to the Privacy Commissioner about a breach of a code of conduct issued by the Director-General of Social Welfare under that section (now the Chief Executive of Work and Income New Zealand). Part VIII of the Privacy Act applies to such complaints as if the code of conduct were a code of practice under the Privacy Act. The code of conduct governs demands by Work and Income New Zealand to supply information or documents about beneficiaries under section 11. Two complaints were received alleging breaches of the code of conduct.

Approval of agreements

Section 35 of the Passports Act requires the Privacy Commissioner's approval to be obtained in relation to agreements for the supply of information from the passports database by the Department of Internal Affairs to the New Zealand Customs Service. My approval is also required for any changes to that agreement. No agreements have been approved to date, although last year my office made comments on a draft agreement, suggesting a number of changes. Towards the end of the year a revised draft agreement was received 16 months after my office provided initial comments on the draft agreement. My office provided further comments but at the end of the year no finalised agreement had been tendered to me for my approval. I understand that information has been supplied, and continues to be supplied, without any agreement approved by me. However, I expect that a revised agreement will be able to be placed before me for my approval in the near future.

Similarly, section 36 of the Passports Act requires the Privacy Commissioner's approval to be obtained in relation to agreements for the supply of information from the New Zealand passports database to Australia. I have not approved any agreements or changes

to any existing agreements, during the year.

However, an agreement was signed in late 1995 between the Secretary of Internal Affairs and the Secretary of the Department of Immigration and Ethnic Affairs of Australia. My approval was not sought, although it is required and is a responsibility of the Secretary of Internal Affairs. Last year my office commented on that agreement, suggesting a number of changes. Two days before the end of the year a revised draft agreement was received 17 months after my office commented on the 1995 agreement. However, a significant number of my office's previous comments had not been adequately incorporated into the revised agreement, so it was not capable of being approved by me without further revision. I understand that information has been supplied, and continues to be supplied, pursuant to the 1995 agreement notwithstanding that I have not approved it and could not approve it in its current form. This is unsatisfactory some four years after the agreement was signed without my approval. I am expecting that the Department of Internal Affairs will be able to provide me with a satisfactory agreement for my approval in the coming year.

I regard as serious the fact that information from the passports database continues to be supplied in the absence of the approvals required by sections 35 and 36 of the Passports Act.

Consultations

Other statutory officers have to, on occasion, form views that will have a bearing on individual privacy. Some statutes require officers to consult with me on relevant matters.

Occasionally the consultation occurs at the implementation stage of a particular scheme and then is not necessarily repeated on any on-going basis. For example, the Financial Transactions Reporting Act 1996 required the Commissioner of Police to consult with me in respect of the preparation of suspicious transaction reporting guidelines. I was consulted in respect of the first such set of guidelines, which were issued in 1996. However, because of the nature of moneylaundering, and the diversity of financial institutions that are subject to obligations under the Act, the Police are developing more specialised guidelines for particular sectors. There has been some consultation during the year on guidelines for law practitioners.

Last year I was consulted on the issue of the first code of conduct

issued under section 11B of the Social Security Act. That code provided that the Department of Social Welfare review it, once it had been in force for a year. Section 11B(3) of the Social Security Act provides that the code of conduct may be amended, or revoked and a new code issued, in consultation with the Privacy Commissioner.

Work and Income New Zealand (WINZ) approached my office in August about the review of the code of conduct. After consulting my office about the review process, WINZ sent out material for consultation with a wide range of agencies in November, requesting views on the content and use of the code, together with any proposals for change. In late March this year, after examining the submissions received by WINZ, my office provided comments on the content and use of the code, and made suggestions for changes to the code and procedures. WINZ had not provided its proposals for changes to the code before the end of the year.

The Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987 require the Ombudsmen to consult with the Privacy Commissioner in relation to review of official information access requests where privacy is a possible ground for withholding information. During the year 66 formal consultations under the two Acts were completed.

TABLE 1: CONSULTATIONS WITH THE OMBUDSMEN 1993-98

Year	Number of consultations
1993/94	22
1994/95	26
1995/96	60
1996/97	87
1997/98	77
1998/99	66

I have seen my role to endeavour to "add value" to the work of the Ombudsmen in reviewing the withholding of information under the freedom of information legislation. In some cases I agree with the Ombudsman's preliminary assessment. In many cases, my comments and suggestions have been in whole or part adopted by the Ombudsman in his final opinion. My role is a consultative one and I do not see it as narrowly advocating a privacy viewpoint.

Although fewer consultations were completed this year, the time spent on them did not diminish noticeably. A significant proportion of the consultations involved many hours work assessing large files from which most, if not all, of the requested information had been withheld. I have also noticed this trend in many of the complaints involving access that fall within my jurisdiction.

It is of concern to me that some public sector agencies, when faced with a request, consistently fail to deal with it in accordance with the Official Information Act and the Privacy Act. Rather than balancing the competing interests and making a careful assessment of the information to be released, some agencies simply withhold all or most of the file. Their analysis of the competing privacy and public interests can be rudimentary or, worse, non-existent. This trend is disturbing, given that access rights are not new. Agencies have had a number of years to become used to the regime imposed by the Official Information Act and the Privacy Act.

At a practical level, this overly simplistic response has impacted on the workload of the Ombudsmen and my office. Rather than simply reviewing the decision, our staff have more to do by way of identifying the information at issue, and assessing and balancing the competing interests. I have only one staff member available to work on consultations with the Ombudsmen, so this trend has affected my ability to respond in a timely fashion.

I have also noticed a growing disparity in the responses given by different branches of the same agency. Lack of consistency in approach is of some concern, and I have contacted some agencies to suggest privacy training would be in order.

Appointment to other bodies

Under the Human Rights Act 1993 I am, by virtue of my appointment as Privacy Commissioner, also a Human Rights Commissioner. As such, I participate in the meetings of Human Rights Commission. I attended eight formal meetings of the Commission during the year.

IV. Information Matching

INTRODUCTION

This has been a busy year in relation to my information matching oversight functions. Several new information matching programmes were authorised, some of which had unusual features and others which were implemented with great rapidity. Although two programmes were discontinued, the total number of programmes monitored at some stage over the year has grown. With new proposals arising every year, the workload is set to expand. During the year I completed the first operational review of a batch of information matching provisions. Information matching complaints are also running at the highest level since matching began.

Nature of information matching and controls

Information matching, often referred to as data matching, usually involves the computerised comparison of two or more sets of records with the objective of seeking out any records which relate to the same individual in order to detect cases of interest. Matching can be done manually with paper files but, as a practical matter, time and cost precludes this. The technique has particular attractions in detecting fraud, waste and abuse in government programmes. The information matching with which I am concerned in relation to my functions under Part X of the Privacy Act relates to cases in which adverse action is to be taken against an individual.

Data matching is perceived to have negative effects on personal privacy by, amongst other things:

- using information which has been obtained for one purpose for an unrelated purpose;
- "fishing" into Government records concerning innocent citizens with the hope of finding some wrongdoing by someone;
- taking automated decisions affecting individuals without human intervention;
- requiring innocent people to prove their lack of guilt due to errors caused by the matching process;

- multiplying the effects on individuals of errors in some Government databases.

To address the risks, Part X of the Privacy Act, together with information matching provisions in other laws, authorise and regulate the practice of information matching. They do this through controls directed at:

- *authorisation* – ensuring that only programmes which appear to be well justified in the public interest are approved;

- *operation* – ensuring that programmes are operated consistently with fair information practices and that individuals are not "presumed guilty until they prove their innocence";

- *evaluation* – subjecting programmes to periodic reviews so that discontinuance can be considered, unless it can be demonstrated that there are continuing benefits and that matching can be operated consistently with fair information practices.

Section 105 of the Act requires me to report annually in relation to each authorised programme carried out during the year. This year's report covers 19 authorised programmes although two of those had been discontinued by year end. Two of the matches which have previously commenced did not actually operate this year. With so many matches being reported on I have included a small summary table of each match to direct readers to certain basic features of the match including:

- the information matching provision – the statutory authority for operating the match;

- the year first authorised – this may be under an earlier statute than the one currently applying to the programme;

- the year the match commenced – in some cases this is many years after first being authorised;

- whether the match utilises unique identifiers – this is prohibited unless expressly authorised in an information matching provision or otherwise essential to the success of the programme;

- whether the match involves the disclosure of information through the use of on-line computer connections – this is gener-

ally prohibited although the Privacy Commissioner has the power to authorise on-line connections in particular cases.

I have classified each programme by one or more of eight primary purposes, namely:

- *detection of errors* in programme administration (e.g. erroneous assessment of benefit amounts, multiple invoicing);
- *confirmation of eligibility or continuing eligibility* for a benefit programme, or compliance with a requirement of a programme;
- *detection of illegal behaviour* by taxpayers, benefit recipients, Government employees etc (e.g. fraudulent or multiple claims, unreported income or assets, impersonation, omissions, unauthorised use, improper conduct, conflict of interest);
- *monitoring* of grants and contract award processes;
- *location of persons* with a debt to a Government agency;
- *identification of persons eligible for a benefit* but not currently claiming that benefit;
- *data quality audit*;
- *updating of data* in one set of records based on data in another set.

A number of matches have more than one purpose under this classification.

Use of that classification gives a simple overall picture of the current use of information matching. The currently authorised information matching programmes, or those operated at some stage during the year, have or had the following purposes:

- confirmation of eligibility or continuing eligibility - 12 programmes;
- detection of illegal behaviour - 7 programmes;
- updating of data - 4 programmes;

- detection of errors - 3 programmes;
- location of persons - 3 programmes;
- identification of persons eligible for a benefit but not currently claiming - 1 programme.

While there have been programmes to detect illegal behaviour and confirm eligibility for some years now, the use of matching programmes to update records is a fairly recent development.

Terminology used in this report

As far as possible I have tried to avoid some of the jargon and technical expressions which necessarily arise in a specialised area such as information matching. However, some technical language necessarily remains and if the text does not sufficiently explain a particular matter, readers are encouraged to refer to Part X of the Privacy Act, particularly the definitions set out in s.97, or to previous annual reports. Extensive explanation and discussion is also found in the two detailed reports submitted during the year to the Minister of Justice:

- *Necessary and Desirable: Privacy Act 1993 Review*, November 1998; and
- *Review of Statutory Authorities for Information Matching*, May 1999.

In the balance of this part of the report, I use several abbreviations and acronyms. The main abbreviations are set out below:

ACC	Accident Compensation Corporation (known from 1992-1998 as the Accident Rehabilitation and Compensation Insurance Corporation)
Courts	Department for Courts
Corrections	Department of Corrections
Customs	NZ Customs Service
DSW	Department of Social Welfare
Education	Ministry of Education
EEC	Electoral Enrolment Centre
IMPIA	Information Matching Privacy Impact Assessment
IRD	Inland Revenue Department

NDMC	National Data Match Centre of WINZ
NZIS	New Zealand Immigration Service
NZISS	New Zealand Income Support Service
Regulator	Accident Insurance Regulator
SAL, SWIFTT and TRACE	Various WINZ databases
TFN	Tax file number (colloquially known as the IRD Number)
WINZ	Department of Work and Income (commonly known as Work and Income New Zealand)

Report on a review of two information matching provisions

Section 106 of the Privacy Act requires me at periodic intervals to review the operation of every information matching provision and consider whether or not, in my opinion as Privacy Commissioner:

- the authority conferred by each information matching provision should be continued; and

- any amendments to the provision are necessary or desirable.

I am required to report my findings to the Minister of Justice who lays a copy of the report before the House of Representatives.

During the year I completed my first review under s.106. I had decided to undertake the reviews of all information matching authorities in batches, with the first batch constituting those programmes which had been authorised in 1991 and which had become operational by 1993. Subsequent reviews will complete the balance of the 1991 programmes and others authorised since. In May 1999 I submitted a report to the Minister in relation to a review of the operation of the Customs Match and the Commencement/Cessation Match.

I concluded that the authority establishing the Customs Match should be continued. However, I was not entirely comfortable with the evidence of the quantifiable benefits and believed that these should be more accurately assessed in subsequent annual reports and for the next s.106 review. I also recommended repeal of s.103(1A) of the Privacy Act as this provision, essentially part of the information matching provision is, in my opinion, both unneces-

sary and objectionable. The subsection allows adverse action to be taken against individuals solely on the basis of a discrepancy revealed by an information matching programme without giving the individual an opportunity to challenge the data. Essentially, the provision not only assumes someone to be guilty until they establish their innocence, but also allows adverse action to be taken against the individual on the basis of that assumed guilt without any prior notice.

I also concluded that the statutory authority establishing the Commencement/Cessation match should be continued. I had no recommendation to amend that provision, although I did observe that there may be a case for re-examining departmental practice concerning the very small overpayments generated as a result of a difference of a few days between commencement of employment and cessation of the payment of a benefit. I am pleased that WINZ is now resolving this very issue.

