

*Hon Peter Dunne*

## INFORMATION PRIVACY

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### ANALYSIS

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### A BILL INTITULED

## **An Act to make provision for the protection of privacy of natural persons in respect of information collected, held and used in both manual and automated systems by public sector agencies and by any other corporate or incorporate body**

BE IT ENACTED by the Parliament of New Zealand as follows:

- 1. Short Title and commencement**—(1) This Act may be cited as the Information Privacy Act 1991.
- (2) Except as provided in **subsection (3)** of this section, this Act shall come into force on the 1st day of June 1992.
- (3) This section, and **Part IV** of, and the **Second Schedule** to this Act shall come into force on the day on which this Act receives the Royal assent.
- 2. Interpretation**—(1) In this Act, unless the context otherwise requires,—
- “Agency” means
- (a) A Minister; or
  - (b) A Department or organisation within the meaning of the Official Information Act 1982; or
  - (c) A local authority within the meaning of the Local Government Official Information and Meetings Act 1987; or

(d) The Wanganui Computer Centre as defined by the Wanganui Computer Centre Act 1976; or

(e) A company within the meaning of the Companies Act 1955; or

5 (f) An incorporated society within the meaning of the Incorporated Societies Act 1908:

“Chief executive officer” means the chief executive officer of an agency, but if there is no chief executive officer a senior officer of an agency:

10 “Collection” means any decision or recommendation, act or omission which would be likely to result in personal information being held by any agency and “collect” has a corresponding meaning:

15 “Collector” means any agency, including any person employed by or contracted by the agency, who undertakes the collection of personal information:

“Computer system” means the computer system continued by section 3 (1) of the Wanganui Computer Centre Act 1976:

20 “Document” means a document in any form; and includes—

(a) Any writing on any material:

25 (b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:

(c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

30 (d) Any book, map, plan, graph, or drawing:

(e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

35 “Enactment” means any provision of—

(a) Any Act of Parliament; or

(b) Any regulations within the meaning of section 2 of the Acts and Regulations Publication Act 1989:

40 “Human Rights Commission” means the Human Rights Commission established under section 4 of the Human Rights Commission Act 1977:

“Human Rights Tribunal” or “Tribunal” means the Human Rights Tribunal established under section 45 of the Human Rights Commission Act 1977:

- “Information Privacy Principle” or “Principle” means any of the Information Privacy Principles listed in the **First Schedule** to this Act:
- “International organisation” means any organisation of States or Governments of States or any organ or agency of any such organisation; and includes the Commonwealth Secretariat: 5
- “Law enforcement information” means any information stored on the computer system that—
- (a) Is about an identifiable person; and 10
  - (b) Is specified in the Schedule to the Wanganui Computer Centre Act 1976:
- “Matching” means the comparison of two or more records of information about a particular person:
- “Minister” means the Minister of Justice: 15
- “Person” means a natural person, and “personal” has a corresponding meaning:
- “Personal Information” means any information held by an agency about an identifiable natural person:
- “Policy Committee” means the Wanganui Computer Centre Policy Committee established under section 19 of the Wanganui Computer Centre Act 1976: 20
- “Privacy Commissioner” means the Privacy Commissioner appointed under **section 29** of this Act:
- “Proceedings Commissioner” means the Proceedings Commissioner appointed under section 7 (2A) of the Human Rights Commission Act 1977: 25
- “Record-keeper” means any agency that is in possession or control of a record of personal information:
- “Use” includes— 30
- (a) Disclosure of any personal information to any natural or legal person; and
  - (b) Giving or allowing any natural or legal person to have access to any personal information:
- “Working day” means any day of the week other than— 35
- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday and Waitangi Day; and
  - (b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year. 40

**3. Act to bind the Crown**—This Act shall bind the Crown.

**4. Purposes**—The purposes of this Act are,—

- (a) To provide for the better protection of the privacy of natural persons in respect of personal information collected, held or used by any agency;
- 5 (b) To provide for proper access by each person to official information relating to that person.

## PART I

## INFORMATION PRIVACY PRINCIPLES

**5. Interferences with privacy**—For the purposes of this Act, an act or practice is an interference with the privacy of an individual if, and only if, the act or practice breaches an  
10 Information Privacy Principle in relation to personal information that related to that individual.

**6. Information Privacy Principles**—The Information Privacy Principles are as follows:

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*Principle 1**Manner and purpose of collection of personal information*

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
- 20 (a) The information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
- (b) The collection of the information is necessary for or directly related to that purpose.
- 25 2. Personal information shall not be collected by a collector by unlawful or unfair means.
3. Personal information shall be collected by a collector directly from the person to whom it relates and with the knowledge or consent of that person except—
- 30 (a) Where the information is already publicly available; or
- (b) Where the person authorises another method of collection; or
- (c) Where such collection would prejudice the purpose of the collection; or
- 35 (d) Where another method for collection would not prejudice the interests of the person; or
- (e) Where another method of collection is required or authorised by or under law.

*Principle 2**Solicitation of personal information from individual concerned*

## 1. Where:

- (a) A collector collects personal information for inclusion in a record or in a generally available publication; and 5
- (b) The information is solicited by the collector from the person concerned

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the person concerned is aware of: 10

- (c) The purpose for which the information is being collected; and
- (d) If the collection of the information is authorised or required by or under law—the fact that the collection of the information is so authorised or required and whether disclosure by that person is voluntary or mandatory; and 15
- (e) The effects on that person, if any, of not providing all or any part of the requested information; and 20
- (f) The rights of access to and correction of personal information provided by these principles.

2. It shall not be necessary for the collector to comply with clause 1 if to do so would render nugatory the purpose of the collection. 25

*Principle 3**Solicitation of personal information generally*

## Where:

- (a) A collector collects personal information for inclusion in a record or in a generally available publication; and 30
- (b) The information is solicited by the collector, the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected; 35
- (i) The information collected is relevant to that purpose and is up to date and complete; and
- (ii) The collection of the information does not intrude to an unreasonable extent upon the personal affairs of the person concerned. 40

*Principle 4*

*Storage and security of personal information*

A record-keeper who has possession or control of a record that contains personal information shall ensure:

- 5 (a) That the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- 10 (b) That if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information
- 15 contained in the record.

*Principle 5*

*Information relating to records kept by a record-keeper*

1. A record-keeper who has possession or control of records that contain personal information shall take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

- 20 (a) Whether the record-keeper has possession or control of any records that contain personal information; and
- 25 (b) If the record-keeper has possession or control of a record that contains such information:
- (i) the nature of that information;
- (ii) the main purposes for which that information is used; and
- 30 (iii) the steps that the person should take if the person wishes to obtain access to the record.
2. A record-keeper shall maintain a record setting out:
- (a) The nature of the records of personal information kept by or on behalf of the record-keeper; and
- 35 (b) The purpose for which each type of record is kept; and
- (c) The classes of persons about whom records are kept; and
- (d) The period for which each type of record is kept; and
- (e) The persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that
- 40 access; and
- (f) The steps that should be taken by persons wishing to obtain access to that information.

3. A record-keeper shall:

- (a) Make the record maintained under **clause 2** of this principle available for inspection by members of the public; and
- (b) If requested by the Privacy Commissioner, give him or her a copy of the record so maintained. 5

*Principle 6**Access to records containing personal information*

1. Where a record-keeper has possession or control of a record that contains personal information, the person concerned shall be entitled: 10
  - (a) To obtain from the record-keeper confirmation of whether or not the record-keeper has such a record;
  - (b) To have access to that record:
    - (i) Within a reasonable time; and
    - (ii) In a reasonable manner; and 15
    - (iii) In a form that is readily intelligible.
2. The application of this principle is subject to **Parts II and III** of this Act.

*Principle 7**Alteration of records containing personal information* 20

1. A record-keeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record: 25
  - (a) Is accurate; and
  - (b) Is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading. 30
2. Where the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the person concerned under **section 21** of this Act, the record-keeper shall, if so requested by the person concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that person of the correction, deletion or addition sought. 35
3. The record-keeper shall inform the person concerned of the action taken under this principle. 40



*Principle 8*

*Record-keeper to check accuracy, etc. of personal information before use*

5 A record-keeper who has possession or control of a record that contains personal information—

- (a) Shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete; and
- 10 (b) Shall not keep that information for any longer than is required for the purpose for which the information was collected.

*Principle 9*

15 *Personal information to be used only for relevant purposes*

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

20 *Principle 10*

*Limits on use of personal information*

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:

- 25 (a) The person concerned has consented to use of the information for that other purpose;
- (b) The record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the person concerned or another person;
- 30 (c) The purpose for which the information is used is directly related to the purpose for which the information was obtained;
- 35 (d) Use of the information for that other purpose is required or authorised by or under law;
- (e) Use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue;
- 40

(f) The information is to be used in aggregate form or for statistical or research purposes and will not be published in a manner that will identify any person.

2. Where information is used for a purpose other than that for which it was obtained, pursuant to **paragraphs (b) and (c) of clause 1** of this principle, the record-keeper shall, as soon as practicable after that use, inform the person concerned. 5

3. The record-keeper shall keep a record of any use of personal information for a purpose other than the purpose for which it was collected, unless to do so would unduly impair efficient administration. 10

4. Nothing in this principle affects any power of a court or other body acting judicially to require the production of evidence.

