

Privacy (Information Sharing) Bill

Government Bill

Explanatory note

General policy statement

The Privacy (Information Sharing) Bill is an omnibus Bill that amends the Privacy Act 1993 and the Tax Administration Act 1994. The Bill amends the Privacy Act 1993 to improve public service delivery by introducing 2 new mechanisms for better and smarter information sharing. Better and smarter information sharing by agencies delivering public services can lead to more integrated services, reduced duplication, and lower information handling costs across government. However, failures of security, sharing of inaccurate information, and use of information in ways that are not anticipated by the person to whom it relates can lead to increased mistakes, costs, and a loss of trust in government.

Agencies delivering public services can currently share a great deal of personal information under the Privacy Act 1993. However, a recent Law Commission review has recognised that improvements can be made. The Privacy Act 1993 is not as clear as it could be about what, when, and how personal information can be shared. Reducing uncertainty will avoid unnecessary compliance costs and improve the efficiency and effectiveness of public service delivery.

This Bill seeks to make 2 key improvements. First, the exceptions to information privacy principles 10(d) and 11(f) will be widened to allow the use and disclosure of personal information when there is

a serious threat to public health or safety or the life or health of an individual. Currently, that threat must also be imminent for the information to be shared. This could prevent agencies from sharing information, where a failure to share could have serious consequences, merely because those consequences are not imminent. Instead, agencies will be required to consider the time at which the threat will occur, as well as the likelihood and severity of the consequences, in deciding whether the threat is serious.

Secondly, a new mechanism will be inserted to make provision for the approval of information sharing agreements by Order in Council. Approved information sharing agreements will enable the use and sharing of information between and within agencies delivering public services by modifying or clarifying the application of the information privacy principles. To ensure any resulting intrusions into personal privacy are minimised, the Bill sets out the required content for information sharing agreements and the process for their approval, which will include consultation with the Privacy Commissioner and other interested parties. Approved information sharing agreements will not limit the ability of individuals, under information privacy principles 6 and 7, to access and correct information about them held by any agency. The Bill also sets out safeguards to ensure that approved information sharing agreements operate transparently and consistently with their intent.

Finally, the Bill makes a related amendment to the Tax Administration Act 1994.

It is intended that the Bill will be divided into 2 Bills at the committee of the whole House stage.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 28 April 2011 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.justice.govt.nz/publications/global-publications/r/regulatory-impact-statement-privacy-act-1993-information-sharing-amendments>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause. It is intended that the Bill will eventually be split into the following Bills:

- the Privacy (Information Sharing) Amendment Bill (comprising *Part 1 and the Schedule*);
- the Tax Administration Amendment Bill (comprising *Part 2*).

Clause 2 is the commencement clause and provides that the Bill (except for *clause 10 and the Schedule*) will come into force on the day after the date on which it receives the Royal assent. *Clause 10 and the Schedule* will come into force on a date to be appointed by Order in Council.

Part 1

Amendments to Privacy Act 1993

Clause 3 provides that *Part 1* amends the Privacy Act 1993 (the **principal Act** in this Part).

Clause 4 amends section 2, which is the interpretation section. The amendments make a minor consequential change to the definition of department to recognise the extended definition given to that term under *new section 96D*. The amendments also make a minor drafting change to the definition of personal information to clarify that the reference to former Act in that definition is a reference to that term as defined by the Births, Deaths, Marriages, and Relationships Registration Act 1995. Finally, the amendments insert a definition of serious threat, which is used in the amendments to information privacy principles 10(d) and 11(f) made by *clause 5*.

Clause 5 amends section 6, which sets out information privacy principles. The amendments relate to information privacy principles 10(d) and 11(f), which set out exceptions to the limits on the use and disclosure of personal information. Under those exceptions, an agency that holds personal information may use the information for another purpose or disclose it to another person if the agency believes, on reasonable grounds, that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to public health or public safety or the life or health of the individual concerned or another individual. The amendments remove the requirement that the threat must be an imminent threat before the information can be used or disclosed under information privacy principles 10(d) and

11(f). Under the amendments, the threat must be a serious threat, which is defined by section 2 (as amended by *clause 4*) to mean a threat that an agency reasonably believes to be a serious threat having regard to the likelihood that the threat will occur, the severity of the consequences if the threat occurs, and the time at which the threat may occur.

Clause 6 amends section 13, which sets out the functions of the Privacy Commissioner. The amendments confer additional functions on the Privacy Commissioner to reflect the provisions of *new Part 9A* (as inserted by *clause 8*).

Clause 7 amends section 66, which describes actions that constitute an interference with privacy about which a complaint may be made to the Privacy Commissioner under Part 8 of the principal Act. The amendments, which relate to *new Part 9A*, provide that an action is an interference with privacy if—

- the action breaches an information privacy principle or a code of practice as modified by Order in Council made under *new section 96G*; or
- the provisions of an information sharing agreement approved by Order in Council made under *new section 96G* have not been complied with.