Other reports to the Minister of Justice

During the year I submitted two other reports to the Minister of Justice bearing upon information matching.

A chapter of *Necessary and Desirable: Privacy Act 1993 Review* was devoted to Part X of the Privacy Act governing information matching. I made 23 recommendations for amendment to Part X and to the Fourth Schedule, which contains the information matching rules. Many of the recommendations involved "fine tuning" to make a complex part of the Act somewhat easier to work with for both my office and departments operating information matching programmes. Other recommendations dealt with substantive matters, including a recommendation that individuals be allowed 10 working days in which to respond to a notice of adverse action rather than the 5 working days presently provided for.

The other report was submitted in November 1998 and concerned a proposed information matching programme between IRD and the Accident Insurance Regulator. The programme was an integral part of the privatisation of workers' compensation and established a mechanism to ensure that employers took out, or were assigned, an accident insurance policy as required by the new Accident Insurance Act. This programme got underway during this year and I report further on it below.

As with other new information matching programmes, the department responsible for the programme undertook preparation of an information matching privacy impact assessment (IMPIA). This assessment explained the proposed programme's objectives and the manner in which it would be operated in compliance with the information matching rules. The Government wished to enact and implement the new accident insurance scheme extremely rapidly and it became apparent to me that I would not have the available resource to scrutinise the proposal, and closely follow the implementation of the programme to ensure compliance with the information matching controls, without some assistance. I was therefore pleased to reach agreement with the Department of Labour that the costs of my engaging a contractor to work on this matter would be met. This arrangement did not impinge on my independence but was of benefit to both the Department (including the new Regulator's office) and my office. Indeed, I believe the arrangement contributed considerably to a fairly smooth implementation of a major new information matching programme, with special complexities, in a very short space of time. The success of that initiative confirms my view that a major portion of my information matching monitoring activities should be funded by charges on the specified agencies running, and benefiting from, the programmes.

That was the sole report on a new match that I submitted to the Minister of Justice during the year even though two other information matching provisions were added to the Third Schedule of the Privacy Act. The two information matching provisions underpinning the Tertiary Institutions/WINZ Student Allowance Match were actually a reinsertion of provisions which had earlier been in the Third Schedule of the Privacy Commissioner Act 1991.[1] In that sense their inclusion in the Privacy Act was a correction of a legislative oversight rather than a significant substantive change. In spite of this, no information matching programme had ever been operated under the earlier provisions included in the Privacy Commissioner Act and so I had the relevant department, now WINZ, prepare an IMPIA. This document was examined and was the subject

1) Sections 226A and 238B of the Education Act were first included as information matching provisions in the Third Schedule of the Privacy Commissioner Act 1991. The provisions were inserted on 25 June 1993 after the Privacy Act 1993 had been passed on 17 May a few days before it came into force on 1 July. During that period the Privacy Commissioner Act remained in force but through an oversight the sections were not carried over in the Third Schedule to the Privacy Act. The provisions were reinserted in 1998 by the Employment Services and Income Support (Integrated Administration) Act 1998.

of discussion with the Department. However, on this occasion, partly due to competing calls on available resources, no specific report to the Minister was prepared.

General comments about the WINZ programmes

The figures for the last two years of the major WINZ information matching programmes operated by the National Data Match Centre (NDMC) show a fairly consistent pattern. Major changes from earlier years of reporting included the decline and then cessation of figures for prospective savings, reorganisation to centralise most of the follow-up work once an information match has been made, calculation of costs, virtual elimination of applying penalties to information matching cases, and the methods of estimating actual recovery of debts established. The new pattern of financial performance revealed is as follows:

TABLE 1: COMBINED TOTALS OF THE FOUR MAIN WINZ NDMC PROGRAMMES[2]

	1997/98	1998/99
Overpayment established - number	33,568	32,519
Overpayments established - amount	$30,372,465	$35,332,459
Penalties applied - number	28	15
Penalties applied - number	$16,938	$7,644
Debts recovered - amount	$8,459,857	$8,9761,018
Cost of operation - amount	$8,215,897	$9,471,880

These figures suggest that:

- the payments estimated to have been actually recovered through these information matching programmes do not quite cover the costs of operating them;

- each year the debt owed to WINZ for overpayments grows by over $20 million through the operation of the programme; and

2) This table combines the amounts for the Customs/WINZ Arrivals/Departures, Corrections/WINZ Penal Institutions, IRD/WINZ Commencement/Cessation and Education/NZISS Student Allowance Programmes.

- penalties – at one stage running close to $10 million per year on information matching cases, are now a rarity in this area.

Prior to 1997/98, the estimation of debts actually recovered (i.e. payments received to pay off the overpayments established by information matching) was – to say the least – highly debatable. Figures of $15 million and $16 million a year were produced but did not seem trustworthy. A revised method of calculating the estimated recoveries was introduced for the 1997/98 year and continued into 1998/99. This method produced estimated recovery figures of $8,459,857 and $8,973,018 respectively.

For some five years now I have been asking WINZ and its predecessors to introduce a system that records the actual recoveries of debts that have arisen from information matching. The latest report I have received about this says "WINZ information technology unit is still scoping system enhancements, which includes determining recoveries of data match debt". Plainly very little progress has been made in this direction. I am not satisfied by estimates of the recoveries, because the figures for costs and recoveries are to my mind just as important as the reporting of "overpayment debts" established.

The information matching programmes conducted by WINZ have all been justified by promises of making enormous monetary savings by cutting back on what the Department now routinely calls "benefit fraud" or "benefit crime" and recovering overpayments. Initially, the figures produced for overpayment debts established in each year were added on a formula basis as "prospective savings". Prospective savings were an estimate of the further overpayments of benefits which would have continued into the future if the information programme had not spotted and put a stop to the individual "benefit fraud" cases. The estimation of prospective savings was far from robust and, in response to probing from my office about the calculation of these figures, the estimates were substantially reduced and are now not produced to me at all. Given the real difficulty in making such assessments, I do not consider that "prospective savings" figures should be a significant component in the accounting for (and financial justification of) information matching programmes, although I do accept that some of the overpayments may otherwise have continued for a period.

It is appropriate to finish these general comments with a "pat on the back" for the National Data Match Centre for the vastly improved reports that are now submitted to me in relation to the op-

eration of the core WINZ programmes. In earlier annual reports I roundly criticised the standard of reports from the predecessors to WINZ, namely DSW and NZ Income Support Service. However, improvements started to appear last year and are now quite noticeable. Thanks to improvements put in train by NZISS, and NDMC staff, the reports are now far more detailed and coherent. The reported figures are more trustworthy and are accompanied by better and more informative commentary than has been the case in previous years. There is more improvement yet to be achieved but I commend the NDMC on improvements so far, and encourage the maintenance and enhancement of quality reporting. It is crucial that quality reporting be carried on each year, since it is important to review the operation of each programme every five years or so to determine trends and enduring usefulness, rather than simply concentrating on a single year's performance.

PROGRAMME BY PROGRAMME REPORTS

Introduction

The following material reports on each of the authorised information matching programmes in operation and four programmes which have been authorised but which are not yet fully operational. A report is also included for the programme carried out under s.11A of the Social Security Act. Although that section is not an information matching provision, I am required pursuant to it to report on the matches carried out under the section as if it were.

For the purposes of this report I have given each programme a title. With the increasing number of programmes - including multiple programmes with different characteristics operated between the same agencies - it has been necessary to develop a system of nomenclature. In 1993 it was simple for my staff, and the officials with whom they dealt, simply to speak of "the" address match for instance. Now there are three such matches.

Each of the titles used in this report begin with the names of the agencies involved (referred to as "specified agencies" in the Privacy Act) and in most cases this is followed by a description. I have adopted the convention of naming the agency whose only role is as a source of information to be matched first. The agency making use of the discrepancies produced by the match is named second. For example, in the "WINZ/Courts Fines Defaulters Address Match" the role of WINZ is to supply the information to be matched with

data from the Department for Courts but it does not use the results to take action against any individual. The Department for Courts uses the discrepancies for its purposes. The programme is further described as an "address match" which means that addresses are disclosed to the Department for Courts to enable matched individuals to be traced. In this case, the addresses being sought are those of "fines defaulters". In some cases the titles of programmes have changed from those used in earlier years. For convenience, previous names are also given.

Each entry commences with a table setting out basic information about the programme. A description of the purposes of the programme and the manner in which it is carried out follows. In each entry there is a discussion of notable issues arising from the operation of the match during the year and, in most cases, a table of results and some brief commentary on those results.

The reports are set out in the following order:

Matches with WINZ as user agency

- Corrections/WINZ Penal Institutions Match
- Customs/WINZ Arrivals/Departures Match
- IRD/WINZ Commencement/Cessation Match
- IRD/WINZ Debtor Address Match
- Section 11A Social Security Act Match
- IRD/WINZ Community Services Card Match
- Tertiary Institutions/WINZ Student Allowance Match
- Education/NZISS Student Allowance Match
- NZES/NZISS Match

Matches with other departments as user agency

- WINZ/Courts Fines Defaulters Address Match
- WINZ/IRD Family Support Match
- NZ Immigration Service/Electoral Enrolment Centre Match
- IRD/ACC Earners Match
- IRD/Accident Insurance Regulator Employer Compliance Match

Matches which have not yet commenced operating

- IRD/Accident Insurance Regulator Sanction Assessment Match
- IRD/Courts Fines Defaulters Address Match

- Corrections/ACC Inmates Match
- ACC/IRD Independent Family Tax Credit Match
- Labour/WINZ Immigration Match

Matches with WINZ as user agency

CORRECTIONS/WINZ/PENAL INSTITUTIONS MATCH	
Information matching provision	Penal Institutions Act 1954, s36F
Year authorised	1991
Commencement date	April 1995
Match type	• Detection of errors • Confirmation of continuing eligibility
Unique identifiers	None
On-line transfers	None

The Corrections/WINZ Penal Institutions Match[3] is designed to detect beneficiaries receiving income support who are imprisoned and are therefore ineligible for benefits. The programme operates by a weekly transfer of information about all newly admitted inmates from the Department of Corrections to WINZ.

The information is compared by name and date of birth. Matched individuals are sent a notice advising them that, unless they produce proof to the contrary, the benefits which they are receiving from WINZ will cease and any overpayment found to have been made will be established as a debt to be repaid to WINZ.

Small improvements in the operation and reporting of this matching programme have been implemented during the year. In particular, the programme should now be more effective at dealing with alias names; more effort is being made by Corrections to notify WINZ of all alias names known to be used by individuals taken into prison.

3) An effort has been made this year in this report to use accurate and descriptive titles for each match. This has meant a slight change in title in a number of cases. Furthermore, this year the principal agency conducting information matching has changed its name to Work and Income NZ, abbreviated to WINZ. To assist in comparison with material in earlier annual reports, the previous names used for particular programmes are given in footnotes. The "Corrections/WINZ Penal Institutions Match" has formerly been referred to as the "Corrections/NZISS Match" or simply the "Corrections Match".

Results

TABLE 2: CORRECTIONS/WINZ PENAL INSTITUTIONS MATCH 1998/99 RESULTS (as at 31 August 1991)	
Number of runs	50
Number of records compared	23,731
Number of "positive" matches	9,279
Legitimate records (no adverse action taken)	5,420
Notice of adverse action issued	3,886
Debts estabilised (number)	4,015
Overpayments established	$2,749,023
Challenges	3
Challenges successful	0

Some issues remain about the addressing of s.103 notices under this match and the arrangements for recipients to respond to WINZ challenging such notices. Essentially, notices are currently addressed and sent to the person at the prison advised by Corrections as relating to the matching record. My office has raised the issue with the Department of how that practice deals with the possibility of the wrong individual being matched. Under the existing arrangement, if an inmate with similar name and date of birth details as a beneficiary is wrongly matched, the notice advising of adverse action will be sent to the inmate whereas adverse action will actually be taken in respect of the beneficiary. On the other hand, simply sending notices to the address held on WINZ records is not a satisfactory solution either, since this may mean that the notice is never received at all by the inmate when the information has been correctly matched. A solution conducive to protecting the individual's interests would be to continue to send the notice to the institution but to also post a copy to the home address held on WINZ records (or vice versa).

One of the practical ways of responding to a WINZ notice is to call a free-phone number given in the letter. WINZ advises that presently an inmate requires a prison officer to approve a call to the Department's number. The NDMC has applied to Corrections to have its 0800 number included in the select global list that any prisoner is able to call. That request has not yet been approved. The giving of, and responding to, notices is an issue I may take up next year.

On the basis of the information supplied, but subject to the comments concerning the giving of s.103 notices, I am satisfied that this programme has generally been conducted in accordance with the requirements of ss.99 to 103 and the information matching rules.