#### *Principle 11*

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##### *Limits on disclosure of personal information*

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency unless:

- (a) The disclosure is to the person concerned; 20
- (b) The disclosure is required or authorised by or under law, including the exemption provisions of this Act;
- (c) The disclosure is made pursuant to **Part II** of this Act, Part II of the Official Information Act 1982 or Part II of the Local Government Official Information and Meetings Act 1987, including a disclosure made in accordance with a recommendation of an Ombudsman under Part V of either Act; 25
- (d) The record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person concerned or another person; 30
- (e) The disclosure is reasonably necessary for the enforcement of the criminal law;
- (f) The person concerned has consented to the disclosure; 35
- (g) The information is to be used in aggregate form or for statistical or research purposes and will not be published in a manner that will identify any person;
- (h) The Privacy Commissioner has authorised the disclosure for the purposes of information matching. 40

2. The record-keeper shall keep a record of any disclosure of personal information under **clause 1** of this Principle. That

record is personal information for the purposes of these principles.

5 3. A person, body or agency to whom personal information is disclosed under **clause 1** of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

4. Nothing in this principle affects any power of a court or other body acting judicially to require the production of evidence.

10 **7. Application of Principles**—(1) **Principles 1, 2, and 3** apply only in relation to information collected after the 1st day of June 1992.

(2) **Principles 4 to 11** apply whenever the information is or was collected.

15 **8. Agency has possession but not control**—Where an agency has possession but not control of a record of personal information, the Information Privacy Principles apply in relation to that agency to the extent only of the obligations or duties to which that agency is subject, otherwise than by virtue  
20 of the operation of this Act, because it is in possession of that particular record.

**9. Statistical information**—(1) Nothing in **Principle 1** shall allow a person to refer, in response to a schedule under the Statistics Act 1975, to another document from which the  
25 information could be obtained, except with the prior approval of the Government Statistician.

(2) **Principle 5 and Principle 6** shall not apply to personal information supplied by the record subject to the Department of Statistics for statistical survey purposes as defined in the  
30 Statistics Act 1975.

**10. Disclosure contrary to another Act**—Nothing in **clause 1 (d) of Principle 10** or in **clause 1 (e) of Principle 11** shall be taken as authorising disclosure of personal information contrary to any provision contained in any other enactment which imposes  
35 a prohibition or restriction in relation to the availability of personal information.

## PART II

## REQUESTS FOR ACCESS TO PERSONAL INFORMATION

**11. Principle of availability**—The question whether any personal information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it. 5

**12. Right of access to personal information**—(1) Subject to this Part of this Act and to **subsection (2)** of this section, every person has a right to and shall, on request, be given access to any personal information which— 10

(a) Is about that person; and

(b) Is held in such a way that it can readily be retrieved. 15

(2) The right conferred by **subsection (1)** of this section may be exercised only by a person who is—

(a) A New Zealand citizen; or

(b) A permanent resident of New Zealand; or

(c) A person who is in New Zealand. 20

(3) Nothing in this section requires, or imposes any responsibility on any agency to compile files or data banks of personal information.

**13. Urgency**—If the person making the request asks that the request be treated as urgent, reasons must be given for seeking the information urgently. 25

**14. Assistance**—It is the duty of every agency to give reasonable assistance to a person, who—

(a) Wishes to make a request in accordance with **section 12** of this Act; or 30

(b) In making a request under **section 12** of this Act, has not made that request in accordance with that section; or

(c) Has not made the request to the appropriate agency or made a request in a manner that is in accordance with that section and to direct the request to the appropriate agency. 35

**15. Precautions**—Where a request is made under **section 12** of this Act the agency—

(a) Shall not give access to that information unless it is satisfied concerning the identity of the person making the request; and 40

- (b) Shall ensure, by the adoption of appropriate procedures, that any information intended for a person is received—
- 5 (i) Only by that person; or  
(ii) Where the request is made by an agent of the person, only by that person or his or her agent; and
- (c) Shall ensure that, where the request is made by an agent of the person, the agent has the written authority of that person to obtain the information or is otherwise
- 10 properly authorised by that person to obtain the information.

**16. Transfer of requests—Where—**

- (a) A request in accordance with **section 12** of this Act is made to an agency, and
- 15 (b) The information to which the request relates—
- (i) Is not held by the agency but is believed by the person dealing with the request to be held by another agency; or
- 20 (ii) Is believed by the person dealing with the request to be more closely connected with the functions of another agency—
- the agency to which the request is made shall promptly, and in any case not later than 10 working days after the day on which the request is received, transfer the request to the agency
- 25 concerned, and inform the person making the request accordingly.

**17. Decisions on requests—**(1) Subject to this Act, the agency to whom a request is made in accordance with **section 12** or is transferred in accordance with **section 16** of this Act shall,

30 as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received by that agency,—

- (a) Decide whether the request is to be granted and, if it is to be granted, in what manner and for what charge (if any); and
- 35 (b) Give or post to the person who made the request notice of the decision on the request.

(2) Where a request in accordance with **section 12** of this Act is made or transferred to an agency, the decision on that request

40 shall be made by the chief executive of the agency or an officer or employee of that agency authorised by that chief executive unless that request is transferred in accordance with **section 16** of this Act to another agency.

(3) Nothing in **subsection (2)** of this section prevents the chief executive of an agency, or any officer or employee of an agency, from consulting a Minister of the Crown or any other person in relation to the decision that the chief executive officer or employee proposes to make on any request made to the agency in accordance with **section 12** of this Act or transferred to the agency in accordance with **section 16** of this Act. 5

**18. Extension of time limits**—(1) Where a request in accordance with **section 12** of this Act is made or transferred to an agency, the chief executive of that agency or an officer or employee of that agency authorised by that chief executive may extend the time limit set out in **section 16** or **section 17** of this Act in respect of the request if— 10

(a) The request is for a large quantity of personal information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the agency; or 15

(b) Consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit. 20

(2) Any extension under **subsection (1)** of this section shall be for a reasonable period of time having regard to the circumstances.

(3) The extension shall be effected by giving or posting notice of the extension to the person who made the request within 20 working days after the day on which the request is received. 25

(4) The notice effecting the extension shall—

(a) Specify the period of the extension; and

(b) Give the reasons for the extension; and 30

(c) State that the person who made the request for the personal information has the right, under **section 40** of this Act, to make a complaint to the Privacy Commissioner about the extension; and

(d) Contain such other information as is necessary. 35

**19. Methods of supplying information**—(1) Where the personal information requested by any person is comprised in a document, that information may be made available in one or more of the following ways:

(a) By giving the person a reasonable opportunity to inspect the document; or 40

(b) By providing the person with a copy of the document; or

- (c) In the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, by making arrangements for the person to hear or view those sounds or visual images; or
- 5 (d) In the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by providing the person with a written transcript of the words recorded or contained in the document; or
- 10 (e) By giving an excerpt or summary of the contents; or  
(f) By furnishing oral information about its contents.
- (2) Subject to **section 20** of this Act, the agency shall make the information available in the way preferred by the person requesting it unless to do so would—
- 15 (a) Impair efficient administration; or  
(b) Be contrary to any legal duty of the agency in respect of the document; or
- 20 (c) Prejudice the interests protected by **sections 24 to 27** of this Act.
- (3) Where the information is not provided in the way preferred by the person requesting it, the agency shall, subject to **section 22** of this Act, give to that person—
- 25 (a) The reason for not providing the information in that way; and  
(b) If that person so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by **sections 24 to 27** of this Act.
- 30

**20. Deletion of information from documents—**

- (1) Where the information requested is comprised in a document and there is good reason for withholding some of the information contained in that document, the other information
- 35 in that document may be made available by making a copy of that document available with such deletions or alterations as are necessary.
- (2) Where a copy of a document is made available under subsection (1) of this section, the agency shall, subject to **section**
- 40 **22** of this Act, give to the applicant—
- (a) The reason for withholding the information; and  
(b) If the applicant so requests, the grounds in support of that reason, unless the giving of those grounds would itself

prejudice the interests protected by **sections 24 to 27** of this Act.

**21. Correction of information**—(1) Where any person is given access to personal information under **section 12**, that person shall be advised of that person's right to request the correction of that information. 5

(2) Every person who is given access under **section 12** of this Act to personal information may, by letter addressed to the agency,—

(a) Request correction of the personal information where the person believes the information— 10

(i) Is inaccurate; or

(ii) Is incomplete and gives a misleading impression; and

(b) Require that a notation be attached to the information indicating the nature of any correction requested but not made. 15

(3) Where an agency receives a letter pursuant to **subsection (1)** of this section, it shall inform the person by whom or by which the letter was sent of the action taken by the agency as a result of the letter. 20

**22. Information concerning existence of certain information**—Where a request under this Act relates to information to which **sections 24 to 27** of this Act applies, or would if it existed apply, the agency dealing with the request may, if it is satisfied that the interest protected by **sections 24 to 27** of this Act would be likely to be prejudiced by the disclosure of the existence or non-existence of such information, give notice in writing to the applicant that the agency neither confirms nor denies the existence or non-existence of that information. 25 30

**23. Restriction where person sentenced to imprisonment**—Nothing in **section 12** of this Act gives any person who, after the commencement of this Act is sentenced to a term of imprisonment for an offence the right to be given access to any personal information about that person that is held by the Police Department and which relates to the offence for which that person was sentenced, or to the conviction or sentencing of that person for that offence. 35



PART III

REFUSAL OF REQUESTS

- 5     **24. Refusal of requests**—A request made in accordance with **section 12** of this Act may be refused only for one or more of the following reasons—
- (a) That, by virtue of **sections 25 to 27** of this Act, there is good reason for withholding the information; or
  - (b) That, by virtue of **section 22** of this Act, the agency does not confirm or deny the existence or non-existence of the information requested; or
  - 10     (c) That the making available of the information requested would—
    - (i) Be contrary to the provisions of a specified enactment; or
    - 15         (ii) Constitute contempt of Court or of the House of Representatives; or
  - (d) That the information requested is or will soon be publicly available; or
  - (e) That the document alleged to contain the information requested does not exist or cannot be found; or
  - 20     (f) That the information requested cannot be made available without substantial collation or research; or
  - (g) That the information requested is not held by the agency and the person dealing with the request has no grounds for believing that the information is either—
  - 25         (i) Held by another agency; or
  - (ii) Connected more closely with the functions of another agency; or
  - (h) That the request is frivolous or vexatious or that the
  - 30     information requested is trivial.

