

Appendix B

List of questions

The Commission welcomes your views on the following questions. Feel free to answer as many or as few questions as you like.

CHAPTER 2 SCOPE, APPROACH AND STRUCTURE OF THE ACT

- Q1 We believe that the “principles-based”, open-textured approach to information privacy regulation in New Zealand is still appropriate. Do you agree? What problems have been encountered as a result of this approach? In what circumstances has it been shown to be helpful or appropriate? What other approaches or combinations of approaches might be more appropriate?
- Q2 Do you think the Privacy Act strikes the right balance between privacy and other competing interests?
- Q3 Are there ways in which compliance with the Act can be made easier and less costly without compromising its objectives?
- Q4 Should the name of the Privacy Act be changed? If so, what should its new name be? Should the Privacy Commissioner be called something else, such as the Data Protection Commissioner?
- Q5 Should the Privacy Act contain a purpose clause? If so, what should it say?
- Q6 How might the Privacy Act be better structured so that it is easier to navigate and to read?
- Q7 How is the Act perceived to be operating in practice? Are any perceived deficiencies the result of the Act itself, or rather of the way it is understood and applied? Could any changes to the Act be made so that the public perception and understanding of it more correctly match its objectives?
- Q8 Do you find the guidance issued by the Privacy Commissioner useful? On what topics would you like more such guidance?

CHAPTER 3
KEY
DEFINITIONS

- Q9 Do the following elements of the definition of “personal information” in the Privacy Act need to be clarified? If so, do you have any suggestions about how this should be done?
- “information”
 - “about”
 - “identifiable”
- Q10 Are there any other issues you would like to raise about the definition of “personal information”?
- Q11 Do you agree that human tissue samples should not be covered by the definition of personal information in the Privacy Act? Why, or why not?
- Q12 Is any clarification needed with regard to the coverage by the privacy principles of genetic information or other information derived from bodily samples?
- Q13 Should there be any changes to the existing provisions relating to deceased persons in the Privacy Act? (See in particular the proposals in paragraphs 3.52 and 3.55.)
- Q14 We propose that the Privacy Act should be amended to allow codes of practice to apply any of the privacy principles to information about deceased persons. Do you agree?
- Q15 Should any other amendments be made to the Privacy Act to extend its application to information about deceased persons?
- Q16 We propose that the Privacy Act should be amended to make clear that section 3(1) of the Law Reform Act 1936 applies to causes of action under the Privacy Act. Do you agree? Do you have any other suggestions about survival of Privacy Act complaints after death?
- Q17 Should the Act provide that any code of practice relating to the credit reporting industry may provide for access and correction rights for corporations? Should the Act provide generally for access and correction rights for corporations?
- Q18 We propose that the Privacy Act should be amended to make clear that, despite the general exclusion of information about legal persons from the definition of personal information, information about a legal person can be personal information if it is also clearly information about an identifiable individual. Do you agree? Would this have implications for other areas of law?
- Q19 Should the Privacy Act be amended to clarify the circumstances in which information about a trust can be personal information?
- Q20 We propose that the definition of “collect” should be deleted. Do you agree? If not, should it be clarified in some way?
- Q21 Are there any other terms that need to be defined, or whose definitions should be amended?