CUSTOMS/WINZ ARRIVALS/DEPARTURES MATCH	
Information matching provision	Customs and Excise Act 1996, s.280
Year authorised	1991
Commencement date	June 1992
Match type	Confirmation of continuing eligibility
Unique identifiers	None
On-line transfers	None

The Customs/WINZ Arrivals/Departures Match[4] is designed to detect those who travel overseas while receiving a benefit. Some benefits, such as unemployment, may not be paid at all when the individual is overseas. Others, such as superannuation, may be paid for only a specified period while the individual is overseas. This period varies from benefit to benefit.

The programme operates by a transfer of passenger arrival and departure information once a week from NZ Customs Service to WINZ. The information is compared with WINZ's database of beneficiaries by name, date of birth, and gender. The information provided to WINZ also includes passport number, flight number, country of citizenship, and dates of arrival or departure.

WINZ then checks its records to determine whether there has been an explanation given for the journey overseas. If there is no explanation, the matched individual is sent a notice advising that, unless they produce proof to the contrary, the WINZ benefit may cease and any overpayment will be recovered from the individual. Where a benefit may be paid for a certain period while the individual is overseas, WINZ does not issue a notice of adverse action until the requisite period passes and the individual remains out of New Zealand.

4) Formerly referred to as the "Customs/NZISS Match", "Customs/DSW Match" or simply the "Customs Match".

Results

The number of records compared, and both the number and value of overpayment debts established, show a substantial increase over previous years.

TABLE 3: CUSTOMS/WINZ/ARRIVALS/DEPARTURES MATCH – 1997/99 RESULTS[5]

	1997/98	1998/99
Number of runs	52	52
Number of records received from customs	3,919,190	5,646,430
Number if "positive" matches	23,888	24,912
Legitimates records (no adverse action taken)	5,474	7,187
Notices of adverse action issues	13,539	18,165
Debts established (number)	10,429	13,577
Overpayments established	$5,240,816	$7,222,958
Challenges	9	33
Challenges successful	–	28

Numerically, the most frequent form of overpayment debt identified by this match is an unemployment benefit, with a median overpayment value of $337; there were over 10,000 such overpayments totaling over $4 million. At the other end of the scale there were 68 overpayments of superannuation identified but these had a median value of $5,114 and a total of $312,850. A New Zealand superannuitant can legitimately be out of the country for up to 30 weeks but as soon as that period of absence is exceeded, the whole of the superannuation paid during the absence becomes repayable, hence the high median figure.

This match was in the first batch of programmes that I reviewed under s.106 of the Act. This is a review that I am required to undertake at periodic intervals to consider whether a particular information matching programme should be continued or if any amendments to the law establishing the programme should be made. I

5) The 1997/98 figures are as at 30 June 1998, while the 1998/99 figures are as at 31 August 1999.

concluded that the Customs Match should be continued, although for the next review I would wish to see more specific and reliable evidence as to the costs and benefits. I also recommended repeal of the provision allowing adverse action to be taken under this match without giving notice to the individual affected.

On the basis of the information supplied, I am satisfied that this programme has generally been conducted in accordance with the requirements of ss.99-103 of the Privacy Act and the information matching rules. This is subject to my general comments about reports made by WINZ.

IRD/WINZ/COMMENCEMENT/CESSATION MATCH	
Information matching provision	Tax Administration Act 1994, s.82
Year authorised	1991
Commencement date	March 1993
Match Type	• Detection of errors • Confirmation of continuing eligibility • Detection of illegal behaviour
Unique identifiers	Tax file number
On-line transfers	None

The IRD/WINZ Commencement/Cessation Match[6] is designed to detect those who are receiving a benefit and working at the same time. The programme operates by an exchange of information six times a year between the Inland Revenue Department and WINZ. WINZ provides the names of individuals receiving income support to IRD to compare with those people recorded on its database. Where a match is found, the matched individual's details of income and the periods of income are passed to WINZ. Any matched individuals are then investigated further by WINZ to determine whether the individual has earned amounts over the limit set for the relevant benefit. A check of the records held by WINZ is done to determine whether there is already an explanation for the match on WINZ's records. If there is no explanation, the matched individual is sent a notice advising that, unless they produce proof to the contrary, the presumed employer will be contacted to confirm dates of employ-

6) Formerly referred to as the "IRD/NZISS Commencement/Cessation Match", the "Commencement/Cessation Match" or simply "*the* IRD Match".

ment and amounts earned. If the employer confirms these matters, then the WINZ benefit may cease, and any calculated overpayment will be established as a debt to be recovered from the individual.

The individuals whose names are submitted to the matching programme are chosen in one of three ways:

- all those individuals who commence or cease receiving a benefit in the period since the last match;
- any Area Benefit Crime unit may nominate specific individuals whom they are investigating;
- one sixth of all those enrolled with WINZ.

This last group will be a different sixth of those enrolled for each match per year, so that in the course of 12 months all those enrolled with WINZ will have had their records matched with IRD at least once.

Results

This programme continues to be the most important in terms of the number of positive matches and the scale of adverse action taken. Perhaps because a substantial number of the records sent by WINZ for matching with Inland Revenue data are selected on the basis of some suspicion by WINZ of over-claiming by the individuals concerned, the "strike rate" of positive matches for each hundred records compared is far higher than it is for the Customs or Education matching programmes.

TABLE 4: IRD/WINZ COMMENCEMENT/CESSATION MATCH - 1998/99 RESULTS (as at 31 August 1999)	
Number of runs	6
Number of records compared	432,772
Number of "positive" matches	113,370
Legitimate records (no adverse action taken)	90,840
Notices of action issued	36,622
Debts established (number)	14,486
Overpayments established	$24,300,764
Challenges	263
Challenges successful	98

The substantial majority of overpayment debt numbers and value established are in relation to the unemployment benefit. The largest single debt established was over $30,000 but the median debt value in unemployment benefit cases was $858.

The number of overpayments established by this programme has increased by some 17% over the 1997/98 figures, but the total value of the overpayments grew by over 45% to this year's $24 million. The average individual overpayment debt established grew from $1,348 to $1,677. WINZ Data Match Centre suggests that one reason for this more effective performance in establishing higher debts is that they now tend to "legitimise" (and not pursue) those cases where an initial screening of a positive match shows that any overpayment would be for less than one week of benefit receipt. By concentrating their effort on investigating and establishing debts for the more serious or significant cases of overclaiming, the chances are reduced of such a case still remaining unresolved at the expiry of the Privacy Act time limits for taking action.

This approach to the allocation of investigative resources is in line with some of my own formal observations:[7] not only is it a more productive use of staff effort, but it also puts the focus of this information matching programme where it should be – on the detection and deterrence of conscious wrongdoing. Furthermore, this new screening policy will eliminate a good proportion of the requests made to employers for further information to confirm an individual's pay details. In doing so, this saves an invisible cost to the country of operating such information matching programmes: compliance by employers with requests by the department.

During the year there have been five complaints concerning the operation of the Commencement/Cessation Match. In one of these complaints I concluded that there was a breach of relevant information matching requirements, namely ss.101 and 103 of the Privacy Act. The remaining complaints are queued for investigation, are in investigation, or have been discontinued.

The Commencement/Cessation Match was one of the programmes that I reviewed during the year under s.106 of the Privacy Act. I concluded that the programme should be continued and did not recommend any amendments to the information matching provision.

7) Report by the Privacy Commissioner to the Minister of Justice, Review of Statutory Authorities for Information Matching, 21 May 1999, paragraphs 4.1.5 – 4.1.7 and 4.4.3 – 4.4.6.

Given that several complaints remain under investigation, and the fact that I have found an interference with privacy in at least one case, I am unable to give an unqualified assurance that this programme has been operated in accordance with ss.99 to 103 of the Act and the information matching rules.

IRD/WINZ DEBTOR ADDRESS MATCH	
Information matching provisions	Tax Administration Act 1994, s.85
Year authorised	1993
Commencement date	November 1994
Match type	Location of persons
Unique identifiers	Tax file number
On-line transfers	None

The IRD/WINZ Address Match[8] is designed to provide WINZ with up to date addresses from IRD for those who owe money to WINZ. These debts arise due to benefit overpayments having been established. The debtors traced through the programme are debtors who are not currently receiving a benefit and for whom WINZ has lost contact. The programme is one part of WINZ's process of collecting debts established by the other WINZ information matching programmes, as well as from other WINZ operations.

Results

It can be seen in Table 5 that a larger number of records were matched this year than in 1996/97. Of the records matched, a fairly high proportion were found "useable", a high 27.5% of the records sent for matching or 30.9% of the records actually matched. A match or hit is considered "useable" if as a result of an automatic scan by the TRACE computer system it is not excluded. TRACE excludes data returned from IRD from being added to a debtor record if:

- no residential address and no employer details were supplied by IRD;

- the debtor is deceased;

8) Formerly referred to as the "IRD/NZISS Address Match", the "IRD/DSW Address Match" or simply *the* "Address Match".

TABLE 5: IRD/WINZ DEBTOR ADDRESS MATCH – 1996-1999 RESULTS			
	1996/97	**1997/98**	**1998/99[9]**
Number of runs	6	5	6
Debtors sent for matching (A)	337,211	256,324	342,697
Average number of debtors per run	56,202	51,625	57,116
Matched by IRD (B)	295,801	230,174	304,552
% of debtors sent (B/A)	87.7%	89.8%	88.9%
Matches found useable (C)	70,339	45,047	94,115
% of debtors sent (C/A)	20.9%	17.6%	27.5%
% of those matched by IRD (C/B)	23.8%	19.6%	30.9%
Letters sent out (D)	18,392	7,708	8,534
% of those matched by IRD (D/B)	6.2%	3.3%	2.8%
% of matches found useable (D/C)	26.1	17.1%	9.1%
Letters not returned (presumed delivered) (E)	15,336	6,482	7,612
% of matches found useable	21.8%	14.4%	8.1%
% of letters sent out (E/D)	83.4%	84.1%	89.2%

- enforcement has ceased;
- the customer balance owing is below an enforcement threshold;
- details supplied by IRD are identical to those details already held by TRACE; or
- the customer is no longer on IRD monitor.

However, while technically "useable", most of the matches were not especially useful. This can be seen by the fact that s.103 letters were sent out in only a tiny fraction of cases: 8,534 cases out of 94,115 useable matches. This represents only 9.1% which was far lower than the figures in the previous two years. Although no investigation has been undertaken to establish why this was, WINZ suggested that it may be due to the fact that during the year there

9) 1998/99 figures as at 19 July 1999.

was an emphasis on working through a portfolio of especially old debt (some 50,000 odd records, many of which originated under the Liable Parent Contribution Scheme which has not operated for more than 10 years). In such cases the match may well produce a "useable" record, in the sense that it differs from the information currently held on the TRACE system, but on checking the new data it may simply reveal that the address produced by IRD is one already known to WINZ - perhaps an even older address than the one on WINZ's records.

On the basis of the information reported to me, I am of the opinion that the programme has been operated in accordance with ss.99 to 103 of the Act and the information matching rules.

SECTION 11A OF THE SOCIAL SECURITY ACT	
Year authorised	1987 (Altered in 1993 to include certain duties under Part X of the Privacy Act)
Category of match type	Detection of illegal behaviour
Unique identifiers	Tax file number
On-line transfers	None

Section 11A of the Social Security Act 1964 authorises WINZ to request information from employers about their employees or a specified class of employees (including former employees). The information may include names and addresses and tax file numbers. Section 11A(3) prevents WINZ requesting information from the same employer within a 12 month period. The information thus obtained may then be compared with records of social security benefits paid out. Any discrepancies found are dealt with in terms of section 11A. Sections 11A(6) and (7) bring the operation of the information matching programme under Part X of the Privacy Act.

Results

The most remarkable feature of the 1998/99 results would appear to be the dramatic drop in reported savings. As will be seen from the table, the net savings attributed to the match for the 1998/99 year were merely a quarter of the savings claimed for the previous year. Clearly there is a correlation with the fact that this year far fewer programmes were approved and, more importantly, actually brought to completion. The total number of employees checked was a mere

TABLE 6: SECTION 11A SOCIAL SECURITY ACT MATCH – 1998/99 RESULTS		
	1997/98	1998/99
Number of approved programmes	112	79
Number of current programmes	17	41
Number of completed programmes	95	38
Total employees checked	26,008	8,021
Cases investigated	3,384	794
Benefits cancelled or adjusted	1,918	540
Total cost	$216,819	$18,458
Total savings	$2,613,209	$658,586
Net savings	$2,396,390	$640,128

8,021 compared with last year's 26,008. However, as the Department has explained to my staff, and is apparent from figures given in my earlier annual reports, last year's figure is actually the aberration rather this year's. The number of programmes approved and carried out, and the general level of savings achieved this year, is in line with pre-1997/98 figures. The Department was unable to explain why an especially large number of matching programmes were carried out last year, since there have apparently been no changes in relevant policies (notwithstanding the reorganisation of NZISS into WINZ).

