

# **Privacy (Information Sharing) Bill**

Government Bill

As reported from the Justice and Electoral  
Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Privacy (Information Sharing) Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

The Privacy (Information Sharing) Bill is an omnibus bill that proposes to amend the Privacy Act 1993 and the Tax Administration Act 1994, to improve public service delivery by facilitating information sharing between agencies.

The bill seeks to

- allow information sharing when it would facilitate the provision of public services
- ensure that individual privacy remains highly protected
- increase agencies' certainty about sharing information.

It is intended that the bill be divided into two separate bills at the committee of the whole House stage.

**Privacy Act 1993**

Part 1 of the bill seeks to make two principal amendments to the Privacy Act to improve information sharing.

The first amendment would broaden the exceptions to information privacy principles 10(d) and 11(f). At present, these principles forbid an agency to use information it holds on an individual for any other purpose than that for which it was collected, or to disclose that information to any other party, unless doing so would prevent or lessen a “serious and imminent threat” to public health or safety, or to the life or health of an individual. This bill seeks to remove the requirement that a threat be “imminent”, and would require agencies to consider the time at which the threat may be realised, the likelihood of the threat being realised, and the severity of the consequences if the threat is realised, when determining whether the threat was serious.

The second proposed amendment would allow information-sharing agreements to be approved by Order in Council. These Orders in Council could modify and clarify the application of the information privacy principles to allow agencies delivering public services to use and share information.

**Tax Administration Act 1994**

Part 2 of the bill seeks to amend the Tax Administration Act, to allow the Inland Revenue Department to disclose personal information about an identifiable individual under an approved information-sharing agreement.

At present, the Inland Revenue Department shares information through ad hoc legislative amendments. This process is slow and can lead to inconsistencies; and amending these arrangements is time-consuming and often requires further legislation. This bill proposes an amendment to the Tax Administration Act to enable the Inland Revenue Department to share information in a more timely and flexible way.

Our commentary covers the major amendments we recommend to the bill. Minor and technical amendments are not discussed.

**Determining “serious threat”**

We recommend amending the definition of “serious threat” in clause 4, by adding the word “and” after paragraphs (a) and (b) of the def-

inition. We consider that the bill as introduced does not make it sufficiently clear that any agency determining whether there was a “serious threat” (for the purposes of principle 10(d) or 11(f) of the Privacy Act) would be required to have regard to all three aspects of the definition of “serious threat”—likelihood, severity, and timing. Our proposed amendment would make it explicit that all three aspects of the definition would have to be considered.

We also propose amending paragraphs (a) to (c) of the definition to refer to the likelihood, severity, and timing of the threat being “realised”, as opposed to “occurring”. We consider that the proposed amendments capture the intended meaning more accurately.

### **Reordering new Part 9A**

We recommend that some provisions of new Part 9A inserted by clause 8 be reordered to bring forward those relating to parties, the responsibilities of lead agencies, and the form and content of information-sharing agreements. This would make new Part 9A clearer and easier to navigate, but would not affect its substance. We also recommend deleting new section 96A. This section is an overview of new Part 9A. We consider it to be unnecessary as new Part 9A is divided into subparts and has adequate cross-headings to indicate content.

### **Removing “rule of law”**

We recommend removing references to the “rule of law” from the bill. We consider reference to by or under any enactment sufficient.

### **Clarifying relationships of parties to agreements**

We recommend inserting new section 96FA in clause 8 (formerly new subclauses 96T(1) to (4) in the bill as introduced). New section 96FA would specify who could be parties to an information-sharing agreement. To clarify that information can be shared within an agency, this provision would be amended to provide that at least one of the agencies that enters into an information-sharing agreement may be part of a public sector agency that is a department.

New section 96FB (formerly new section 96T(6) and (7) in the bill as introduced) provides for representative parties. In some situations,

the number of parties who might wish to share information would be so great (for example, doctors or teachers) that it would be more practical to nominate a representative party (for example, the Medical Council of New Zealand, the New Zealand Teachers Council). To enable this, new section 96FB would allow an agency to enter into an information-sharing agreement as a representative of a “class of agencies”.