- 35     **25. Conclusive reasons for withholding personal information**—Good reason for withholding personal information exists, for the purpose of **section 11** of this Act, if the making available of that information would be likely—
- (a) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
  - (b) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence
  - 40     by—
    - (i) The government of any other country or any agency of such a government; or
    - (ii) Any international organisation; or

- (c) To prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) To endanger the safety of any person.

**26. Special reasons for withholding personal information related to the Cook Islands, Tokelau, or Niue, or the Ross Dependency**—Good reason for withholding personal information exists, for the purpose of section 11 of this Act, if the making available of the information would be likely—

- (a) To prejudice the security or defence of—
  - (i) The self-governing state of the Cook Islands; or
  - (ii) The self-governing state of Niue; or
  - (iii) Tokelau; or
  - (iv) The Ross Dependency; or
- (b) To prejudice relations between any of the Governments of—
  - (i) New Zealand;
  - (ii) The self-governing state of the Cook Islands; or
  - (iii) The self-governing state of Niue; or
- (c) To prejudice the international relations of the Governments of—
  - (i) The self-governing state of the Cook Islands; or
  - (ii) The self-governing state of Niue.

**27. Further reasons for refusal of requests for personal information**—(1) Good reason for withholding personal information exists, for the purpose of section 11 of this Act, if—

- (a) The disclosure of the information would involve the unwarranted disclosure of the affairs of another person or of a deceased person; or
- (b) The disclosure of the information or of information identifying the person who supplied it, being evaluative materials, would breach an express or implied promise—
  - (i) Which was made to the person who supplied the information; and
  - (ii) Which was to the effect that the information or the identity of the person who supplied it or both would be held in confidence; or
- (c) After consultation undertaken (where practicable) by or on behalf of the agency with a natural person's medical practitioner, the agency is satisfied that—
  - (i) The information relates to that person; and

- (ii) The disclosure of the information (being information that relates to the physical or mental health of the person who requested it) would be likely to prejudice the physical or mental health of that person; or
- 5 (d) In the case of a natural person under the age of 16, the disclosure of that information would be contrary to that person's interests; or
- 10 (e) The disclosure of that information (being information in respect of a person who has been convicted of an offence or is or has been detained in custody) would be likely to prejudice the safe custody or the rehabilitation of that person; or
- 15 (f) The withholding of the information is necessary to protect information where the making available of the information—
  - (i) Would disclose a trade secret; or
  - (ii) Would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; and the withholding is not outweighed by other considerations which render it desirable, in the public interest, to make that information available; or
- 20 (g) The disclosure of the information would breach legal professional privilege; or
- 25 (h) The request is frivolous or vexatious, or the information requested is trivial.
- (2) For the purposes of **subsection (1)** of this section the term “evaluative material” means evaluative or opinion material
- 30 compiled solely—
  - (a) For the purpose of determining the suitability, eligibility, or qualifications of the person to whom the material relates—
    - 35 (i) For employment or for appointment to office; or
    - (ii) For promotion in employment or office or for continuance in employment or office; or
    - (iii) For removal from employment or office; or
    - (iv) For the awarding of contracts, awards, scholarships, honours, or other benefits; or
  - 40 (b) For the purpose of determining whether any contract, award, scholarship, honour, or benefit should be continued, modified, or cancelled; or
  - (c) For the purpose of deciding whether to insure any person or property or to continue or renew the insurance of
  - 45 any person or property.

**28. Reason for refusal to be given**—Where a request made in accordance with **section 12** of this Act is refused, the agency shall—

- (a) Subject to **section 7** of this Act, give to the applicant—
  - (i) The reason for its refusal; and 5
  - (ii) If the applicant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by **sections 24 to 27** of this Act; and
- (b) Give to the applicant information concerning the applicant's right, by way of complaint under **section 40** of this Act to the Privacy Commissioner, to seek an investigation and review of the refusal. 10

#### PART IV

#### PRIVACY COMMISSIONER 15

**29. Privacy Commissioner**—(1) There shall be appointed a person to be called the Privacy Commissioner.

(2) The Privacy Commissioner shall be appointed by the Governor-General on the recommendation of the Minister of Justice. 20

(3) The Privacy Commissioner shall be a member of the Human Rights Commission under section 7(1) of the Human Rights Commission Act 1977.

**30. Deputy Privacy Commissioner**—(1) There may from time to time be appointed by the Governor-General, on the recommendation of the Minister of Justice, a Deputy Privacy Commissioner who, subject to the control of the Privacy Commissioner, shall have and may exercise all the powers, duties, and functions of the Privacy Commissioner under this Act or any other Act (other than the function of being a member of the Human Rights Commission). 25 30

(2) On the occurrence for any cause of a vacancy in the office of the Privacy Commissioner (whether by reason of death, resignation, or otherwise) and in case of the absence from duty of the Privacy Commissioner (from whatever cause arising), and so long as any such vacancy or absence continues, the Deputy Privacy Commissioner shall have and may exercise all the powers, duties, and functions of the Privacy Commissioner. 35

(3) The fact that the Deputy Privacy Commissioner exercises any power, duty, or function of the Privacy Commissioner shall be conclusive evidence of the authority to do so. 40

**31. Terms of office of Privacy Commissioner or Deputy Privacy Commissioner—**

(1) Except as otherwise provided by this Act, the Privacy Commissioner and Deputy Privacy Commissioner shall hold office for such term as the Governor-General on the recommendation of the Minister shall specify in the appointment, being a term not exceeding 5 years, but may from time to time be reappointed.

(2) Where the term for which any person has been appointed as Privacy Commissioner or Deputy Privacy Commissioner expires, that person, unless sooner vacating or removed from office under section 32 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until that person is reappointed or a successor to that person is appointed.

**32. Vacation of office—**(1) The Privacy Commissioner and Deputy Privacy Commissioner may at any time resign office by delivering a notice in writing to that effect to the Minister.

(2) The Privacy Commissioner or Deputy Privacy Commissioner shall be deemed to have vacated office if the person so appointed dies or is, under the Insolvency Act 1967, adjudged bankrupt.

(3) The Privacy Commissioner and Deputy Privacy Commissioner may at any time be removed from office by the Governor-General for disability, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

**33. Privacy Commissioner and staff to maintain secrecy—**

(1) The Privacy Commissioner and every person holding any office or appointment under the Privacy Commissioner shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be officials.

(2) The Privacy Commissioner and every such person as aforesaid shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(3) Every person holding any office or appointment under the Privacy Commissioner shall, before he or she begins to perform any official duty under this Act, take an oath, to be administered by the Privacy Commissioner, that he or she will not divulge any information received by him or her under this Act except for the purpose of giving effect to this Act.

(4) Notwithstanding anything in subsections (1) to (3) of this section, the Privacy Commissioner may disclose such matters as in the Privacy Commissioner's opinion ought to be disclosed for the purposes of an investigation or in order to establish grounds

for the Privacy Commissioner's conclusions and recommendations.