CHAPTER 4
THE
INFORMATION
PRIVACY
PRINCIPLES

- Q22 Should any of the existing principles be combined?
- Q23 Should principle 12 be removed from the principles and placed somewhere else in the Act?
- Q24 Should any other principles be deleted?
- Q25 Should there be any structural changes to the exceptions to the principles?
- Q26 Are you aware of situations in which the purposes for which agencies collect information are unclear? Does a lack of clarity about the purpose for which agencies collect information sometimes cause problems? Do you have any suggestions about how the Act should deal with specification of purpose?
- Q27 Should principle 1 be amended to require that the collection of information is *reasonably* necessary for the purpose? If so, how should reasonableness be determined?
- Q28 We propose that the word “directly” should be deleted from principles 2(1) and 3(1). Do you agree?
- Q29 We propose that principle 2 should provide that unsolicited information must either be destroyed; or, if it is retained, handled in compliance with all relevant provisions of the privacy principles as if the agency had take active steps to collect it. Do you agree? We further propose that principle 2 should provide that an agency must not retain unsolicited information that it would be unlawful for it to collect. Do you agree? Do you have any other suggestions with regard to the handling of unsolicited information?
- Q30 Should principle 3 be amended by making it applicable whether or not the information is collected from the person concerned?
- Q31 We propose that the “no prejudice” exception to principles 2 and 3 should be deleted. Do you agree?
- Q32 Should the Act provide that the “not reasonably practicable” exception does not apply when an agency wishes to avoid complying with principle 2 simply because the individual concerned refuses to provide the information, or because the agency believes that the individual would refuse?
- Q33 We propose that a “health or safety” exception should be added to principle 2. Do you agree? Should such an exception also be added to principle 3?
- Q34 We propose that the exceptions in principle 3(4)(a) and 3(4)(f)(ii) should be deleted. Do you agree?
- Q35 We propose that principle 4 should be amended so that it clearly applies to *attempts* to collect information. Do you agree?

- Q36 We propose that principle 5 should be amended to make clear that agencies must take reasonable steps to ensure that people who are authorised to access personal information for the purposes in connection with which the information is held by the agency do not access, use, modify or disclose that information for other purposes. Do you agree?
- Q37 We propose that principle 8 should be amended so that agencies must check the accuracy of information before use *or disclosure*. Do you agree?
- Q38 We propose that principle 9 should continue to allow retention of information for so long as it is required for the purposes for which it may lawfully be used. Do you agree?
- Q39 We propose that principle 9 should continue not to specify how personal information should be disposed of. Do you agree? Would guidance on this point from the Office of the Privacy Commissioner be helpful?
- Q40 Are coerced access requests a problem? If so, can the Privacy Act be amended to deal with the problem?
- Q41 We propose that where an agency is not willing to correct personal information, it should be required to inform the requester of his or her right to request that a statement be attached to the information of the correction sought but not made. Do you agree?
- Q42 Should the “safety” ground in section 27(1)(d) be expanded? If so, what new elements should it contain?
- Q43 Should there be a specific withholding ground relating to significant likelihood of harassment, or do existing withholding grounds cover this adequately?
- Q44 Should the “commercial prejudice” withholding ground in section 28(1)(b) be amended? If so, how?
- Q45 Should the Privacy Act be amended to provide statutory guidance with respect to the withholding of information under section 29(1)(a) in cases of “mixed” information? If not, would guidance from the Privacy Commissioner be of assistance?
- Q46 Should section 29(1)(c) be amended to refer to consulting the individual’s psychologist when appropriate? Should it refer to consulting with any other health practitioners and, if so, which ones?
- Q47 We propose that a new ground for refusal should be added to allow agencies to refuse access to information that has previously been provided to an individual, or that has previously been refused, provided that no reasonable grounds exist for the individual to request the information again. Do you agree? Do you have any other suggestions about how the Privacy Act should deal with the problem of repeated access requests for the same information?

- Q48 We propose that private sector agencies should no longer be allowed to charge for correction of personal information. Do you agree?
- Q49 We propose that complexity of the issues raised by a personal information request should be added to the grounds for seeking an extension of time in section 41(1). Do you agree?
- Q50 Should the Act expressly provide that disclosures within agencies can be covered by principle 11? If so, how should this be done?
- Q51 Should there be a new exception to principle 11 where the disclosure is to a person or persons who already know the information in question?
- Q52 We propose that the words “and imminent” should be deleted from principles 10(d) and 11(f). Do you agree?
- Q53 Should “assign” or “identifier” be defined in the Act, and if so, how should they be defined?
- Q54 Should principle 12(2) be amended so that it applies only to unique identifiers originally generated, created or assigned by public sector agencies (with an accompanying amendment to section 46(4) to allow principle 12(2) to be reapplied to private sector-generated identifiers by a code of practice)?
- Q55 Should there be an exception to principle 12(2) for statistical and research purposes? Should there be any other exceptions to principle 12(2)?
- Q56 Is there any uncertainty about the application of principle 12(4)? If so, how should this be addressed?
- Q57 Are any other changes needed to any of the existing privacy principles (including the provisions relating to principles 6 and 7 in Parts 4 and 5 of the Act)?
- Q58 Should an anonymity and pseudonymity principle be added to the Privacy Act, either as part of principle 1 or as a separate principle? If so, what should be the content of such a principle?
- Q59 Should the Privacy Act include an Openness principle? If so, what should be its content? If not, should openness be provided for in some other way?
- Q60 Should any other new principles be included in the Privacy Act? If so, what are they?

