MINISTRY OF JUSTICE
Tāhū o te Ture

Hon Judith Collins, Minister of Justice

Review of the Privacy Act 1993 – Seeking Decisions on Proposals for Reform and Funding

Date	22 August 2013	File reference	PRI-03-04

Action Sought	**Timeframe/Deadline**
Direct officials on your preferred approach to the proposals outlined in this paper	30 August

Contacts for telephone discussion (if required)

Name	**Position**	**Telephone (work)**	**(a/h)**	**1st contact**
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Minister's office to complete:

☐ Noted ☐ Approved ☐ Overtaken by events

☐ Referred to: _____

☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office comments

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Review of the Privacy Act 1993 – Seeking Decisions on Proposals for Reform and Funding Options

Purpose

1. This paper:
   - updates you on the Review of the Privacy Act (the Act); and
   - seeks your views on a package of proposals and funding options to inform the Cabinet paper.

Executive summary

2. New Zealand's privacy regime was established in the early 1990s. In that era a regime based on individual complaints was appropriate because breaches tended to impact on single individuals.
3. Since then information technology has developed significantly. Today large amounts of data can be stored, retrieved and transmitted digitally. This enables businesses and government to operate more efficiently and effectively in delivering services.
4. In this environment privacy breaches can impact on large numbers of consumers rather than single individuals.
5. Consequently a regime more focused on early identification and prevention of privacy risks is required rather than after the fact remedies.
6. This is the approach recommended by the Law Commission and is in line with international trends.
7. When the Law Commission's report came out in June 2011, opinion was divided as to the nature and extent of the problem with the current privacy settings. Since then, significant data security breaches have occurred in both the public and, to some extent, the private sectors, reinforcing the strength of the Commission's recommendations.
8. Key proposals to give the Privacy Commissioner (the Commissioner) a stronger role in earlier identification and prevention of privacy risks are:
   - 8.1. mandatory reporting of privacy breaches – a two tier regime requiring:
     - for material breaches - notification to the Commissioner
     - for serious breaches - notification both to the Commissioner and the affected individuals when there is a real risk of harm
   - 8.2. enhanced own motion investigations – strengthening the Commissioner's existing powers to investigate emerging issues before serious harm occurs and for proactive assessment of agencies' systems and practices where privacy concerns have been identified

8.3. compliance notices – the power to issue compliance notices for privacy breaches as a result of a complaint, own motion investigation, data breach notification or other avenue.

9. While these proposals will ensure the Privacy Commissioner has adequate tools to address privacy risks, there will be safeguards around their use to minimise compliance costs. The primary role of the Commissioner will remain to facilitate compliance and work with agencies.

10. We are also proposing amendments that will:

10.1. streamline the complaints resolution process. This proposal aims to build trust in the system and increase efficiency and effectiveness

10.2. clarify the law and impose new obligations relating to cross-border flows of information. These proposals aim to support New Zealand businesses to operate effectively internationally

10.3. fix gaps in the privacy regime and make compliance easier for organisations.

11. These proposals are generally welcomed by the public and private sectors. They are seen as good for business and the public sector by giving the public the confidence to provide information to them. They are also seen as in line with developing international expectations for doing business worldwide.

12. The Office of the Privacy Commissioner's (OPC) current baseline is $3.248 million per annum which has remained static since 2007. OPC is under financial pressure despite significant productivity improvements. To implement the proposals arising from the Privacy Act review the Office must be resourced to do so, but must first be resourced to a sustainable base level, to which can be added the proposed new functions. All figures are GST exclusive.

12.1. An operational baseline increase is sought, including overheads, of $1.164 million in 2013/14 and $3.308 million per annum from 2014/15

12.2. Transitional costs, including overheads, of between $0.070 and $0.280 million per annum for each of the years between 2013/14 to 2017/18 are also sought.

The proposed privacy reform package

13. Sound privacy law is good for people, business, and government. Individuals can have greater confidence that their information will be treated with respect, and Government and businesses can have greater confidence in using and disclosing information efficiently and effectively to deliver services and grow the economy.

14. New Zealand's privacy law was established in the early 1990's and is based on individual complaints. Since then, information technology has developed significantly. Today large amounts of data can be stored, retrieved and transmitted digitally. The Act clearly needs some changes to ensure business and government can operate effectively in the current environment and into the foreseeable future.

15. The Law Commission's report made a total of 144 recommendations. The Interim Government Response addressed 51 recommendations and deferred the majority for further consideration. The remaining Law Commission recommendations have now been analysed, along with the recommendations from a series of reports from respective Commissioners entitled *Necessary and Desirable*.

16. These recommendations have been included in this review because the Law Commission recommended that the new Privacy Act takes into account both the Law Commission and

Necessary and Desirable recommendations. All recommendations will be addressed in a supplementary government response.

17. Many recommendations are pragmatic solutions to address gaps that have become apparent over the past 20 years, and to address the changing privacy landscape. We propose that the majority of the Law Commission recommendations be adopted, with the rest to be addressed in another work stream, modified, deferred, or rejected. Most of the *Necessary and Desirable* recommendations have been withdrawn by the Commissioner or overtaken by the Law Commission recommendations, but some will be adopted. Together with the guidance to be developed by the Commissioner these proposed changes will fix gaps in the Act's scope, clarify the law and make compliance easier for organisations.

18. When the Law Commission's report came out in June 2011, opinion was divided as to the nature and extent of the problem with the current privacy settings. Since then, significant data security breaches have occurred in both the public and, to some extent, the private sectors, reinforcing the strength of the Commission's recommendations.

19. We are seeking your feedback on three remaining significant proposals. Taken together these proposals give a stronger role for the Commissioner in the earlier identification and prevention of privacy risks:

    19.1. *reducing the potential for privacy risks:* through new enforcement and compliance tools including mandatory breach notifications, strengthened own motion investigations, compliance notices and penalties for non-compliance

    19.2. *building trust and minimising harm:* by removing unnecessary steps from the complaints process and creating a better process for determining complaints about access to a person's personal information

    19.3. *secure flows of data across borders:* by facilitating the safe transfer of personal information across borders and enhancing cooperation between the Privacy Commissioner and her international counterparts.

20. This package of reforms is consistent with international trends. Generally Canada, the United Kingdom (the UK) and Australia have broadly similar functions/powers in place, or will have in the near future. Implementing these proposals will add to New Zealand's reputation as a good place to do international business, and will contribute to economic growth and prosperity. Appendix One provides a summary of international comparisons.

Reducing the potential for privacy risks

21. New Zealand needs a privacy regime that will enable the early identification and investigation of, and response to, systemic privacy risks. The current voluntary compliance framework, combined with a lack of prescription in our privacy laws, has resulted in some under-identification and under-reporting of risks. As the Commissioner has limited powers, breaches are common and there are few incentives for agencies to avoid future breaches. Information technology has developed significantly since the Act was passed, and privacy breaches can now impact on large numbers of individuals.

22. We are proposing mandatory breach notification, strengthened own motion investigations, compliance notices, and greater penalties for non-compliance, to address the problems identified above.

23. If these proposals are accepted, New Zealand will have a privacy regime more focused on early intervention and prevention of risks rather than after the fact remedies.

Mandatory breach notification

24. We are proposing a two tier regime for the notification of privacy breaches. Currently the Commissioner becomes aware of privacy breaches through voluntary notification and media reports. Voluntary notification results in inconsistent practices, and does not enable early identification of and response to the serious harm that can result from a privacy breach.

25. Mandatory reporting of privacy breaches is critical for enabling the Commissioner to become aware of, and begin to address, emerging issues prior to harm occurring. The first tier of our proposed regime requires agencies to notify the Commissioner of any material breach as soon as reasonably practicable, taking into account the following matters: the sensitivity of the information; the number of people involved; and indications of a systemic problem. There are no exceptions to this requirement.

26. The second tier relates to more serious breaches. Agencies will be required to notify the Commissioner **and** affected individuals of breaches where there is a real risk of harm. This definition will hook into the current section 66 of the Act which defines 'interference with privacy'. This definition is well understood, and includes actual or potential loss, injury, significant humiliation, or adverse affects on rights or benefits.

27. There are no exceptions to the requirement to notify the Commissioner. There are exceptions, however, to the requirement to notify individuals, including protecting trade secrets, security and vulnerable individuals.

28. We propose that agencies that do not notify the Commissioner of relevant breaches will be liable to a fine not exceeding $10,000 (a new offence). Agencies may also be liable for a breach of principle 5 (requirement to keep information secure) or principle 11 (limits on disclosure of information).

29. We are aware that this proposal may impose compliance costs on agencies, particularly for significant breaches. We consider that costs are outweighed by the increased protection for individuals that notification will provide. Agencies may also be incentivised to strengthen their privacy settings to avoid future breaches, thereby reducing the potential for future costs.

International Comparisons

30. Mandatory notification of data breaches is now a common position in similar jurisdictions. The UK is expected to follow the EU's recent regulation requiring mandatory notification to the 'supervisory authority' and the individuals affected. Australia and Canada have introduced federal Bills providing for mandatory notification. Australia's amendments are expected to be in force by March 2014. Some Canadian provinces have already amended their privacy laws to this effect.

Law Commission recommendation

31. The Law Commission recommended mandatory notification to the Commissioner and affected individuals of serious breaches or where notification will enable individuals to take steps to mitigate harm.

32. We prefer the two tier option outlined above which would give the Commissioner a fuller picture of privacy risks and enable the Commissioner to identify widespread problems before serious breaches occur.

Strengthened Own Motion Investigation Powers

33. We propose to strengthen existing own motion powers to give the Commissioner an effective means of investigating emerging issues before serious harm occurs, and proactively assessing agencies' systems and practices where privacy concerns have been identified.

34. Currently the Commissioner can undertake an own motion investigation into any matter if it appears to them that the privacy of an individual is being, or may be, infringed. The Commissioner has compulsory information-gathering powers and can summon witnesses. Every person who does not comply with the Commissioner's requests commits an offence and is liable for a fine of up to $2,000.

35. We propose to strengthen this existing power by:

    35.1. conferring the power of entry on the Commissioner (to agencies' premises and so long as it is necessary for the investigation)

    35.2. giving the Commissioner the discretion to decrease the time for agency compliance with the Commissioner's evidence powers

    35.3. increasing the penalty for offences for not complying with requests for information from $2,000 to a maximum of $10,000.

36. The costs of conducting own motion inquiries will be met by the Commissioner, who will receive an increase to baseline funding (see financial implications section for further detail).

International Comparisons – audits and own motion investigations

37. This proposal is broadly comparable with international jurisdictions, but New Zealand will have a simpler and more consistent framework. By comparison, other jurisdictions operate a patchwork of own motion investigations and audits and (in some cases) 'advisory visits' that are applied differently depending on the type of agency (public/private, central/provincial).

Law Commission recommendation

38. The Law Commission recommended that the Commissioner should be able to audit agencies' systems and practices. We prefer our proposal because:

    38.1. the proposal would reinforce the primary focus of the Commissioner to facilitate compliance through education, guidance and working with agencies, and for issues to be addressed at the lowest level

    38.2. own motion investigations are better able to focus on issues apparent across sectors, rather than focus on individual agencies

    38.3. funding arrangements are clarified.

