



REVIEW OF THE PRIVACY ACT 1993

REVIEW OF THE LAW OF PRIVACY
STAGE 4



LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE



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STAGE 4

The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

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FOREWORD

This issues paper is part of stage 4 of the Law Commission's Review of Privacy. Stage 4 is a Review of the Privacy Act 1993. We are seeking submissions from the public.

We have had to take account of a wide range of matters. The Act has been in force for 17 years, and its workings have brought to light a few problems. The international context is important too: information flows across national borders, and international treaties and conventions are increasingly important. Perhaps most importantly, technology is moving at pace and developments in computing, tracking and monitoring constantly pose challenges to our privacy.

Throughout we have had to keep in mind the crucial question of balance. On the one hand we must ensure that people's personal information is properly protected. To fail to do so can lead not just to humiliation and embarrassment but, even worse, to identity crime, stalking or reputational damage. On the other hand we must ensure that the potential of the new technologies for good is not unduly restricted, and that important values like freedom of information, health and safety and law enforcement are not impeded.

We ask a large number of questions in this paper. They range from relatively specific questions such as whether the details of the Act's privacy principles need amendment, to broader questions such as whether the Privacy Commissioner's powers need to change, to brand new questions such as whether there should be a mandatory requirement to notify breaches of privacy where data has been lost or wrongly disclosed.

On some issues the Commission has formed a provisional view and is seeking reactions to it; on others it has not yet taken a position and wants advice.

The topic has proved to be a very large one, and the issues paper is long: we could not do it justice in less. We ask many questions. We do not expect many will wish to answer all those questions. But we do hope that readers will select chapters that interest them, and let us have their views. We need all the help we can get.



Geoffrey Palmer
President
Law Commission

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Ministry of Justice

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Participants in a forum on general privacy issues held in May 2007

Participants in a consultation meeting with media representatives held in July 2007

Participants in a forum on health privacy issues held in August 2007

Participants in a meeting with privacy specialists held in May 2008

Participants in a consultation meeting with Māori held in June 2008

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Ministry of Health

Ministry of Social Development

New Zealand Police

Office of the Ombudsmen

Archives New Zealand

Inspector-General of Intelligence and Security

New Zealand Security Intelligence Service

Government Communications Security Bureau

State Services Commission

Trade Me

Health and Disability Commissioner

Robert Hesketh, Director of Human Rights Proceedings

Royden Hindle, Chair, Human Rights Review Tribunal

Bruce Slane

Sandra Kelman

Rowena Cullen

Call for submissions

Submissions or comments on this Issues Paper should be sent to the Law Commission by **30 April 2010**.

Privacy Submissions

Law Commission
PO Box 2590
Wellington 6140

email – privacy@lawcom.govt.nz

Any enquiries may be made to **Ewan Morris, 04 9144 821**.

There are questions set out in the chapters of this issues paper, and collected at the start of the paper, on which we would welcome your views. It is not necessary to answer all questions. Your submission or comment may be set out in any format but it is helpful to specify the number of the question you are discussing, or the paragraph of the issues paper to which you are referring.

This Issues Paper is available on the Law Commission's website www.lawcom.govt.nz.

Official Information Act 1982

The Law Commission's processes are essentially public, and it is subject to the Official Information Act 1982. Thus copies of submissions made to the Law Commission will normally be made available on request, and the Commission may refer to submissions in its reports. Any requests for withholding of information on grounds of confidentiality or for any other reason will be determined in accordance with the Official Information Act 1982.

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Glossary

The following table contains a list of acronyms and abbreviations that are used regularly throughout this issues paper, and their corresponding meanings or full citations. Where appropriate, it also contains the names of some bodies and an explanation of what they do.

ALRC	Australian Law Reform Commission
APEC	Asia Pacific Economic Cooperation
Article 29 Data Protection Working Party	This is a Working Party set up under Article 29 of the EC Data Protection Directive 95/46/EC. It is an independent European advisory body on data protection and privacy.
CRPC	Credit Reporting Privacy Code 2004
DPI	Deep packet inspection
EU	European Union
Federal Trade Commission	The Federal Trade Commission is the Federal body which oversees consumer protection and competition in the US, including the regulation of business practices that impinge on personal privacy.
HIPC	Health Information Privacy Code 1994
ICO	Information Commissioner's Office (UK)
IP address	Internet Protocol address
ISP	Internet Service Provider
Necessary and Desirable	Office of the Privacy Commissioner <i>Necessary and Desirable: Privacy Act 1993 Review</i> (Wellington, 1998).
1st Supplement to Necessary and Desirable	Office of the Privacy Commissioner <i>Supplement to first periodic review of the operation of the Privacy Act 1993: Report by the Privacy Commissioner to the Minister of Justice supplementing Necessary and Desirable: Privacy Act 1993 Review (December 1998) and offering further recommendations</i> (Wellington, April 2000).

2nd Supplement to Necessary and Desirable	Office of the Privacy Commissioner <i>Second supplement to first periodic review of the operation of the Privacy Act 1993: Report by the Privacy Commissioner to the Minister of Justice supplementing Necessary and Desirable: Privacy Act 1993 Review (December 1998) and the first supplement to that report</i> (Wellington, January 2003).
3rd Supplement to Necessary and Desirable	Office of the Privacy Commissioner <i>Third supplement to first periodic review of the operation of the Privacy Act 1993: Report by the Privacy Commissioner to the Minister of Justice supplementing Necessary and Desirable: Privacy Act 1993 Review (December 1998) and the First and Second Supplements to that report (April 2000 and January 2003)</i> (Wellington, December 2003).
4th Supplement to Necessary and Desirable	Office of the Privacy Commissioner <i>Fourth supplement to first periodic review of the operation of the Privacy Act 1993: Report by the Privacy Commissioner to the Minister of Justice supplementing Necessary and Desirable: Privacy Act 1993 Review (December 1998) and the First, Second and Third Supplements to that report</i> (Wellington, May 2008).
NSWLRC	New South Wales Law Reform Commission
OECD	Organisation for Economic Cooperation and Development
OIA	Official Information Act 1982 (NZ)
OPC	Office of the Privacy Commissioner (NZ)
PETs	Privacy-enhancing technologies
PIPEDA	Personal Information Protection and Electronic Documents Act 2000 (Canada)
Privacy Act	Privacy Act 1993 (NZ)
RFID	Radio frequency identification
TIPC	Telecommunications Information Privacy Code 2003
VUW report	Miriam Lips, Rose O'Neill and Elizabeth Eppel <i>Improving Information Sharing for Effective Social Outcomes</i> (Victoria University of Wellington, 2009). "VUW" is a reference to Victoria University of Wellington.