**34. General functions of Privacy Commissioner—**

- (1) The Privacy Commissioner will have the following general functions: 5
- (a) To publish information annually on the existence of records containing personal information: 5
  - (b) To inquire generally into any enactment, law, practice, or procedure if it appears to the Privacy Commissioner that the privacy of persons is being, or may be, unduly infringed thereby, and to report to the Minister the results of such inquiry: 10
  - (c) To examine a proposed enactment that would require or authorise acts or practices of an agency that might be interferences with the privacy of individuals, and to report to the Minister the results of such examination: 15
  - (d) To undertake research into, and to monitor developments in, data processing and computer technology to ensure that any adverse effects of such developments on the privacy of individuals are minimised, and to report to the Minister the results of such research and monitoring: 20
  - (e) To promote an understanding and acceptance of the Information Privacy Principles and of the objects of those Principles: 25
  - (f) To prepare, and to publish in such manner as the Privacy Commissioner considers appropriate, guidelines for the avoidance of acts or practices of an agency that may or might be interferences with the privacy of individuals: 30
  - (g) To provide advice to a Minister or an agency on any matter relevant to the operation of this Act:
  - (h) On request, to conduct audits of records of personal information maintained by agencies for the purpose of ascertaining whether the records are maintained according to the Information Privacy Principles: 35
  - (i) Whenever the Privacy Commissioner thinks it necessary, to inform the relevant Minister of action that needs to be taken by a department or organisation in order to achieve compliance by the department or organisation with the Information Privacy Principles: 40
  - (j) For the purpose of promoting the protection of individual privacy, to undertake education programmes on the

Privacy Commissioner's own behalf or in co-operation with other persons or authorities acting on behalf of the Privacy Commissioner:

- 5 (k) To receive and invite representations from members of the public on any matter affecting privacy:
- (l) To make public statements in relation to any matter affecting privacy, whether generally or in relation to a class of persons:
- 10 (m) To do anything incidental or conducive to the performance of any of the preceding functions.
- (2) The Privacy Commissioner shall also have such functions as are conferred on the Privacy Commissioner by this Act or any other enactment.
- (3) The Privacy Commissioner shall have all such powers as are reasonably necessary or expedient to enable him or her to carry out his or her functions including power—
- 15 (a) To seek advice from the Ombudsmen and the Human Rights Commission:
- (b) To consult with and to receive reports from any agency on the problems encountered by agencies in the administration of this Act:
- 20 (c) To publish information relating to the access to or the supply of personal information.
- (4) The provisions of the **First** Schedule to this Act shall have effect in relation to the Privacy Commissioner and his or her proceedings.
- 25 (5) The Privacy Commissioner is not empowered to inquire into any investigation conducted by an Ombudsman or the Human Rights Commission.

30 **35. Specific functions of Privacy Commissioner—**

- (1) The Privacy Commissioner will have the following specific functions:
- 35 (a) To investigate complaints made under **Part V** of this Act;
- (b) To act as conciliator in relation to any such complaint:
- (c) To take such further action as is contemplated by the legislation unless;
- 40 (i) Those actions are of the kind which under the Human Rights Commission Act 1977 are taken by the Proceedings Commissioner; or
- (ii) The Privacy Commissioner requests the Proceedings Commissioner to take the actions under **Part V** of this Act; and
- (iii) The Proceedings Commissioner agrees with the request:

- (d) To be the respondent to applications to the Human Rights Tribunal for exemptions from the Information Privacy Principles:
  - (e) To consider and decide on applications for information matching as provided in **Part VII** of this Act: 5
  - (f) To inquire into any other matters concerning law enforcement information and relating to the operation of the Wanganui Computer Centre Act 1976.
- (2) The Privacy Commissioner may investigate on his or her own motion any matter which could be the subject of a complaint. 10

**36. Privacy Commissioner to have regard to certain matters**—In the performance of his or her functions, and the exercise of his or her powers, the Privacy Commissioner is to— 15

- (a) Have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way: 20
- (b) Take account of—
  - (i) International obligations accepted by New Zealand including those concerning the international technology of communications; and 25
  - (ii) Developing general international guidelines relevant to the better protection of individual privacy:
- (c) Ensure that his or her directions and guidelines are consistent with the Information Privacy Principles.

**37. Delegation of powers of Privacy Commissioner**— 30

(1) With the prior approval of the Minister, the Privacy Commissioner may from time to time, by writing under his or her hand, delegate to the Deputy Privacy Commissioner or to any officer or employee of the Privacy Commissioner any of the Privacy Commissioner's powers under this Act, except this power of delegation and the power to make any report under this Act. 35

- (2) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class. 40
- (3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Privacy Commissioner.



(4) Any such delegation may be made subject to such restrictions and conditions as the Privacy Commissioner thinks fit, and may be made either generally or in relation to any particular case or class of cases.

5 (5) Until any such delegation is revoked, it shall continue in force according to its tenor; in the event of the Privacy Commissioner ceasing to hold office, it shall continue to have effect as if made by his or her successor.

10 (6) Any person purporting to exercise any power of the Privacy Commissioner by virtue of a delegation under this section shall, when required to do so, produce evidence of his or her authority to exercise the power.

**38. Reports, etc.**—(1) The Privacy Commissioner may from time to time, in the public interest or in the interests of any person or agency, publish reports relating generally to the exercise of his or her functions under this Act or to any particular case or cases investigated by him or her, whether or not the matter to be dealt with in any such report has been the subject of a report to the Minister or the Prime Minister.

20 (2) The Privacy Commissioner shall not, in any report or statement made pursuant to this Act, make any comment that is adverse to any person unless that person has been given an opportunity to be heard.

25 (3) If any matter of the kind referred to in **section 44** of this Act comes to the knowledge of the Privacy Commissioner, the Privacy Commissioner shall not disclose it except in a report to the Prime Minister made pursuant to this Act.

(4) A copy of any report made under **subsection (1)** this section shall be laid before the House of Representatives.

30 **39. Annual report**—(1) Without limiting the right of the Privacy Commissioner to report at any other time, but subject to **section 44** of this Act, the Privacy Commissioner shall, within 3 months after the expiration of each year ending with the 30th day of June or such other date as may from time to time be directed by the Minister, furnish to the Minister a report on the exercise of his or her functions under this Act during that year.

35 (2) A copy of the annual report shall be laid before the House of Representatives.

## PART V

### 40 COMPLAINTS, INVESTIGATIONS AND REMEDIES

**40. Complaints**—Complaints to the Privacy Commissioner may be made by—

- (a) A person who considers that his or her privacy has been interfered with through an act, omission, or practice which has breached, or appears to breach, the Information Privacy Principles:
- (b) A person who has made a request which has not been attended to within the statutory time limits: 5
- (c) A person who has made a request that has been refused on the basis that an exemption applies:
- (d) A person who considers that the rules on information matching have been breached in relation to him or herself: 10
- (e) A person who considers that an information matching applicant has not complied with requirements laid down by the Privacy Commissioner:
- (f) A person who has reason to believe that the law enforcement information recorded about him or her on the computer system is wrongly so recorded because of inaccuracies, omissions, or the inclusion of unauthorised data, or is so recorded as to present a misleading impression. 15 20

- 41. Privacy Commissioner may refuse to investigate complaint**—(1) The Privacy Commissioner may in his or her discretion decide not to investigate, or as the case may require, not to investigate further, any complaint if it relates to a matter of which the person alleged to be aggrieved has had knowledge for more than 12 months before the complaint is received by the Privacy Commissioner, or if in his or her opinion— 25
- (a) The subject-matter of the complaint is trivial; or
  - (b) The complaint is frivolous or vexatious or is not made in good faith; or 30
  - (c) There is in all the circumstances an adequate remedy or right of appeal, other than the right to petition Parliament or to make a complaint to an Ombudsman, which it would be reasonable for the person alleged to be aggrieved to exercise. 35
- (2) Notwithstanding anything in **subsection (1)** of this section, the Privacy Commissioner may in his or her discretion decide not to investigate further any complaint if in the course of the investigation of the complaint it appears to the Privacy Commissioner that, having regard to all the circumstances of the case, any further investigation is unnecessary. 40
- (3) In any case where the Privacy Commissioner decides not to investigate or further investigate a complaint the

complainant shall be informed of that decision and the reasons therefor.

5 (4) In any case where the Privacy Commissioner decides not to investigate or further investigate a complaint which relates to law enforcement information recorded about a person on the computer system, he or she shall forward all the papers in relation to the complaint to the Policy Committee.

10 **42. Proceedings of Privacy Commissioner**—(1) Before investigating any matter under this Act, the Privacy Commissioner shall inform any person affected of the nature of the complaint (if any) and of an intention to make the investigation.

(2) Every investigation by the Privacy Commissioner under this Act shall be conducted in private.

15 (3) The Privacy Commissioner may hear or obtain information from such persons as he or she thinks fit.

(4) Subject to the provisions of this Act and of any regulations made under this Act, the Privacy Commissioner may regulate his or her procedure in such manner as he or she thinks fit.

20 **43. Evidence**—(1) Subject to the provisions of this section and to **section 44** of this Act, the Privacy Commissioner may from time to time require any person who in his or her opinion is able to give any information relating to any matter that is being investigated by the Privacy Commissioner to furnish any  
25 such information, and to produce any documents or papers or things which in the Privacy Commissioner's opinion relate to any such matter aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member  
30 of any agency and whether or not such documents, papers, or things are in the custody or under the control of any agency.

(2) The Privacy Commissioner may summon before him or her and examine on oath any person who in the Privacy Commissioner's opinion is able to give any such information as  
35 aforesaid and for that purpose may administer an oath. Every such investigation by the Privacy Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

(3) Subject to the provisions of this section, every such person  
40 shall be obliged to answer any questions put to him or her by the Privacy Commissioner but shall have the same privileges as witnesses have in any Court.

(4) Nothing in this section shall authorise the Privacy Commissioner to require any member of the Policy Committee or any other person to supply any information or to produce any document or paper that might involve the disclosure of any process or deliberations of the Policy Committee.

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(5) No person shall be required to supply any information or to answer any question put by the Privacy Commissioner in relation to any matter, or to produce to the Privacy Commissioner any document or paper or thing relating to any matter, in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act or regulations, other than the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 or the State Sector Act 1988.

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(6) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Privacy Commissioner shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Privacy Commissioner shall be given against any person.

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(7) No person shall be liable to prosecution for an offence against any enactment, other than this Act, by reason of his or her compliance with any requirement of the Privacy Commissioner under this section.