Clause 8 inserts a *new Part 9A* into the principal Act (*new sections 96A to 96Y*). *New Part 9A* deals with information sharing.

New section 96A provides an overview of the provisions of *new Part 9A*.

New section 96B sets out the purpose of *new Part 9A*, which is to allow the sharing of personal information to facilitate the provision of public services.

New section 96C explains the relationship between *new Part 9A* and other law relating to information sharing. It clarifies that *new Part 9A* does not limit any other enactment or rule of law that allows personal information to be collected, used, or disclosed. Thus, *new Part 9A* will not limit any existing or future arrangements between or within agencies for the disclosure of personal information if those arrangements are separately authorised by the principal Act or any codes of practice made under that Act, or by any other legislation. Neither will *new Part 9A* require information sharing agreements to be entered into in circumstances where there is already sufficient authority

for the disclosure of personal information or where any modification to the information privacy principles or any code of practice issued under the principal Act is not required.

It also provides that *new Part 9A* does not limit section 7 or 57 of the principal Act and that *new Part 9A* and Part 10 (information matching) and Part 11 (law enforcement information) do not limit one another.

New section 96D contains definitions of some terms used in *new Part 9A*.

New sections 96E and 96F set out the legal authority for information sharing between or within agencies under *new Part 9A*.

New section 96E provides that an approved information sharing agreement may authorise an agency to share any personal information with 1 or more other agencies in accordance with the terms of the agreement.

New section 96F provides that an approved information sharing agreement may authorise a part of an agency to share any personal information with 1 or more parts of the same agency in accordance with the terms of the agreement.

New section 96G provides a mechanism for the approval of information sharing agreements. Under *new section 96G*, the Governor-General may, by Order in Council made on the recommendation of the relevant Minister, approve an information sharing agreement.

New section 96H sets out certain requirements for an Order in Council made under *new section 96G*.

New section 96I contains further provisions about an Order in Council made under *new section 96G*.

New section 96J provides that an Order in Council made under *new section 96G* is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

New section 96K sets out the matters that a relevant Minister must have regard to before recommending the making of an Order in Council under *new section 96G*.

New section 96L requires agencies proposing to enter into an information sharing agreement to consult with the Privacy Commissioner, any person or organisation that they consider represents the interests of individuals whose personal information will be shared under the

proposed agreement, and any other person or organisation that they consider should be consulted. The consultation must be carried out before the proposed agreement is concluded.

New section 96M enables the Privacy Commissioner to prepare a report to the relevant Minister on any matter relating to privacy that arises or is likely to arise in respect of an approved information sharing agreement. The report may include the Privacy Commissioner's comments about the consultation carried out under *new section 96L* and any submissions made by the Privacy Commissioner under that section. The Privacy Commissioner may publish a copy of the report, but only after consulting with the relevant Minister.

New section 96N requires a party to an approved information sharing agreement to give written notice to an individual before it takes adverse action against the individual on the basis (whether wholly or in part) of personal information about the individual that was shared under the agreement.

New section 96O provides that the requirement under *new section 96N* to give 10 working days' notice of adverse action applies unless—

- an approved information sharing agreement provides that a party to the agreement may give a shorter period of notice or may dispense with the giving of the notice; or
- if the agreement does not so provide, the Commissioner, on the application of a party to the agreement, allows the party in the circumstances of a particular case to give a shorter period of notice or to dispense with the giving of the notice.

New section 96P enables the Privacy Commissioner to conduct a review of the operation of an approved information sharing agreement at the end of a period of 12 months after the Order in Council approving the agreement is made and then at any time that he or she thinks appropriate for subsequent reviews. In conducting a review, the Privacy Commissioner must consult with the parties to the agreement and any person or organisation that he or she considers represents the interests of the classes of individuals whose personal information is being shared under the agreement.

New section 96Q provides that, after conducting a review under *new section 96P*, the Privacy Commissioner may report to the relevant Minister if he or she has reasonable grounds to suspect that an ap-

proved information sharing agreement is operating in an unusual or unexpected way, failing to facilitate the provision of the public service or public services to which it relates, unreasonably impinging on the privacy of individuals, or operating in such a way that the costs of sharing personal information under the agreement outweigh the benefits of sharing it. The Privacy Commissioner may recommend in the report that the parties to the agreement should amend it or that the Order in Council by which it was approved should be revoked.

New section 96R requires the relevant Minister to present a copy of the Privacy Commissioner's report under *new section 96Q(1)* to the House of Representatives within 5 working days after receiving it from the Privacy Commissioner or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament. The relevant Minister must also present to the House of Representatives a report setting out the Government's response to the Privacy Commissioner's report.

The requirement to present a copy of the Privacy Commissioner's report to the House of Representatives is intended to facilitate the application of the procedure under the Regulations (Disallowance) Act 1989 for the disallowance of the Order in Council approving the information sharing agreement that is the subject of the Privacy Commissioner's report. While the application of that procedure is not dependent on the presentation of the Privacy Commissioner's report, the effect of the presentation is to bring the matter to the attention of the Members of Parliament so that they can consider whether the matter warrants the application of the disallowance procedure to the Order in Council in question.

