

Privacy Commissioner's Submission to the Governance and Administration Committee on the Public Service Legislation Bill (189-1)

Executive Summary

1. The Public Service Legislation Bill (the Bill) seeks to provide a modern legislative framework for a more adaptive and collaborative public service, including through expanding the types of entities that comprise the public service. I support the objectives of this Bill and consider that the Privacy Act 1993, as an enabling piece of legislation, can help in achieving them.
2. One of my functions under the Privacy Act is to examine legislation before Parliament and to consider any matters affecting individuals' privacy. The Privacy Act is a core public law statute that applies broadly across the public sector (as well as the private sector). It governs the collection, use, storage and disclosure of personal information and provides a mandate for my Office to consider wider developments or actions that affect personal privacy. Central to my examination of proposed legislation is the principle that policy and legislation should be consistent with privacy rights unless there is very good reason (and evidence) to override those rights.
3. My comments on this Bill relate to the relationship between the Privacy Act and the organisational arrangements that can be established in Part 2 of the Bill. I have identified minor amendments to the Privacy Act to improve this relationship and recommend that clause 108 of the Bill:
 - amend the definition of 'public sector agency' in section 96C of the Privacy Act to include departmental agencies and interdepartmental ventures, and
 - amend section 96H of the Privacy Act to provide that departmental agencies and interdepartmental ventures can be the lead agency for an AISA.

The relationship between the organisational arrangements and the Privacy Act

Organisational arrangements under the Bill

4. The Bill allows for the following organisational arrangements to provide the public service with greater flexibility to carry out certain roles:
 - interdepartmental executive boards that consist of a group of chief executives to enable joined-up strategic policy, planning, and budgeting around shared outcomes
 - interdepartmental ventures that will allow resources to be brought together into a single distinct entity, and
 - departmental agencies that sit within a host department (for example, the National Emergency Management Agency is hosted by the Department of Prime Minister and Cabinet).

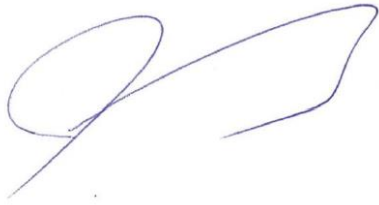
5. The Bill contains two clauses addressing the relationship between these entity types and the Privacy Act. Clause 105 of the Bill clarifies that the responsibility to maintain a Privacy Officer under the Privacy Act lies with the departmental agency.
6. Clause 108 of the Bill makes necessary and appropriate amendments to the Privacy Act to ensure that those entity types likely to share personal information fit into the schema of the Privacy Act. These amendments:
 - make it clear that any personal information held by an employee of a department carrying out the functions of a departmental agency is to be treated as held by the departmental agency, and
 - expand the definition of 'agency' in the Privacy Act to include departmental agencies and interdepartmental ventures.

Ensuring that new entities appropriately collect, use and share personal information

7. Information needs must be considered when establishing a new interdepartmental venture or departmental agency. To accomplish this a Privacy Impact Assessment should be developed to consider the information flows required both to set-up the entity and for its ongoing operation. The particulars around information flows will need to be considered in each case. For example, consideration should be given to what personal information is required from parent agencies and the specific legislation that applies in the circumstances.
8. The sharing of personal information required by these new entities may be enabled through pre-existing legislative provisions, or under the Privacy Act through exceptions to the information privacy principles or under Authorised Information Sharing Agreements (AISAs) provided for under Part 9A of the Privacy Act.
9. I have identified minor additions to clause 108 of the Bill to help ensure that the new entity types can participate in AISAs. I **recommend** that clause 108:
 - amend the definition of 'public sector agency' in section 96C of the Privacy Act to include departmental agencies and interdepartmental ventures, and
 - amend section 96H of the Privacy Act to provide for departmental agencies and interdepartmental ventures can be the lead agency for an AISA.
10. I note that these clarifications will need to be adjusted appropriately should the Privacy Bill be passed by Parliament in advance of the Public Service Legislation Bill.

Conclusion

11. I support the Bill's intention to improve the flexibility of the public service in delivering positive outcomes for New Zealanders.
12. I trust that my comments are of use to the Committee in its consideration of the Bill. While I do not seek to be heard on my submission, I am happy to appear before the Committee if that would assist the Committee.

A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by a series of loops and a long horizontal stroke.

John Edwards
Privacy Commissioner

29 January 2020