New subclause 96FB(2) would require that agencies in the represented “class of agencies” that were parties to the agreement be identified in a schedule to the agreement. We consider that the bill as introduced does not sufficiently explain the relationships of parties to information-sharing agreements. Our proposed amendment would clarify these relationships. The amendment would also make it clear that an information-sharing agreement cannot compel any party to share information.

### **Broadening required content of agreements**

We recommend adding a new subparagraph to new section 96FD(2) in clause 8 (formerly new section 96U(2) in the bill as introduced) to stipulate that an information-sharing agreement must contain a statement of purpose specified “with due particularity”, to ensure compliance with Government policy.

### **Broadening the definition of “costs”**

We recommend amending the definition of “costs” in section 92K(2)(d) in clause 8 to “financial and other costs”. As introduced, the bill requires that, before recommending an Order in Council, the relevant Minister must be satisfied that “the benefits of sharing personal information under the agreement are likely to outweigh the costs of sharing it”. We consider that this does not make sufficiently clear the intention that any likely negative effects on children, or other social and cultural costs, be considered before an information-sharing agreement is approved. Our proposed amendment would make the broader definition of costs explicit.

### **Amending an approved information-sharing agreement**

We recommend that new section 96OD(2)(b) in clause 8 be amended to provide that amendments to information-sharing agreements must be made available by the lead agency, free of charge, at the lead agency's head office and also accessible, free of charge, on a website. As introduced, the bill requires the lead agency for an information-sharing agreement to make the agreement publicly "available" in these ways, but includes no similar requirement for amendments to agreements. Our proposed amendment would align the bill with the policy intention.

As introduced, section 96S(5)(c)(i) would allow parties to an information-sharing agreement to amend it without requiring an Order in Council, provided the changes were "minor or incidental in nature". We recommend deleting this provision, as only changes affecting the privacy implications of the agreement would require an Order in Council. The remainder of this provision is now contained in new section 96OD(5)(c).

### **Labour Party minority view**

Labour believes in an effective and efficient public sector. The swift sharing of information between public sector agencies, accompanied by appropriate safeguards, is an important component of this.

But this bill takes a piecemeal approach to dealing with information sharing, and may not stand the claims that have been made as to the need for it. In particular, it is unlikely to do much to enhance the protection of vulnerable children. We agree with the New Zealand Law Society, and with other submitters, that there are better approaches than simply enacting some cherry-picked aspects of the Law Commission's review of privacy law. A standalone statute dealing with the welfare of vulnerable children when they are most at risk is a preferable approach.

We would have preferred to see a standalone statute for the protection of at-risk children, accompanied by the complete enactment of the recommendations arising out of the Law Commission's review of the Privacy Act. This would have ensured that our privacy legislation—now nearly two decades old—is up to date with technological developments, changing social mores, and the barriers to ensuring

safety of the most vulnerable in society. A comprehensive rewrite of the Act on the basis of all of the Law Commission's work is essential. In particular, we are concerned that some of the Law Commission's key suggestions, such as those regarding the Privacy Commissioner's power to investigate and enforce, may not be taken up by the government. Given the ever-widening powers of agencies to share information, let alone the implications of new technologies, it is important that the Commissioner's role allow her to ensure compliance with up-to-date legislation.

We will support the bill because we do not think it is likely to actively cause harm. However, we think there are alternative approaches that could have done much good. And we are very concerned that enacting only part of the Law Commission's recommendations poses the risk that the rest of them will languish, in whole or in part, postponing an overdue overhaul of privacy law, and upsetting the carefully calibrated balance between efficiency and safeguards that the Commission recommends.

## **Green Party minority view**

### **Introduction**

People require a sense of security if they are to feel comfortable within their society and one important facet of security is the capacity to control information about oneself. Therefore the principles of privacy, as a means of controlling that information, are vital contributors to the individual's sense of security. Privacy is thus a fundamentally important human right.

The Privacy (Information Sharing) Bill will increase the amount of information sharing that government agencies can undertake in order to accomplish an ill-defined goal of better public service gains. While another stated goal is to ensure that privacy remains highly protected, the corollary of increased information sharing between government departments is actually that the individual enjoys less control over their personal information.