New section 96S sets out a mechanism for the approval of amendments or variations to an approved information sharing agreement. It provides that the original agreement approved by Order in Council made under *new section 96G* continues to have effect as if the amendment or variation had not been made unless the Governor-General, by a further Order in Council made on the recommendation of the relevant Minister, approves the agreement as amended or varied.

New section 96T sets out who can be party to an information sharing agreement.

New section 96U contains requirements about the form and content of information sharing agreements.

New section 96V explains how the lead agency for an information sharing agreement is to be determined.

New section 96W describes the responsibilities of the lead agency for an information sharing agreement, which include the responsibility of preparing a report on the operation of the agreement at the frequency required by the Commissioner under *new section 96X*.

New section 96X allows the Privacy Commissioner to determine the frequency of a lead agency's report under *new section 96W*.

New section 96Y provides for amendments to be made to *new Schedule 2A* (as inserted by *clause 10*) by Order in Council.

Clause 9 amends section 128, which sets out regulation-making powers under the principal Act. The amendment will allow regulations to be made prescribing the matters that the Commissioner may specify to a lead agency as matters to be included in a report under *new section 96W*.

Clause 10 inserts *new Schedule 2A* into the principal Act. *Clause 10* and *new Schedule 2A* will come into force on a date to be appointed by Order in Council. The delayed commencement will allow details to be inserted into *new Schedule 2A* as and when the first information sharing agreement is approved by Order in Council made under *new section 96G*. Under *new section 96I*, each Order in Council made under *new section 96G* must insert certain specified information into *new Schedule 2A*.

The *Schedule* contains *new Schedule 2A* of the principal Act.

Part 2

Amendment to Tax Administration Act 1994

Clause 11 provides that *Part 2* amends the Tax Administration Act 1994 (the **principal Act** in this Part).

Clause 12 inserts *new section 81A* to provide that despite section 81 of the principal Act (which requires officers of the Inland Revenue Department to maintain secrecy), the Commissioner may supply personal information under an information sharing agreement approved by Order in Council made under *new section 96G* of the Privacy Act 1993 (as amended by the Bill).

Hon Simon Power

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Privacy (Information Sharing) Act **2011**.
- 2 Commencement**
 - (1) **Section 10** and the **Schedule** come into force on a date appointed by the Governor-General by Order in Council. 5
 - (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

- Part 1**
Amendments to Privacy Act 1993
- 3 Principal Act amended** 10
This Part amends the Privacy Act 1993.

4 Interpretation

- (1) The definition of **department** in section 2(1) is amended by inserting “, except as provided in **section 96D**,” before “means”.
- (2) The definition of **personal information** in section 2(1) is amended by adding “(as defined by the Births, Deaths, Marriages, and Relationships Registration Act 1995)”.
- (3) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
 - “**serious threat**, for the purposes of principle 10(d) or 11(f), means a threat that an agency reasonably believes to be a serious threat having regard to all of the following:
 - “(a) the likelihood that the threat will occur:
 - “(b) the severity of the consequences if the threat occurs:
 - “(c) the time at which the threat may occur”.

5 Information privacy principles

- (1) Information privacy principle 10(d) in section 6 is amended by omitting “serious and imminent threat” and substituting “serious threat (as defined in section 2(1))”.
- (2) Information privacy principle 11(f) in section 6 is amended by omitting “serious and imminent threat” and substituting “serious threat (as defined in section 2(1))”.

6 Functions of Commissioner

- Section 13 is amended by inserting the following subsections after subsection (1):
- “(1AA) Without limiting subsection (1), the functions of the Commissioner in relation to information sharing under **Part 9A** are—
- “(a) to make submissions on an information sharing agreement for which approval by Order in Council under **section 96G** is being sought:
 - “(b) to report to a relevant Minister, under **section 96M(1)**, on any matter relating to privacy that arises or is likely to arise in respect of an approved information sharing agreement and on any other matter specified in that section:

- “(c) to publish a copy of a report referred to in **paragraph (b)** in accordance with **section 96M(3)**:
 - “(d) to receive and investigate complaints about any alleged interference with privacy under an approved information sharing agreement in accordance with Part 8: 5
 - “(e) if appropriate under the circumstances, to exempt an agency, under **section 96O**, from the requirement to give notice of adverse action under **section 96N** or to reduce the period of notice required under that section:
 - “(f) to conduct a review under **section 96P** on the operation of an approved information sharing agreement: 10
 - “(g) to report to a relevant Minister under **section 96Q** on the findings of a review conducted under **section 96P**:
 - “(h) to require a public sector agency to report, in accordance with **section 96W**, on the operation of each approved information sharing agreement for which it is the lead agency. 15
- “(1AB) In **subsection (1AA)**, **adverse action**, **approved information sharing agreement**, **information sharing agreement**, **lead agency**, and **relevant Minister** have the meanings given to them by **section 96D**.” 20