The power to issue compliance notices for breaches of the Act

39. We propose that the Commissioner should have the power to issue compliance notices for breaches of the Act that come to the notice of the Commissioner as the result of a complaint, an own motion investigation, a data breach notification, or from other avenues. Currently the Commissioner relies on voluntary compliance and has limited ability to act where wider concerns with systems or procedures are identified through the complaints process or other avenues, or where agencies are unwilling to comply.

40. There will be a number of procedural safeguards, including natural justice and the right to appeal to the Human Rights Review Tribunal (the Tribunal). There will also be a number of statutory considerations to help ensure the compliance notice is proportionate such as the number of people affected, any other possible means of securing compliance, and the scale of investment required to comply with the notice. Failure to take these considerations into account could result in a compliance notice being judicially reviewed.

International comparisons – compliance notices for a breach of the Act

41. All similar jurisdictions provide for compliance notices (by different names) which can be enforced through the Courts; these apply to complaints and audits/investigations. Non-compliance can result in fines.

Law Commission recommendation

42. The Law Commission recommended that the Commissioner be able to issue compliance notices. This recommendation is consistent with the proposal outlined above.

Building trust and minimising harm

43. We propose streamlining the complaints resolution process. When a complaint relates to difficulties accessing the complainant's information from an agency, this change will enhance complainants' confidence that their complaint can be resolved quickly and efficiently. The proposal aims to build trust in the system and increase efficiency and effectiveness.

Access complaints

44. We propose that the Commissioner be able to determine access complaints about what information should be released and which withheld. This will streamline the process to enable faster complaint resolution.

45. Access complaints are complaints about an agency's decision not to give people access to their information. If the Commissioner cannot settle an access complaint currently, an enforceable decision can only be obtained from the Tribunal. Tribunal proceedings are adversarial and court-like, and not an appropriate forum for resolving access complaints. Where the complainant is a party to the proceedings, the proceedings must be conducted in a way that prevents the complainant from seeing the material at issue until the Tribunal has made a determination. This raises natural justice concerns.

46. Once an access determination is made, if our proposal is adopted, the Commissioner could issue a compliance notice if the agency does not abide by the determination. The determination and the issuing of a compliance notice can be appealed to the Tribunal.

International comparisons – access complaints

47. The UK, Canada and Australia all provide for the privacy or information commissioners (at the relevant federal or state/provincial level) to investigate complaints about difficulty accessing personal information, and to issue compliance notices, if necessary, or request a hearing through the courts.

Law Commission recommendation

48. The Law Commission recommended that the Commissioner be able to issue access determinations that are enforceable in the Tribunal. This recommendation is consistent with the proposal outlined above.

Referral to the Director of Human Rights Proceedings

49. In addition to the proposal to allow the Commissioner to determine access complaints faster, we originally proposed amending the Act's secrecy provisions. This proposal was designed to ensure the Commissioner can give the Director of Human Rights Proceedings (the Director) all information relevant to the Director's decision to bring proceedings. We thought this would streamline the process by significantly reducing duplication and delay as it would allow the Director direct access to the Commissioner's file instead of having to consider the complaint afresh. .

50. After further discussions with the Director we have decided to withdraw this proposal. This is because we now consider that amending the secrecy provisions would not eliminate duplication, as the Director is required to make their own decision as to whether to bring proceedings and there is only limited value in obtaining the Commissioner's file. We are also concerned that direct access by the Director to the Commissioner's file could be a disincentive for parties to the complaints procedures to engage in the settlement process if they fear information given for the purposes of mediation could be forwarded onto the Director.

Law Commission recommendation

51. The Law Commission recommended removing the Director's role entirely from privacy complaints. The Commissioner would then decide which cases should proceed to the Tribunal, act as the plaintiff in those cases, and perform the other privacy roles currently performed by the Director.

52. We reject this recommendation because the primary conciliation role of the Commissioner should be maintained and the continued separation of compliance and litigation functions ensures the parties can freely engage in conciliation and prosecutorial resources and expertise will not need to be duplicated in the Office of the Privacy Commissioner.

Secure flows of data across borders

53. Technological advancement since the Act was passed means that cross-border information flows, uncommon in 1993, now occur frequently. As the Act does not explicitly deal with international transactions, New Zealanders have less consumer protection than citizens of other jurisdictions such as Europe, Canada and Australia. In situations where the Act does not apply, the law, cost, or logistics may preclude an affected individual from seeking redress in the foreign country. Our proposals aim to build trust in the system, support New Zealand businesses to operate effectively internationally, and take a balanced and proportionate approach to enforcement.

Cross-border outsourcing

54. We propose amending the Act to clarify that an overseas service provider is an agent of the New Zealand agency when engaging in cross-border outsourcing. Cross-border outsourcing occurs when a New Zealand agency sends personal information to an overseas provider for storage and processing (examples include 'cloud computer' services and overseas call centres).

55. While the Act generally treats an agency that is outsourcing information as still holding the information and, therefore, as accountable for it; the drafting of the Act is ambiguous. Our proposal would clarify that the New Zealand agency continues to be accountable under the Act for what happens to the information, and will be responsible for any privacy breaches by the overseas service provider. This clarification will help New Zealand agencies to assess the risks and benefits of outsourcing information for storage and

processing, and give people more confidence that their information will be protected appropriately if it is outsourced overseas.

56. As this proposal clarifies what is generally understood to be the existing law, there should be few costs for agencies already complying with these obligations. Any costs are outweighed by the proposal's benefits, which include clarifying the law, promoting public confidence in the management of information outsourced overseas and enhancing remedies if information is mismanaged in offshore processing.

International Comparisons – cross-border outsourcing

57. Our proposal is consistent with the law in Canada, the UK and Australia. The EU directive and the OECD guidelines support this approach.

Law Commission recommendation

58. The Law Commission recommended that the Act be amended to clarify that an overseas service provider is an agent of the New Zealand agency. This recommendation is consistent with the proposal outlined above.

Cross-border information disclosures

59. We propose a new privacy principle that will require New Zealand agencies to take reasonable steps to ensure that information subject to cross-border disclosure will be subject to acceptable privacy standards in the foreign country.

60. Cross-border disclosures occur when a New Zealand agency discloses information to an agency from a different country, for that agency's own use. Currently New Zealand agencies may disclose information overseas which, once disclosed, falls outside the Act's jurisdiction if:

    60.1.1. disclosure is consistent with the purpose for which the information was obtained

    60.1.2. the individual concerned authorises the disclosure

    60.1.3. other exceptions apply.

61. The new principle will provide agencies with considerable flexibility around what steps they take to ensure the acceptability of privacy standards in relevant foreign countries. There will be exceptions, including disclosures for the maintenance of the law, to avoid health and safety issues, and where expressly authorised by the individual concerned. The Commissioner will have the power to publish a list of overseas frameworks that constitute acceptable privacy standards. The Act will also provide guidance on the types of steps that could be taken and on what constitutes acceptable privacy standards.

62. New Zealand agencies will be liable if they do not take reasonable steps to protect the information before it leaves their control (or do not establish that an exception to the principle applies). Agencies will not be liable for privacy breaches committed by the overseas agency in breach of any contractual measures or reliance on foreign privacy laws.

63. Public confidence in cross-border information flows is essential for New Zealand's effective participation in global markets. This proposal will enhance access to justice for individuals, and encourage businesses to assess privacy risks before disclosing information overseas. While the new principle will create compliance costs for agencies, these will be mitigated by the exceptions to the principle and the list of acceptable overseas frameworks. We

consider that the potential costs associated with this proposal are justified in order to introduce greater consumer protection.

International comparisons – information disclosures

64. Other jurisdictions have similar provisions in place. The EU directive allows cross-border transfer of data only if there is an adequate level of protection, with some exceptions. Changes to strengthen Australia's cross-border disclosure principle will come into force in March 2014. Proposed new OECD guidelines (on which our Act is based) anticipate that states can require agencies disclosing data offshore to ensure the information is subject to adequate protection.

Law Commission recommendation

65. The Law Commission recommended that the Act be amended so that a New Zealand agency is required to take such steps as are reasonably necessary to ensure that the information will be subject to acceptable privacy standards in the foreign country.

66. This recommendation is consistent with the proposal outlined above, but the Law Commission did not recommend an authorisation exception. The Commission considered it difficult to ensure such an exception would be understandable, efficient and cost-effective. We consider that the proposed authorisation exception, based on new Australian provisions, is workable.

Cross-border cooperation by enforcement authorities

67. We propose to enhance the Commissioner's currently limited powers to investigate complaints outside of New Zealand's borders and enable the Commissioner to share information with and provide assistance to international counterparts. Greater international cooperation is likely to directly benefit New Zealanders who have concerns about the use of their personal information overseas.

Law Commission recommendation

68. The Law Commission recommended broadening the Commissioner's powers to enable the sharing of information with, and provision of assistance to, international counterparts. This recommendation is consistent with the proposal outlined above.

Internationally agreed business rules for privacy

69. The Law Commission also suggested that, in the future, the APEC cross-border privacy rules may provide a mechanism for multinational businesses to reduce compliance costs. The 'opt-in' rules allow businesses to become subject to a uniform set of privacy rules across multiple jurisdictions.

70. We agree that the APEC rules could be useful and reduce compliance costs, but disagree with the Law Commission's proposal to do this through a provision allowing the rules to come into force at a time to be determined by Order in Council. We have constitutional concerns about implementing legislatively a non-binding international arrangement that does not have treaty status and can be changed quite easily. We propose to investigate, with the Commissioner's support, non-legislative mechanisms for implementing the APEC rules. Other APEC economies are also exploring administrative approaches for implementation.

Less substantive proposals to fix gaps in the Act and make compliance easier

71. Complying with the Act can be difficult as it is complex and poorly structured. Both the Law Commission Report and *Necessary and Desirable* made a number of less substantive recommendations that aim to improve the scope and application of the Act, give agencies more certainty and confidence in managing personal information and improve compliance.

72. We are proposing a new purpose clause that builds on the Law Commission's proposed purpose clause. This will assist with interpreting and clarifying the Act. The new clause will focus on balancing privacy interests with important social and business interests requiring appropriate flows of personal information.

73. Appendix Two sets out the approach we are proposing to take with the less substantive recommendations from the Law Commission Report and *Necessary and Desirable*.

Consultation

74. We have consulted key government agencies and targeted private sector organisations on the substantial proposals contained in this paper. This paper reflects the views received during consultation. Upon your agreement with the proposals, we will consult with wider government agencies on a draft cabinet paper and supplementary government response.

75. We would also like to explore with you the option of issuing an exposure draft of the Privacy Bill for consultation with private and public sector agencies.

76. Some in the business community, while agreeing with the general approach, consider that there may be merit in issuing a discussion document prior to Cabinet decisions. We do not think a formal discussion document is necessary, but suggest that an exposure draft bill, accompanied by high quality explanatory material, would be a good way to enable any concerns to be addressed before introduction to the House.

77. An exposure draft would be released after Cabinet's agreement to the proposals but before the Bill is tabled in Parliament. It will be made clear that the Government has made broad policy decisions and that we are consulting on how those decisions have been implemented in order to tease out unintended consequences, including compliance costs. The policy behind the Bill can be challenged by submitters during the select committee process. The exposure draft bill will add up to three months to the timing of the Bill's introduction.