CHAPTER 5
EXCLUSIONS
AND EXEMPTIONS

- Q61 We propose that the application of the privacy principles (not necessarily by way of the Privacy Act itself) to the House of Representatives and to MPs should be considered by a committee of Parliament. Do you agree?
- Q62 We propose that the issue of extending the privacy principles to the parliamentary service bodies should be reviewed by a committee of Parliament at the same time as that committee considers the application of the principles to the House of Representatives and MPs. Do you agree?
- Q63 We propose that the Ombudsmen should be made subject to the privacy principles. Do you agree?
- Q64 We propose that the exclusion of the news media in relation to their news activities should remain in the Privacy Act. Do you agree?
- Q65 We propose that the definition of “news activity” should remain as it is. Do you agree?
- Q66 Do you think the definition of “news medium” should be amended to confine it to the print and broadcast media? Alternatively, should it be confined to news media that are subject to a code of ethics and complaints procedure?
- Q67 We propose that the limiting reference to Radio New Zealand and Television New Zealand should be removed from the definition of “news medium”. Do you agree?
- Q68 Are any other changes needed to the exclusions from the definition of “agency”?
- Q69 Are any changes needed to section 55?
- Q70 We propose that section 54 should be amended to allow the Privacy Commissioner to grant exemptions from principle 9. Do you agree? Should the Commissioner be allowed to grant exemptions under section 54 from any other principles?
- Q71 We propose that section 54 should continue to be limited to one-off exemptions only. Do you agree?
- Q72 Are any other changes needed to section 54?
- Q73 Should the meaning of “personal affairs” in section 56 be clarified? If so, how?
- Q74 We propose that section 56 should be amended to provide that it does not apply where a person has collected information from an agency by engaging in misleading conduct (in particular, by falsely claiming to have the authorisation of the individual to whom the information relates or to be that individual). Do you agree?
- Q75 We propose that section 56 should be amended so that it does not apply where personal information is obtained unlawfully (whether or not the person obtaining the information has been charged or convicted of a criminal offence). Do you agree?

- Q76 We propose that section 56 should be amended so that it does not apply where the collection, use or disclosure of personal information results in identifiable harm to another individual. Do you agree? If not, do you support any of the other options discussed in paragraphs 5.53–5.55?
- Q77 Do you have any other suggestions for amending section 56?
- Q78 Should principles 1, 5, 8 and 9 apply to the intelligence organisations?
- Q79 Should there be any other changes to the exemption for the intelligence organisations under section 57?
- Q80 Should there be any changes to the procedures for investigating privacy complaints involving the intelligence organisations? Are any problems created by the dual jurisdiction of the Privacy Commissioner and the Inspector-General of Intelligence and Security?
- Q81 Should any new exemptions be included in the Privacy Act?

CHAPTER 6
PRIVACY
COMMISSIONER

- Q82 Should section 13, or its heading, indicate that it is not an exhaustive list of the Privacy Commissioner's functions? Where should section 13 be located in the Act?
- Q83 Do you have any concerns about the breadth of the Commissioner's functions? Should the functions be confined to matters involving informational privacy?
- Q84 We suggest that the Privacy Act should express the Commissioner's functions in a more succinct way. Do you agree? How could this best be done?
- Q85 We propose that sections 13(1)(d) and 21 should be deleted. Do you agree?
- Q86 Are the reporting functions in section 13(1)(c), (p), (q) and (r) necessary? If so, is it necessary that the reports be to the Prime Minister?
- Q87 Should any other functions in section 13 be removed?
- Q88 We propose that a person or body other than the Privacy Commissioner should review the operation of the Act. Do you agree? If so, do you have any suggestions about who should conduct the reviews?
- Q89 Should reviews continue to be required every five years?
- Q90 We propose that there should be a requirement for the government to respond to reports arising out of reviews of the Act within a specified period of time. Do you agree?
- Q91 We propose that the current audit power should be amended to give the Commissioner power to conduct mandatory audits, as outlined in paragraph 6.93. Do you agree?
- Q92 Should any other functions be amended?
- Q93 Do you think that the Commissioner should have any further functions or powers that we have not discussed?