Because of the centrality of the public service to this bill the individual's relationship with the state is a pivotal concern. Moreover, the reduction in the individual's core right to protect their information is met with no attendant requirements as to the responsible use of that information, nor does it empower the Privacy Commissioner

with adequate means to assist in developing a more responsible culture within information sharing.

### **Relationship between individual and the state**

Technology is often touted as a reason for privacy laws to be updated, and with good reason. As advancements in technology promulgate, legislation that was not designed to cope with such advancements becomes quickly outdated. But this bill does not relate to technology but rather seeks a readjustment of core privacy principles that impact upon the rights of the individual vis-à-vis the state.

One particularly concerning element is in the empowering of the executive to create information sharing agreements by regulation. This could result in agreements that are not in keeping with the principles of the Privacy Act and, by extension, give the public less reason to be confident in the integrity of that legislation.

Scrutiny of the agreements is also a potential issue because copies will only be made available on the internet, which some people do not have access to, or in the head office of the lead agencies, which imposes its own set of access issues for those not in the vicinity. Though these do not raise the barriers to availability so high as to constitute complete inaccessibility for most individuals they do mean a core protection will be several steps removed from the most vulnerable.

Moreover, the decision not to carry over 96T has serious implications because it increases the likelihood that information will be passed to agencies not envisioned in the original agreement. Diluting the requirements for when private sector agencies can participate in the information sharing might contribute to a misplaced sense of certainty on the part of the agencies but it does not contribute to a certainty for the individual on how their information is to be disseminated and used responsibly.

### **Law Commission recommendations**

The Law Commission's landmark report on privacy law in Aotearoa New Zealand made two key recommendations for empowering the Privacy Commissioner to protect against the sorts of breaches that are highly possible in an environment of increased information sharing. First of these was that the Commissioner should be able to issue compliance notices to agencies deemed to be in breach of the Privacy Act.

Second was the power to require an audit of an agency's practices and systems for handling private information. Implementing these would have brought the New Zealand Privacy Commissioner's powers in line with the majority of comparable overseas bodies charged with the protection of privacy.

These measures are not, however, included in this legislation which gives rise to the Green Party's primary objection that this bill does not include strong enough protection to privacy to correspond with the increase in information sharing. In separating and fast-tracking the sharing elements of the Law Commission's recommendations this Bill creates a deleterious imbalance between the scales of information sharing and protecting that information from irresponsible use. New sections in Part 9A setting out the Privacy Commissioner's functions in relation to the information sharing agreements, as conferred by clause 6, are considered by the Green Party as lowest-denominator protections which fall well short of the mark set by the Law Commission's recommendations. Though they technically confer new powers on the Privacy Commissioner these are consultative only and provide no measures to bind agencies into reviewing their handling of personal information. Even the case of a report being tabled with the Minister concerned through section 96Q and its subsequent reporting in the House under section 96R does not then put in place measures to redress it, merely that the Government has to report on their response which leaves privacy protection purely at the whim of the Government of the day.

The Green Party cannot commend this bill back to the House without the surety of the Law Commission's other recommendations regarding increased powers for the Privacy Commissioner and requirements for the state to treat the information with additional care.



## **Appendix**

### **Committee process**

The Privacy (Information Sharing) Bill was referred to the committee on 8 February 2012. The closing date for submissions was 23 March 2012. We received and considered 20 submissions from interested groups and individuals. We heard five submissions.

We received advice from the Ministry of Justice.

### **Committee membership**

Tim Macindoe (Chairperson)

Dr Jackie Blue

Dr Cam Calder

Charles Chauvel

Hon Lianne Dalziel

Julie Anne Genter

Alfred Ngaro

Denis O'Rourke

Jan Logie replaced Julie Anne Genter for this item of business.

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**Privacy (Information Sharing) Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~

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*Hon Judith Collins*

## **Privacy (Information Sharing) Bill**

Government Bill

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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

**This Part** amends the Privacy Act 1993.

### 4 Interpretation

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(1) ~~The definition of **department** in section 2(1) is amended by inserting “, except as provided in **section 96B**,” 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~~ of the threat ~~will occur~~; being realised; and

“(b) the severity of the consequences if the threat ~~occurs~~; is realised; and

“(c) the time at which the threat may ~~occur~~ be realised”.