78. We consider that the best 'value add' is for targeted consultation on the exposure draft Bill where the detail of the proposals will be set out.

Financial implications

79. OPC's current baseline is $3.248 million per annum. The baseline funding has remained static since 2007 and OPC is under financial pressure despite significant productivity improvements. If OPC is to implement the proposals arising from the Privacy Act review, it must be resourced to do so, but must first be resourced to a sustainable *base* level to which can be added the proposed new functions.

    79.1. The Commissioner's ability to effectively carry out her current functions is limited. Over the last four years, OPC has significantly increased its workload with no additional resource. Complaints to OPC have increased by 34 percent; public enquiries by 54 percent and media enquiries by 130 percent. This has occurred over the period in which an increasing number of privacy breaches have occurred within Government agencies. The Commissioner has no spare capacity to assist these agencies reshape their privacy settings or to review outdated codes of practice.

79.2. The Commissioner is financially unable to play an active role in helping Government achieve its Better Public Service (BPS) priorities relating to improving interactions with Government (result areas 9 and 10) or other BPS result areas such as supporting the design of policy initiatives to achieve the vulnerable children, reducing crime and other priority targets.

79.3. The Commissioner is unable to absorb the additional costs associated with the proposed package of privacy reforms.

80. OPC requires an increase in its baseline from $3.248 million to $6.556 million per annum under steady state, including overhead costs - in the order of a 100 percent increase of current baseline. All figures exclude GST. The proposed baseline increase comprises:

80.1. $0.832 million in 2013/14 and $2.363 million per annum from 2014/15, excluding overheads, for keeping on top of increases in demand for OPC services and enabling it to better perform its current functions

80.2. $0.283 million in 2013/14 and $0.565 million per annum from 2014/15, excluding overheads, for enabling OPC to support the achievement of the Government's BPS targets

80.3. $0.200m in 2013/14 and $1.100 million per annum from 2014/15, excluding overheads, so that OPC can take up the new functions arising from the privacy reforms (as detailed in the table below) incorporating:

- policies already agreed by Government - such as information-sharing agreements (the role for OPC with respect to these agreements has been incorporated into the Privacy Act) - and additional guidance and education material (SOC Min (12) 3/1 refers)
- new policies proposed in this paper - including mandatory breach notifications, strengthened own motion investigation powers, and the costs of monitoring, enforcing and responding to appeals with respect to compliance notices

80.4. $0.333 million in 2013/14 and $0.945 million per annum from 2014/15 for overhead costs associated with the additional staff employed under the three streams of funding above.

81. In addition to baseline implications, there are also transitional costs associated with the package of privacy reforms. The baseline and transitional financial implications of changes in privacy settings are set out in the following table.

Office of the Privacy Commissioner costs associated with changes in privacy settings

(excl GST)

	$ million					
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19

						ongoing
Ongoing operating costs – baseline increases						
Existing functions	0.349	0.698	0.698	0.698	0.698	0.698
Better Public Services	0.283	0.565	0.565	0.565	0.565	0.565
New Functions including: - Privacy Act review functions (policies proposed) and - information-sharing agreements (policy previously approved)	0.200	1.100	1.100	1.100	1.100	1.100
Sub-totals excl. overheads	**0.832**	**2.363**	**2.363**	**2.363**	**2.363**	**2.363**
Overheads	0.333	0.945	0.945	0.945	0.945	0.945
Sub-totals incl. overheads	**1.164**	**3.308**	**3.308**	**3.308**	**3.308**	**3.308**

Transitional operating costs							
Development and publication of guidance and education material	Policy previously approved	0.100	0.100				
Appeals associated with the introduction of compliance notices	Policy proposed		0.050	0.100			
Compilation of a list of approved jurisdictions	Policy proposed		0.050	0.050	0.050	0.050	
Sub-totals excl. overheads		**0.100**	**0.200**	**0.150**	**0.050**	**0.050**	**-**
Overheads		0.040	0.080	0.060	0.020	0.020	-
Sub-totals incl. overheads		**0.140**	**0.280**	**0.210**	**0.070**	**0.070**	**-**

Totals excl. overheads	**0.932**	**2.563**	**2.513**	**2.413**	**2.413**	**2.363**
Totals incl. overheads	**1.304**	**3.588**	**3.518**	**3.378**	**3.378**	**3.308**

82. Additional floor space for supplementary staff is not required, and small capital costs associated with the proposals above will be absorbed.

83. We are seeking your directions on options for additional funding:

83.1. new funding - DPMC is supportive of this option. Treasury accepts the case but is keen to explore cost recovery options; or

83.2. a permanent Vote transfer, either from:

- large Government agencies with a significant stake in privacy (might include Ministry of Social Development, ACC, Inland Revenue Department, MOJ, Police, DIA, Ministry of Health and the Ministry of Education);

- a contribution from larger and smaller government agencies; *or*

83.3. in the longer term, exploring options for balancing private and public sector contributions.

Timeframe and Next Steps

84. If you agree with the approach in this paper the next steps to progress the review are:

Stage	Date
Cabinet Social Policy Committee meeting	Between end August and mid September depending upon your feedback and the results of the agency consultation round
Exposure draft and consultation	From end of January 2014, followed by further drafting refinement
Approval for introduction	End of May 2014
Introduction	June 2014
Further steps dependent on timing of the election.	

Recommendations

85. It is recommended that you:

1. **Note** that the Government has already tabled an initial response to the Law Commission's report *Review of the Privacy Act 1993*, which included an agreement to retain a principles-based approach to the regulation of privacy and deferred the majority of recommendations for further analysis

2. **Note** that we propose a package of proposals that:

   2.1 reduces the potential for privacy risks

   2.2 builds trust and minimises harm

   2.3 ensures seamless flows of data across borders

3. **Agree** to new compliance and enforcement tools aimed reducing the potential for privacy risks

   3.1 a two-tier mandatory data breach notification regime that would require agencies to notify the Commissioner of material breaches and breaches where there is a real risk of harm to both the Commissioner and affected individuals — **YES / NO**

   3.2 strengthened own motion investigation powers — **YES / NO**

   3.3 compliance notices to require agencies to take steps to resolve serious privacy risks — **YES / NO**

4. **Agree** to remove unnecessary steps from the complaints process by enabling the Privacy Commissioner to determine access complaints. — **YES / NO**

5. **Agree** that any new compliance and enforcement powers avoid over-regulation through: — **YES / NO**

   5.1 clear thresholds and statutory considerations for their exercise

   5.2 clear guidance to agencies, so they know what to expect

5.3 requiring the Commissioner to bear the cost of own motion investigations

5.4 clear appeal and review pathways

5.5 recognition that agencies may need time to fully implement compliance notices, where significant capital expenditure is required

6. **Agree** to amend the Act to deal explicitly with cross-border information flows by: **YES/ NO**

6.1 clarifying that an overseas service provider under an outsourcing agreement is an agent of the New Zealand agency, and that the New Zealand agency continues to be accountable under the Privacy Act for what happens to the outsourced information

6.2 a new principle requiring New Zealand agencies to take such steps as are reasonably necessary to ensure that information disclosed overseas will be subject to acceptable privacy standards in the foreign country

6.3 defining "acceptable privacy standards" and setting out statutory guidance on the steps that could be taken to comply with the new principle

7. **Agree** that the Act should explicitly empower the Privacy Commissioner to share information with, and assist, her international counterparts in cross-border privacy matters **YES/ NO**

8. **Agree** to address the less substantive recommendations as set out in Appendix Two **YES/ NO**

9. **Agree** that, when a Privacy Bill is available, an exposure draft be released for consultation with targeted private and public sector agencies **YES / NO**

10. **Agree** that the Cabinet paper should seek funding for the Office of the Privacy Commissioner to support its sustainability and for the proposed new functions, excluding GST, as below: **YES / NO**

10.1 an increase in its operating baseline, including overhead costs, of:

i. $1.764 million in 2013/14

ii. $3.308 million per annum from 2014/15

10.2 transitional funding, including overhead costs, of between $0.070 million and $0.280 million per annum for each of the years between 2013/14 and 2017/18

11. **Agree** that the Cabinet paper should seek to source this additional funding through:

either

11.1 new money **YES / NO**

or

11.2 a permanent Vote transfer from either:

i. large Government agencies with a significant stake in privacy, or **YES / NO**

ii. a contribution from larger and smaller Government agencies **YES / NO**

or

11.3 an exploration of options for balancing private and public sector contributions. **YES / NO**

Fiona Illingsworth
Policy Manager, Electoral and Constitutional

APPROVED / SEEN / NOT AGREED

Hon Judith Collins
Minister of Justice

International Comparisons – Powers of the Privacy Office

	Australia	Canada	UK	NZ (proposed)
Data breach notification (from 2014)	• Serious breaches notified to PC and individuals • Small private entities exempted. Exemption when not in public interest • No states have notification requirements • Stage 2 of reforms will reconsider small private entity exemption	• Bill proposes two-tier system: material breaches notified to PC, PC and individuals notified where real risk of harm - private sector only • Alberta – only province with mandatory notification to PC; private sector only, where real risk of harm • Ontario – mandatory reporting of health data breaches	• Voluntary reporting, but expected to review this to be consistent with 2013 UK directive for mandatory reporting to PC and individuals	• Two tier system (1) 'material' breach to PC (2) real risk of harm breach to PC/individuals • Exceptions apply to individuals
New Zealand will be moving from well behind to the front of the pack. Comparator countries are also moving in the same direction as New Zealand				
Audit/OMI into privacy systems	• Compulsory audit of federal public agencies, tax, credit and telcos • Voluntary audit of other larger private agencies • OMI into larger private and federal public agencies • Victoria/NSW – OMI to look at specific act or practice of state public agencies	• PC can audit public or private organisations where a breach seems serious or systemic • PC can initiate an OMI into public or private organisation if reasonable grounds • British Columbia/Alberta – inquiry into provincial private sector organisations if complaint not resolved	• Assessment notices lead to compulsory audits of central government departments • Compulsory audit of telcos/ISPs • Consensual audits of larger public agencies • Advisory visits of small/medium public/private agencies	• PC can initiate OMI of public and private agencies with strengthened existing OMI powers
New Zealand will be moving from behind the pack to the middle of the pack, but with a simpler and more consistent framework				
Compliance notices	• Determination follows federal complaint investigation • Victoria – a compliance notice can follow a complaint orOMI	• Non-binding recommendations of PC can be heard in Federal Court: ○ following audit/OMI or complaint investigation (private sector) ○ access complaints (public agencies)	• 'Stop-now' order after breach notification (public agencies only) • Undertakings commit a public /private entity to actions to improve compliance after complaint investigation, audits/ consensual notices, visits	• Compliance notices for public /private sector agencies to enforce the Act, can follow complaint OMI or breach notification
New Zealand will be moving from well behind to the middle of the pack, but with a simpler and more consistent framework				