On the basis of the information supplied, I am satisfied that this programme has been generally conducted in accordance with the requirements of ss.99 to 103 of the Privacy Act and the information matching rules.

IRD/WINZ COMMUNITY SERVICES CARD MATCH	
Information matching provision	Tax Administration Act 1994, s.83
Year authorised	1991
Commencement date	1992
Match type	Identification of persons eligible for a benefit not currently claiming
Unique identifiers	Tax file number
On-line transfers	None

The IRD/WINZ Community Services Card Match[10] is an information matching programme in which the Inland Revenue Department supplies WINZ with tax credit information, for the purpose of allowing WINZ to identify those individuals whose income is at a level which makes them eligible for a Community Services Card (CSC). A CSC entitles the holder to subsidised health care.

When the CSC was developed, the decision was taken to use the same criteria for families with dependant children as those used by IRD to assess eligibility for family support. The information matching programme allowed costs to be saved by automating assessment and issue of CSCs for this group of people. Information matches usually occur fortnightly. The number of cases in each run varies, with on average about 10,000 cases each time.

The information provided by IRD is matched against the income limits for the card. The income limits vary depending upon the number of dependant children. Each exchange generates:

- a letter to a person matched advising that he or she is over the income threshold for a card; or
- a letter advising that the person is within the threshold for the card and enclosing an application form for a card which may be completed and returned; or
- if a current CSC is already held, a renewal flag is placed upon SWIFTT, the Department's computer system, so that when the existing card expires a new card is automatically generated for eligible cardholders.

The way in which the programme has been operated to date means that there is no adverse action taken as a result of this programme. An individual is offered a Community Services Card if they are successfully matched by the programme. The programme is not presently used to identify persons who hold, but are no longer eligible for a card.

I have not required any formal reports from WINZ or IRD for the operation of this programme.

This programme operates between Work and Income NZ and tertiary institutions or other educational service providers. The

10) Formerly referred to as the "IRD/NZISS Community Services Card Match", or the "Community Services Card Match".

TERTIARY INSTITUTIONS/WINZ STUDENT ALLOWANCE MATCH	
Information matching provision	Education Act 1989, ss.226A, 238B
Year authorised	1998
Commencement date	December 1998
Match type	• Confirmation of eligibility and continuing eligibility • Updating of data
Unique identifiers	• WINZ customer number • Tertiary institution enrolment number
On-line transfer	None

match allows information about the enrolment status of those who have applied for student allowances to be passed to WINZ to check entitlements. This programme replaces the now discontinued Education/NZISS Match formerly operated under s.307A of the Education Act (noted below).

Purpose of programme

The purpose of the programme is to enable WINZ to obtain the enrolment information required to assess a student's entitlement to receive a student allowance payable in terms of the criteria prescribed under regulations. The data provided by institutions enables WINZ to:

- verify that a student is undertaking a programme of study which has been approved by the Ministry of Education for student allowance purposes;

- determine whether the student is full time;

- confirm start and end dates of the student's programme; and

- confirm any vacation periods exceeding three weeks during the student's period of study

Upon receipt of data from an institution, WINZ decides whether to grant an allowance, decline an allowance on the grounds that the student is not enrolled in an approved programme of study, or decline an allowance on the grounds that the student is not studying full-time. This part of the matching programme is known by

the participants as Verification of Study (VOS).

The other key purpose of the match is to provide WINZ with the study results of students who have received payment of an allowance. Students must pass more then half of the programme for which they received an allowance, otherwise their future entitlement to any allowances is suspended. This part of the programme is known by the participants as Results of Study (ROS). Although the framework for ROS has been put in place, that part of the programme did not operate during the year. It is planned to be implemented in 2000.

Operation of programme

Under considerable pressure on the agencies involved and within tight timeframes the programme was put in place in time to allow matching to commence on 21 December 1998. WINZ adopted two processes to carry out the match. The larger institutions, such as universities, participated in an electronic matching process while the smaller institutions, such as private training institutions and secondary schools, used a manual process. Both processes involve the exchange of the same data items to achieve the same outcomes.

The manual process entails requests from WINZ being sent to the institution in a letter and the institution replying by mail or fax. By comparison, the electronic process allows institutions to dial into a mail-box to obtain an electronic request. When the institution has processed the request, it is returned to the same mail-box for WINZ to transfer to SAL. (SAL is WINZ's computer database developed specifically for the assessment and payment of student allowances).

WINZ advised that neither the manual nor electronic processes used on-line computer connections. From July to September 1998 the Department considered the use of on-line computer connections. This would have required an application to the Privacy Commissioner for a specific approval under information matching rule 3. Some correspondence was entered into on the subject. However, ultimately the Department chose not to apply and instead pursued the programme without on-line computer connections.

WINZ issues the first VOS request to an institution once a student's application is pre-approved and three weeks before the start date of the student programme. Pre-approval for this purpose means

that WINZ has received a signed application with supporting documentation and has determined that the applicant meets all the basic eligibility criteria as to age, residential status, and income. The institution can respond to the request in one of two ways:

- *Unknown* – the institution is unable to match the details of the person as provided by WINZ. This arises particularly where students decide not to pursue their enrolment but have not advised WINZ of this (but might also apply if a false application was made);

- *Positive Match* – where the institution has a record of a person with the same details as specified by WINZ in the request. The institution provides a "pending" response if the student's enrolment is not yet finalised and a "confirmed" response if it is.

Where an institution fails to reply or replies with an unknown or pending response, WINZ later issues a reminder VOS request. A number of VOS requests may therefore be made of an institution in respect of a single application. A second or further VOS request was required in just under half of all applications in the first three months of operation (dropping to just over a quarter in the final three months of the year). Six or more requests were made in about 5% of cases throughout the entire period.

Multiple source agencies

There are a fluctuating number of tertiary and educational institutions involved in this programme. In the first 6 months, the number of institutions that were asked for data moved from 644 to 525. The large number of institutions involved in the matching programme is an unusual feature of this match. For this reason, a novel approach was taken in the legislation implementing the programme. Normally, any agency participating in an authorised programme is expressly listed in the definition of "specified agency" in s.97 of the Privacy Act. However, in this case the agencies involved in the programme are respectively described rather than named as:

> "The department for the time being responsible for the administration of the Social Security Act 1964."

> "Any tertiary institution, secondary school or private training establishment (as those terms are defined in the Education Act 1989) to which section 226A or 238B of that Act applies as

from time to time notified to the Commissioner by the department for the time being responsible for the administration of the Social Security Act 1964."

The provision anticipates WINZ notifying me of the identity of the source agencies before undertaking matching. There is also an obligation under s.99 of the Act to ensure that a copy of the relevant information matching agreement is forwarded to me "forthwith". A match involving more then 500 institutions is unusual and I would, of course, wish to be both flexible and accommodating to the Department in meeting its statutory responsibilities. However, I was only provided with copies of the executed information matching agreements in late May 1999, after my staff had reminded the department of their responsibility. This was some 5 months after matching had begun.

Section 99 prohibits the disclosure of information pursuant to an information matching provision until a written information matching agreement between the agencies in question is in place. In this regard, I note that all the information matching agreements have "December 98" printed upon them. The precise date on which they were executed has not been entered in most cases. In those cases where the educational institution has inserted a date, it was frequently within January, February or March 1999. In a few cases WINZ has date stamped returned executed agreements as March 1999. In such circumstances, it is not clear how the Department could have legally begun matching with any such agency, if indeed it did, from December onwards.

Executing information matching agreements should not be seen as a matter of no importance. For tertiary institutions participating in the routine exchange and matching of records it is important that they fully understand what is required of them to ensure that the matching runs smoothly, data quality is maintained and privacy preserved. However, in the absence of particular complaints I will likely not pursue any question of compliance with s.99.

I appreciate the Department's difficulties in dealing with hundreds of small agencies in this exercise in a short space of time. I am aware of some adverse publicity during the process in which, for example, some schools apparently felt that they were being pressured to sign a document that they either did not understand or held concerns about. The experience does perhaps reinforce a point I have made elsewhere: Part X of the Privacy Act is now required to

cope with matches having quite different characteristics from those first enacted in 1991. With goodwill, flexibility, and time to work through the issues, Part X adequately copes with the new challenges posed. Nevertheless, I believe that implementation of my recommendations in the review of the operation of the Privacy Act will go some way towards introducing a degree of flexibility to cope with new types of matches, while still strongly protecting the fair information practices embedded in the information matching controls.

Results

WINZ submitted two reports in relation to the operation of this match. The first covered the period from 21 December 1998 to 31 March 1999. This was received on 22 May 1999. The second covered from 1 April to 30 June 1999 and was only received on 11 October as this report was being finalised.

While the narrative report for the first period was useful there was a paucity of necessary figures (such as a breakdown of the outcome of challenges to s.103 notices issued). While some figures have been supplied for the latter period, they were received too late to be properly checked and analysed. The second report also did not summarise the position over the full year's operation and therefore does not provide a complete picture for my purposes.

Accordingly, the following table provides only very basic statistics even though some other figures were provided for the second period. It will hopefully be possible in the next annual report to provide a complete breakdown for both this year and 1999/2000.

TABLE 7: TERTIARY INSTITUTIONS/WINZ STUDENT ALLOWANCE MATCH – 1998/99 RESULTS

	21 December 98 - 31 March 99	1 April 99 - 30 June 99
Number of institutions to which WINZ issued VOS requests	644	525
Number of individual allowance applications in respect of which VOS requests issued	49,695	18,102
"Decline" outcome assessed following a positive match	3,403	1,299

A number of developments are expected in relation to this match during the coming year. For example, the ROS matching will begin. There is also expected to be an extension of matching activity to encompass student loans as well as student allowances (in a separate matching programme but essentially involving the same agencies).

Given the serious matters noted concerning the information matching agreements I am not in a position to offer an assurance concerning compliance with s.99(1) and (4). Subject to the comments in relation to the reports so far submitted by the Department, which do not as yet give me a complete picture for the six months in operation, I have no reason to believe that the programme was not carried out in accordance with ss.100-103 of the Privacy Act and the information matching rules.

Discontinued matches with NZISS as user agency

EDUCATION/NZISS STUDENT ALLOWANCE MATCH	
Information matching provision	Education Act 1989, s.307A
Year authorised	1991
Commencement date	October 1992
Match type	• Confirmation of continuing eligibility • Detection of illegal behaviour
Unique identifiers	Tax file number
On-line transfers	None

The Education/NZISS Student Allowance Match[11] was designed to detect those on unemployment or sickness benefits who were also receiving a student allowance or studying full-time. The programme sought to prevent "double-dipping" and was carried out three times a year since 1992.

The programme was operated by NZISS forwarding a diskette with the names of those receiving the relevant benefits to the Ministry of Education. The student allowance database held by the Ministry was compared with that of NZISS, using the tax file number

11) Formerly referred to as the "Education/NZISS Match" or simply the "Education Match".

as the only basis for a match. Any matches were then returned to NZISS by the Ministry of Education. NZISS checked the enrolment status of matched individuals with the relevant tertiary institution. Individuals for whom full-time enrolment was confirmed were sent a notice advising them that, unless they produced proof to the contrary, the benefit they were receiving from NZISS would cease and any overpayment found to have been made would be established as a debt to be repaid to NZISS.

The programme ceased to be an authorised information matching programme on 1 October 1998 with the establishment of the new Department of Work and Income - combining the former roles of NZ Employment Service and NZISS. WINZ took over the payment of student allowances from 1 January 1999. The Education Match as it has been to date will no longer take place. However, there is a new Tertiary Institution/WINZ Student Allowance Match (see above).

During the 1998/99 year there were four match runs. Three of these occurred in September 1998. A fourth run occurred on 21 December 1998. The December match, the last ever, was operated after WINZ had been established but days before it assumed responsibility from the Ministry of Education for the processing of student allowances. The last match, strictly speaking, occurred after the match had ceased to be an authorised information matching programme. Nonetheless, for the sake of completeness the following table summarises some details for all four of these matches carried out during the year.

TABLE 8: EDUCATION/NZISS STUDENT ALLOWANCE MATCH – 1998/99 RESULTS (as at 31 August 1999)	
Number of records compared	838,255
Number of "positive" matches	29,242
Records removed due to multiple use of TFN	26,976
Records requiring further verification/screening	2,266
Records requiring further verification/screening (not loaded into NDMC database)	1,659
Remainder of records loaded into NDMC database	607

The following table sets out the reported debt that was established. It is understood that these figures include debt established as a result of the December 1998 match run, carried out after s.307A of the Education Act ceased to be an authorised information matching provision.