7 Interference with privacy

Section 66(1)(a) is amended by inserting the following subparagraphs after subparagraph (ii):

- “(iia) the action breaches an information privacy principle or a code of practice as modified by an Order in Council made under **section 96G**; or 25
- “(iib) the provisions of an information sharing agreement approved by an Order in Council made under **section 96G** have not been complied with; or” 30

8 New Part 9A inserted

The following Part is inserted after Part 9:

“Part 9A

“Information sharing

“Subpart 1—Preliminary matters

“96A Overview of Part

- “(1) This section— 5
- “(a) is a guide to the general scheme and effect of this Part; and
- “(b) does not affect the interpretation or application of other provisions of this Part.
- “(2) **Subpart 1** contains, in addition to this overview, provisions that— 10
- “(a) set out the purpose of this Part; and
- “(b) explain the relationship between this Part and other law relating to information sharing; and
- “(c) define some terms used in this Part. 15
- “(3) **Subpart 2** contains provisions that—
- “(a) authorise the sharing of personal information between or within agencies if it is done in accordance with an approved information sharing agreement; and
- “(b) set out the procedure for the approval of an information sharing agreement by an Order in Council made on the recommendation of the relevant Minister, including the matters that the relevant Minister must have regard to before recommending the Order in Council; and 20
- “(c) require consultation to be carried out in respect of every proposed information sharing agreement (particularly consultation with the Commissioner so that he or she can consider the privacy implications of each agreement). 25
- “(4) **Subpart 3** contains provisions that— 30
- “(a) require parties to an approved information sharing agreement to give 10 working days’ notice before taking adverse action against an individual as a result of personal information being shared under the agreement, unless the period of notice is reduced or the requirement to give notice is dispensed with by the terms of the agreement or by the Commissioner; and 35

- “(b) allow the Commissioner to conduct reviews of the operation of an approved information sharing agreement and to report to the relevant Minister on the findings of the review; and
- “(c) provide for the amendment or variation of an approved information sharing agreement. 5
- “(5) **Subpart 4** contains provisions that—
 - “(a) specify who can be party to an information sharing agreement; and
 - “(b) set out the requirements for the form and content of an information sharing agreement; and 10
 - “(c) state how the lead agency for an information sharing agreement is to be determined and the responsibilities of that role, including the responsibility to make the agreement publicly available and the responsibility to prepare a report on the operation of the agreement at the frequency required by the Commissioner. 15

“96B Purpose of Part

- “(1) The purpose of this Part is to enable the sharing of personal information to facilitate the provision of public services. 20
- “(2) To achieve that purpose, this Part—
 - “(a) provides a mechanism for the approval of information sharing agreements for the sharing of information between or within agencies; and
 - “(b) authorises exemptions from or modifications to— 25
 - “(i) any of the information privacy principles (except principles 6 and 7, which relate respectively to the right to have access to, and correct, personal information);
 - “(ii) any code of practice (except any code of practice that modifies principles 6 and 7); and 30
 - “(c) reduces any uncertainty about whether personal information can be lawfully shared for the provision of the public services, and in the circumstances, described in the information sharing agreements. 35

“96C Relationship between this Part and other law relating to information sharing

“(1) To avoid doubt, nothing in this Part—

“(a) limits any other enactment or rule of law that allows the collection, use, or disclosure of personal information; 5
and

“(b) compels agencies to enter into an information sharing agreement if those agencies are already allowed to share personal information—

“(i) under any other enactment or rule of law: 10

“(ii) in circumstances where an exemption from or a modification to any 1 or more of the information privacy principles or any code of practice is not required to make the sharing of the information lawful. 15

“(2) Without limiting **subsection (1)(a)**,—

“(a) this Part does not limit section 7 or 57; and

“(b) this Part and Parts 10 and 11 do not limit one another.

“96D Interpretation

In this Part, unless the context otherwise requires,— 20

“**adverse action** has the meaning given to it by section 97 and includes a decision to impose a penalty or a fine or to recover a penalty or a fine

“**approved information sharing agreement** means an information sharing agreement approved by an Order in Council 25
that is for the time being in force

“**code of practice** means a code of practice issued under section 46

“**department** has the meaning given to it by section 2(1) and includes the New Zealand Police 30

“**information sharing agreement** or **agreement** means an agreement for sharing information between or within agencies (whether or not the information to be shared is personal information only)

“**lead agency** means a department that enters into an information sharing agreement and is designated as the lead agency in—

“(a) the agreement; and

“(b) the Order in Council approving the agreement 5

“**local authority** means a local authority or public body named or specified in Schedule 1 of the Local Government Official Information and Meetings Act 1987

“**Order in Council**, except in **sections 96S(3) and 96Y**, means an Order in Council made under **section 96G(1)** 10

“**organisation** means—

“(a) an organisation named in Part 2 of Schedule 1 of the Ombudsmen Act 1975; and