International Comparisons – International data flows

	Australia (from 2014)	Canada	UK	NZ (proposed)
Cross border outsourcing	Not clear whether current or amended Act deals with outsourcing	**Federal** – private sector agency is responsible for outsourced info	Applies EU Directive (transfer outside EU only if adequate protection, or using approved contractual clauses)	Clarify existing law – agency responsible for outsourced information
New Zealand will be staying with the pack as the proposal is consistent with Canada, UK and Australia.				
Cross border disclosures	Public and private agency responsible for overseas' agency's breach of privacy principles if no reasonable steps have been taken. **Exceptions** include consent	No specific rules	As for outsourcing	New principle requiring disclosing organisations to take reasonable steps to ensure acceptable privacy standards. **Exceptions** include consent
New Zealand will be moving closer to the UK and EU standard and ahead of Canada				

APPENDIX TWO: LESS SUBSTANTIVE RECOMMENDATIONS

Part A: Recommendations to be implemented

Law Commission recommendations		
No	Recommendation	Discussion and impacts
5	The Act should provide that codes of practice may apply and vary the privacy principles to information about deceased persons	This amendment would enable the Privacy Commissioner to issue a code in the future it he or she considers it is necessary.
7	The definition of "collect" should be amended to provide that situations in which an agency has taken no active steps to acquire or record information are excluded from the definition	This amendment would clarify the existing definition of 'collect' to exclude situations where an agency has taken no active steps to acquire or record information
8	The definition of "publicly available publication' should be amended to make it clear that it includes websites and material in electronic form, information can be publicly available if a fee is charged for access, and public registers are included only to the extent that they are public	Acknowledges technological change and clarifies the status of public registers
11	The word "directly" should be deleted from principles 2(1) and 3(1). *[Principle 2(1) and 3(1) refer to the collection of information directly from the individual concerned]*	Minor and technical amendment
12	Principle 2(2) should be amended by adding a new exception covering situations in which an agency believes, on reasonable grounds, that non-compliance is necessary to prevent or lessen a serious threat to the health or safety of any individual. *[Principle 2(1) provides that where an agency collects personal information, the agency shall collect the information directly from the individual concerned]*	Provides internal consistency
13	Principles 3(4)(a) and 3(4)(f)(ii) should be deleted. *[Principle 3 relates to collecting information from the subject. Principle 3 (4)(a) is an exception where non-compliance is authorised by the individual. Principle 3 relates to collecting information from the subject. Principle 3(4)(f)(ii) is an exception where the information will be used for statistical or research purposes]*	Minor and technical amendment
14	Principle 4 should be amended to make it clear that it applies to attempts to collect information *[Principle 4 relates to the collection of information by unlawful, unfair or unreasonable means]*	Clarifies that attempts to collect information are included under the Act
16	Principle 8 should be amended to make it clear that it applies to both use and disclosure	Minor and technical amendment

	[Principle 8 provides that the accuracy of information is to be checked before use]	
17	Section 45 should be amended to provide that an agency shall not give access to information if the agency has reasonable grounds for believing that the individual concerned is making the request under duress	Would allow agencies to withhold information if there are reasonable grounds to believe a request for information is made under duress from another person
18	Section 66(2) should be amended to provide clearly that failure by an agency to comply with the requirements of section 45 is an interference with privacy. *Section 66(2) defines and lists interference with privacy. Section 45 requires agencies to be satisfied of the identity of a requester of information.*	There is no reason why the list of administrative provisions listed in section 66(2) should not include section 45. Would enhance good business practices and relationships. Might increase compliance costs to ensure business systems are adequate or, in many cases, might merely require the implementation of rules about using existing systems. The number of complaints may increase.
20	Where an agency is not willing to correct personal information in response to a request made under principle 7, the agency should be required to inform the requester of the right to request that a statement be attached to the information of the correction sought but not made	Minor and technical amendment to an existing right to request a statement be attached
21	Sections 27 to 29 should be amended to incorporate the agency "belief on reasonable grounds threshold, for consistency with principles 10 and 11	Provides internal consistency
22	Section 27(1)(d) should be amended so that an agency may refuse access if disclosure of the information would be likely to present a serious threat to public health or public safety, or to the life of health of any individual	Current provisions only relate to the physical safety of an individual. Widening this to refer to all types of 'health' would encompass mental as well as physical safety, align with principles 10 and 11, and be consistent with Australia's privacy principles.
25	A new provision should be added to section 29 allowing agencies to refuse access where disclosure of the information requested would disclose information about another individual who is a victim.	Enhances the protection of individuals and ensures that information requested only applies to the requester.
26	Section 29(1)(c) should be amended to add "or relevant health practitioner" after "medical practitioner". Section 29(4) should be amended to define "health practitioner" as having the same meaning as in section 5(1) if the Health Practitioners Competence Assurance Act 2003, and "relevant health practitioner" as "a health practitioner whose scope of practice includes the assessment of an individual's mental state".	Allows for a wider range of health professionals to be consulted to provide an assessment of an individual's mental health

28	Section 35(3)(b)(i), which provides that an agency that is not a public sector agency may charge for correction of personal information, should be deleted.	Individuals would be more likely to volunteer up-to-date information if they are not charged.
29	Complexity of the issues raised by a personal information request should be added to the grounds in section 41(1) on which an agency may extend the time limit for responding to a request.	Not having enough time to carry out due process, including checks and balances, can be a contributing factor in privacy breaches.
32	Principle 12(2) should be redrafted so that the meaning of "assign" is clearer. *[Principle 12 relates to the use of unique identifiers]*	Minor and technical amendment
33	An exception for the use of unique identifiers for statistical and research purposes should be added to principle 12(2). *[Principle 12 relates to the use of unique identifiers]*	Minor and technical amendment
35	Principle 1 should be amended by adding a new sub-clause providing that individuals should be able to interact with agencies anonymously or under a pseudonym, where it is lawful and practicable to do in the circumstances *Principle 1 provides that agencies should only collect information where it is necessary for a lawful purpose connected with the function of the agency*	Potentially encourages individuals to provide information that they otherwise would not
37	The Ombudsmen should be deleted from the list of entities excluded from the definition of "agency"	Modified proposal is to amend the Ombudsmen Act so that information on how the Ombudsmen deal with personal information must be included in their annual report.
40.1	Section 54 should be amended to allow the Privacy Commissioner to grant exemptions from principle 9	The introduction of this approach would allow flexibility for one-off circumstances.
41	Section 54 should be amended to require the Privacy Commissioner to report annually on exemptions applied for and granted under section 54, and to maintain on the Commissioner's website a list of all current exemptions	One-off exemptions should be transparent.
42	The Act should be amended so that principles 6 and 7 do not apply to the Auditor-General, excepted to personal information about staff *Principles 6 and 7 relate to access to, and correction of, personal information respectively*	Currently people under investigation could use the Privacy Act to seek access to the Auditor-General's investigation file. This change will put the Auditor-General on a similar footing to the Ombudsmen
43	Section 56 should be amended to state expressly that the exemption applies to all principles 1 to 11	Individuals should not have to comply with the Act in relation to everyday domestic activities such as taking photographs of family or friends.

44 and 45.1 and 45.2	Changes to the domestic affairs exemption (section 56): • To narrow application to information held solely for domestic purposes • To prevent people from relying on the exemption where they have collected the information through misleading conduct, unlawfully, or the use, collection or disclosure would be highly offensive to an objective person	Individuals should not have to comply with the Act in relation to everyday domestic activities such as taking photographs of family or friends. An exemption with respect to personal information would not apply if the information had been obtained unlawfully or through misleading conduct.
47	Section 13 should be amended to make it clear that it is not a complete list of the Privacy Commissioner's functions.	Minor and technical amendment.
48	Section 13(1)(d) and section 21 should be repealed. *[These sections give the Privacy Commissioner discretion to publish directories of personal information. Since enactment, no personal directory has been published.]*	Minor and technical amendment
51	The list of the Privacy Commissioner's functions in the present section 13 should be abridged and consolidated as set out in paragraph 5.28. *It is agreed that section 13 should be consolidated. However, how this section should be consolidated will be determined during the drafting phase*	Minor and technical amendment, wording to be determined during drafting
54	The harm threshold in section 66 should remain in relation to complaints	Retaining the status quo is considered the best option for preventing frivolous or vexatious complaints.
60	The Privacy Act should specifically provide that representative complaints are permitted.	Would provide clarity to allow representative complaints. Will increase efficiency by encouraging 'pooling' of multiple complaints of a similar nature.
62	The Human Rights Review Tribunal should not be empowered to order exemplary damages.	Agree with status quo.
66.2	There should be a new offence of knowingly destroying documents containing personal information to which a person has sought access	The proposed offence is not currently covered by the Crimes Act or the Privacy Act.
80	Section 7 should be repealed and replaced by a new provision. That provision should: • be headed "Relationship to other enactments"; • provide that in case of inconsistency between a privacy principle and another Act, the other Act will prevail; • provide that regulations previously made which prevail over the privacy principles should continue so to prevail; and	Minor and technical amendment. Wording of the new section 7 will be determined during the drafting phase.

	provide that in future regulations should not override the privacy principles unless the empowering Act expressly so provides.	
81	Section 7(5) should be moved to Part 6 of the Act *[Section 7(5) provides that principle 7 (correction of personal information) does not apply to the Department of Statistics where the information was obtained under Statistics Act 1975. Part 6 is titled "Codes of practice and exemptions from information privacy principles"]*	Minor and technical amendment. Wording of the new section 7 will be determined during the drafting phase.
82	Section 7(6) should be moved to Part 7 of the Act, should such a provision remain necessary *[Section 7(6) provides that nothing in the privacy principles should apply to public registers, subject to Part 7. Part 7 sets out provisions specifically for public registers, including separate public register privacy principles]*	Minor and technical amendment. Wording of the new section 7 will be determined during the drafting phase.
90	The Evidence Regulations 2007 should expressly provide that they apply to the exclusion of privacy principles 6 and 7. *The Evidence Regulations apply to a video record when it is intended that the record may later be offered by the prosecution as evidence in criminal proceedings. Principles 6 and 7 relate to the access and correction of personal information*	Minor and technical amendment
93	Section 27(1)(c) should be amended to clarify that the access refusal ground is concerned with protecting the maintenance of the law by public sector agencies	Provides internal consistency
97	A new exception to principle 11 should be created that would expressly permit an agency to report any reasonably held suspicion or belief that an offence has been or may be committed, including any relevant information about that offence, to a public sector agency with law enforcement functions	Assists law and order
101	Section 13(1)(n) should be amended to delete the word "computer". *Section 13 lists the Privacy Commissioner's functions*	Makes the Act technology neutral
102.1	The technology-neutral privacy principles should be retained.	Future proofs the Act
103	The Privacy Commissioner should consider convening an expert Privacy by Design Panel to promote privacy by design and to raise awareness of privacy enhancing technologies	Referred to the Privacy Commissioner for consideration
106	The Privacy Commissioner should consider whether it is timely to issue a code of practice or guidance covering biometrics	Referred to the Privacy Commissioner for consideration
117	Principle 12 should be amended to encourage measures to control the public display of unique identifiers as a response to the problem of identity crime. The following subclause should be added to principle 12: (5) An agency that discloses of displays in individual's unique identifier must take such steps (if any) as are reasonable to minimise the risk of misuse of the unique identifier.	Minor and technical amendment
119	Section 14 should be amended to provide that, in exercising his or her functions, the Privacy Commissioner must take account of Māori needs and cultural perspectives, and of the cultural diversity of New Zealand society.	Would contribute to relationships with people from Māori and other cultures, and

		help to develop trust that information is used in ways that would not disempower or diminish mana.
120.1	Principle 4 should be amended to provide that, in considering whether the collection of personal information is unfair or unreasonably intrusive for the purposes of principle 4(b), the age of the individual concerned must be taken into account. *Principle 4 relates to the manner of collection of personal information]*	Provides additional protections for vulnerable individuals
126	Section 23 should be amended to allow agencies to appoint a privacy officer from outside the agency. *Section 23 relates to the appointment of privacy officers*	Would help to reduce the compliance costs of small businesses if they can share a privacy officer, or buy in specialist advice
132	There should no longer be a requirement of five-yearly reviews by the Privacy Commissioner of every information matching provision, but the Commissioner should be able to conduct reviews as and when desirable.	Five yearly review places unduly onerous burden on OPC
134	The Privacy Commissioner should be able to report separately on information matching programmes rather than including this report in the Annual Report	Avoids delaying the Annual Report
19	Recommendation from Stage 3 of the Law Commission's Review of the Law of Privacy: Invasion of Privacy: Penalties and Remedies (Both Closed-Circuit Television (CCTV) and Radio-Frequency Identification (RFID) should be regulated within the Privacy Act framework, rather than under specific statutes or regulations. The Privacy Commissioner should continue to monitor the adequacy of existing law to deal with these technologies. If a more specific regulatory framework is considered necessary in the future, the option of developing codes of practice under the Privacy Act should be considered.	This is the current situation which should continue