CHAPTER 7
CODES OF
PRACTICE

- Q94 Are any changes to the Act required to make the development of codes of practice more effective, or to improve the effectiveness of codes generally?
- Q95 We consider that codes of practice should be implemented by ordinary regulations approved by Cabinet, rather than simply being issued by the Privacy Commissioner. Do you agree?
- Q96 Should reviews, or sunset provisions, be mandatory in relation to codes of practice?

CHAPTER 8
COMPLAINTS,
ENFORCEMENT
AND REMEDIES

- Q97 We propose that the complaints, enforcement and remedies provisions of the Privacy Act should be reformed in the manner outlined in paragraphs 8.33–8.76. Do you agree? In particular do you agree that:
- the harm threshold in section 66 of the Act should be removed;
 - the role of the Director of Human Rights Proceedings should be discontinued for privacy cases;
 - for access reviews the Privacy Commissioner should determine the complaint and the role of the Human Rights Review Tribunal should be that of an appellate body;
 - the Human Rights Review Tribunal should be chaired by a District Court Judge;
 - the Privacy Commissioner should be given statutory power to issue enforcement notices; and
 - non-compliance with an enforcement notice should be made an offence?
- Q98 Are any other dispute resolution or enforcement mechanisms required?
- Q99 Should the Act provide more specifically for the taking of representative complaints? If so:
- Should the representative be required to be personally affected by the alleged breach?
 - Should the consent of other members of the group be required?
 - Should the group be formed on an opt-in or opt-out basis?
- Q100 Should there be new offences of:
- (a) intentionally misleading an agency by impersonating an individual or misrepresenting the existence or nature of authorisation from an individual in order to obtain personal information or to have personal information used, altered or destroyed; and/or
 - (b) knowingly destroying documents containing personal information to which an individual has sought access in order to evade an access request?
- Q101 Should the Act contain any further offences?
- Q102 Are any changes needed to clarify the Ombudsmen's role in investigating the Privacy Commissioner's handling of complaints under the Privacy Act?
- Q103 Do you have any further comments on the Act's provisions regarding complaints, enforcement and remedies?

- Q104 Should there be greater openness about data mining by public agencies? For example, should public agencies be required to report annually on their data mining activities?
- Q105 We consider that the current controls on information matching by public sector agencies are appropriate and should be retained. Do you agree?
- Q106 We do not think that there is currently a case to impose detailed controls on information matching by private sector agencies. Do you agree? If not, can you provide examples of situations where a lack of controls has put people's privacy at risk?
- Q107 We propose that Part 10 and Schedule 4 should be enacted as a separate Privacy (Public Sector Data Matching) Act. Do you agree?
- Q108 We consider that all information matching undertaken by public sector agencies should require specific statutory authority, and be covered by the controls in Part 10 and Schedule 4. Do you agree?
- Q109 We propose that the list of examples of what constitutes "adverse action" against an individual should be extended to include a decision to impose a penalty, and a decision to recover a penalty or fine imposed earlier. Do you agree? Should any other changes be made to the list of examples?
- Q110 We are currently of the view that the definition of adverse action should not be amended to clarify that information matching programmes that have a beneficial consequence for individuals or no adverse consequence are expressly excluded. Do you agree?
- Q111 We propose that the controls on information matching programmes by public sector agencies should be focused on computerised/automated matching, and manual matching should no longer be covered (computerised information matching with a manual component would continue to be covered). Do you agree?
- Q112 We propose that the information matching guidelines in section 98 should be amended to require a mandatory protocol procedure so that the Privacy Commissioner has better information on which to assess proposals for new information matching authorities. Do you agree?
- Q113 We propose that the period of notice that should be given by an agency before it takes adverse action against an individual on the basis of the results of an information matching programme should be increased from five working days to 10 working days. The Privacy Commissioner should also be empowered to shorten or waive the notice period in appropriate cases. Do you agree?
- Q114 We propose that the Privacy Commissioner should be able to present a separate report to Parliament each year on his or her monitoring of information matching programmes, rather than include this in the Commissioner's annual report. Do you agree?