“(b) an organisation named in Schedule 1 of the Official Information Act 1982 15

“**private sector agency** means a non-government agency

“**public sector agency** means a department, an organisation, or a local authority

“**public service** means a public function, power, or duty that is conferred or imposed on a public sector agency by or under law 20

“**relevant Minister** means the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for a lead agency

“**sharing**, in relation to any information, means all or any of the following if authorised by an approved information sharing agreement: 25

“(a) collecting the information:

“(b) storing the information:

“(c) checking the information: 30

“(d) using the information:

“(e) disclosing the information:

“(f) exchanging the information:

“(g) if necessary, assigning a unique identifier to an individual. 35

“Subpart 2—Information sharing

“*Authority for information sharing*

“**96E Information sharing between agencies**

An approved information sharing agreement may authorise an agency to share any personal information with 1 or more other agencies in accordance with the terms of the agreement. 5

“**96F Information sharing within agencies**

An approved information sharing agreement may authorise a part of an agency to share any personal information with 1 or more parts of the same agency in accordance with the terms of the agreement. 10

“*Approval of information sharing agreements*

“**96G Governor-General may approve information sharing agreement by Order in Council**

“(1) The Governor-General may, by Order in Council made on the recommendation of the relevant Minister, approve an information sharing agreement. 15

“(2) An Order in Council may grant an exemption from or modify the application of—

“(a) any 1 or more of the information privacy principles (except principles 6 and 7): 20

“(b) any code of practice (except any code of practice that modifies principles 6 and 7).

“(3) An Order in Council that, under **subsection (2)**, grants an exemption from any 1 or more of the information privacy principles (except principles 6 and 7) or any code of practice (except any code of practice that modifies principles 6 and 7) may provide that the exemption is unconditional or is subject to any conditions that are prescribed in the Order in Council. 25

“(4) An Order in Council that, under **subsection (2)**, modifies the application of any 1 or more of the information privacy principles or any code of practice may do so by prescribing standards that are more stringent or less stringent than the standards that are prescribed by the principle or, as the case may be, the code of practice. 30 35

“96H Requirements for Order in Council

An Order in Council must—

- “(a) state, if applicable,—
 - “(i) the nature of the exemption granted under **section 96G(2)** and the conditions of the exemption (if any): 5
 - “(ii) how any of the information privacy principles or any code of practice will be modified under **section 96G(2)**: 10
- “(b) state the public service or public services the provision of which the information sharing agreement is intended to facilitate: 10
- “(c) specify with due particularity the personal information or the type of personal information to be shared under the agreement: 15
- “(d) set out the parties, or classes of parties, to the agreement and designate 1 of the parties as the lead agency: 15
- “(e) for every party to the agreement,—
 - “(i) describe the personal information or type of personal information that the party may share with each of the other parties; and 20
 - “(ii) state how the party may use the personal information; and
 - “(iii) state the adverse actions that the party can reasonably be expected to take as a result of sharing personal information under the agreement; and 25
 - “(iv) specify the procedure that the party must follow before taking adverse action against an individual as a result of sharing personal information under the agreement if the requirement in **section 96N(1)** does not apply because of **section 96O(a)(ii)**: 30
- “(f) state how a copy of the agreement can be obtained.

“96I Further provisions about Order in Council

- “(1) An Order in Council must provide that it comes into force on a date specified in the Order in Council (which must not be a date that is before the date on which it is made). 35
- “(2) An Order in Council remains in force until it—

- “(a) expires on a date appointed in the Order in Council (if any); or
“(b) is revoked.
- “(3) An Order in Council must insert into **Schedule 2A**—
- “(a) a description of each of the following: 5
- “(i) the information sharing agreement that is approved by the Order in Council:
“(ii) the public service or the public services the provision of which the agreement is intended to facilitate: 10
“(iii) the personal information or type of personal information that may be shared between or within the agencies that are party to the agreement; and
- “(b) the name of the agreement; and
“(c) the name of the lead agency for the agreement; and 15
“(d) the Internet site address where a copy of the agreement can be accessed.
- “**96J Application of Acts and Regulations Publication Act 1989 and Regulations (Disallowance) Act 1989**
- An Order in Council is a regulation for the purposes of— 20
- “(a) the Acts and Regulations Publication Act 1989; and
“(b) the Regulations (Disallowance) Act 1989.
- “Procedure for recommending Order in Council*
- “**96K Matters to which relevant Minister must have regard before recommending Order in Council** 25
- “(1) Before recommending the making of an Order in Council, the relevant Minister must—
- “(a) be satisfied of the matters set out in **subsection (2)**; and
“(b) have regard to any submissions made under **section 96L(1)(a)** in relation to the information sharing agreement that is proposed for approval by the Order in Council. 30
- “(2) The matters referred to in **subsection (1)(a)** are as follows:
- “(a) that the information sharing agreement will facilitate 35
the provision of any public service or public services:

- “(b) that the type and quantity of personal information to be shared under the agreement are no more than is necessary to facilitate the provision of that public service or those public services:
 - “(c) that the agreement does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy: 5
 - “(d) that the benefits of sharing personal information under the agreement are likely to outweigh the costs of sharing it: 10
 - “(e) that any potential conflicts or inconsistencies between the sharing of personal information under the agreement and any other enactment or rule of law have been identified and appropriately addressed.
- “**96L Consultation on proposed information sharing agreement** 15
- “(1) The agencies proposing to enter into an information sharing agreement must, before the proposed agreement is concluded,—
 - “(a) consult with, and invite submissions on the proposed agreement from,— 20
 - “(i) the Commissioner; and
 - “(ii) any person or organisation that the agencies consider represents the interests of the classes of individuals whose personal information will be shared under the proposed agreement; and 25
 - “(iii) any other person or organisation that the agencies consider should be consulted; and
 - “(b) have regard to any submissions made under **paragraph (a)**.
 - “(2) The Commissioner— 30
 - “(a) must consider the privacy implications of the proposed agreement; and
 - “(b) may make any submissions under **subsection (1)(a)(i)** that he or she thinks fit.
 - “(3) The agencies must give the relevant Minister a copy of the submissions made under **subsection (1)(a)** (if any). 35

*“Commissioner’s report on approved
information sharing agreement*

“96M Commissioner may prepare and publish report on approved information sharing agreement

- “**(1)** If an information sharing agreement is approved by Order in Council, the Commissioner may prepare a report to the relevant Minister on any matter relating to privacy that arises or is likely to arise in respect of the agreement. 5
- “**(2)** Without limiting **subsection (1)**, the Commissioner may include in a report under that subsection— 10
- “**(a)** any comment that he or she wishes to make about the consultation that the agencies carried out under **section 96L(1)(a)**; and
- “**(b)** any submissions that he or she made to the agencies under **section 96L(1)(a)(i)**. 15
- “**(3)** The Commissioner—
- “**(a)** may publish a report under **subsection (1)**; but
- “**(b)** must consult the relevant Minister before doing so.

“Subpart 3—Matters relating to operation of approved information sharing agreements 20

“Notice of adverse action

“96N Requirement to give notice of adverse action

- “**(1)** A party to an approved information sharing agreement must give written notice to an individual before it takes any adverse action against the individual on the basis (whether wholly or in part) of personal information about the individual that was shared under the agreement. 25
- “**(2)** The notice must—
- “**(a)** give details of the adverse action that the party proposes to take and the personal information about the individual on which the action is based; and 30
- “**(b)** state that the individual has 10 working days from the receipt of the notice in which to dispute the correctness of that personal information.
- “**(3)** To avoid doubt, an individual who is given the notice may take any steps that are available under any enactment or rule of law 35

to dispute any proposed adverse action against him or her, but he or she may show cause under this section as to why the proposed adverse action should not be taken only on the basis that it is based on incorrect personal information.

“96O When requirement to give notice of adverse action applies 5

The requirement to give notice under **section 96N** applies unless—

“(a) an approved information sharing agreement provides that a party to the agreement may—

“(i) give a shorter period of notice than the 10-work- 10
ing-day period referred to in **section 96N(2)(b)**;
or

“(ii) dispense with the giving of the notice; or

“(b) if an approved information sharing agreement does not provide in the manner specified in **paragraph (a)**, the 15
Commissioner, on the application of a party to an approved information sharing agreement, allows the party in the circumstances of a particular case to—

“(i) give a shorter period of notice than the 10-work- 20
ing-day period referred to in **section 96N(2)(b)**;
or

“(ii) dispense with the giving of the notice.

“Review of approved information sharing agreement

**“96P Review of operation of approved information sharing 25
agreement**

“(1) The Commissioner may, on his or her own initiative, conduct a review of the operation of an approved information sharing agreement—

“(a) at the end of a period of 12 months after the Order in 30
Council approving the agreement is made; and

“(b) at any time that the Commissioner considers appropriate for any subsequent reviews.

“(2) In conducting a review, the Commissioner must—

“(a) consult the following about the review: 35

“(i) the parties to the agreement:

- “(ii) any person or organisation that the Commissioner considers represents the interests of the classes of individuals whose personal information is being shared under the agreement; and
- “(b) consider any submissions made on the review. 5
- “(3) The parties to the agreement must take all reasonable steps to co-operate with the review.
- “96Q Report on findings of review**
- “(1) After completing a review under **section 96P**, the Commissioner may report to the relevant Minister if he or she has reasonable grounds to suspect that an approved information sharing agreement is— 10
- “(a) operating in an unusual or unexpected way (that is, in a way that was not foreseen by the Commissioner or the parties to the agreement at the time the agreement was entered into): 15
- “(b) failing to facilitate the provision of the public service or public services to which it relates:
- “(c) unreasonably impinging on the privacy of individuals:
- “(d) operating in such a way that the costs of sharing personal information under the agreement outweigh the benefits of sharing it. 20
- “(2) The Commissioner may recommend in the report that—
- “(a) the parties to the agreement should amend it in 1 or more material respects; or 25
- “(b) the Order in Council by which the agreement was approved should be revoked.
- “96R Relevant Minister must present to House of Representatives copy of report under section 96Q(1) and report setting out Government’s response** 30
- The relevant Minister must—
- “(a) present a copy of a report under **section 96Q(1)** to the House of Representatives within 5 working days after receiving it from the Commissioner or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament; and 35

“(b) as soon as possible after complying with **paragraph (a)**, present a report to the House of Representatives setting out the Government’s response to the report under **section 96Q(1)**.