Necessary and Desirable recommendations to be implemented		
No	**Recommendation**	**Discussion and impacts**
1	The relevant changes in legislative drafting styles recently adopted by the Parliamentary Counsel Office should be applied throughout the Privacy Act.	• Agree. Implement during drafting phase
2	The marginal notes and headings in the following principle, sections, Part and rule should be amended to make them more helpful, accurate and precise: principle 9; sections 7, 27, 28, 42, 45, 73, 95, 100, 101 and 105; Part X; information matching rule 8.	• Agree. Implement during drafting phase
3	The present section notes concerning the official information legislation should be presented in a comparative table at the end of the Act.	• Agree. Implement during drafting phase
4	The Parliamentary Counsel Office should be requested to arrange for a consolidated reprint of the Privacy Act following the implementation of reforms adopted as a result of this report.	• Agree. Implement during drafting phase
16	Consideration should be given to the desirability of enacting a definition of "use", which will encompass the retrieval, consultation or use of information	• Agree. Implement during drafting phase

17	Section 2(2), (avoidance of doubt clause in interpretation section) should be replaced with a more concise provision.	• Agree. Minor drafting change.
25A	There should be a reference in information privacy principle 7 to the application of Part 5 of the Act.	• Propose to leave to Privacy Commissioner's discretion when Act redrafted.
39	Section 20(2) should be amended by substituting "Human Rights Act 1993" for the reference to the "Human Rights Commission Act 1977".	• Agree. Implement during drafting phase
39A	References to "Proceedings Commissioner" in sections 20, 77 and 116 should be replaced by "Director of Human Rights Proceedings".	• Agree. Implement during drafting phase
43	An appropriate amendment should be made to section 21(1) or 22 so that it is plain the Privacy Commissioner has the power to obtain from an agency the identity of the agency's privacy officer to enable the Commissioner to respond to enquiries from the public. *Note LC recommendation 48 to repeal section 21 relating to directories of personal information. Section 22 empowers the Commissioner to require agencies to provide information*	• Agree. Minor drafting change.
47	The existing reasons for refusal of requests set out in sections 27, 28 and 29 should be reorganised into an ungrouped list of reasons to make it easier for users of the Act to locate relevant provisions. *These sections provide good reason for refusing access to information*	• Agree. Minor drafting change.
53	It should be made clear that section 29(1)(b) is not available in relation to material that is provided by a person within the agency as part of his or her job. *Section 29(1)(b) provides a reason to withhold information if it would breach an express or implied promise to the person who supplied the information*	• Agree. Minor drafting change.
54	Sections 43 and 44 should be amended so that the grounds in support of the reasons for withholding evaluative material be given, without the requestor needing to expressly ask, unless the giving of these grounds would itself prejudice the interests protected by section 29(1)(b) *Sections 43 and 44 relate to deletion of information from documents and reasons for refusal to be given*	• Agree. Minor drafting change.
55	Section 29(1)(b) should be amended to clarify that the author of evaluative material may refuse an information privacy request in circumstances where the material may be withheld by the recipient agency.	• Agree. Minor drafting change.
58	Section 29(2)(c) should be redrafted to make plain the link with the obligations to transfer a request.	• Agree. Implement during drafting phase
60	Consideration should be given to extending the application of section 32 to information to which section 29(1)(e) applies. *Section 32 relates to information concerning the existence of certain information. Section 29(1)(e) relates to withholding information if disclosure would be likely to prejudice the safe custody or rehabilitation of the individual*	• Agree. Minor drafting change.

60A	The following statutory provisions, and any similar provisions should be amended so that relevant requests are treated as information privacy requests in appropriate cases: Coroners Act 1988 (section 44); Transport Services Licensing Act 1989 (section 24); Civil Aviation Act 1990 (sections 10, 19, and 74); Building Act 1991 (2nd Schedule, clause 7); Maritime Transport Act 1994 (sections 49, 50, 189, and 276); Hazardous Substances and New Organisms Act 1996 (section 53).	• Agree. Implement during drafting phase
64	Section 35 (when charges apply for requests) should be redrafted in a simpler fashion.	• Agree. Implement during drafting phase
68	Section 39 should be amended so that: (a) an agency is relieved of the obligation to transfer a request in circumstances where it has good reason to believe that the individual does not wish the request to be transferred; and (b) the agency duly informs the requestor, together with information about the appropriate agency to which any future request should be directed. *Section 39 relates to transfers of requests*	• Agree. Minor drafting change.
69	Consideration should be given to clarifying the meaning of the phrase "time limit fixed" in section 66(3) so as to emphasise the primary obligation to give access "as soon as reasonably practicable".	• Agree. Implement during drafting phase
69B	Consideration should be given to removing section 40(2) into a separate section dealing with an agency's entitlements and duties following the taking of a decision to grant an individual access to information, including the duty to make information available without undue delay.	• Agree. Implement during drafting phase
70	Section 40(3) and (4), (procedure for transferring requests) should be repealed. *Section 40 relates to decisions on requests*	• Agree. Minor drafting change.
73	Section 46(2)(aa) should be amended by deleting all of those words in parentheses, that is "but not all of those principles".	• Agree. Implement during drafting phase
74	Section 46(4) should be amended by adding a paragraph acknowledging that a code may provide for such other matters as specified in any other Act.	• Agree. Implement during drafting phase
78	Section 47(5), (publication of notice requirement for proposals for issuing of code of practice) should be repealed.	• Agree. Implement during drafting phase
80	Section 54 should provide that the Commissioner may require the applicant to publicly notify an application in appropriate terms. *Section 54 relates to Commissioner may authorise collection, use or disclosure of personal information*	• Agree. Minor drafting change.
101	Section 66(1) should be amended by deleting the words "and only if".	• Agree. Implement during drafting phase
101A	Section 66(2)(a) should be amended by inserting appropriate reference to a decision to transfer a request under section 39. *Section 66 defines and lists interference with privacy.*	• Agree. Minor drafting change.

101C	Section 66(2)(a)(vi) should also refer to a refusal of a request under information privacy principle 7(1)(b).	• Agree. Minor drafting change.
101D	Section 66(3) should be amended so that, in relation to a correction request, a failure to meet the time limit fixed by section 40(1) is deemed to be a refusal to correct personal information.	• Agree. Minor drafting change.
101E	Section 66(4) should be amended so that undue delay in correcting information in response to a correction request is deemed, for the purposes of section 66(2)(a)(vi), to be a refusal to correct the information to which the request relates.	• Agree. Minor drafting change.
101F	Consideration should be given to clarifying the relationship between sections 44 and 66.	• Agree. Implement during drafting phase
102	Section 67(2) and (3) which provide for the lodging of complaints under the Privacy Act with the Ombudsmen, and for the transfer of such complaints, should be repealed. *Section 67 relates to complaints made to the Commissioner*	• Agree. Minor drafting change.
103	Section 70(2) should be amended so that the Commissioner is obliged to advise of the procedure to be followed only where he has decided to investigate a complaint so as to avoid overlap with the obligations in section 71(3) *Section 70 sets out actions to be taken upon receipt of a complaint*	• Agree. Minor drafting change.
104A	Section 71 should be amended so that the Commissioner has discretion to decide to take no action on a complaint where the complaint was made more than 12 months after the complainant became aware of the action complained about. *Section 71 states that the Commissioner may take no action on a complaint*	• Agree. Amendment will provide consistency with the Ombudsmen Act
107	Sections 72, 72A and 72B should be combined into a single section providing for the referral of complaints to the Ombudsmen, Health and Disability Commissioner and Inspector-General of Intelligence and Security, and consideration should be given to listing other statutory complaints bodies.	• Agree. Implement during drafting phase
109	Section 77(1)(a) should be amended so that the Commissioner is required to continue endeavouring to secure a settlement only where it appears to the Commissioner that settlement is possible. *Section 77 sets out procedure after investigation*	• Agree. Minor drafting change.
110	Section 78 should be broadened to encompass all charging complaints. *Section 78 sets out procedures in relation to charging*	• Agree. Minor drafting change
112A	Consideration should be given to clarifying the position in respect of proceedings taken under section 83 where there is a mixture of issues before the Tribunal, some which have, and others which have not, been the subject of an investigation by the Privacy Commissioner. *Section 83 states that an individual may bring proceedings before the Tribunal*	• Agree. Minor drafting change
112B	Section 83 should provide that an aggrieved individual may only bring proceedings within six months of receiving notice that: (a) the Commissioner or Director of Human Rights Proceedings are of the opinion that the complaint does not have substance or should not be proceeded with; or (b) the DHRP agrees to the aggrieved individual bringing proceedings or declines to take proceedings.	• Agree. Minor drafting change. Will provide certainty for agencies.
113	Section 88(2) and (3), (damages awarded in proceedings), should be more closely aligned with section 88 of the Human Rights Act 1993.	• Agree. Implement during drafting phase

115	Section 92(3), (failure of agency to comply with requests of Commissioner can be reported to Prime Minister), should be repealed. *Section 92 specifies compliance with the requirements of the Commissioner*	• Agree. Minor drafting change.
116A	Consideration should be given to including an explicit privilege against the admissibility of apologies in Tribunal proceedings, modelled upon the Civil Liability Act 2002 (NSW), with a view to promoting apologies in the securing of settlements.	• Agree. Implement during drafting phase
144	Section 96 should be amended so that the obligation of secrecy clearly extends to former Commissioners and persons formerly engaged or employed in connection with the work of the Commissioner. Provision should also be made for the Director of Human Rights Proceedings. *Section 96 states that proceedings are privileged*	• Agree. Will not be retroactive.
145	Sections 117, 117A and 117B should be combined into a single consultation section with consideration given to placing the details of the officer with whom consultation is to be undertaken and the purposes of such consultation in a new schedule.	• Agree. Implement during drafting phase
146	Consideration should be given to making provision, along the lines of sections 117 to 117B, for consultation with other statutory bodies such as the Independent Police Conduct Authority. *These sections sets out consultation with other agencies*	• Agree. Minor technical change.
147	Sections 124 and 125 should be repealed and replaced by a single provision providing that the relevant delegation provisions in the Local Government Act 1974 and Local Government Official Information and Meetings Act 1987 apply.	• Agree. Implement during drafting phase
149A	Consideration should be given to creating an explicit duty to retain requested personal information for as long as is reasonably necessary to allow the individual to exhaust any recourse under the Act, to accompany the proposed offence of knowingly destroying documents to evade an access request.	• Agree.
153	Section 132 (savings provision) should be repealed.	• Agree. Implement during drafting phase

Ministry of Justice Recommendation		
MOJ Rec	Duty on agencies and individuals to take reasonable steps to resolve their disputes	This approach would allow government to work efficiently to deliver good social outcomes. More complaints could be settled in a non-litigious, efficient and effective way.