- Q115 We propose that, in the absence of increased resources to enable the Privacy Commissioner to undertake the required 5-yearly reviews of information matching authorities under section 106, each authority should be sunsetted so that it expires after five years unless (a) renewed by Parliament, or (b) extended by Order in Council made on the recommendation of the Privacy Commissioner. Do you agree? If so, which option do you prefer?
- Q116 We propose that, if the Privacy Commissioner continues to undertake reviews of information matching authorities, there should be a requirement on the Government to respond to the Commissioner's report within six months of the presentation of the report. Do you agree?
- Q117 We propose that the Inland Revenue Department should no longer have a blanket exemption from the requirements to commence adverse action against an individual within 12 months, and to destroy personal information provided for or derived from an information matching programme once it is no longer needed. Specific exemptions for individual information matching authorities should be provided instead, if these can be justified. Do you agree?
- Q118 We propose that the current information matching rules requiring publicity and notice of information matching programmes, and prohibiting the creation of separate databanks, should be stated in the body of the Act itself. Do you agree? Are any other information matching rules so important that they should also be included in the Act rather than a schedule?
- Q119 Should the Act provide for the making of regulations amending the list of specified agencies in section 97 to ensure that the information matching controls in Part 10 continue to apply when agencies are reorganised?
- Q120 Do you have any other comments or suggestions about information matching?

CHAPTER 10 INFORMATION SHARING

- Q121 Are the principles set out in paragraphs 10.116–10.123 useful in framing a way forward for information sharing? Do you have any other suggestions?
- Q122 We have presented the following mechanisms as possible means of regulating information sharing:
- guidelines;
 - a code of practice;
 - a national public sector information sharing strategy;
 - a rebuttable presumption that personal information held by one public sector agency can be shared with other public sector agencies if such sharing is for the benefit of the individual concerned and is for a purpose that is broadly similar to that for which the information was obtained;
 - allowing the Privacy Commissioner to issue binding or advance rulings;
 - the enactment of a set of information sharing guidelines similar to the information matching guidelines in section 98;
 - requiring greater openness about information sharing by public sector agencies (such as requiring them to report annually on their information sharing activities);
 - the addition of a new “welfare” exception to principle 11;
 - an extension of the current section 54 exemption power;

- a schedule of authorised information sharing activities;
- a new regime similar to the existing information matching regime; and
- a “common or integrated programme or service” exception.

What are your views on any of these mechanisms?

- Q123 Do you have any other suggestions about how the sharing of information by public sector agencies might be facilitated in appropriate cases?
- Q124 How should legal authority for sharing of personal information across borders between government agencies be provided for? How should the law ensure that privacy is protected when information is shared in this way?

CHAPTER 11 INTERACTION WITH OTHER LAWS

- Q125 We propose that section 7 should be redrafted. Do you agree? Do you have any particular comments or suggestions for approaching this?
- Q126 Do you think a published list or table of statutory provisions that override the privacy principles would be helpful? In what form should this be made available?
- Q127 What presumptions or mechanisms should there be for clarifying the relationship between the Privacy Act and other legislation?
- Q128 Should section 7 be redrafted to ensure that future delegated legislation does not override the Privacy Act except insofar as the empowering Act clearly so authorises?
- Q129 Do you have any comments about the interaction of the privacy principles with the common law?
- Q130 What are your views on whether there should be closer alignment of the tests for disclosure of personal information under the OIA and the Privacy Act?
- Q131 Should the Privacy Act’s deferral to the OIA be made explicit?
- Q132 Should consideration be given to a specific right of review or complaints process for those affected by the release of personal information under the OIA?
- Q133 Should consideration be given to formalising a consultation process between the public agency holding personal information and a person who may be affected by the release of that information under the OIA?
- Q134 Should the OIA be able to be used by government agencies to obtain from each other information about individuals? If not, how should such a limitation be given effect?
- Q135 Should consideration be given to combining all, or any parts, of the Privacy Act, the Official Information Act and the Public Records Act?
- Q136 Do you have any preliminary views on umbrella regulation of privacy and freedom of information?
- Q137 Do you have views about the current division of access rights between the Privacy Act and the OIA?