“*Amendment or variation of approved information sharing agreements* 5

“**96S Amendment or variation of approved information sharing agreement**

“(1) This section applies if the parties to an approved information sharing agreement amend or vary the agreement (whether in accordance with the Commissioner’s recommendation in a report under **section 96Q(1)** or otherwise). 10

“(2) As soon as practicable after the amendment or variation is made, the lead agency for the agreement must give written notice of the amendment or variation to— 15

“(a) the Commissioner; and

“(b) the relevant Minister.

“(3) The information sharing agreement approved by Order in Council continues to have effect as if the amendment or variation notified under **subsection (2)** had not been made unless the Governor-General, by a further Order in Council made on the recommendation of the relevant Minister, approves the agreement as amended or varied by the parties. 20

“(4) **Sections 96G to 96M** apply, subject to any necessary modifications, to the approval of the agreement as so amended or varied. 25

“(5) Nothing in this section applies if the amendment or variation to an approved information sharing agreement relates only to—

“(a) the fees and charges payable under the agreement; or

“(b) the name or description of a party to the agreement; or 30

“(c) any terms or conditions of the agreement that the lead agency considers, after consulting with the Commissioner,—

“(i) are minor or incidental in nature; and

“(ii) do not, or are unlikely to, have any effect on the privacy implications of the agreement. 35

“Subpart 4—Information sharing agreements

“*Parties*

“**96T Parties to information sharing agreement**

- “(1) Any 2 or more of the following may enter into an information sharing agreement: 5
- “(a) a public sector agency:
 - “(b) a private sector agency:
 - “(c) a part of a public sector agency:
 - “(d) a part of a private sector agency.
- “(2) **Subsection (1)** is subject to **subsections (3) to (6)**. 10
- “(3) An overseas agency may not enter into an information sharing agreement.
- “(4) At least 1 of the agencies that enters into an information sharing agreement must be a public sector agency that is a department. 15
- “(5) A private sector agency may enter into an information sharing agreement with 1 or more other private sector agencies if—
- “(a) each of the private sector agencies is lawfully carrying out any public service or public services on behalf of 1 or more public sector agencies (whether under a delegation, contract, transfer, or any other lawful authority); and 20
 - “(b) the public sector agency or, as the case may be, at least 1 of those public sector agencies enters into the agreement; and 25
 - “(c) **subsection (4)** is complied with.
- “(6) A public sector agency (except a department) or private sector agency may enter into an information sharing agreement as a representative of a class of agencies to which that public sector agency or, as the case may be, private sector agency belongs, if **subsections (4) and (5)** are complied with. 30
- “(7) If **subsection (6)** applies,—
- “(a) the public sector agencies (except departments) or private sector agencies within the class of agencies referred to in that subsection that are parties to the information sharing agreement must be named in a schedule to the agreement; and 35

- “(b) the lead agency for the agreement may amend that schedule by adding or removing the names of public sector agencies (except departments) or private sector agencies within that class that will be, are, or are no longer parties to the agreement; and 5
- “(c) every reference in this Part to a party to an information sharing agreement must, unless the context otherwise requires, be taken to include a reference to a public sector agency or private sector agency named in that schedule. 10

“Form and content

“96U Form and content of information sharing agreement

- “(1) An information sharing agreement must be in writing.
- “(2) An information sharing agreement must—
 - “(a) set out the information referred to in **section 96H**: 15
 - “(b) contain an overview of the operational details about how information is to be shared under the agreement:
 - “(c) specify the safeguards that will apply to protect the privacy of individuals and ensure that any interference with their privacy is minimised: 20
 - “(d) if a party to the agreement is a private sector agency, state which public sector agency will be responsible for dealing with complaints about an alleged interference with privacy if the private sector agency is unable to be held to account for those complaints: 25
 - “(e) state that every party to the agreement must give any reasonable assistance that is necessary in the circumstances to allow the Commissioner or an individual who wishes to make a complaint about an interference with privacy to determine the agency against which the complaint should be made: 30
 - “(f) if **section 96T(6)** applies,—
 - “(i) identify which public sector agency or private sector agency is entering into the agreement as a representative of a class of agencies; and 35
 - “(ii) describe that class; and
 - “(iii) include a schedule that names the public sector agencies (except departments) or private sector

agencies within that class that are parties to the agreement.