Law Commission recommendations relating to the Official Information Act		
#	**Recommendation**	**Reason for response**
74	The reasons for refusing a request for personal information under section 27 of the OIA and section 26 of the LGOIMA and under the Privacy Act should be kept in alignment as far as possible	• To be responded to in the Government Response on New Media

Appendix One: Part B

Law Commission recommendations *and* Necessary and Desirable recommendations: rejected, deferred, responded to in another work stream, referred for guidance, withdrawn by author, already agreed, implemented through other legislation or (in the case of the Necessary and Desirable recommendations) overtaken and dealt with by the Law Commission recommendations

Law Commission recommendations		
#	**Recommendation**	**Reason for response**
6	Causes of action under the Privacy Act should survive the complainant's death.	• Reject. Common law maxim that a personal action dies with the person
10	The scope of 'publicly available publication' exceptions in principles 10 and 11 should be narrowed if it is unfair to rely upon these exceptions in the circumstances.	• Implemented in Harmful Communications [CAB Min (13) 10/5]
19	"Authorise" should be defined in section 2 as excluding situations in which an individual's agreement is obtained under duress	• Reject. Not required due the change to be made at recommendation 17. • The term 'authorise' is used in a variety of ways in the Act and adding exclusions will not adequately capture all the ways it is used.
23	A new provision should be added to section 29, allowing agencies to refuse access where disclosure of the information would create a significant likelihood of serious harassment of an individual. *Section 29 specifies good reason for refusing access to personal information*	• Reject. Not required due to the change to be made at recommendation 22 • May lead to agencies to assess why the information is being sought. It is unclear how the test who would work in practice, and what agencies will need to take into account.
27	A new provision should be added to section 29, allowing agencies to refuse access if the same information, or substantially the same information, has previously been provided to the requestor	• Reject. Agree with the Ombudsmen who questioned whether the refusal ground is justified when agencies can already use vexatious ground. • Invite the Ombudsmen and Privacy Commissioner to provide additional education and guidance on the vexatious ground.
36	The Privacy Act should apply to the Parliamentary Service, but only in respect of its departmental holdings. Information held by the Parliamentary Service on behalf of Members of Parliament should not be covered by the Privacy Act.	• Defer to enable a wider consideration of issues in consultation with Parliamentary Services and the Office of the Clerk
40.2	Section 54 should be amended to allow the Privacy Commissioner to grant exemptions from principle 12. *[Principle 9 requires agencies not to keep information for longer than necessary, principle 12 relates to unique identifiers]*	• Reject. It is not clear how the allocation and use of unique identifiers could be a one-off occurrence and not be on-going. On balance, and in light of lack of problem definition, exemption is not warranted.

45.3	Section 56 should be amended to provide that it does not apply where the collection, use or disclosure of personal information would be highly offensive to an objective reasonable person *Section 56 exempts personal information relating to domestic affairs from the privacy principles.*	• Implemented in Harmful Communications [CAB Min (13) 10/5]
46	Section 57 should be amended to provide that principles 5, 8 and 9 apply to the intelligence organisations, in addition to principles 6,7, and 12 as at present *Section 57 exempts intelligence organisations from specific principles*	• Defer. This recommendation will be considered in the report back by November 2014 on policy matters arising from the review of NZSIS [CAB Min (13) 14/1]
49	The Privacy Act should contain a provision that it is to be reviewed every five years.	• Reject. Not required due to Government regulatory scanning programme
50	The Government should be required to table in Parliament within six months a response to each review of the Act.	• Reject. Consequential on recommendation 49
52	Codes of practice should continue to be developed by the Privacy Commissioner, but should require approval by the Governor-General in Council.	• Defer to be considered in a future review. The status quo is working well, and does include constitutional safeguards (for example referral to the Regulations Review Committee for examination).
53	The Governor-General in Council should be able to reject a proposed code, but not to amend it.	• Reject. Does not recognise the independence and expertise of the Privacy Commissioner. • May require the Governor-General to act contrary to the constitutional convention that he/she acts upon advice of the Minister. Preferred approach is for relevant stakeholders to take a collaborative approach during the development of codes of practice
61	The chairperson of the Human Rights Review Tribunal should be a judge at the level of a District Court Judge.	• Reject. No evidence that previous chairs have been subject to political interference, would impose significant costs, and appointing a sitting judge would involve the removal of judge from the District Court
66.1	There should be a new offence of intentionally misleading an agency	• Reject. This is already covered by the Crimes Act (sections 240, 258, 116)
86	An exception should be added to principle 11 making it clear that when requests for personal information are made to agencies subject to the Official Information Act 1982 or the Local Government Information and Meetings Act 1987, the latter Acts govern such requests	• Reject. Additional education and guidance would be more effective than legislative change.
87	The Public Records Act 2005 should require the Chief Archivist to consult the Privacy Commissioner when preparing standards about access to archived records.	• Reject. Legislative amendment is not necessary as consultation occurs currently
88	A subsection should be added to section 18 of the Public Records Act expressly providing that that section prevails over principle 9 of the Privacy Act.	• Reject. Resolved by adopting recommendation 80 to clarify the relationship between the Act and other legislation

89	Section 16 of the Criminal Disclosure Act 2008 should contain a provision that, in deciding whether information is relevant for the purpose of section 13(2) of that Act, consideration must be given to the extent to which it relates to the private affairs of another individual.	• Reject. Existing provisions of the Criminal Disclosure Act is sufficient and further legislative change is not necessary
102.2	The technology-neutral privacy principles should be reviewed every 5 years	• Reject. Not required due to Government regulatory scanning programme
103	The Privacy Commissioner should consider convening an expert Privacy by Design Panel to promote privacy by design and to raise awareness of privacy-enhancing technologies	• Transferred to the Privacy Commissioner for consideration
104	The Government should issue a Cabinet Office circular setting out when public sector agencies are expected to produce a privacy impact assessment	• Overtaken by the Government Chief Information Officer's review of publicly available systems
105	SSC should provide guidance on its website as to expectations for use of privacy impact assessments in the public sector, such guidance being prepared in consultation with the Department of Internal Affairs and the Privacy Commissioner.	• Overtaken by the Government Chief Information Officer's review of publicly available systems
106	The Privacy Commissioner should consider whether it is timely to issue a code of practice or guidance covering biometrics	• Transferred to the Privacy Commissioner for consideration
116	The Marketing Association's Do Not Call register should be put on a statutory footing under the reformed consumer legislation and the Ministry of Consumer Affairs should initiate the necessary policy work to progress this initiative	• This recommendation was considered by Cabinet in the context of the Consumer Law Reform Bill (EGI Min (12) 16/5).
122	Section 14(b) should be amended to refer to New Zealand's international obligations concerning the rights and best interests of the child. *Section 14 specifies the mattes the Commissioner must have regard to*	• Reject. UNCROC is binding on New Zealand legislation and there is no need to specifically refer to obligations under UNCROC in legislation
7	Recommendation 7 from Stage 2 relating to Public Registers. Provision should be made in the Act for applications for name and/or address suppression to the Privacy Commissioner, and that each public register statute should refer to the availability of such applications.	• Defer to enable all recommendations relating to public registers to be considered as a package and as part of a comprehensive review

Schedule 1: Part B – Necessary and Desirable recommendations		
#	**Recommendation**	**Reason for response**
5	An appropriate committee of Parliament should consider whether it is desirable to grant individuals access rights to information held about them by the House of Representatives or to adopt rules similar to any of the 12 information privacy principles.	• Overtaken by Law Commission recommendation 36. That recommendation is deferred.

6	An appropriate committee of Parliament should consider whether it is desirable to: (a) adopt any measures to encourage members of Parliament to apply, or follow, any of the 12 information privacy principle; or (b) provide that MPs in their official capacities are agencies for some purposes of the information privacy principles	• Overtaken by Law Commission recommendation 36. That recommendation is deferred.
7	Consideration should be given to whether it is appropriate to replace the total exemption for the Parliamentary Service Commission in subparagraph (b)(v) of the definition of "agency" with a partial exemption.	• Overtaken by Law Commission recommendation 36. That recommendation is deferred.
7A	[Alternative to recommendation 7 above] Recommend that subparagraph (b)(v) of the definition of 'agency' in section of the Privacy Act be amended so that the Parliamentary Service Commission be made subject to information privacy principles 1-5, and 7-12.	• Overtaken by Law Commission recommendation 36. That recommendation is deferred.
8	The partial exemption for the Parliamentary Service in subparagraph (b)(vi) of the definition of "agency" should be repealed, or further restricted, if this can be achieved in a manner that does not impact upon the exemption in subparagraph (b)(iv).	• Overtaken by Law Commission recommendation 36. That recommendation is deferred.
8A	As an alternative to recommendation 8. Recommend that, as with recommendation 7A, subparagraph (b)(v) of the definition of 'agency' in section of the Privacy Act be amended so that: (a) the Parliamentary Service Commission be made subject to information privacy principles 1-5, and 7-12; (b) the present partial exemption that applies to the Parliamentary Service generally be continued in relation to rights of access normally enjoyed under information privacy principle 6, with access rights also extended to prospective employees and contractors.	• Overtaken by Law Commission recommendation 36. That recommendation is rejected.
9	Consideration should be given to including a definition of "tribunal" limited to statutory tribunals forming part of the New Zealand administrative or judicial structure.	Recommendation has been withdrawn by Privacy Commissioner (fourth supplement 2.1 refers).
10	Subparagraph (b)(ix) of the definition of "agency" should be repealed so that the Ombudsmen are considered to be an "agency" for the purposes of the Act. We have considered this recommendation in the context of responding to recommendation 37 from the Law Commission.	• Overtaken by Law Commission recommendation 37. That recommendation is modified.
11	Consideration should be given to adopting a new definition of "document" in section 2 in conjunction with any redefinition of the term in the proposed Evidence Code.	• Reject. The Law Commission and the Government has determined that the scope of the Act is working well.
12	Consideration should be given to amending the definition of "personal information" to clarify the position of information sourced from, but not contained in, the register of deaths.	• Overtaken by Law Commission recommendation 4. Agree with recommendation 4.