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(8) Where any person is required by the Privacy Commissioner to attend before him or her for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if that person were a witness in a Court, and the provisions of any regulations in that behalf made under the Summary Proceedings Act 1957 and for the time being in force shall apply accordingly. For the purposes of this subsection the Privacy Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

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#### **44. Disclosure of certain matters not to be required—**

(1) Where—

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(a) The Prime Minister certifies that the giving of any information or the answering of any question or the production of any document or paper or thing might prejudice the security, defence, or international

relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation); or

- 5 (b) The Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing—
- (i) Might prejudice the investigation or detection of offences; or
- 10 (ii) Might involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest;

the Privacy Commissioner shall not require the information or answer to be given, or, as the case may be, the document or paper or thing to be produced.

- 15 (2) Subject to the provisions of **subsection (1)** of this section, the rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the
- 20 answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Privacy Commissioner.

**45. Proceedings privileged**—(1) Subject to **subsection (2)** of this section—

- 25 (a) No proceedings, civil or criminal, shall lie against the Privacy Commissioner or any person holding office or appointment on the staff of the Privacy Commissioner, for anything he or she may do or report or say in the course of the exercise or intended
- 30 exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith:

- (b) The Privacy Commissioner and any such person as aforesaid, shall, subject to **section 43 (6)** of this Act, not be called to give evidence in any Court, or in any
- 35 proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.

(2) Nothing in **subsection (1)** of this section applies in respect of proceedings for—

- 40 (a) An offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961; or
- (b) The offence of conspiring to commit an offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961; or

(c) The offence of attempting to commit an offence against section 78A (1) or section 105 or section 105A of the Crimes Act 1961.

(3) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry by or proceedings before the Privacy Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court. 5

(4) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Privacy Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand. 10

**46. Parties to be informed of result of investigation—** 15  
Where any investigation is made following a complaint, the Privacy Commissioner shall conduct the investigation with due expedition and shall inform the parties concerned, as soon as reasonably practicable after the conclusion of the investigation and in such manner as he or she thinks proper, of the result of the investigation. 20

**47. Procedure after investigation—**(1) Where the Privacy Commissioner, after making any investigation under Part V of this Act, is of the opinion—

(a) In the case of a complaint, that the complaint has substance, the Privacy Commissioner shall use his or her best endeavours to secure a settlement between any parties concerned and, if it is considered appropriate, a satisfactory assurance against the repetition of any action or omission that was the subject-matter of the investigation or the doing of further acts or omissions of a similar kind by the person concerned; or 25 30

(b) In any other case, that the matter ought to be proceeded with, the Privacy Commissioner shall use his or her best endeavours to secure such an assurance as aforesaid. 35

(2) If the Privacy Commissioner is unable to secure such a settlement and assurance, or, as the case may be such an assurance as aforesaid, or if it appears that the act or omission was done in contravention of such an assurance given on a previous occasion, or that any term of such a settlement has not been complied with, the Privacy Commissioner shall 40

determine, in his or her discretion, both whether a matter justifies the institution of proceedings under **section 48** of this Act and whether proceedings should be instituted under **section 48** of this Act in respect of that matter.

- 5 (3) The Privacy Commissioner shall not take proceedings against a person referred to in **subsection (2)** of this section unless he or she has given that person an opportunity to be heard.

PART VI

HUMAN RIGHTS TRIBUNAL

- 10 **48. Civil proceedings**—(1) Civil proceedings before the Human Rights Tribunal shall lie at the suit of the Proceedings Commissioner against the person referred to in **section 47 (2)** of this Act for a breach of any of the provisions of **Part I and Part II** of this Act.

- 15 (2) The Proceedings Commissioner, on the recommendation of the Privacy Commissioner, may, under **subsection (1)** of this section, bring proceedings on behalf of a class of persons, and may seek on behalf of persons who belong to the class any of the remedies described in **subsection (6)** of this section, where it  
20 considers that the person referred to in **section 47 (2)** of this Act is carrying on a practice which affects that class and which is in breach of **Part I** of this Act.

- (3) Where proceedings are commenced by the Proceedings Commissioner under **subsection (1)** of this section, the aggrieved  
25 person (if any) shall not be an original party to, or, unless the Tribunal otherwise orders, join or be joined in, any such proceedings.

- (4) Notwithstanding **subsection (1)** of this section, the aggrieved person (if any) may bring proceedings before the Human Rights  
30 Tribunal if he or she wishes to do so, and—

- (a) The Privacy Commissioner or the Proceedings Commissioner is of the opinion that the complaint does not have substance or that the matter ought not to be proceeded with; or  
35 (b) In a case where the Proceedings Commissioner would be entitled to bring proceedings, the Proceedings Commissioner—

- (i) Agrees to the aggrieved person bringing proceedings; or  
40 (ii) Declines to take proceedings.

- (5) In any proceedings before the Human Rights Tribunal the Proceedings Commissioner or the aggrieved person (as the case

may be) may seek such of the remedies described in **subsection (6)** of this section as he or she thinks fit.

(6) If in any such proceedings the Tribunal is satisfied on the balance of probabilities that the defendant has committed a breach of any of the provisions of the Information Privacy Principles, it may grant one or more of the following remedies— 5

- (a) A declaration that the defendant has committed a breach of this Act:
- (b) An order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any kind specified in the order: 10
- (c) Damages in accordance with **section 50** of this Act: 15
- (d) An order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the aggrieved person as a result of the breach:
- (e) A declaration that any contract entered into or performed in contravention of any of the Information Privacy Principles is an illegal contract: 20
- (f) Relief in accordance with the Illegal Contracts Act 1970 in respect of any such contract to which the defendant and the aggrieved person are parties: 25
- (g) Such other relief as the Tribunal thinks fit.

(7) In any proceedings under this section the Human Rights Tribunal may award such costs against the defendant as it thinks fit, whether or not it makes any other order, or may award costs against the plaintiff, or may decline to award costs against either party. Where the Proceedings Commissioner is the plaintiff any costs awarded against him or her shall be paid by the Privacy Commissioner and the Privacy Commissioner shall not be entitled to be indemnified by the aggrieved person (if any). 30 35

(8) It shall not be a defence to proceedings under this section that the breach was unintentional or without negligence on the part of the defendant, but the Human Rights Tribunal may take the conduct of the defendant into account in deciding what, if any, remedy to grant. 40

**49. Right of Proceedings Commissioner to appear in civil proceedings—**(1) The Proceedings Commissioner may appear and be heard, in person or by a barrister or solicitor,—



(a) In any proceedings before the Human Rights Tribunal;  
and

(b) In any proceedings in—

(i) A District Court; or

(ii) The High Court; or

(iii) The Court of Appeal,

in relation to any proceedings that are or have been  
before the Human Rights Tribunal,

whether or not the Proceedings Commissioner is or was a party  
to the proceedings before the Human Rights Tribunal.

(2) Where, pursuant to **subsection (1)** of this section, the  
Proceedings Commissioner appears in any proceedings of a  
kind described in that subsection, he or she shall, unless those  
proceedings are by way of appeal, have the right to adduce  
evidence and the right to cross-examine witnesses.

(3) Where, pursuant to **subsection (1)** of this section, the  
Proceedings Commissioner, not being a party to any  
proceedings before the Human Rights Tribunal, appears in  
those proceedings or in any proceedings in any Court in  
relation to those proceedings, the Human Rights Tribunal or  
the Court, as the case may be, may make such order as it thinks  
fit—

(a) As to the payment by any party to the proceedings before  
the Human Rights Tribunal or the Court of the costs  
incurred by the Proceedings Commissioner in so  
doing; or

(b) As to the payment by the Proceedings Commissioner of  
any costs incurred by any of the parties to the  
proceedings before the Human Rights Tribunal or the  
Court by reason of the appearance of the Proceedings  
Commissioner.

(4) Costs ordered to be paid by the Proceedings  
Commissioner shall be paid by the Privacy Commissioner.

(5) Nothing in this section limits or affects—

(a) **Section 48 (7)** of this Act; or

(b) Any power of a Court to award costs in any proceedings  
to which the Proceedings Commissioner is a party.

**50. Damages**—(1) In any proceedings under **section 49** of this  
Act the Tribunal may award damages against the defendant for  
a breach of any of the Information Privacy Principles in respect  
of any one or more of the following—

(a) Pecuniary loss suffered as a result of, and expenses  
reasonably incurred by the aggrieved person for the

purpose of, the transaction or activity out of which the breach arose:

(b) Loss of any benefit, whether or not of a monetary kind, which the aggrieved person might reasonably have been expected to obtain but for the breach: 5

(c) Humiliation, loss of dignity, and injury to the feelings of the aggrieved person:

Provided that damages awarded under **paragraph (c)** of this subsection on behalf of any one aggrieved person shall not exceed \$2,000. 10

(2) Damages recovered by the Privacy Commissioner under this section shall be paid by the Privacy Commissioner to the aggrieved person on whose behalf the proceedings were brought or, if that person is an unmarried minor or is not of full mental capacity, in the discretion of the Privacy Commissioner to the Public Trustee. 15

(3) Where money is paid to the Public Trustee under **subsection (2)** of this section—

(a) Section 12 of the Minors' Contracts Act 1969 shall apply in the case of an unmarried minor; and 20

(b) Section 66 of the Public Trust Office Act 1957 shall apply in the case of a person who is not of full mental capacity.