TABLE 9: EDUCATION/NZISS STUDENT ALLOWANCE MATCH – BREAKDOWN OF DEBT ESTABLISHED 1998/99 (as at 31 August 1999)		
Benefit Type	Debt: Number	Debt: Amount
Unemployment	426	1,021,426.74
Sickness	1	2,517.36
Training	13	33,960.65
DPB	1	1,809.44
TOTAL	441	1,059,714.19

The Department imposed no penalties during the period.

The Department advised that Quality Assurance Officers detected two education records that had a debt established incorrectly. As the Departmental system did not allow a record outcome to be changed once committed, the records had their monetary amounts reduced to one cent.

During the year there were three complaints in relation to the operation of this programme. In two complaints I found that there had been a breach of Part X of the Privacy Act (relating to information matching) and in one of these cases this amounted to an interference with privacy. At the end of the year one complaint remains under investigation.

I had intended this year to review the operation of this programme under s.106 of the Act with the first batch of reviews covering those information matching programmes authorised in 1991 that were in operation by 1993. However, once I was advised that this programme would be discontinued in late 1998 I concluded that it would not be worthwhile to complete a review of this match.

Given the complaints in respect of the operation of this programme, including one in which I reached the opinion that there had been an interference with privacy, I cannot give an assurance that this programme has been operated in full accordance with the requirements of ss.99 to 103 of the Privacy Act and the information matching rules.

NZES/NZISS MATCH	
Information matching provisions	Social Security Act 1964, s.131A
Year authorised	1997
Commencement date	1997
Match type	• Confirmation of eligibility and continuing eligibility • Updating of data
Unique identifiers	• Social Welfare number • department of Labor Job-seeker's registration number
On-line transfers	Approved until 1 October 1998

The information exchange between NZ Employment Service and NZISS took place several times a day and was designed to allow each department to keep up-to-date records of those registered with both departments essentially to:

- administer the "work-test" and mandatory interview programmes; and

- maintain the job-seekers' register through lapsings.

The information exchanged included details uniquely identifying an individual, whether the individual had received a work-tested benefit, whether the individual had failed a work-test, lapse of an individual's enrolment with NZES, and so forth. The information flowed in both directions.

The programme was discontinued as an authorised information matching programme with the creation of the new Department of Work and Income on 1 October 1998. WINZ brought together functions formerly undertaken separately by NZES and NZISS.

Observations on the NZES/NZISS Match

Although there is a single statutory definition of "information matching" there are, in fact, a variety of potential match types, each having slightly different characteristics. The NZES/NZISS Match had some features which differed significantly from those previously authorised in New Zealand (which had primarily fallen within the categories of "detection of illegal behaviour" and "location of

persons"). The NZES/NZISS Match was the first which could be characterised principally as involving "confirmation of continuing eligibility" and "updating of data". Furthermore, the match was the first to anticipate data linkage, through on-line computer connections, as an integral part of the programme.

With the novel characteristics of this match in mind, I had been willing to explore alternatives to the standard unqualified application of Part X of the Act. For example, in June 1996 I granted an authorisation under information matching rule 3(1) to permit the use of on-line computer connections, normally prohibited. This permission was continued by a series of limited period approvals. The final one was given on 1 March 1998 and allowed the use of on-line computer connections until 1 October 1998 when the match ceased to be an authorised information matching programme.

I have no power to dispense with most aspects of Part X (nor would I wish to). Accordingly, when the departments identified significant difficulties in complying with the notice requirements under s.103 of the Act, consideration was given by those departments to amending the Social Security Act, in essence to override certain requirements of the Privacy Act. Although the rights of beneficiaries were diminished somewhat by the resulting amendment, I was satisfied that a suitable set of protections was substituted. Had the match not been discontinued, it would have been my intention to closely observe the operation of the programme to see that the substitute arrangements did in fact provide an appropriate level of data protection.

I observed in last year's annual report that NZISS had indicated problems with its ability to report to me in terms of s.104. Difficulties could well have been anticipated given the novelty and complexity of the programme involving, for instance, electronic transmission, exchange of data in both directions, frequent matching, and so forth. The Department pleaded practical difficulties in terms of the effort and cost of reprogramming its computer to provide reports on the operation of the match. Ultimately, the issue was resolved by the announcement of the merger of NZISS and NZES into WINZ. Given the intended discontinuance of the match as an authorised information matching programme, it seemed inappropriate to commit resources to computer reprogramming to generate the necessary reports for just a short time. However, that does mean that there is a paucity of reported information on this match. This makes it difficult for me to fulfil my reporting requirements under s.105, or to obtain a clear picture of whether the automated

data link worked satisfactorily from the perspective of cost effectiveness or in terms of fair information practice.

Although the regular s.104 reports were not provided, there was some detailed scrutiny of the programme. As a condition of the approvals for on-line computer connections, I required both agencies to undertake internal audits to confirm compliance with applicable requirements. That worked in a very positive fashion. The audits uncovered problems in some areas, generally of a minor nature, and reassurance of compliance in others. Recommendations for improving compliance were made and carried into effect.

I remain of the view that Part X of the Act established a suitable framework for the authorisation and regulation of a wide range of public sector information matching programmes. However, some pressure is placed on Part X - which is fairly detailed and in some cases quite prescriptive - when matches with characteristics quite different to those anticipated in 1991 are authorised. I am confident that given time and goodwill on the part of departments, the challenges of ensuring this match's proper compliance with Part X, including reporting, would have been met. Public officials are resourceful and committed to meeting their legal requirements. However, I have recommended in my review of the operation of the Privacy Act that there be consideration of reform of the information matching rules, and aspects of Part X, to cater to a wider range of match types. Such reform would build upon experience gained in New Zealand since 1991.

Unfortunately, this programme illustrates what has been a recurring problem with some programmes authorised since 1991. That is, departments sometimes see Privacy Act compliance as a matter to be addressed after the computer programming has been completed. This is quite wrong and can lead to significant delays in putting things right and at a cost that becomes problematic. Departments undertaking authorised matches must realise that Part X compliance is an essential feature of what they are require to deliver. Reporting on the operation of the match is part of that and should be built into the design and implementation of the programme.

In my opinion, departments ought to obtain similar types of reports themselves for internal purposes partly to assure compliance with their legal responsibilities, but also to confirm that what they are undertaking is in fact being achieved cost effectively. As a State

Services Commission inquiry into the 1997 amendment to this information matching provision (undertaken at the Prime Minister's request) noted, problems were caused as a result of officials failing to appreciate what was involved in Part X compliance. As the Cabinet paper noted, "ensuring compliance with the Privacy Act was critical to the successful implementation of the Government's policy". No doubt various lessons have been learned, but one important one is that departments need to get to grips with Privacy Act compliance issues early in the design of a programme. My office will continue to assist departments in that regard as far as my resources allow.

During the year there were three complaints regarding the operation of this programme. In one of those complaints I reached the opinion that there had been a breach of the information matching controls in the Privacy Act. The other complaints remained under investigation at the end of the year.

Given the complaints and the lack of detailed reports from the Department on the operation of this match during the period, I am unable to give an assurance that the programme complied with ss.99 to 103 of the Act and the information matching rules during the year.

Matches with other departments as user agency

WINZ/COURT FINES DEFAULTERS ADDRESS MATCH	
Information matching provision	Social Security Act 1964, s.126A
Year authorised	1996
Commencement date	1998
Match type	Location of persons
Unique identifiers	None
On-line transfers	None

The WINZ/Courts Fines Defaulters Address Match[12] is an information matching programme in which the Department for Courts is to be supplied with address information by Work and Income NZ concerning fines defaulters who receive income support. The purpose of the programme is to locate those who owe fines in order to enable recovery of outstanding amounts.

12) Formerly referred to as the "NZISS/Courts Address Match".

Results

TABLE 10: WINZ/COURTS FINES DEFAULTERS ADDRESS MATCH – 1998/99 RESULTS (as at 1 July 1999)	
Matching runs	2
Names sent to WINZ for matching	67,180
Names matched	13,050
Useable matches	12,954
Notices under s.103 of the Privacy Act given	12,106
Cleared by successful challenge	1,538

Although this programme was authorised in 1996, matching only started in December 1997/January 1998, when three tiny test matches, involving 100 records each, took place. Later in 1998, further small test matches were carried out. However it was only in 1999 that large scale matching really began. Only two significant match runs were completed this year. A further large match was undertaken shortly before the end of the financial year but no action was taken on the results during the reporting period.

It is too early to sensibly assess the performance of the match by reference to recoveries that can be attributed to the new addresses obtained. However, reporting procedures established by Courts will make the position clearer by the time of next year's annual report. I understand that it had been intended to operate the match monthly, with 13 runs allowed for in the information matching agreement. At present this has not been achieved, with matching still being done on an ad hoc basis. I have been advised that Courts now considers six runs sufficient in the coming year.

From the above table, it may be noted that useable matches were obtained for about one-fifth of the names submitted for matching. Of those, a fairly significant number were cleared by successful challenge – that is, in response to a notice given by the Department as required under s.103 of the Privacy Act, 1,538 individuals satisfied the Department that no action should be taken because an incorrect person had been identified, no fines were outstanding, or the recipient of the notice was deceased etc.

Last year's annual report noted that the information matching

provision under which this programme is carried out has been amended to allow WINZ to disclose telephone numbers, as well as addresses, to Courts. Given that a significant problem of inaccuracy in the telephone numbers held by WINZ had already been identified, I expressed some concern at this move. Courts has advised that the information matching agreement does not presently provide for the disclosure of telephone numbers and that at present Courts solely receives address information. I would wish to see quantifiable improvements in data quality before telephone numbers are routinely disclosed.

In June 1999 the largest of the matching runs was attempted. This involved 43,165 names being sent for matching. This match run was attempted three times before processing was successful. The same set of names was provided for each of the three attempts and the resultant data from the unsuccessful attempts were destroyed. The first attempt was unsuccessful due to incorrect header format date. The header format was corrected and the run rescheduled, but unfortunately the correction process led to corruption in the date of birth field. The second attempt was processed successfully but produced a very large volume of rejected records which, upon investigation, revealed the date of birth problem. After further corrections to the core data, a third attempt at processing the same information produced an acceptable result.

Such experiences emphasise the care that needs to be taken in undertaking data matching as well as the processes leading up to the match and those following. This provides a good example of the careful implementation of a match. Pilot matches were carried out before the programme was approved to provide data on which policymakers could judge the programme's likely usefulness, followed by test matches after approval to ensure that technical processes provided sound and accurate results before full-scale matching. It should sound a note of caution to other departments who may be tempted to take short-cuts in developing matching programmes or who assume that it is always a simple and technically straightforward process. There are no shortcuts: careful attention to detail is essential to ensure successful programmes which comply with the Privacy Act and ensure public confidence through the avoidance of mass error.

On the basis of the information supplied to me by the Department, I am satisfied that this programme has been conducted in accordance with the requirements of ss.99 to 103 of the Privacy Act and the information matching rules.

WINZ/IRD FAMILY SUPPORT MATCH	
Information matching provision	Tax Administration Act 1994, s.84
Year authorised	1993
Commencement date	1995
Match type	Confirmation of continuing eligibility
Unique identifiers	Tax file number
On-line transfers	None

The WINZ/IRD Family Support Match[13] is designed to prevent people "double-dipping" by receiving family tax credits from both IRD and WINZ. IRD periodically sends records to WINZ which carries out the process of comparison. Where there is a positive match, the person's details are referred back to IRD to use the results to take adverse action.

In this programme, IRD is both a "source agency" and "user agency", with WINZ being the "matching agency" (i.e. carrying out the automated process of comparison). As a rule of thumb, it is often most convenient for the agency with the smaller number of records to be compared, to disclose those records to the agency with the larger database to carry out the process of comparison.

Results

TABLE 11: WINZ/IRD FAMILY SUPPORT MATCH 1996-1999 RESULTS			
	1996/97 Runs 15-23	1997/98 Runs 24-32	1998/99[14] Runs 33-41
Cases sent by IRD to WINZ for matching	648,438	797,230	878,754
Cases matched by WINZ	6,387	6,297	6,889
Cases of adverse action taken	5,097	4,927	5,524
Costs incurred by IRD	$369,062	$538,017	$460,198
Savings (estimated)[15]	$9,573,428	$12,537,265	$14,563,098

13) Formerly referred to as the "NZISS/IRD Child Support Match" or "the Family Support Match". Sometimes referred to by departments as "the Double-Dipping Programme".

Last year I observed that approximately 150,000 more cases (individual names) were sent by IRD for matching than in previous years. However, in that year the number of cases of "double-dipping" was no higher numerically than previous years. This year there has been a further increase of 80,000 in the number of cases sent for matching. This puts the number of names being matched at approximately 220,000 higher than the level that had been generally operating since 1995. However, unlike last year's small dip in the number of cases of apparent double-dipping identified, this year the number of cases in which it appeared appropriate to commence adverse action has climbed to 5,524. This is the highest figure yet achieved and is roughly 500 more cases than the usual number of cases.