13	Consideration should be given to redefining or recasting "public sector agency", "Minister", "department", "organisation" and "local authority".	• Reject. The Law Commission and the Government has determined that the scope of the Act is working well.
14	Consideration should be given to enacting a definition of "private sector agency".	• Reject. The Law Commission and the Government has determined that the scope of the Act is working well.
15	The definition of "statutory officer" should be moved from section 2(1) into section 3	• Reject - The definition should not be removed from the definition section
17A	Consideration should be given to adding, as a second part of information privacy principle 1, a new principle that "wherever it is lawful and practicable, individuals should have the option of not identifying themselves when entering transactions."	• Overtaken by Law Commission recommendation 35. Agree with recommendation 35.
17B	Consideration should be given to adding, as a second part of information privacy principle 1, a new principle that "wherever it is lawful and practicable, individuals should have the option of not identifying themselves when entering transactions.	• Overtaken by Law Commission recommendation 35. Agree with recommendation 35.
18	Section 46(4) should be amended to provide that a code of practice may require an agency to take all practicable steps to ensure that an individual may ascertain the agency's policies and practices in relation to particular personal information.	• Defer to a future review of the Privacy Act. Potential for significant compliance costs.
19	Information privacy principles 1, 3(1) and 8 should be amended to substitute the phrase "purpose or purposes" for the word "purpose".	• Unnecessary, as has been implemented through section 33 of Interpretation Act.
19A	The word "directly" should be omitted from information privacy principle 3(1).	• Overtaken by Law Commission recommendation 11. Agree with recommendation 11.
20	Information privacy principle 3(4)(a), (non compliance is authorised by the individual concerned), should be repealed. Implemented through our consideration of R13 from the Law Commission	• Overtaken by Law Commission recommendation 13. Agree with that recommendation
21	Information privacy principle 3(4)(f)(ii), (information will be used for statistical or research purposes and individual not identifiable), should be repealed.	• Overtaken by Law Commission recommendation 13. Agree with that recommendation
23	Information privacy principle 5(a)(ii), (storage and security of personal information), should be amended by inserting the word "browsing" or "inspection".	• Overtaken by Law Commission recommendation 15. Agree with that recommendation.
23A	The Privacy Act should include an obligation requiring agencies to notify affected individuals where a security breach by the agency puts the individual at risk.	• Overtaken by Law Commission recommendations 67 to 71. Agree with that recommendation.
24	Information privacy principle 7 (correction of personal information), should be suitably amended so that agencies are obliged to inform requestors, in cases where the agency is not willing to correct information, that they may request that a statement be attached to the information.	• Overtaken by Law Commission recommendation 20. Agree with that recommendation
25	Information privacy principle 7 (correction of personal information) should be supplemented with a right to prevent the use or disclosure of personal information for the purposes of direct marketing through the deletion or blocking of personal information held by the agency for direct marketing purposes.	• Overtaken by Law Commission recommendation 116, and this is being responded to in another work stream.

25B	Consideration should be given to the merits of a national system, established under statute, to control the use of automated dialling machines and enable individuals to opt-out of telemarketing.	• Overtaken by Law Commission recommendation 116 and this is being responded to in another work stream.
26	Consideration should be given to amending information privacy principle 8 to substitute the phrase "use or disclose" for "use" in the first line.	• Overtaken by Law Commission recommendation 16. Agree with that recommendation
27	Section 46(4) should be amended to provide that a code of practice may require an agency to retain specified information or documents for a specified period, not exceeding six years. *Section 46 relates to codes of practice*	• Defer to a future review of the Privacy Act. Potential for significant compliance costs.
28	In relation to the controls on reassignment of unique identifiers: (a) information privacy principle 12(2) should be limited so that the prohibition is solely in relation to the reassignment of unique identifiers originally generated, created or assigned by a public sector agency; and (b) section 46(4) should be amended to make it clear that a code of practice may apply the controls in principle 12(2) to the assignment of unique identifiers generated, created or assigned by any agency (not simply a public sector agency).	• Overtaken by Law Commission recommendation 33. Agree with that recommendation.
28A	The Law Commission or officials, in further reviewing principle 12, should usefully have regard to: (a) the Australian experience and proposals with its identifier principle (b) the usefulness of including exceptions to principle 12(2) (c) the merit of including controls in principle 12 to encourage number truncation or other ways of controlling the public display of unique identifiers. (Fourth Supplement) *Principle 12 relates to the use of unique identifiers*	• Overtaken by Law Commission recommendation 117. Agree with recommendation 117.
29	Section 66(1) should be amended so that an interference with privacy may be established notwithstanding the absence of any harm or detriment of the type set out at section 66(1)(b) in cases of wilful breach of information privacy principle 1 or 2. *Section 66 sets out what constitutes a breach of privacy*	• Overtaken by Law Commission recommendation 54. Agree with that recommendation.
30	Section 7(1) should be amended by transferring its content, in so far as it relates to information privacy principle 11, into principle 11 as a new exception.	• Overtaken by Law Commission recommendations 80 to 82. Agree with those recommendations.
31	Consideration should be given to transferring the content of: (a) section 7(4) into information privacy principles 1 to 5, 7 to 10, and 12 as exceptions; and (b) section 7(5) into Part VI.	• Overtaken by Law Commission recommendations 80 to 82. Agree with those recommendations.

32	The content of section 7(2) and (3), in so far as they relate to information privacy principle 6, should be relocated into Part IV.	• Overtaken by Law Commission recommendations 80 to 82. Agree with those recommendations.
33	Section 7(2) and (3), in so far as they relate to information privacy principle 11, should be repealed and replaced with a single provision, which may be relocated into principle 11 itself, to the effect that where another enactment imposes a more restrictive obligation of secrecy or non-disclosure than principle 11, the principle does not operate to provide additional grounds for disclosure.	• Overtaken by Law Commission recommendations 80 to 82. Agree with those recommendations.
34	A sunset clause should provide for the expiry of section 7(3) after a period of 3 years.	• Overtaken by Law Commission recommendations 80 to 82. Agree with those recommendations.
34A	With respect to statutory secrecy provisions saved by section 7(2): (a) the departments which administer statutes containing such provisions should consider whether they ought to be amended so that individual access requests under information privacy principle 6 are not unnecessarily precluded; and (b) in particular, section 81 of the Tax Administration Act 1994 should be amended to allow for individual access by individual concerned pursuant to information privacy principle 6 (in drafting such a provision care should be taken to address the risk of coerced access requests).	• Overtaken by Law Commission recommendations 80 to 82. Agree with those recommendations.
35	The Act should be amended to include express provision for controlling transborder data flows, consistent with clause 17 of the OECD Guidelines and the emerging international approach to data export. In particular consideration should be given to providing: (a) a mechanism which would enable mutual assistance to be extended to prohibit data exports in circumstances where New Zealand is being used as a conduit for transfers designed to circumvent controls in EU and other privacy laws; (b) mechanisms for imposing restrictions concerning categories of personal data for which there are particular sensitivities and in respect of which the recipient countries would provide no adequate protection.	Overtaken by Law Commission recommendations 107 to 115. Agree with those recommendations.
36	Section 11 (enforceability of principles) should be amended so that the entitlement under information privacy principle 6(1) to have access to information held by an agency is a legal right in circumstances where the agency is prosecuting the individual for an offence.	• Already implemented through the Criminal Disclosure Act 2008
37	There should be provision for the Commissioner to put a case for funding directly to Treasury and relevant Ministers.	• Recommendation withdrawn by Privacy Commissioner.

37A	A provision should be inserted into Part 3 of the Act stating that the Commissioner must act independently in the exercise or performance of his or her functions.	• Implemented by the Crown Entities Act 2004.
37B	The Privacy Commissioner should have mandatory audit powers in relation to at least the public sector but preferably both public and private sectors.	• Overtaken by Law Commission recommendation 64. A modification to recommendation 64 is proposed.
38	Section 15(3) should be amended to make clear that a deputy may be designated as an alternate Human Rights Commissioner with the concurrence with the Chief Human Rights Commissioner.	• Withdrawn by Privacy Commissioner.
40	Consideration should be given to repealing section 21 (directories of personal information). Consequently section 20(1)(d) should be repealed and the content of section 21(1)(a) to (f) transferred to a new written section 21 (Commissioner may require agency to supply information).	• Overtaken by Law Commission recommendation 48. Agree with that recommendation.
41	Consideration should be given to the costs and benefits of having the Ministry of Justice include some of the information listed in section 21(1) in any future Directory of Official Information.	• Overtaken by Law Commission recommendation 48. Agree with that recommendation.
42	Section 21(3) should be amended so that the Commissioner is obliged to have regard, in determining whether or not a directory of personal information should be prepared, to the compliance costs to agencies consequent upon such a determination.	• Overtaken by Law Commission recommendation 48. Agree with that recommendation.
44	Section 23 (privacy officers) should be amended to delete the words "within that agency".	• Overtaken by Law Commission recommendation 126. Agree with that recommendation
45	Clause 2(3) of the First Schedule should be repealed so that the Minister does not have the function of determining how many staff the Commissioner engages whether generally or in respect of any specified duties.	• Already repealed by the Crown Entities Act 2004.
46	Clause 6(2) of the First Schedule should be repealed as being unnecessary.	• Already repealed by the Crown Entities Act 2004.
46A	Section 26 should be amended so that a government response to the Privacy Commissioner's recommendations is required to be presented to Parliament within six months of receipt and that subsequent reviews should be at five year intervals after a government response is available.	• Overtaken by Law Commission recommendations 49 and 50. Recommendation 49 is rejected as it is considered not necessary in light of the regulatory scanning programme, and recommendation 50 is consequential to recommendation 49.
48	Consideration should be given to the merits of redrafting the "maintenance of the law" withholding grounds to make more plain the constituent law enforcement interests protected.	• Overtaken by Law Commission recommendations 93, 94, 95 and 96. Agree with recommendation 93. Recommendations 94 to 96 were agreed through the initial Government response.
49	Consideration should be given to the desirability of enabling the withholding of information where there is a significant likelihood of harassment of an individual as a result of the disclosure of information.	• Overtaken by Law Commission recommendation 23. That recommendation is rejected.