### 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))”.

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(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: 5
  - “(c) to publish a copy of a report referred to in **paragraph (b)** in accordance with **section 96M(3)**: 10
  - “(d) to receive and investigate complaints about any alleged interference with privacy under an approved information sharing agreement in accordance with Part 8:
  - “(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: 15
  - “(f) to conduct a review under **section 96P** on the operation of an approved information sharing agreement:
  - “(g) to report to a relevant Minister under **section 96Q** on the findings of a review conducted under **section 96P**: 20
  - “(h) to require a public sector agency to report, in accordance with **section 96W 96OA**, on the operation of each approved information sharing agreement for which it is the lead agency. 25
- “(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**.”
- 7 Interference with privacy** 30
- 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 35
  - “(iib) the provisions of an information sharing agreement approved by an Order in Council made

under **section 96G** have not been complied with; or”.

## 8 New Part 9A inserted

The following Part is inserted after Part 9:

	<b>“Part 9A</b>	5
	<b>“Information sharing</b>	
	<b>“Subpart 1—Preliminary matters</b>	
<del>“96A</del>	<b>Overview of Part</b>	
<del>“(1)</del>	<del>This section—</del>	
	<del>“(a) is a guide to the general scheme and effect of this Part;</del>	10
	<del>and</del>	
	<del>“(b) does not affect the interpretation or application of other provisions of this Part.</del>	
<del>“(2)</del>	<del><b>Subpart 4</b> contains, in addition to this overview, provisions that—</del>	15
	<del>“(a) set out the purpose of this Part; and</del>	
	<del>“(b) explain the relationship between this Part and other law relating to information sharing; and</del>	
	<del>“(c) define some terms used in this Part.</del>	
<del>“(3)</del>	<del><b>Subpart 2</b> contains provisions that—</del>	20
	<del>“(a) authorise the sharing of personal information between or within agencies if it is done in accordance with an approved information sharing agreement; and</del>	
	<del>“(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</del>	25
	<del>“(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).</del>	30
<del>“(4)</del>	<del><b>Subpart 3</b> contains provisions that—</del>	
	<del>“(a) require parties to an approved information sharing agreement to give 10 working days’ notice before taking adverse action against an individual as a re-</del>	35

- ~~sult 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~~
- ~~“(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) **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~~
  - ~~“(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.~~
- “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.
  - “(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—
      - “(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
    - “(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~~ approved information sharing agreements.

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

- “(1) To avoid doubt, nothing in this Part— 5
- “(a) limits ~~any other enactment or rule of law that allows the~~ collection, use, or disclosure of personal information that is authorised or required by or under any enactment; and
- “(b) compels agencies to enter into an information sharing agreement if those agencies are already allowed to share personal information— 10
- “(i) by or under any other enactment ~~or rule of law~~;
- “(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, 54 or 57; and 20
- “(b) this Part and Parts 10 and 11 do not limit one another.

**“96D Interpretation**

In this Part, unless the context otherwise requires,—

“**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 25

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

“**code of practice** means a code of practice issued under section 46 30

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

“**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 infor-~~ 35

~~information only~~) that enables the sharing of personal information (whether or not the sharing also includes information that is not personal information) to facilitate the provision of a public service

“**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

“**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), 96OD(3) and 96Y**, means an Order in Council made under **section 96G(1)**

“**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

“**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

“**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:

“(a) collecting the information:

“(b) storing the information:

“(c) checking the information:

“(d) using the information:

“(e) disclosing the information:

“(f) exchanging the information:

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

“Subpart 2—Information sharing agreements

“*Authority for information sharing*

“**96E Information sharing between agencies** 5

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.

“**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

“Parties

“**96FA Parties to information sharing agreement** 15

“(1) Any 2 or more of the following may enter into an information sharing agreement:

“(a) a public sector agency;

“(b) a private sector agency;

“(c) a part of a public sector agency; 20

“(d) a part of a private sector agency.

“(2) **Subsection (1)** is subject to **subsections (3) and (4).**

“(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— 25

“(a) a public sector agency that is a department; or

“(b) part of a public sector agency that is a department.