- Q138 Do you have any views about the interrelationship between the Public Records Act and the Privacy Act, and between the Public Records Act and the privacy withholding ground in the OIA? Do you agree that the relationship between the different legislation should be clarified?
- Q139 Should remedies be available to a person aggrieved by a decision to place personal information on open access in the Archives? If so, what kind of remedies?
- Q140 Do you have any view about the question of jurisdiction for health information privacy as between the Privacy Commissioner and the Health and Disability Commissioner?
- Q141 Do you have views about how privacy can be protected in relation to personal information used for statistical purposes?
- Q142 Is a review of statutory secrecy provisions desirable?
- Q143 Does the intersection of any other legislation with the Privacy Act require clarification or review?

CHAPTER 12
LAW
ENFORCEMENT

- Q144 Should section 27(1)(c) include more specific law enforcement grounds for the withholding of personal information about a requester? If so, which specific grounds should be included?
- Q145 Would it be helpful if the Privacy Commissioner provided information or commentary about the law enforcement grounds for refusing access?
- Q146 We believe that, as a result of the coming into force of the Criminal Disclosure Act 2008 and section 29(1)(ia) of the Privacy Act 1993, there is presently no need to make provision for limiting access by prisoners to information. Do you agree?
- Q147 We suggest that the maintenance of the law exception should be redrafted for greater clarity. Do you agree?
- Q148 Should there be separate maintenance of the law exceptions for the disclosure of personal information (i) to a law enforcement agency upon request, (ii) to a law enforcement agency in the absence of a request, and (iii) by a law enforcement agency?
- Q149 Would it be helpful if the Privacy Commissioner provided information or commentary about the maintenance of the law exception to the use and disclosure principles?
- Q150 Should Schedule 5 law enforcement information sharing continue to be dealt with in a specific Schedule to the Privacy Act? Alternatively, should this be dealt with in specific regulations, or in a specific code of practice?

- Q151 Should additional transparency and accountability measures (like those that apply to information matching) also be applied to law enforcement information sharing? Alternatively, could Schedule 5 law enforcement information sharing be dealt with adequately under one or more of the generic information-sharing options outlined in chapter 10?
- Q152 Is there any reason for Part 11 and Schedule 5 to continue to provide for local authorities to have access to any law enforcement information?
- Q153 Should the power to amend Schedule 5 by Order in Council be reinstated? Should the power be subject to a sunset clause? What safeguards should be built into the process?
- Q154 Should the maintenance of the law exception to the disclosure principle be redrafted to clarify that personal information may be shared between law enforcement agencies for law enforcement purposes? Should any other mechanism to facilitate information sharing between law enforcement agencies be considered?

CHAPTER 13 TECHNOLOGY

- Q155 Do you have any comments on the role and functions of the Privacy Commissioner in relation to technological developments? Should the Privacy Commissioner's functions in relation to technology be revised and should any new functions be added?
- Q156 Should the Privacy Act provide for a Privacy Advisory Panel, or empower the Privacy Commissioner to set up expert panels on particular issues, as the Australian Privacy Act does?
- Q157 Is the basic framework of the Privacy Act adequate to deal with technological change? Should the privacy principles remain technologically neutral?
- Q158 Do you have any comments about the role of privacy-enhancing technologies in government or the private sector, and how their use could be encouraged?
- Q159 Should consideration be given to empowering the Privacy Commissioner to direct public or private sector agencies to produce Privacy Impact Assessments for new projects that may have a significant impact on the handling of personal information?
- Q160 Do you have any comments about the privacy issues associated with the technologies discussed in this chapter? Is any particular law reform or regulatory response required in relation to any or all of these technologies? Should consideration be given to codes of practice or Privacy Commissioner guidelines in relation to any particular technology?
- Q161 Do technologies not discussed in this chapter give rise to important privacy issues that require examination?

**CHAPTER 14
TRANS-BORDER
DATA FLOWS**

- Q162 Should there be more protections around personal information being sent out of New Zealand?
- Q163 If you think there should be further reform, which of the approaches discussed in paragraphs 14.40-14.55 do you prefer? Would you prefer another model or variant not discussed here?
- Q164 Does the Act require further amendments to implement the OECD Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy? Are any other amendments required in relation to cross-border enforcement cooperation?
- Q165 Do you see value in implementing a cross-border privacy rules system in New Zealand? If so, do you have a view on the questions in paragraph 14.71?
- Q166 Do you have any further comments on the issues raised by trans-border data flows?