WINZ did detect at least one instance where a positive match resulted in identifying the wrong person. This came about due to the WINZ SWIFTT database holding more than one person with the same tax file number (TFN). The programme attempted a match by comparing the TFNs held on the IRD tape against the tax file numbers held on SWIFTT. A match was found based on the TFN, then the programme attempted to match the surname and first initial and date of birth details, or one of those details, and was successful. This second stage would often be expected to eliminate such wrong matches. The programme then checked whether the client had received family support from WINZ during the last two payment periods - which the person had. The "wrong" customer was picked, but because all the matching criteria were met, a positive match was reported. WINZ does not believe this situation happens very often. WINZ is involved in a process of "cleansing" the number of inaccurate TFNs on its SWIFTT database and therefore is confident that the chances of this happening in future are diminishing.

On the basis of the information supplied, I am satisfied that this programme has been conducted in general accordance with the requirements of ss.99 to 103 of the Privacy Act and the information matching rules.

14) 1998/99 figures as advised by IRD on 8 October 1999.

15) Calculated by determining the amount of the payments stopped, multiplied by the number of fortnights left in the customer's tax year, ie to the end of March (when the payment ought normally be stopped/reviewed because of the filing of a tax return).

NZIS/ELECTORATE ENROLMENT CENTRE MATCH	
Information matching provision	Electoral Act 1993, s.263A
Year authorised	1995
Commencement date	August 1996
Match type	• Confirmation of eligibility • Detection of illegal behaviour
Unique identifiers	None
On-line transfers	None

The Electoral Match is designed to identify individuals who are enrolled to vote in general elections without the necessary residence qualification. Information is provided by NZ Immigration Service (NZIS) to the Electoral Enrolment Centre (EEC) of all overstayers and visitors who are recorded as being present in New Zealand. From time to time (generally once a year), EEC obtains from NZIS the lists of overstayers and visitors. This information is compared with the electoral roll to identify those who are both enrolled and also listed as either visitors to New Zealand or overstayers.

Details of any names matched are sent to the Registrar of Electors in the electoral district in which the individual is enrolled. The matched individuals are sent a notice of adverse action advising that unless proof to the contrary is produced (for example, evidence of citizenship) the person may be deleted from the electoral roll. If there is no reply to the notice, a procedure established in section 96 of the Electoral Act is followed. If the individual cannot produce the necessary evidence or does not reply to the notice, he or she is deleted from the electoral roll. If the notice cannot be served, the individual is placed on the "dormant roll" which indicates that their vote will be taken on election day, but it will not be counted unless proof of eligibility to vote is later produced.

Continuing data quality issue

As noted in last year's annual report, I had submitted a special report to the Minister of Justice in January 1998 expressing disquiet about the inaccuracy of source data being used in the electoral match. I was concerned that an Auditor-General audit in 1997 had found the list of overstayers, used for comparison purposes in the match, to be "very inaccurate", despite the need for improvement having

been identified in a 1994 audit. Given the fundamental importance of the right to vote in a democracy, I considered that caution must be exercised before allowing unreliable data to provide the basis for commencing a process for disqualifying an elector. As reported last year, based upon reassurances from officials, the Minister declined to suspend the match. In fact, no matching was undertaken during the 1998/99 year. As the match did not operate during the year, there are no results to report. It is intended that a match be conducted prior to the 1999 general election.

During the year my staff met with officials from the Electoral Enrolment Centre and NZ Immigration Service to discuss the data quality matter, and several other reporting and operational matters. At the meeting my staff asked NZIS to provide information about, and regular reports on, data quality improvements in respect of the overstayer list. Disappointingly, NZIS provided no such reports despite reminders. However, in October 1999, in the preparation for this report, my staff were advised orally that NZIS concentrated during the 1998/99 year on identifying the key problems causing the data quality problems. The Service was now satisfied of the principal cause of the problems but, during the year had not taken any significant steps to resolve the problem. It is understood that the steps that may need to be taken involve the NZ Customs Service, which supplies passenger movement data, and therefore is not within the control of NZIS. My staff were further advised that in preparation for a match to be held after the end of the financial year, before the 1999 General Election, NZIS would separate information on the overstayer list by reference to its reliability and only pass to the EEC "confirmed" overstayer information. This is a matter I will consider further in the new year.

IRD/ACC EARNINGS MATCH	
Information matching provision	Tax Administration Act 1994, s.82
Year authorised	1991
Commencement date	1997
Match type	• Confirmation of eligibility • Detection of errors • Detection of illegal behaviour
Unique identifiers	Tax file number
On-line transfers	None

In late 1997, ACC conducted a test run of the IRD/ACC Earnings Match[16] to obtain employment information to help detect individuals fraudulently receiving ACC compensation while also receiving income. The individuals whose names were submitted were from a narrow group of ACC compensation recipients, and I was advised that the run was a test of ACC's systems. Some adverse action was taken. ACC has advised that the match produced some problems which require them to make some fundamental changes to its plans. I was advised that the programme did not operate during this year.

This new information matching programme is designed to allow the Accident Insurance Regulator to identify employers not complying with the requirement to purchase accident insurance. It does this by obtaining details of all employers' information from the Inland Revenue Department. This information is matched with information received from insurance companies as to whether those persons have accident insurance. Adverse action in the form of a penalty may be imposed by the Regulator in cases where the failure to be insured is verified.

IRD/ACCIDENT INSURANCE REGULATOR EMPLOYER COMPLIANCE MATCH	
Information matching provision	Accident Insurance Act 1998, s.370
Year authorised	1998
Commencement date	1999
Match type	• Detection of illegal behaviour • Updating of data
Unique identifiers	• Tax file number • Insurance number
On-line transfers	None

Operation and results of first match

Unusually, the initial operation of this information matching programme was a vital part of the implementation of a new scheme. The opening to competition of the employers' accident insurance market terminated the old ACC coverage for employers at the end of June 1999. As of 1 July 1999, any person or company which was an employer was required to have in place an employment accident insurance policy, or would be allocated to a new state-owned

16) Formerly referred to as the "IRD/ACC Match" or simply "the ACC Match".

insurer (At Work Insurance Ltd commonly styled "@Work") for such insurance cover. The most reliable record of current employers resided in Inland Revenue. The Accident Insurance Act 1998 provides that the Regulator can obtain details of employers from IRD and can compare those details with details of the employers that the insurance companies report have insurance contracts in place. This will be an ongoing process of checking, carried out periodically.

However, the same mechanism of information matching was used during May and June 1998 to identify and write to all those employers who had not already taken out insurance policies in the private sector to advise them of their obligations, and of the imminent allocation to @Work if they did not have another policy in place by 25 June 1999. The matching programme was then run again immediately after 25 June to produce a list of employers to be passed to @Work.

An initial match was carried out on 22 May 1999, using details supplied from IRD of 232,916 apparent employers. Information from insurers at that date showed only 1,246 had already taken out private insurance cover. After removing from the list of employers some 2,801 who had already notified the Regulator that they had ceased to be employers, a mail-out went to 228,869 apparent employers. That mail-out advised of the new accident insurance requirements, but also invited any recipient of the letter who was no longer an employer to send back a declaration to that effect. A further match was carried out on 16 June 1999 in respect of a further 4,467 persons or companies who, according to IRD records, had been identified as employers since the data had been compiled for the May match. Of these, 3,986 apparent employers were written to by the Regulator.

By 25 June, the Regulator had received from the insurers the details of 121,582 employers who appeared to have taken out private sector insurance, which compared with the total of 237,383 employers according to IRD. By the end of June 1999, the Regulator had received 36,071 declarations that the apparent employer either never had been, or had ceased to be, an employer. 3,844 instances of incorrect or changed addresses had also been received by that date. There were 121,359 persons or companies who appeared to be employers and who appeared not to have taken out unemployment accident insurance policies in the private sector. Details of those apparently uninsured employers were passed to @Work for that company to issue cover and contact their newly allocated clients.

Not surprisingly, insurance companies had been seeing frenetic activity by employers entering into insurance contracts just before the 25 June deadline, and it emerged that a substantial number of policies issued by the private sector insurance companies had still not been reported to the Regulator for the 25 June match. Upon receiving proof that cover had been put in place before the deadline, the Regulator withdrew such an employer from the allocation to @Work. Similarly, the Regulator continued to receive details of persons and companies which had appeared on the IRD lists as employers but were not employing anyone as at 1 July 1999. By these means, the total number of "employers" allocated to @Work reduced from 121,359 to 99,978 within a week of the 25 June match. At 7 September, the @Work allocation total had reduced to 74,153 (some 31.8% of all the employers written to by the Regulator during May and June).

Analysis and auditing by the Regulator of the insurance policies reported by the private insurance companies has revealed a significant number of employers who appear to have taken out policies with two or more insurers, either through the error of brokers or through different sections of the employer's organisation having made parallel but independent arrangements. This phenomenon is responsible for the fact that the number of reportedly insured employers, when added to the number of employers allocated to @Work as otherwise uninsured, substantially exceeds the total number of employers initially reported by IRD. The Regulator has initiated action by the insurance companies concerned to resolve these situations.

The cost of the information matching work carried out by the Regulator in May and June 1999 is reported as totalling $193,234. The bulk of this sum is accounted for by the printing and postage of the large number of notification letters, amounting to $147,391. That latter cost can be regarded as essentially a cost of direct mailing information to employers affected by the statutory changes. It also carried out the function under s.103 of the Privacy Act of giving persons who were going to be allocated to @Work the opportunity to show why this would not have been appropriate - for instance because they had ceased to be employers by the relevant date.

On the basis of the information supplied, I am satisfied that this programme has been conducted in accordance with the requirements of ss.99 to 103 of the Privacy Act and the information matching rules.

Matches which have not yet commenced operating

IRD/ACCIDENT INSURANCE REGULATOR SANCTION ASSESSMENT MATCH	
Information matching provision	Accident Insurance Act 1998, s.371
Year authorised	1998
Commencement date	Not yeat commenced
Match type	Updating of data
Unique identifiers	Tax file numbers
On-line transfers	None

This information matching programme, authorised by s.371 of the Accident Insurance Act 1998, forms part of the process used by the Accident Insurance Regulator to enforce the requirement that every employer maintains approved insurance for workplace accidents. Sections 384 to 391 of that Act allow the Regulator to charge an employer a civil penalty in respect of a period in which the employer has failed to have such insurance, and provides for that penalty to be a multiple of the premium which the employer would have had to pay for that insurance over the period concerned. In order to calculate such a premium, and therefore such a penalty, the Regulator must know the classification of the industry in which the employer was operating and the total taxable earnings and number of employees working for that employer at that time. This information is held by IRD, and the Accident Insurance Act allows for IRD to pass the information to the Regulator upon request and by a process covered by the information matching provisions of the Privacy Act.

The introduction of the new workplace accident insurance regime took effect from 1 July 1999, meaning that this programme did not commence within the 1998/99 reporting period. However, the Regulator has been in contact with my office to discuss the proposed operation of the programme.

IRD/COURTS FINES DEFAULTERS ADDRESS MATCH	
Information matching provision	Tax Administration Act 1994, s.85A
Year authorised	1998
Commencement date	Not yet commenced
Match type	Location of persons
Unique identifiers	None
On-line transfers	None

The IRD/Courts Fines Defaulters Address Match is similar in purpose and nature to the earlier authorised WINZ/Courts Fines Defaulters Address Match. It is an information matching programme in which the Department for Courts is to be supplied with address and telephone information by IRD concerning those fines defaulters for whom IRD has details. The purpose of the programme is to locate those who owe fines in order to enable recovery of outstanding amounts. The programme is intended to complement the address match with WINZ since WINZ is more likely to have current address information for persons outside the workforce (that is, receiving income support), whereas IRD's records are likely to be better in relation to people in employment who are paying tax.

The programme has not yet commenced operating. However, there have been some discussions with Courts during the year concerning the format of reports to be given to the Privacy Commissioner once matching begins.

CORRECTIONS/ACC INMATES MATCH	
Information matching provision	Accident insurance Act 1998, s.353
Year authorised	1992
Commencement date	Not yet commenced
Match type	Confirmation of continuing eligibilty
Unique identifiers	None
On-line transfers	None

During the year, the Accident Compensation Corporation entered into an information matching agreement with the Depart-

ment of Corrections to provide for the disclosure of inmate details by Corrections to ACC for comparison with the records of people receiving accident compensation. The purpose of the Corrections/ ACC Inmates Match[17] is to enforce the provision, now contained in s.122 of the Accident Insurance Act 1998, which disentitles inmates from receiving accident compensation during imprisonment.