“**96FB Representative parties**

“(1) An agency that represents the interests of a class of agencies may enter into an information sharing agreement with a department if that agency is— 30

“(a) a public sector agency that is not a department; or

- “(b) a private sector agency.
- “(2) If an agreement is proposed to be entered into under **subsection (1)**, any agency (except a department) that is a member of the class of agencies referred to in that subsection may become a party to the agreement by being sufficiently identified in a schedule to the agreement (a **Schedule of Parties**). 5
- “(3) At any time after an agreement has been entered into the lead agency may, with or without the consent of any agency,—
- “(a) amend the Schedule of Parties to add or remove agencies as parties: 10
- “(b) substitute a new Schedule of Parties.
- “(4) An agency that becomes a party to the agreement under **subsection (2) or (3)** may, but need not, share or participate in the sharing of any personal information with 1 or more other agencies in accordance with the terms of the agreement. 15
- “(5) Unless the context otherwise requires, every reference in this **Part** to a party to an information sharing agreement includes an agency that becomes a party to an agreement under **subsection (2) or (3)**.

*“Lead agency* 20

**“96FC Determining which party is lead agency**

- “(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 which of those public sector agencies is to be designated as the lead agency. 25

*“Form and content*

**“96FD Form and content of information sharing agreement** 30

- “(1) An information sharing agreement must be in writing.
- “(2) An information sharing agreement must—
- “(a) specify with due particularity the purpose of the information sharing agreement;
- “(b) set out the information referred to in **section 96H**; 35

- “(c) contain an overview of the operational details about the sharing of information under the agreement:
- “(d) specify the safeguards that will apply to protect the privacy of individuals and ensure that any interference with their privacy is minimised: 5
- “(e) 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: 10
- “(f) 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: 15
- “(g) if entered into under **section 96FB**,—
- “(i) identify the party that is a public sector agency or private sector agency representing the interests of a class of agencies; and 20
- “(ii) describe that class of agencies; and
- “(iii) include a schedule that sufficiently identifies the public sector agencies 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— 25
- “(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. 30

*“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. 35



- “(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):
  - “(b) any code of practice (except any code of practice that modifies principles 6 and 7). 5
- “(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. 10
- “(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. 15
- “96H Requirements for Order in Council 20**

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):
    - “(ii) how any of the information privacy principles or any code of practice will be modified under **section 96G(2)**: 25
  - “(b) state the public service or public services the provision of which the information sharing agreement is intended to facilitate: 30
  - “(c) specify with due particularity the personal information or the type of personal information to be shared under the agreement:
  - “(d) set out the parties, or classes of parties, to the agreement and designate 1 of the parties as the lead agency: 35
  - “(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
- “(ii) state how the party may use the personal information; and 5
- “(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
- “(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)**: 10
- “(f) state how a copy of the agreement can be ~~obtained~~ accessed. 15
- “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). 20
- “(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**— 25
- “(a) a description of each of the following:
- “(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: 30
- “(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 35
- “(c) the name of the lead agency for the agreement; and
- “(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—

- “(a) the Acts and Regulations Publication Act 1989; and
- “(b) the Regulations (Disallowance) Act 1989.

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*“Procedure for recommending Order in Council*

**“96K Matters to which relevant Minister must have regard before recommending Order in Council**

“(1) Before recommending the making of an Order in Council, the relevant Minister must—

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- “(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.

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“(2) The matters referred to in **subsection (1)(a)** are as follows:

- “(a) that the information sharing agreement will facilitate 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:
- “(d) that the benefits of sharing personal information under the agreement are likely to outweigh the financial and other costs of sharing it:
- “(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.

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**“96L Consultation on proposed information sharing agreement**

“(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,— 5

“(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 10

“(iii) any other person or organisation that the agencies consider should be consulted; and

“(b) have regard to any submissions made under **paragraph (a)**. 15

“(2) The Commissioner—

“(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. 20

“(3) The agencies must give the relevant Minister a copy of the submissions made under **subsection (1)(a)** (if any).

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

**“96M Commissioner may prepare and publish report on approved information sharing agreement** 25

“(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. 30

“(2) Without limiting **subsection (1)**, the Commissioner may include in a report under that subsection—

“(a) any comment that he or she wishes to make about the consultation that the agencies carried out under **section 96L(1)(a)**; and 35

“(b) any submissions that he or she made to the agencies under **section 96L(1)(a)(i)**.