**51. Monetary limits on remedies that Tribunal may grant**—Civil proceedings under **section 48** of this Act may be instituted before the Human Rights Tribunal irrespective of the amount of damages claimed or the value of the property in respect of which any remedy is sought but, subject to sections 53 and 54 of this Act, the Tribunal shall not award any damages or grant any remedy in any such proceedings if the making of that award or the granting of that remedy would, by reason of the monetary limits contained in sections 29 to 34 of the District Courts Act 1947, be beyond the jurisdiction of a District Court: 25

Provided that where civil proceedings under **section 48** of this Act are brought by the Proceedings Commissioner on behalf of more than one aggrieved person, those proceedings shall, for the purpose of applying any such monetary limit, be treated as if each aggrieved person on whose behalf those proceedings are brought were the plaintiff in a separate action against the defendant. 30 35 40

**52. Granting of remedies by High Court on reference from the Tribunal**—(1) Where the Tribunal is satisfied on the

balance of probabilities that a defendant in proceedings under **section 48** of this Act has committed a breach of the Information Privacy Principles but that—

5 (a) The granting of the appropriate remedy under **section 48 (6)** of this Act would be outside the limits imposed by **section 51** of this Act; or

(b) That the granting of a remedy in those proceedings would be better dealt with by the High Court; the Tribunal shall refer the granting of a remedy in those  
10 proceedings to the High Court.

(2) Where the granting of a remedy in any proceedings under **section 48** of this Act is referred to the High Court under **subsection (1)** of this section, that Court shall decide, on the basis of the Tribunal's finding that the defendant has committed a  
15 breach of the Information Privacy Principles, whether one or more of the remedies set out in **section 48 (6)** of this Act is to be granted.

(3) Every decision of the High Court under **subsection (2)** of this section shall be remitted to the Tribunal for inclusion in its determination with regard to the proceedings and shall have  
20 effect as part of that determination notwithstanding the limits imposed by **section 51** of this Act.

(4) A reference under **subsection (1)** of this section shall be effected by sending to the Registrar of the High Court at  
25 Wellington a report on the proceedings, which report shall set out the Tribunal's finding with regard to the breach of the Information Privacy Principles, and shall include or be accompanied by a statement of the considerations to which the Tribunal has had regard in making the reference to the Court.

30 (5) The Court may direct the Tribunal to amplify any report made for the purposes of **subsection (4)** of this section.

(6) A copy of every report made for the purposes of **subsection (4)** of this section shall be given or sent forthwith to every party to the proceedings, and any such party shall be entitled to be  
35 heard and to tender in the High Court evidence concerning the remedy (if any) to be granted on the basis of the Tribunal's finding that the defendant has committed a breach of the Information Privacy Principles but no such party shall be entitled, on the reference under **subsection (1)** of this section, to  
40 challenge that finding.

(7) Every reference to the High Court under **subsection (1)** of this section shall be dealt with by the Administrative Division of the High Court.

45 (8) Subject to this Act, the procedure in respect of any reference under **subsection (1)** of this section shall be in

accordance with the rules of Court and, subject to any necessary modifications, shall be the same as that applying in respect of an appeal.

(9) Nothing in this section shall limit the provisions of sections 63 to 65 of the Human Rights Commission Act 1977 or prevent the making of an appeal in accordance with section 63 of the Human Rights Commission Act 1977 in respect of any determination of the Tribunal in which a decision of the High Court is included pursuant to **subsection (3)** of this section. 5

**53. Abandonment to enable Tribunal to make an award of damages**—Notwithstanding the provisions of sections 51 and 52 of this Act, where the tribunal would have in any proceedings under section 48 of this Act jurisdiction to make an award of damages in accordance with section 50 of this Act were the amount of the award within the limit for the time being fixed by section 29 (1) of the District Courts Act 1947 (as applied by section 51 of this Act), the Tribunal may make such an award in any case where the plaintiff abandons the excess; and an award of damages in those proceedings in accordance with section 50 of this Act shall operate to discharge from liability in respect of the amount so abandoned any person against whom the proceedings are brought and the subsequent award made. 10 15 20

**54. Extension of jurisdiction by agreement between the parties**—(1) Notwithstanding the provisions of sections 51 and 52 of this Act, would have, in any proceedings under section 48 of this Act, jurisdiction to grant any one or more of the remedies specified in section 48 (6) of this Act and the parties to the proceedings, by memorandum signed by them or their respective solicitors or agents, agree that the Tribunal shall have jurisdiction to grant any one or more of the remedies specified in section 48 (6) of this Act irrespective of the provisions of section 51 of this Act, the Tribunal shall have jurisdiction to grant one or more of those remedies accordingly. 25 30

(2) Nothing in a memorandum entered into for the purposes of subsection (1) of this section shall authorise the Tribunal to exceed the limit imposed by the proviso to section 50 (1) of this Act. 35

**55. Exemptions from information privacy principles**—  
 (1) Where the Tribunal is satisfied that— 40  
 (a) An act, omission, or practice breaches or may breach an Information Privacy Principle; and

- (b) The public interest in an organisation, industry or profession doing the act, omitting to do the act or engaging in the practice outweighs to a substantial degree the public interest in adherence to that Principle—
- 5 the Tribunal may grant an exemption from some or all of the Information Privacy Principles contained in this Act.
- (2) An application for an exemption may be made either by a single organisation or by a body representing an industry or
- 10 profession.
- (3) The Privacy Commissioner shall be the respondent to any application for an exemption.
- (4) The Tribunal may specify the nature of the exemption in its decision or it may direct the Privacy Commissioner to
- 15 develop guidelines on the exempted matter in consultation with the applicant.
- (5) Any such guidelines shall be submitted by the Privacy Commissioner to the Tribunal for its approval or modification.
- (6) The guidelines approved by the Tribunal under this
- 20 section shall be binding on the organisation, industry or profession specified in the guidelines.

PART VII

INFORMATION MATCHING

**56. Functions in relation to information matching—**

- 25 (1) The Privacy Commissioner will have the following functions in relation to the matching of personal information—
- (a) To consider and decide on applications for information matching where a statutory prohibition on disclosure of information does not exist:
- 30 (b) To report to the appropriate Minister or Ministers where a specific statutory provision preventing matching exists and which, in the opinion of the Privacy Commissioner, should be removed:
- (c) To report to the appropriate Minister on any legislative
- 35 proposal for information matching, both as to the desirability of the proposal and the controls which should be incorporated if it is implemented.
- (2) The Privacy Commissioner's information matching functions will apply—
- 40 (a) Where a record keeper in one agency wishes to obtain access to information kept by a record keeper in another agency; or

(b) Where a record keeper wishes to obtain access to a record kept for a different purpose in the same agency.

(3) No information matching application is necessary for information to be matched with information in public registries or publicly available documents: 5

Provided that if the publicly available information is required to be provided in a manner not open to the general public, an application to the Privacy Commissioner shall be necessary.

**57. Application for information matching—**(1) An information matching application may be made to the Privacy Commissioner by one or all of the record keepers affected. 10

(2) The applicant or applicants shall provide the Privacy Commissioner with the following information about the application—

(a) The purpose for and the justification of the proposed information matching; and 15

(b) The anticipated results; and

(c) The personal records involved; and

(d) An assessment of the accuracy of the information involved; and 20

(e) The procedures for verification of matches made; and

(f) The methods of preserving the confidentiality of the information used; and

(g) A statement by any record keeper whose records are affected and who objects to the proposal. 25

**58. Advertising for submissions—**On receiving an application for information matching under **section 57** of this Act the Privacy Commissioner shall advertise the application as he or she thinks appropriate and invite submissions on the application. 30

**59. Consideration of application and submissions—**(1) The Privacy Commissioner shall consider the information provided by the applicant(s) under **section 57** of this Act together with any submissions received and in doing so shall take that into consideration whether— 35

(a) The proposal is permitted by law;

(b) The information matching is the only feasible way of obtaining essential information;

(c) The information matching has demonstrable cost savings over any other method of obtaining the information: 40

- (d) The benefits to be derived from information matching are so clearly in the public interest as to outweigh the disadvantages of such matching:
- 5 (e) Less intrusive methods of achieving the objective of the information matching have been considered and why they have been rejected:
- (f) Satisfactory provisions have been made to maintain the security and confidentiality of the personal information:
- 10 (g) Arrangements have been made to ensure that the personal information to be used is up-to-date, accurate and relevant to the purpose for which it is to be used:
- 15 (h) Provisions have been made for the ongoing monitoring of the effectiveness of the information matching proposal.
- (2) The Privacy Commissioner in deciding on any application for information matching may—
- 20 (a) approve the application as made to him or her; or
- (b) approve the application with amendments; or
- (c) decline the application.
- 25 (3) No action is to be taken on any application for information matching where that matching is to the detriment of a person or persons, without intervention by the Privacy Commissioner to check the matching and to make a decision on the detriment and the actions to be taken.