**CHAPTER 15
DIRECT
MARKETING**

- Q167 Are any regulatory controls on direct marketing needed? If so, which forms of direct marketing require further controls:
- telemarketing;
 - unsolicited mail;
 - door-to-door marketing;
 - autodialing;
 - electronic spam;
 - fax marketing;
 - charitable solicitations;
 - political donation solicitations; or
 - other?
- Q168 Which regulatory option or options do you favour:
- a direct marketing principle in the Privacy Act;
 - a right to opt out of direct marketing in the Privacy Act, a Privacy Act code of practice, or regulations;
 - a voluntary or compulsory Do Not Call Register for telemarketing; or
 - any other option?
- Q169 Do you have any comments about the privacy issues associated with online behavioural targeting? What, in your view, is the appropriate regulatory response to these issues?

- Q170 Should the Privacy Act include a mandatory breach notification requirement, or is a voluntary notification model more appropriate?
- Q171 How should a data breach be defined? Should a data breach notification requirement be applicable to all types of personal information, or should a more purposive definition be developed for the purposes of the breach notification regime?
- Q172 In what circumstances should organisations be required to notify individuals that their personal information has been compromised? Should the legislation list the factors to be taken into account in deciding whether to notify? If so, what factors should the legislation list? Should there be different thresholds for notification to the individual and notification to the regulator?
- Q173 Who should decide whether a notification must be made in response to a data breach?
- Q174 Should the Privacy Commissioner have the power to compel an organisation to notify affected individuals?
- Q175 In the case of a data breach should the agency be required to notify the Privacy Commissioner's Office? If so, should this be in every case, or only when the "notification threshold" is met?
- Q176 Should other agencies be notified? If so, in what circumstances?
- Q177 At which point should notification be required?
- Q178 Should delays in notifying be allowed for law enforcement or any other purposes?
- Q179 Should the method of notification be prescribed, or stated in terms of the objective to be achieved?
- Q180 What information should have to be included in a breach notification?
- Q181 What exceptions, if any, should be included in a data breach notification regime? In particular:
- Should encryption be an express exception or one of the matters to be included in the risk assessment exercise?
 - Should public interest be included as a ground on which the Privacy Commissioner can waive an organisation's obligation to notify, or are more narrowly-defined exceptions more appropriate?
- Q182 Is the complaints process an adequate mechanism for dealing with an organisation's failure to notify in the case of a data breach, or are further sanctions necessary?
- Q183 Should it be decided that notification should be mandatory, do you agree that an amendment to principle 5, backed up by provisions later in the Act, is the best way to enact an obligation to notify? If not, how do you think the obligation should be enacted?

CHAPTER 17
IDENTITY CRIME

Q184 Are any changes needed, either to the Privacy Act or to other laws, to better address identity crime?

CHAPTER 18
PARTICULAR
GROUPS

Q185 Are there any ways in which the Privacy Act or the Office of the Privacy Commissioner could better provide for the needs of Māori?

Q186 Are there any ways in which the needs and concerns of particular cultural or religious groups in relation to privacy could be better met?

Q187 Are any particular protections for young people required in relation to online privacy or direct marketing?

Q188 Are any other new, specific protections for young people needed in the Act?

Q189 Should the Act provide more specifically for when a child or young person should be treated as having capacity to exercise rights under the Act? If so, should there be a set age or a more individual test?

Q190 Do you have any other concerns about the privacy of children and young people?

Q191 Should the Privacy Act include any special provisions for adults with reduced capacity?

Q192 Are there any other groups that have particular needs in relation to the Privacy Act? If so, how should these be provided for?

CHAPTER 19
HEALTH
INFORMATION
AND WORKPLACE
PRIVACY

Q193 Is there a need for a separate review of health information and/or new health information legislation?

Q194 Are you satisfied with the current legal framework governing workplace privacy, or is more specific regulation, such as a code of practice or specific legislation, needed to deal with workplace privacy issues?

Q195 Do you have any other comments, or any further suggestions, about how the Privacy Act 1993 could be amended or improved?