The match did not operate during the year although preparatory work was undertaken for a pilot match to assess compliance levels among long and short term inmates. The pilot match was delayed several times and was thought likely to be undertaken after the end of this financial year. An issue has been raised with ACC about the addressing of notices of adverse action. This is essentially as outlined above in relation to the Corrections/WINZ Penal Institutions match: if a notice is solely sent to a prison, it provides no safeguard in the event of records being wrongly matched.

It may be noted that statutory authority for this information matching programme has existed since 1992 but ACC has chosen not to initiate a match during those seven years. The statutory authority under which the programme is authorised is a very broad one and also authorises new matching programmes between ACC and the Department of Labour, NZ Customs Service, WINZ, Ministry of Health, the Health Funding Authority and any hospital and health service. The provision is not as precise as most other information matching provisions in detailing the nature of matching with each or any of those entities or in specifying in detail the information which would be disclosed in a particular case.

It may therefore be that this provision represents some risk to privacy that has not yet been assessed in the detail that later provisions have under the information privacy impact assessment process established in 1996. I note that the Department has not made use of the provision to date and has been very thorough in its careful design of pilot matches to test how worthwhile the matching programme with Corrections might be. However, without wishing to be alarmist, it is sobering to note that without any further Parliamentary enactment, this single section could provide authority for a significant array of new matching programmes with attendant disclosure of sensitive information, including medical information.

17) Formerly referred to as the "Correction/ACC Match".

ACC/IRD INDEPENDENT FAMILY TAX CREDIT MATCH	
Information matching provision	Tax Administration Act 1994, s.46A
Year authorised	1996
Commencement date	Not yet commenced
Match type	Confirmation of eligibility
Unique identifiers	Tax file number
On-line transfers	None

The law authorising this programme seeks to facilitate the exchange of information between ACC and IRD for the purpose of verifying entitlement to the Independent Family Tax Credit (IFTC). Section 46A of the Tax Administration Act provides that ACC must, on request from IRD provide, in respect of each person receiving weekly compensation continuously for three months or more, that person's name and address, tax file number, and date of birth and the periods for which the person has been receiving weekly compensation for three months or more. The section further empowers IRD to compare the information with IRD information in order to assess that person's entitlement or their spouse's entitlement to the IFTC.

The programme was authorised by a provision introduced in the Tax Reduction and Social Policy Bill in 1996. I reported to the Minister in respect of that programme in April of that year concluding that the proposed programme generally complied with the information matching guidelines. There was an issue about the denial of access rights through IRD's secrecy provision but this was largely resolved by expressly preserving Privacy Act access rights in the information matching provision.

No information matching agreement has been entered into in relation to this match. The programme has not yet begun.

LABOUR/WINZ IMMIGRATION MATCH	
Information matching provision	Immigration Act 1987, s.141A
Year authorised	1991
Commencement date	Not yet commenced
Match	• Detection of illegal behaviour • Confirmation of continuing eligibility
Unique identifers	None
On-line transfers	None

I have not previously reported on the Labour/WINZ Immigration Match since it has not yet operated. The provision authorises the Department of Labour, which in this context will mean the NZ Immigration Service, to disclose information about people believed to be unlawfully in New Zealand, or lawfully here only by virtue of being on a temporary or limited purpose permit to WINZ, in order to verify entitlement to a benefit.

I will look at the statutory authority for this match during the coming year as part of the second batch of reviews being carried out under s.106 of the Act. Questions may need to be asked about the continuing need for an information matching provision which has not been utilised for matching in eight years.

V. Financial Statements for the year ended 30 June 1999

CONTENTS

Statement of Responsibility

In terms of section 42 of the Public Finance Act 1989.

1. I accept responsibility for the preparation of these financial statements and the judgments used therein, and

2. I have been responsible for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting, and

3. I am of the opinion that these financial statements fairly reflect the financial position of the Office of the Privacy Commissioner for the period ended 30 June 1999.

B H Slane
PRIVACY COMMISSIONER

Privacy Commissioner Statement of Accounting Policies for the year ended 30 June 1999

REPORTING ENTITY

The Privacy Commissioner is a crown entity as defined by the Public Finance Act 1989.

These are the financial statements of the Privacy Commissioner prepared pursuant to sections 41 and 42 of the Public Finance Act 1989.

MEASUREMENT SYSTEM

The general accounting systems recognised as appropriate for the measurement and reporting of results and financial position on an historical cost basis have been followed.

ACCOUNTING POLICIES

The following accounting policies, which materially affect the measurement of the financial performance and the financial position on an historical cost basis, have been followed.

Budget figures

The Budget figures are those adopted by the Privacy Commissioner at the beginning of the financial year.

Revenue

The Privacy Commissioner derives revenue from the provision of services to Parliament, for services to third parties and interest on its deposits. Such revenue is recognised when earned and reported in the financial period to which it relates.

Debtors

Debtors are stated at their estimated realisable value.

Leases

Operating lease payments, where the lessors effectively retain substantially all the risks and benefits of ownership of the leased item are charged as expenses in the periods in which they are incurred.

Fixed assets

Fixed Assets are stated at their cost price less accumulated depreciation.

Depreciation

Fixed Assets are depreciated on a straight-line basis over the useful life of the asset. The estimated useful lives are:

Furniture and Fittings	5 Years
Office Equipment	5 Years

Employee entitlements

Provision is made in the financial statements for the Privacy Commissioner's liability in respect of annual leave. Annual leave has been calculated on an actual entitlement basis at current rates of pay.

Financial instruments

The Privacy Commissioner is party to financial instruments as part of its normal operations. These financial instruments include bank accounts, short-term deposits, debtors and creditors. All financial instruments are recognised in the Statement of Financial Position and all revenue and expenses in relation to financial instruments are recognised in the Statement of Financial Performance.

Goods and Services Tax (GST)

The financial statements are shown exclusive of GST. The amount of GST owing to or from the Inland Revenue Department at balance date, being the difference between output GST and input GST, is included as either a debtor or creditor (as appropriate).

Commitments

Future expenses and liabilities to be incurred on contracts that have been entered into at balance date are disclosed as commitments to the extent that these are equally unperformed obligations.

Contingent liabilities

Contingent liabilities are disclosed at the point that the contingency is evident.

Inventory

Publications inventory held for sale is valued at the lower of cost, determined on a first in first out basis, or net realisable value.

CHANGES IN ACCOUNTING POLICIES

There have been no changes in Accounting Policies since the date of the last audited financial statements.

STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 30 JUNE 1999

1997/98 Actual $		Note	1998/99 Actual $	1998/99 Budget $
	INCOME			
1,764,444	Operating Grant		1,764,444	1,764,444
120,118	Other Income		146,198	185,020
18,387	Interest		9,661	9,735
1,902,949	**TOTAL INCOME**		**1,920,303**	**1,959,199**
	EXPENSES			
0	Review of the Privacy Act		59,146	64,000
56,778	Marketing/Newsletter		65,609	126,900
6,500	Audit Fees		7,000	6,500
65,170	Depreciation		65,524	65,000
171,901	Rental Expense		210,787	189,816
657,848	Operating expenses		438,137	476,312
1,124,170	Staff Expenses	**1**	1,013,270	1,087,285
2,082,367	**TOTAL EXPENSES**		**1,859,473**	**2,015,813**
(179,418)	**NET OPERATING (DEFICIT)/SURPLUS**		**60,830**	**(56,614)**

The accompanying notes and accounting policies form an integral part of these financial statements.

STATEMENT OF MOVEMENT IN EQUITY FOR THE YEAR ENDED 30 JUNE 1999

1997/98 Actual $		Note	1998/99 Actual $	1998/99 Budget $
129,226	Equity at 1 July 1998		(50,192)	(50,192)
(179,418)	Excess of Income over Expenses for the year		60,830	(56,614)
–	Capital Injection		181,000	–
(179,418)	Total recognised Revenue and Expenses for the year		241,830	(56,614)
(50,192)	**Equity at 30 June 1999**		**191,638**	**(106,806)**

The accompanying notes and accounting policies form an integral part of these financial statements.

STATEMENT OF FINANCIAL POSITION AS AT 30 JUNE 1998

1997/98 Actual $		Note	1998/99 Actual $	1998/99 Budget $
(50,192)	Surplus from operations		10,638	(106,806)
–	Capital Injection		181,000	–
(50,192)	**EQUITY**		**191,638**	**(106,806)**
	Represented by:			
	ASSETS			
	Current Assets			
450	Cash on Hand		450	450
53,730	Countrywide Bank		253,637	62,116
14,811	Debtors		23,842	14,811
20,788	Inventory		29,678	20,788
5,658	Prepayments		8,001	5,658
95,437	***Total Current Assets***		**315,608**	**103,823**
87,946	**Fixed Assets**	**2**	**31,479**	**22,946**
183,383	**Total Assets**		**347,087**	**126,769**
	LIABILITIES			
	Current Liabilities			
233,575	Sundry Creditors	**3**	155,449	233,575
233,575	***Total Current Liabilities***		**155,449**	**233,575**
(50,192)	**NET ASSETS**		**191,638**	**(106,806)**

B H Slane
Privacy Commissioner

28 October 1999

The accompanying notes and accounting policies form an integral part of these financial statements.

STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 30 JUNE 1999

1997/98 Actual $		Note	1998/99 Actual $	1998/99 Budget $
	CASH FLOWS FROM OPERATING ACTIVITIES:			
	Cash was provided from:			
1,764,444	Government Grant		1,764,444	1,764,444
99,718	Other Income		137,167	185,020
18,387	Interest		9,661	9,735
1,882,549			**1,911,272**	**1,959,199**
	Cash was applied to:			
881,375	Payments to Suppliers		812,221	863,529
1,103,143	Payments to Employees		1,060,960	1,087,285
(59,112)	Payments of GST		10,127	-
1,925,406			**1,883,308**	**1,950,814**
(42,857)	**Net Cash Flows applied to operating activities**		**27,964**	**8,385**
	CASH FLOWS FROM INVESTING ACTIVITIES			
	Cash was applied to:			
1,495	Purchase of Fixed Assets		9,057	–
(1,495)	**Net Cash Flows applied to Investing Activities**		**(9,057)**	**–**
	CASH FLOWS FROM FINANCING ACTIVITIES			
	Cash was provided from:			
–	Capital Injection		181,000	–
–	**Net Cash Flows applied to Financing Activities**		**181,000**	**–**
(44,352)	Net decrease in cash held		**199,907**	**8,385**
98,532	Plus opening cash		**54,180**	**54,180**
54,180	**Closing Cash Balance**		**254,087**	**62,565**
450	Cash on Hand		450	450
31,717	Countrywide Bank		33,335	62,115
22,013	Countrywide Bank - Deposit		220,302	-
54,180			**254,087**	**62,565**

The accompanying notes and accounting policies form an integral part of these financial statements.

RECONCILIATION OF NET SURPLUS FROM OPERATIONS WITH THE NET CASH FLOWS FROM OPERATING ACTIVITIES FOR THE YEAR ENDED 30 JUNE 1999

1997/98 Actual $		Note	1998/99 Actual $	1998/99 Budget $
(179,418)	Net surplus/ (deficit) from operations		60,830	(56,614)
	Add (less) non-cash Item:			
65,170	Depreciation		65,524	64,999
65,170	Total non-cash items		65,524	64,999
	Add (less) movements in working capital items:			
95,066	Increase/(Decrease) in Creditors		(78,126)	–
328	(Increase)/Decrease in Prepayments		(2,343)	–
(20,788)	(Increase)/Decrease in Inventory		(8,890)	–
(3,215)	(Increase)/Decrease in Debtors		(9,031)	–
71,391			**(98,390)**	**–**
(42,857)	**Net Cash Flows from Operations**		**27,964**	**8,385**

The accompanying notes and accounting policies form an integral part of these financial statements.

STATEMENT OF COMMITMENTS AS AT 30 JUNE 1999

	1999 $	1998 $
Capital Commitments approved and contracted	**Nil**	**Nil**
Non-cancellable operating lease commitments, payable:		
Less than one year	211,606	161,243
one - two years	213,611	123,588
two - five years	187,500	104,760
greater than five years	208,333	–
	821,050	**389,591**

Other non-cancellable contracts:

At balance date the Privacy Commissioner had not entered into any non-cancellable contracts.

STATEMENT OF CONTINGENT LIABILITIES AS AT 30 JUNE 1999

There are no known contingent liabilities as at 30 June 1999. There were no contingent liabilities as at 30 June 1998.