**60. Appeal from Privacy Commissioner's decision**—An appeal from any decision of the Privacy Commissioner on applications for information matching may be made to the

30 Human Rights Tribunal under **Part VI** of this Act.

## PART VIII

### WANGANUI COMPUTER CENTRE INFORMATION

**61. Access to Wanganui Computer Centre information**—(1) Notwithstanding Information Privacy

35 **Principle 6**, and **section 12** of this Act, every application for access to personal information held by the Wanganui Computer Centre shall be made to the Privacy Commissioner.

(2) Subject to **subsection (3)** of this section, every person has the

40 right to apply to the Privacy Commissioner, in such reasonable manner as may be determined from time to time by the Privacy Commissioner, for a copy of all or part of the law enforcement information recorded about the applicant on the computer system, other than law enforcement information

stored under the subject headings (as shown in the Schedule to the Wanganui Computer Centre Act)—

- (a) 'Modus operandi'; or
- (b) 'Wanted persons'; or
- (c) 'Document processing' where that law enforcement information relates to persons wanted for arrest; or 5
- (d) 'Document processing' or 'missing persons' where that law enforcement information, under either heading, relates to persons wanted for interview or required to be located in respect to alleged or suspected criminal offences. 10

(3) Subject to **subsection (5)** of this section the Privacy Commissioner, on being satisfied as to—

- (a) The identity of the applicant; and
  - (b) The applicant's entitlement to make the application,— 15
- shall forthwith acquire a copy of the required law enforcement information.

(4) Subject to the directions of the Policy Committee, the Privacy Commissioner may decline to release any law enforcement information that has been requested under **subsection (2)** of this section if, in the opinion of the Privacy Commissioner, the release of the law enforcement information would be likely to be detrimental to the administration of justice. 20

(5) Unless the Privacy Commissioner is satisfied that there are good and sufficient reasons to the contrary, no person shall be entitled to make more than one request under this section during any 12 months' period. 25

**62. Method of supplying Wanganui Computer Centre information**—(1) The Privacy Commissioner shall supply to the applicant the law enforcement information to which the applicant is entitled in such manner as the Privacy Commissioner thinks fit so as to protect the confidentiality of the law enforcement information. 30

(2) Notwithstanding anything in **subsection (1)** of this section, the law enforcement information to which the applicant is entitled may, where the Privacy Commissioner considers that the circumstances so require, be forwarded by the Privacy Commissioner, in such manner as may be agreed upon between the applicant and the Privacy Commissioner, to— 35 40

- (a) The applicant; or
- (b) A person authorised by the applicant.



**63. Investigation of Wanganui Computer Centre**

**information**—(1) In respect of any complaint received about law enforcement information recorded on the computer system, the Privacy Commissioner shall, after satisfying him or herself as to the identity of the complainant, direct the appropriate Department or Departments to the effect that all law enforcement information held in the computer system relative to the complaint be printed and be submitted to the Privacy Commissioner for investigation, and the Privacy Commissioner may, if he or she so wishes, supervise the printing of the information:

Provided that this subsection shall not restrict **section 41** of this Act.

(2) If at any time during the course of an investigation relating to law enforcement information recorded on the computer system, it appears to the Privacy Commissioner that there may be sufficient grounds for determining that a complaint is justified, the Commissioner shall report this opinion and the reasons therefor to the Department or Departments affected, which shall be given the opportunity to be heard on the matter.

**64. Result of investigation of Wanganui Computer Centre information**—(1) Where the Privacy Commissioner determines that any complaint about law enforcement information recorded about a complainant is justified, the Privacy Commissioner shall forthwith direct the Department or Departments concerned to make such deletions or alterations to the law enforcement information held on the computer system, or held elsewhere by the Department or Departments concerned, as the Privacy Commissioner considers to be necessary, and the Department or Departments shall forthwith comply with those directions.

(2) If within a reasonable time the Privacy Commissioner is not satisfied that the action that the Department or Departments have taken has complied with any of the Privacy Commissioner's directions, he or she shall send a report on the matter to the Prime Minister.

(3) The Privacy Commissioner shall inform the complainant in such manner and at such time as the Commissioner thinks proper of the result of the investigation.

## PART IX

## MISCELLANEOUS PROVISIONS

**65. Document setting out personal information held—**

(1) Every person has the right to and shall, on request made under this subsection, be given access to the document referred to in subsection (2) of this section. 5

(2) Every agency holding personal information shall hold, in all its public offices, a document, up-to-date as at the preceding 31st day of March, that, subject to sections 22 and 24 of this Act, includes in respect of every category of personal information held— 10

(a) The nature of the information contained in those records; and

(b) The purposes for which the information was obtained or compiled and is used; and 15

(c) A statement of the things that a person who wishes to obtain access to personal information may do to obtain such access.

**66. Service of notices—**(1) Any notice or other document required or authorised to be served on or given to any person for the purposes of this Act may be served or given by delivering it to that person, and may be delivered to him or her either personally or by leaving it at his or her usual or last known place of abode or business or at the address specified in any application or other document received from him or her or by posting it in a letter addressed to him or her at that place of abode or business or at that address. 20 25

(2) If any such notice or other document is sent to any person by registered letter it shall be deemed to have been delivered to him or her on the fourth day after the day on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted. 30

(3) If the person is absent from New Zealand, the notice or other document may be delivered as aforesaid to his or her agent in New Zealand. If he or she is deceased, the notice or other document may be delivered as aforesaid to his or her personal representatives. 35

(4) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no known personal representatives, or if for any other reason it is not practicable to deliver the notice or other document personally the notice or other document shall be 40

delivered in such manner as may be directed by the Commission or the Tribunal.

5 (5) Notwithstanding anything in the foregoing provisions of this section, the Commission or the Tribunal may in any case direct the manner in which any notice or other document is to be served or given, or dispense with the service or giving thereof.

10 **67. Offences**—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$1000 who—

- 15 (a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Privacy Commissioner or any other person in the exercise of his or her powers under this Act:
- 20 (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commission or a Commissioner or any other person under this Act:
- (c) Knowingly makes any false statement to or misleads or attempts to mislead the Commission or a Commissioner or any other person in the exercise of his or her powers under this Act.

25 **68. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes—

- 30 (a) Prescribing forms of applications and other documents required for the purposes of this Act, or authorising any person to prescribe or approve such forms:
- (b) Prescribing the procedure to be followed under this Act in respect of complaints to and proceedings before the Privacy Commissioner or in respect of proceedings before the Tribunal:
- 35 (c) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

**69. Protection against certain actions**—(1) Where any personal information is made available in good faith pursuant to this Act—

- 40 (a) No proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences

that follow from the making available of that information; and

- (b) No proceedings, civil or criminal, in respect of any publication involved in, or resulting from, the making available of that information shall lie against the author of the information or any other person by reason of that author or other person having supplied the information to an agency. 5

(2) The making available of, or the giving of access to, any official information in consequence of a request made under this Act shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the information is made available or the access is given. 10 15

**70. Exclusion of public interest immunity**—(1) Subject to subsection (2) of this section, the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest shall not apply in respect of— 20

- (a) Any investigation by or proceedings before the Privacy Commissioner; or  
 (b) Any application under section 4 (1) of the Judicature Amendment Act 1972 for the review of any decision under this Act; 25

but not so as to give any party any information that he or she would not, apart from this section, be entitled to.

(2) Nothing in subsection (1) of this section affects section 33 of this Act. 30

**71. Money to be appropriated by Parliament for purposes of this Act**—(1) All fees, salaries, allowances and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose. 35

(2) The provisions of the Public Finance Act 1989 shall apply to money and stores of the Privacy Commissioner as if they were public money (as defined in section 2 (1) of the Public Finance Act 1989) or public assets.

**72. Savings**—(1) Nothing in this Act authorises or permits the making available of any personal information if the making 40

available of that information would constitute contempt of Court or of the House of Representatives.

(2) Nothing in this Act derogates from—

- 5 (a) Any provision which is contained in any other enactment and which authorises or requires personal information to be made available; or
- 10 (b) Any provision which is contained in any other Act of Parliament or in any regulations within the meaning of the Regulations (Disallowance) Act 1989 (made by Order in Council and in force immediately before the 1st day of June 1992) and which—
- 15 (i) Imposes a prohibition or restriction in relation to the availability of personal information; or
- (ii) Regulates the manner in which official information may be obtained or made available; or
- 20 (c) Any provision of any Order in Council made under the Commissions of Inquiry Act 1908 or of any other document by which a Royal Commission or commission of inquiry or board of inquiry is appointed.

**73. Saving in respect of Ombudsmen Act 1975**—Except as expressly provided in this Act, nothing in this Act shall derogate from or limit the functions of the Ombudsmen under the Ombudsmen Act 1975.

25 **74. Saving in respect of Human Rights Commission Act 1977**—Except as expressly provided in this Act, nothing in this Act shall derogate from or limit the functions of the Human Rights Commission under the Human Rights Commission Act 1977.

30 **75. Related amendments to other Acts**—The Acts specified in the **Second Schedule** to this Act are hereby amended in the manner indicated in that schedule.

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**SCHEDULES****FIRST SCHEDULE****Section 34 (4)****PROVISIONS RELATING TO OFFICE OF PRIVACY COMMISSIONER**

**1. Employees of Privacy Commissioner**—(1) Subject to the provisions of this clause, the Privacy Commissioner may from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as he or she thinks necessary for the efficient carrying out of his or her functions, powers, and duties under this Act or any other enactment.