- “(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 5
  - “*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. 10
- “(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 15
  - “(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~~ 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. 20 25
  
- “**96O When requirement to give notice of adverse action applies**
- The requirement to give notice under **section 96N** applies unless—
  - “(a) an approved information sharing agreement provides that a party to the agreement may— 30
    - “(i) give a shorter period of notice than the 10-working-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 35

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-working-day period referred to in **section 96N(2)(b)**; 5
- or
- “(ii) dispense with the giving of the notice.

“Responsibilities of lead agency

**“96OA Responsibilities of lead agency**

- “(1) A lead agency for an information sharing agreement must, if the agreement is approved by Order in Council under section 96G(1),—** 10
- “(a) make a copy of the agreement—**
    - “(i) available for inspection, free of charge, at the lead agency’s head office on any working day; and** 15
    - “(ii) accessible, free of charge, on an Internet site maintained by or on behalf of the lead agency; and**
  - “(b) prepare a report on the operation of the agreement at the intervals required by the Commissioner under section 96OC; and** 20
  - “(c) carry out any other responsibilities imposed by this Part.**
- “(2) A lead agency does not need to comply with subsection (1)(a)(ii) if the relevant Minister designates an Internet site maintained by or on behalf of another public sector agency as the Internet site where a copy of the agreement is to be made accessible free of charge.** 25
- “(3) To avoid doubt, nothing in this section applies to a party to an information sharing agreement that is not the lead agency except as provided in subsection (2).** 30

**“96OB Report of lead agency**

- “(1) A report prepared by a lead agency under section 96OA(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—** 35
- “(a) the costs of reporting;**



- “(i) the Commissioner; and  
“(ii) the relevant Minister; and  
“(b) make a copy of the amendment—
- “(i) available for inspection, free of charge, at the lead agency’s head office on any working day; and 5  
“(ii) accessible, free of charge, on the Internet site where a copy of the agreement is accessible.
- “(3) The information sharing agreement approved by Order in Council continues to have effect as if the amendment 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 by the parties. 10
- “(4) **Sections 96G to 96M** apply, subject to any necessary modifications, to the approval of the agreement as so amended. 15
- “(5) Nothing in **subsection (2)(a), (3), or (4)** applies if the amendment 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 20  
“(c) any terms or conditions of the agreement that the lead agency considers, after consulting the Commissioner, do not, or are unlikely to, have any effect on the privacy implications of the agreement.
- “Review of approved information sharing agreement”* 25
- “96P Review of operation of approved information sharing agreement**
- “(1) The Commissioner may, on his or her own initiative, conduct a review of the operation of an approved information sharing agreement— 30
- “(a) at the end of a period of 12 months after the Order in Council approving the agreement is made; and  
“(b) at any time that the Commissioner considers appropriate for any subsequent reviews. 35
- “(2) In conducting a review, the Commissioner must—  
“(a) consult the following about the review:



- “(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 5
  - “(b) consider any submissions made on the review.
  - “(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: 20
    - “(d) operating in such a way that the costs of sharing personal information under the agreement outweigh the benefits of sharing it.
  - “(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— 30
- ~~“(a)~~ the fees and charges payable under the agreement; or
- ~~“(b)~~ the name or description of a party to the agreement; or
- ~~“(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*

~~“96F 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; 30 if subsections (4) and (5) are complied with.~~
- ~~“(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 96F(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 † 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 † 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 5
    - “(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 10
    - “(iii) to reflect any amendments or variations to an approved information sharing agreement that are approved under **section 96S 96OD**; or
    - “(iv) to correct any error or omission in any description in that schedule: 15
  - “(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: 20
  - “(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.” 25

**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 96OA(1)(b)**.”. 30

**10 New Schedule 2A inserted**

The **Schedule 2A** set out in the Schedule is inserted after Schedule 2. 35

**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.”
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**Schedule**  
**New Schedule 2A inserted into principal Act**  
**Schedule 2A**  
**Approved information sharing agreements**

**s 10**

**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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**Privacy (Information Sharing) Bill**

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**Legislative history**

16 August 2011  
8 February 2012

Introduction (Bill 318–1)  
First reading and referral to Justice and Electoral  
Committee

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