The accompanying notes and accounting policies form an integral part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1999

Note 1: STAFF EXPENSES

The total remuneration of the Privacy Commissioner was $160,770

Note 2: FIXED ASSETS

	1997/98 Cost/$	1997/98 Accum Depn/$	1997/98 Closing Bk Val/$	1998/99 Cost/$	1998/99 Accum Depn/$	1998/99 Closing Bk Val/$
Office Equipment	276,318	144,421	77,829	286,870	255,900	30,970
Furniture & Fittings	48,038	28,314	10,117	48,038	47,529	509
	324,356	**172,735**	**87,946**	**334,908**	**303,429**	**31,479**

Note 3: SUNDRY CREDITORS

1997/98		1998/99
91,800	Accruals - Wages and Holiday pay	45,006
73,393	Trade Creditors	23,998
	Accruals	28,190
68,382	GST	58,255
233,575	**TOTAL SUNDRY CREDITORS**	**155,449**

Note 4: FINANCIAL INSTRUMENTS

The Privacy Commissioner is party to financial instruments as part of its normal operations. These financial instruments include bank accounts, short term deposits, debtors, and creditors.

4.1 CREDIT RISK

Credit risk is the risk that a third party will default on its obligations to the Privacy Commissioner, causing the Commissioner to incur a loss. In the normal course of its business the Commissioner incurs credit risk from debtors and transactions with financial institutions. The Privacy Commissioner does not generally require security from debtors. The maximum exposure to credit risk at the 30 June 1999 is:

1997/98 $		1998/99 $
53,730	Bank Balances	253,637
14,811	Debtors	13,347
68,541		**266,984**

STATEMENT OF OBJECTIVES, STATEMENT OF PERFORMANCE

For the year ended 30 June 1999

Output - operations of the Privacy Commissioner

	1999	1998
	$	$
Total cost of producing output	1,859,473	2,066,496

OBJECTIVE 1

- To peruse and report upon proposed legislation.

Performance Indicators

- To peruse proposals for legislation and, having identified those upon which useful input can be made with comments on implications for privacy of the individual, to make those comments where practicable to do so in time for consideration by departments, Ministers or select committees.

- Comments are to be made by the Commissioner or a suitably qualified staff member.

Performance Measures

- Provide comments in respect of proposed legislation within target times set by the Commissioner.

Actual Achievement

- Submissions, reports or comments were made within the target time on all legislative proposals on which the office could usefully comment by the Commissioner or a suitably qualified staff member.

OBJECTIVE 2

- To issue and, as appropriate, review codes of practice.

Performance Indicators

- To consider proposals for codes of practice, provide guidance in the preparation of draft codes and to conduct sector and public consultation, carrying out all tasks by suitably qualified staff and within the time target set by the Commissioner.

- To carry out reviews of all temporary codes issued within one year so as to bring permanent codes into effect (where warranted) as soon as the temporary code expires.

Performance Measures

- Meet all requests for issue of codes within any set target time.

- Complete issue of permanent codes in time for expiry of temporary code.

Actual Achievement

- No temporary codes expired during the period.

- No application was submitted under section 47(2) for a code to be issued by the Commissioner.

- Consultation was completed in respect of two proposed amendments to the Health Information Privacy Code 1994 which were publicly released the previous year. Both were issued in August as a composite amendment.

- A review of the Health Information Privacy Code 1994 was commenced and completed.

OBJECTIVE 3

- To handle complaints of interference with privacy.

- To consult with the Ombudsman under the Official Information Act and the Local Government Official Information and Meetings Act.

Performance Indicators

- To receive, notify, investigate and resolve all complaints by use

of suitably qualified staff under appropriate supervision as to quality and timeliness.

- To provide comment to the Ombudsmen on reviews of the withholding of official information to protect the privacy of natural persons or deceased natural persons.

Performance Measures

- Within the resources of the Office, to undertake all phases of complaints handling with experienced and qualified staff working under appropriate supervision of timeliness and quality.
- To complete the processing of 630 complaints.
- Number of consultations.

Actual Achievement

	Projected	Actual
number of complaints received	1,400	1,003
number of complaints processed	630	895

- All complaints received by the Office were handled by suitably qualified staff working under supervision and each complaint was subject to full review by the Privacy Commissioner prior to its completion.
- During the year 1,003 complaints were received, jurisdiction assessed and accepted for investigation. Over the same period 895 complaints were resolved or action upon them discontinued and the files closed.
- During the year 66 formal consultations with the Ombudsmen were completed.

OBJECTIVE 4

To increase awareness and understanding of the Privacy Act.

Performance Indicators

- To provide enquirers with appropriate information given by suitably qualified staff.

- Within the resources of the Office, to present seminars and workshops to interest groups within the main population centres and elsewhere as warranted.

- To make speeches and other public statements which are of consistently high quality.

Performance Measures

- Numbers of enquiries received and answered by telephone, mail and visits.

- Preparation and issue of printed material to answer routine or general enquiries.

- Numbers and locations of seminars and workshops presented by suitably qualified staff.

- Speeches and public statements made by appropriate staff.

Actual Achievement

	Projected	Actual
education/public information programmes	1	1
number of enquiries received	9,500	6,971

- 6,971 enquiries were formally logged. Of these 6,356 telephone enquiries were answered. 615 written enquiries were received during the year, of which 599 were answered. Trained staff answered all of these enquiries. In addition there were a number of unrecorded informal enquiries, visits and requests for printed materials which are not formally logged as enquiries.

- Guidance was provided to a number of agencies in more specific terms on the preparation of their own compliance procedures and documents in the course of responding to enquiries and resolving complaints; no separate figures were recorded for this activity.

- Fact sheets prepared by senior staff covering the Act and the Health Information Privacy Code 1994 were supplied on request.

- Regular issues of *Private Word*, the Office newsletter were mailed to a significant proportion of people on the Office mailing lists.

- The average print run is 5,000 copies.
- Two general compilations of material were issued, comprising papers, submissions and speeches. A second volume of Complaints Review Tribunal cases, including two High Court appeals, was also released.
- A fully indexed compilation of case notes was produced.
- The website was rebuilt to bring it in line with the best current standards.
- Thirteen case notes were published on the Commissioner's investigations.
- Thirty-one seminars and workshops, and twelve speeches were presented during the year by qualified and experienced staff of the office.
- A Privacy Issues Forum was held in Wellington and was attended by 171 people.
- All media statements and the majority of public speeches were made by the Privacy Commissioner personally.

OBJECTIVE 5

- To monitor and report on information matching
- To review statutory authorities for information matching.

Performance Indicators

- To receive, peruse and question the agreements and periodic reports from agencies undertaking information matching.
- To review and report as soon as practicable after 1 February 1994 on the operation of information matching provisions.

Performance Measures

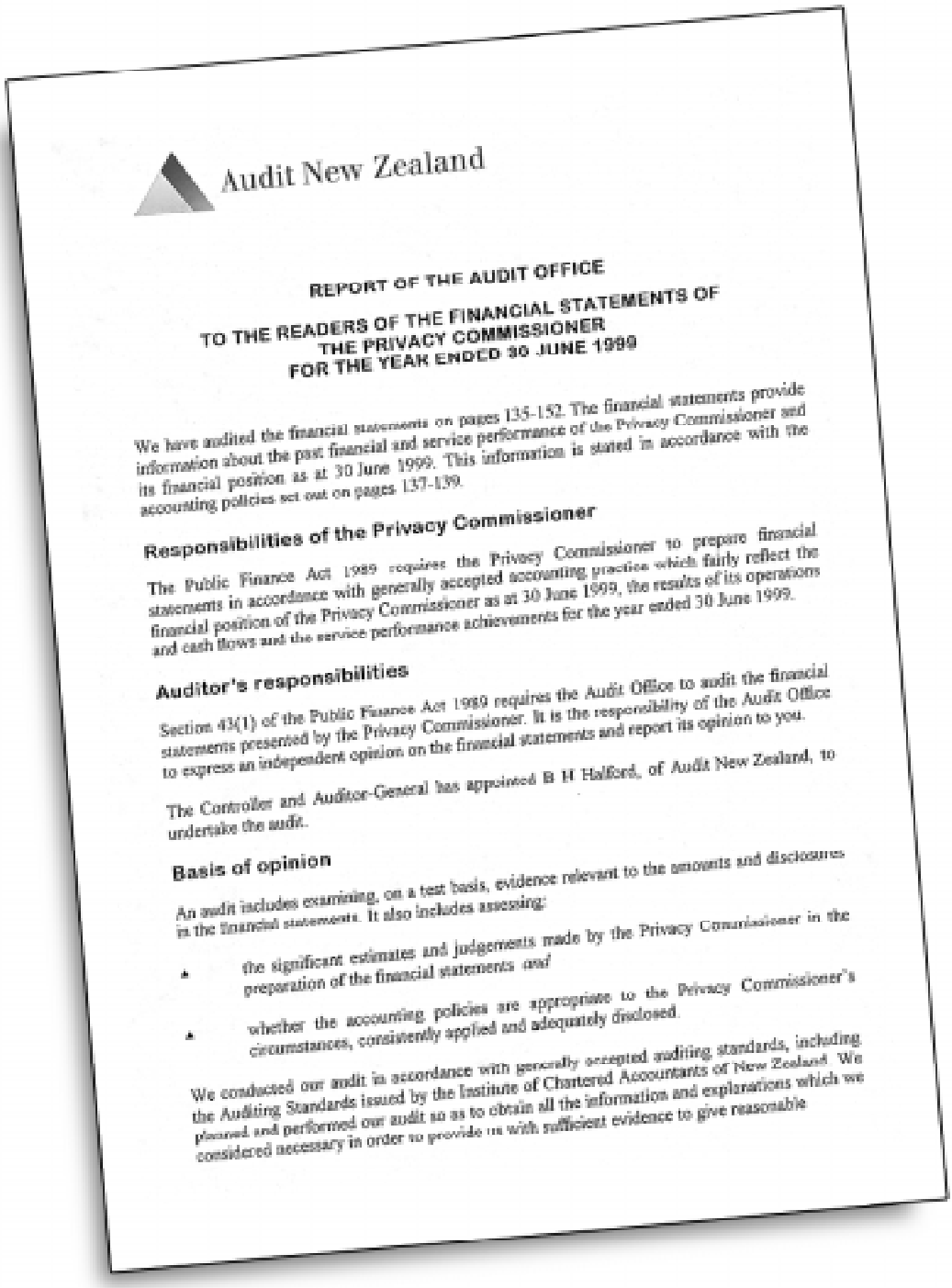
- Inclusion in the Annual Report of a report on the operation of the information matching programmes during the year.

- Provision of a report to the Minister of Justice on the operation of the information matching provisions soon after February 1994.

Actual Achievement

- A full report on the information matching programmes operated in the year 1998/99 is contained in this annual report.

- The first batch of reviews of the operation of information matching provisions was completed with a report submitted to the Minister of Justice in May. Preliminary work commenced on a second batch of reviews intended to be completed in the next financial year.



Audit New Zealand

REPORT OF THE AUDIT OFFICE

TO THE READERS OF THE FINANCIAL STATEMENTS OF
THE PRIVACY COMMISSIONER
FOR THE YEAR ENDED 30 JUNE 1999

We have audited the financial statements on pages 135-152. The financial statements provide information about the past financial and service performance of the Privacy Commissioner and its financial position as at 30 June 1999. This information is stated in accordance with the accounting policies set out on pages 137-139.

Responsibilities of the Privacy Commissioner

The Public Finance Act 1989 requires the Privacy Commissioner to prepare financial statements in accordance with generally accepted accounting practice which fairly reflect the financial position of the Privacy Commissioner as at 30 June 1999, the results of its operations and cash flows and the service performance achievements for the year ended 30 June 1999.

Auditor's responsibilities

Section 43(1) of the Public Finance Act 1989 requires the Audit Office to audit the financial statements presented by the Privacy Commissioner. It is the responsibility of the Audit Office to express an independent opinion on the financial statements and report its opinion to you.

The Controller and Auditor-General has appointed B H Halford, of Audit New Zealand, to undertake the audit.

Basis of opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- the significant estimates and judgements made by the Privacy Commissioner in the preparation of the financial statements *and*
- whether the accounting policies are appropriate to the Privacy Commissioner's circumstances, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards, including the Auditing Standards issued by the Institute of Chartered Accountants of New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable

assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion, we also evaluated the overall adequacy of the presentation of information in the financial statements.

Other than in our capacity as auditor acting on behalf of the Controller and Auditor-General, we have no relationship with or interests in the Privacy Commissioner.

Unqualified opinion

We have obtained all the information and explanations we have required.

In our opinion the financial statements of the Privacy Commissioner on pages 135-152:

- comply with generally accepted accounting practice and
- fairly reflect:
  - the financial position as at 30 June 1999
  - the results of its operations and cash flows for the year ended on that date and
  - the service performance achievements in relation to the performance targets and other measures adopted for the year ended on that date.

Our audit was completed on 28 October 1999 and our unqualified opinion is expressed as at that date.

B H Halford
Audit New Zealand
On behalf of the Controller and Auditor-General
Auckland, New Zealand

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