- “(3) An information sharing agreement may specify any other terms or conditions that the parties may agree, including—
- “(a) the fees and charges that are payable under the agreement; and
 - “(b) any other business processes relating to the sharing of information under the agreement.

“Lead agency

“**96V Determining which party is lead agency** 10

- “(1) If only 1 public sector agency that is a department enters into an information sharing agreement, it must be designated as the lead agency for the agreement.
- “(2) If more than 1 public sector agency that is a department enters into an information sharing agreement, the parties to the agreement may agree between themselves as to which of those public sector agencies is to be designated as the lead agency. 15

“**96W Responsibilities of lead agency**

- “(1) A lead agency for an information sharing agreement must, if the agreement is approved by Order in Council,— 20
- “(a) make a copy of the agreement available—
 - “(i) for inspection, free of charge, at the lead agency’s head office on any working day; and
 - “(ii) free of charge on an Internet site maintained by or on behalf of the lead agency; and 25
 - “(b) prepare a report on the operation of the agreement at the frequency required by the Commissioner under **section 96X**; and
 - “(c) carry out any other responsibilities imposed by this Part.
- “(2) A report under **subsection (1)(b)** must include the matters prescribed in regulations made under this Act that the Commissioner specifies to the lead agency after having regard to— 30
- “(a) the costs of reporting;
 - “(b) the degree of public interest in information about the matters prescribed in those regulations: 35

- “(c) the significance of the privacy implications of the approved information sharing agreement.
- “(3) A report under **subsection (1)(b)** must be included—
 - “(a) in the lead agency’s annual report under the Public Finance Act 1989, if it is required annually; or 5
 - “(b) in the lead agency’s annual report under the Public Finance Act 1989 that immediately follows the end of each interval specified under **section 96X(1)(b)**.
- “(4) A lead agency does not need to comply with **subsection (1)(a)(ii)** if the relevant Minister designates an Internet site 10 maintained by or on behalf of another public sector agency as the Internet site where a copy of the agreement is to be made available free of charge.
- “(5) To avoid doubt, nothing in this section applies to a party to an information sharing agreement that is not the lead agency 15 except as provided in **subsection (4)**.

“**96X Commissioner may specify frequency of reporting by lead agency**

- “(1) The Commissioner may require a lead agency to prepare a report under **section 96W(1)(b)** either— 20
 - “(a) annually; or
 - “(b) at a less frequent interval that the Commissioner may specify.
- “(2) In determining the appropriate frequency in **subsection (1)** of a report under **section 96W(1)(b)**, the Commissioner must 25 have regard to—
 - “(a) the costs of reporting;
 - “(b) the degree of public interest in information about the matters prescribed in regulations made under this Act;
 - “(c) the significance of the privacy implications of the approved information sharing agreement. 30

“Subpart 5—Miscellaneous

“**96Y Power to amend Schedule 2A**

- “(1) Without limiting the matters that an Order in Council made under **section 96G** must insert into **Schedule 2A** in accord- 35

ance with **section 96I(3)**, the Governor-General may, by Order in Council,—

“(a) make any amendments to **Schedule 2A** that are required—

“(i) to recognise the abolition or dissolution of any agency that is party to an approved information sharing agreement or any change in the name of such an agency; or

“(ii) to reflect any change in the details of the Internet site address where a copy of an approved information sharing agreement can be accessed; or

“(iii) to reflect any amendments or variations to an approved information sharing agreement that are approved under **section 96S**; or

“(iv) to correct any error or omission in any description in that schedule:

“(b) remove any description or matter in **Schedule 2A**, including all of the descriptions or matters relating to an approved information sharing agreement if the Order in Council by which it was approved has expired or has been revoked:

“(c) otherwise amend or replace **Schedule 2A**.

“(2) To avoid doubt, any of the matters set out in this section may be included in an Order in Council made under **section 96G** or in a separate Order in Council made under this section.”

9 Regulations

Section 128 is amended by inserting the following paragraph after paragraph (a):

“(aa) prescribing the matters that the Commissioner may specify to a lead agency as matters that are to be included in a report by the lead agency under **section 96W(1)(b)**.”

10 New Schedule 2A inserted

The **Schedule 2A** set out in the Schedule is inserted after Schedule 2.

Part 2
Amendment to Tax Administration Act
1994

- 11 Principal Act amended**
This Part amends the Tax Administration Act 1994. 5
- 12 New section 81A inserted**
The following section is inserted after section 81:
- “81A Disclosure of information under approved information sharing agreement**
Despite section 81, the Commissioner may supply personal 10
information about an identifiable individual under an informa-
tion sharing agreement approved by an Order in Council made
under **section 96G** of the Privacy Act 1993 that is for the time
being in force.”
-

Schedule
New Schedule 2A inserted into principal Act

s 10

Schedule 2A
Approved information sharing agreements

ss 96I(3), 96Y

Name of agreement	Public service(s) to be facilitated by agreement	Internet address where copy of agreement can be accessed	Lead agency for agreement	Description of personal information or type of personal information to be shared under agreement	Access available to
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