(2) The number of officers and employees who may be appointed under **subclause (1)** of this clause, whether generally or in respect of any specified duties, shall from time to time be determined by the Minister of Justice.

(3) Officers and employees appointed under **subclause (1)** of this clause shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Privacy Commissioner from time to time determines in agreement with the State Services Commission, or as the Minister of Justice from time to time determines in any case where the Privacy Commissioner and the State Services Commission fail to agree.

(4) Any determination under **subclause (3)** of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is so specified the determination shall take effect on the date thereof.

**2. Employment of experts**—(1) The Privacy Commissioner may appoint any person, who in his or her opinion possesses expert knowledge or is otherwise able to assist in connection with the exercise of the Privacy Commissioner's functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient carrying out of any such functions.

(2) The Privacy Commissioner shall pay persons appointed under this clause, for services rendered by them, fees and commission or either at such rates as the Privacy Commissioner thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Privacy Commissioner.

**3. Remuneration, allowances, and expenses of Privacy Commissioner and Deputy Privacy Commissioner**—(1) There shall be paid to the Privacy Commissioner and Deputy Privacy Commissioner such remuneration by way of fees, salary, wages, or allowances as may from time to time be fixed, by the Higher Salaries Commission.

(2) Any decision under **subclause (1)** of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no such date is specified the decision shall take effect on the date thereof.

(3) The Privacy Commissioner and Deputy Privacy Commissioner are hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(4) There shall be paid to the Privacy Commissioner and Deputy Privacy Commissioner travelling allowances and travelling expenses, in accordance with Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

FIRST SCHEDULE—*continued*

PROVISIONS RELATING TO OFFICE OF PRIVACY COMMISSIONER—*continued*

**4. Superannuation or retiring allowances**—(1) For the purpose of providing a superannuation fund or retiring allowance for the Privacy Commissioner and Deputy Privacy Commissioner on any of the officers or employees of the Privacy Commissioner, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

(2) Notwithstanding anything in this Act, any person who immediately before becoming the Privacy Commissioner or Deputy Privacy Commissioner or an officer or employee of the Privacy Commissioner is a contributor to the Government Superannuation Fund under Part II of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956 employed in the Government service so long as he or she continues in office as the Privacy Commissioner or Deputy Privacy Commissioner or to be an officer or employee of the Privacy Commissioner and that Act shall apply to that person in all respects as if the service were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in **subclause (2)** of this clause shall entitle any such person to become a contributor to the Government Superannuation Fund after he or she has once ceased to be a contributor.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (3)** of this clause, to a person who is in the service of the Privacy Commissioner, whether as an officer or employee, and is a contributor to the Government Superannuation Fund, the term “controlling authority”, in relation to any such person who is in the service of the Privacy Commissioner, means the Privacy Commissioner.

**5. Funds of Privacy Commissioner**—The funds of the Privacy Commissioner shall consist of—

- (a) Any money appropriated by Parliament for the purposes of the Privacy Commissioner;
- (b) All other money lawfully received by the Privacy Commissioner for the purposes of the Privacy Commissioner;
- (c) All accumulations of income derived from any such money.

**6. Bank accounts**—(1) The Privacy Commissioner shall open at any bank or banks such accounts as are necessary for the exercise of his or her functions and powers.

(2) All money received by the Privacy Commissioner, or by any employee of the Privacy Commissioner shall, as soon as practicable after it has been received, be paid into such bank accounts of the Privacy Commissioner as the Privacy Commissioner from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised by the Privacy Commissioner, or shall be submitted to the Privacy Commissioner for confirmation by the 15th day of the month after the date of payment.

(4) The withdrawal or payment of money from any such accounts shall be by cheque signed by such person or persons as the Privacy Commissioner may from time to time authorise.

FIRST SCHEDULE—*continued*PROVISIONS RELATING TO OFFICE OF PRIVACY COMMISSIONER—*continued*

**7. Accounts and audit**—The Crown agency reporting provisions in Part V of the Public Finance Act 1989 shall apply in relation to the Privacy Commissioner.

**8. Investment of money**—Any money which belongs to the Privacy Commissioner and which is not immediately required for expenditure by the Office of the Privacy Commissioner may be invested pursuant to section 25 of the Public Finance Act 1989.

**9. Exemption from income tax**—The income of the Office of the Privacy Commissioner shall be exempt from income tax.

**10. Application of certain Acts to members and staff of Privacy Commissioner**—No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of his or her appointment as an employee of the Privacy Commissioner, or a person appointed by the Privacy Commissioner under clause 2 of this Schedule.

**11. Crown may provide services for Privacy Commissioner**—The Crown, acting through any department, may from time to time, at the request of the Privacy Commissioner, execute any work or enter into arrangements for the execution or provision by the department for the Privacy Commissioner of any work or service, or for the supply to the Privacy Commissioner any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

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Section 75

SECOND SCHEDULE

ENACTMENTS CONSEQUENTIALLY AMENDED

Enactment	Amendment
1956, No. 65—The Health Act 1956 (R.S. Vol. 19, p. 493)	<p>By omitting from section 22c (as inserted by section 6 of the Health Amendment Act 1989) the words “Official Information Act 1982” and substituting the words “Information Privacy Act 1991”.</p> <p>By omitting from section 22E (b) (as inserted by section 6 of the Health Amendment Act 1989) the words “Official Information Act 1982” and substituting the words “Information Privacy Act 1991”.</p> <p>By omitting from section 22F (2) (b) (as inserted by section 6 of the Health Amendment Act 1989) the words “Official Information Act 1982” and substituting the words “Information Privacy Act 1991”.</p>
1975, No. 9—The Ombudsmen Act 1975 (R.S. Vol. 21, p. 657)	<p>By inserting in Part II of the First Schedule in its appropriate alphabetical order the following item:</p> <p>“Office of the Privacy Commissioner”.</p>
1976, No. 19—The Wanganui Computer Centre Act 1976	<p>By repealing the definition of “Commissioner” in section 2 and substituting the following definition:</p> <p>“‘Commissioner’ means the Privacy Commissioner appointed under section 29 of the Information Privacy Act 1991”.</p> <p>By repealing sections 5 to 18b.</p> <p>By repealing paragraph (j) of section 19 (1) (as amended by section 7 (2) of the Wanganui Computer Centre Amendment Act 1989) and substituting the following paragraph:</p> <p>“(j) The Privacy Commissioner appointed under section 29 of the Information Privacy Act 1991.”</p> <p>By repealing sections 24A and 24b.</p> <p>By repealing subsections (2A) and (2B) of section 29.</p> <p>By repealing section 31.</p>

SECOND SCHEDULE—*continued*ENACTMENTS CONSEQUENTIALLY AMENDED—*continued*

Enactment	Amendment
1977, No. 49—The Human Rights Commission Act 1977 (R.S. Vol. 18, p.227)	<p>By inserting, after section 7 (1) (c) the following paragraph:  “(ca) The Privacy Commissioner appointed under the Information Privacy Act 1991”.</p> <p>By omitting from sections 2, 38 (4), 38 (5), 38A (1), 41 and 45 the words “Equal Opportunities Tribunal” and substituting the words “Human Rights Tribunal”.</p> <p>By omitting from section 47 (4) the expression “12” and substituting the word “15”.</p>
1982, No. 156—The Official Information Act 1982 (R.S. Vol. 21, p. 579)	<p>By repealing Part V (section 67).</p> <p>By repealing the definition of “personal information” in section 2 and inserting the following definition:  “‘Personal information’ means any official information held about a person who is:  “(a) A body corporate which is incorporated in New Zealand; or  “(b) A body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand.”</p> <p>By omitting from section 4 (b) the words “relating to that person”.</p> <p>By omitting from section 24 (1) the words “(in the case of a natural person, without charge)”.</p> <p>By repealing subsection (2) of section 24.</p> <p>By repealing section 24A.</p> <p>By repealing paragraphs (d) and (e) of section 27 (1).</p>
1983, No. 134—The Area Health Boards Act 1983	<p>By omitting from section 51A (as inserted by section 13 of the Area Health Boards Amendment Act (No. 3)) the words “Official Information Act 1982” and substituting the words “Information Privacy Act 1991”.</p> <p>By omitting from section 51c (b) (as inserted by section 13 of the Area Health Boards Amendment Act (No. 3)) the words “Official Information Act 1982” and substituting the words “Information Privacy Act 1991”.</p>

SECOND SCHEDULE—*continued*

ENACTMENTS CONSEQUENTIALLY AMENDED—*continued*

Enactment	Amendment
1983, No. 134—The Area Health Boards Act 1983— <i>continued</i>	By omitting from section 51D(2)(b) (as inserted by section 13 of the Area Health Boards Amendment Act (No. 3)) the words “Official Information Act 1982” and substituting the words “Information Privacy Act 1991”.
1987, No. 174—The Local Government Official Information and Meetings Act 1987	<p>By repealing the definition of “personal information” in section 2 and inserting the following definition:</p> <p>“‘Personal information’ means any official information held about a person who is:</p> <p>    “(a) A body corporate which is incorporated in New Zealand; or</p> <p>    “(b) A body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand.”</p> <p>By omitting from section 4 (b) the words “relating to that person”.</p> <p>By omitting from section 23 (1) the words “(in the case of a natural person, without charge)”.</p> <p>By repealing paragraphs (d) and (e) of section 26 (1).</p>