50	A straightforward definition of 'trade secret' should be inserted into section 28. check whether we have a definition already – if not, not going to create one	• Reject. The Law Commission and the Government has determined that the scope of the Act is working well.
51	Consideration should be given to amending section 28(1)(b) to provide for withholding of information where the disclosure would unreasonably prejudice the commercial position of the agency itself, particularly where the information requested would reveal the agency's bargaining position in respect of negotiations involving the individual concerned. [check OIA work with Sam]	• Overtaken by recommendation 17 of the Law Commissions' report on the Official Information Act. This recommendation has been referred to MBIE for consideration.
52	Consideration should be given to providing statutory guidance on the withholding of information in the common cases of "mixed" information concerning the requestor and other individuals.	• Overtaken by Law Commission recommendation 24. Government agree to this recommendation in its initial response.
56	Consideration should be given to amending section 29(1)(c) to provide for consultation with the individual's medical practitioner or, in the circumstances of the case, the individual's psychologist.	• Overtaken by Law Commission recommendation 26. Agree with that recommendation.
56A	Consideration should be given to simplifying or omitting the definition of "medical practitioner" in section 29(4).	• Overtaken by Law Commission recommendation 26. Agree with that recommendation.
57	Section 29(1)(f) should be redrafted so that it provides a self-contained explanation of the meaning of legal professional privilege.	• Reject – not a strong case for the degree of statutory provision proposed
58A	As alternative to recommendation 66, (see Compliance & Administration Costs) consideration should be given to adding new reasons for refusal to section 29 to cover positions where: • a person making a request has already been refused access to the information requested, provided that no reasonable ground exist for that person to request the information again; and • a person making a request has already been given access to the information requested on a recent occasion, provided that no reasonable grounds exist for the person to request the information again.	• Overtaken by Law Commission recommendation 27. Reject recommendation 27.
59	Section 31, (restriction where person sentenced to imprisonment), should be repealed.	• Already implemented via the Criminal Disclosure Act 2008
61	The standing requirements in section 34 should be abolished.	• Already repealed by the Privacy (Cross-border Information) Amendment Act 2010
62	Public sector agencies should be entitled to make a reasonable charge, of the type permitted by section 35, for making information available to an individual overseas who is neither a New Zealand citizen nor permanent resident.	• Rejecting. Not a widespread problem so a general legislative amendment is not required. Targeted legislative amendment could be implemented if necessary
63	If the general standing requirement in section 34 is removed then section 13(3) of the Adoption (Intercountry) Act 1997 should be repealed.	• Already repealed by the Privacy (Cross-border Information) Amendment Act 2010

65	Section 35(3)(b)(i), (charging for corrections), should be repealed. .	• Overtaken by Law Commission recommendation 28. Agree with recommendation 28.
66	The Commissioner or the Tribunal should be empowered to exempt an agency from having to deal with a particular individual's access request for a fixed period where it can be shown that the individual has lodged requests of a repetitious or systematic nature which would unreasonably interfere with the operations of the agency and amount to an abuse of the right of access.	• Overtaken by Law Commission recommendation 27. Agree with that recommendation.
67	Section 37 should be amended to make it clear that in cases where a request for urgency has been substantiated, an agency is obliged to make reasonable endeavours to process the request with priority.	• Reject. No clear standard to hold agencies to account, provide incentives for requestors to make false claims for urgency
67A	Section 38 (agency to provide assistance to individual) should be replaced with a provision modelled upon the replacement to section 13 of the Official Information Act 1982 recommended by the Law Commission.	• Defer until the parallel amendment to the OIA is made
69A	The 20 working day outer time limit in section 40(1), (decisions on requests) should be replaced with a 15 working day limit. There should be a year's delay before the new limit becomes operative.	• Reject. Disproportionate increase in compliance costs and would be inconsistent with Official Information Act.
71	Complexity of the issues raised by a request should be added to the grounds for an extension of time under section 41(1).	• Overtaken by Law Commission recommendation 29. Agree with recommendation 29.
72	Section 41(3) should be amended by replacing the phrase "within 20 working days" with "as soon as reasonably practicable, and in any case not later than 20 working days".	• Reject to ensure consistency with OIA
75	Section 46(6) should be replaced with a provision which empowers the Privacy Commissioner to include in a code of practice a provision applying principle 11 to an agency, or a class of agencies, to health information about any deceased person for a period specified in the code beyond any such person's death.	• Overtaken by Law Commission recommendation 5. Agree with recommendation 5
75A	Section 46(6) should be amended so that it applies to information privacy principle 5 as well as principle 11.	• Overtaken by Law Commission recommendation 5. Agree with recommendation 5
76	Consideration should be given to amending section 47(3) to make it clear that a body can apply for a code whether it represents the whole of a class of agencies, industry, profession etc or just a substantial section.	• Reject. As a code modifies the law it should have the support of the whole industry
77	There should be provision for the Commissioner to require a representative body applicant to undertake notification under section 47(4), (proposal for issuing of code of practice), in terms directed by the Commissioner.	• Reject as above.

79	Section 54(1) should be amended to enable the Commissioner to grant an exemption to enable information to be kept notwithstanding that this would otherwise be in breach of principle 9.	• Overtaken by Law Commission recommendation 40. Agree with recommendation 40.1 and reject recommendation 40.2.
81	Consideration should be given to the desirability of narrowing section 55(b) so as to enable access requests by the individual concerned to evidence given, or submissions made, to a Royal Commission prior to the report to the Governor-General where that evidence was given, or the submissions made, in open public hearing.	• Overtaken by work undertaken by DIA on the Inquiries Act in relation to natural justice
81A	Paragraph (j) of the definition of "official information" in the Official Information Act 1982 should be amended to replace "department or Minister of the Crown or organisation" with "agency (as that term is defined in the Privacy Act 1993)".	• Reject. The word 'agency' does not appear anywhere else in the Official Information Act so its use in the definition of official information would require people to cross-refer to the Privacy Act.
82	Section 56 should be amended so that an individual cannot rely upon the domestic affairs exemption where that individual has collected personal information from an agency by falsely representing that he or she has the authorisation of the individual concerned or is the individual concerned.	• Overtaken by Law Commission recommendation 44. Agree with recommendation 44.
82A	The domestic affairs exemption in section 56 should be limited so that it does not apply to cases of secret filming of people in intimate situations or to unlawful collection of personal information. (Third and Fourth Supplements)	• Overtaken by Law Commission recommendation 45. Agree with recommendation 45.
83	The exemption for intelligence organisations in section 57 should be narrowed so that principles 1, 5, 8 and 9 apply to information collected, obtained, held, or used, by an intelligence organisation.	• Overtaken by Law Commission recommendation 46. That recommendation is being responded to in another workstream.
83A	Officials responsible for disaster management in New Zealand should give consideration to whether any amendment to the Privacy Act is desirable to provide for best practice disaster information management in the event of a declared emergency and, in particular, whether any amendments such as those adopted in Australia are useful.	• Overtaken by recent code issued by Privacy Commission covering information sharing in civil defence emergencies.
84	Public register privacy principle 1 should be amended so that search references be required to be consistent with the purpose of a particular register.	• Defer all public register recommendations until review of Privacy Act has been completed.
85	As new public register provisions are enacted, or existing ones reviewed or consolidated or amended, consideration should be given to including statutory statements of purpose.	• As above.
86	Consideration should be given to establishing in the Act a regulation-making power to specify, in respect of any particular public register, the purposes for which the register is established and is open to search by the public.	• As above.
87	Public register privacy principle 2 should be re-enacted with a structure which more clearly leads users to identify its elements.	• As above.

88	Public register privacy principle 3 should be amended by adding "in New Zealand" after the words "a member of the public".	• As above.
89	If recommendation 88 is adopted, there should be a power in the Act to make regulations, after consultation with the Privacy Commissioner, in respect of any public register to authorise and control the electronic transmission of personal data which is not limited to members of the public within New Zealand.	• As above.
90	Public register privacy principle 4 should be amended so that the constraints upon charging for access to personal information from a public register apply only in relation to the making available of information to the individual concerned.	• As above.
91	A further public register privacy principle should be enacted that provides that personal information containing an individual's name together with the individual's address or telephone number, is not to be disclosed from a public register on a volume or bulk basis unless this is consistent with the purpose for which the register is maintained.	• As above.
92	Section 7(6) should be replaced with a subsection in section 8 providing that the information privacy principles apply in respect of a public register only to the extent specified in section 60 and 63(2)(b).	• As above.
93	Section 60 should be amended as follows: (a) in subsection (1) omit the phrases "subject to subsection (3) of this section" and "so far as is reasonably practicable"; (b) the content of subsection (3) should be moved adjacent to subsection (1) and redrafted in plainer fashion; in subsection (2) "person" should be replaced by "agency".	• As above.
94	Section 60(2) should be amended: (a) by omitting the words "as far as is reasonably practicable"; and by substituting an exception based upon the authorisation of the individual concerned.	• As above.
95	The public register privacy principles should be enforceable in a similar manner to the information privacy principles by amending, as necessary, sections 61(3)-(5) and 66.	• As above.
96	The Order in Council process in section 65 should be utilised to add existing register provisions in enactments to the list in the Second Schedule. The Ministry of Justice should commence work to identify the relevant enactments, and to consult with the relevant agencies, so that the first Order in Council is ready to be issued during the 1998/99 year with the completion of the project by the end of the following year.	• As above.

97	The Ministry of Justice should, in carrying out the exercise to bring register provisions into the Second Schedule pursuant to section 65, also consider in respect of each register the desirability of issuing regulations under section 121 of the Domestic Violence Act 1995.	• As above.
98	A new public register privacy principle should be created which obliges agencies maintaining public registers to adopt a process to hold details of an individual's whereabouts separately from information generally accessible to the public where it is shown that the individual's safety or that of the individual's family would be put at risk through the disclosure of the information. An exception is to be provided where alternative safeguards exist to ensure that such information is not disclosed to the public for purposes unrelated to the purposes for which the information was collected or obtained.	• As above.
99	A mechanism should be established in Part VII of the Act, with the details set out in a new schedule, enabling individuals to obtain suppression directions in relation to public registers which would replace Part VI of the Domestic Violence Act but be applicable to a wider range of circumstances concerning personal safety and harassment.	• As above.
100	The official information statutes should be excluded from questions of release of personal information from public registers.	• As above.
101B	Section 66(4) should be amended to encompass undue delay on the part of an agency in transferring a request under section 39 (transfer of requests).	• Reject – would impose compliance costs
102A	Consideration should be given to providing for the registration and handling of representative complaints. (Third Supplement)	• Overtaken by Law Commission recommendation 60. Agree with recommendation 60.
104	Section 70 should be amended to recognise that a decision to investigate a complaint, or to take no action on a complaint, may be postponed until preliminary inquiries are made of the complainant for the purpose of determining whether: (a) the Commissioner has power to investigate the matter; (b) the Commissioner may, in his or her discretion, decide not to investigate the matter; or (c) the complainant wishes to proceed with the complaint.	• Reject – legislative amendment is not required to enable the Privacy Commissioner to make preliminary inquiries
105	Consideration should be given to establishing a process whereby a decision by the Commissioner that a complaint is beyond jurisdiction can, on this question alone, be referred by the complainant to the Complaints Review Tribunal for its decision on the matter.	• Reject – decision can be judicially reviewed
106	Provision should be made in Part VIII of the Act for the Commissioner to defer action, or further action, on a complaint where:	• Overtaken by MOJ recommendation

	(a) the complainant has not complained to the agency concerned and the Commissioner considers that the complainant should do so in an attempt to directly resolve the matter; or (b) the complaint concerns an agency in respect of which there is an independent, expeditious and appropriate procedure for addressing such complaints available through an industry body which the complainant has not used.	
107A	Provision should be made for the transfer of complaints to, or the cooperative handling of complaints with, privacy commissioners and similar authorities in other states. (Third and Fourth Supplements)	• Overtaken by Law Commission recommendation 114. Agree with recommendation 114.
108	Adequate funding should be made available so that the volume of complaints received at the Office of the Privacy Commissioner can be processed as required by section 75, "with due expedition".	• Taken over by Law Commissions recommendations 56 to 59.
111	Consideration should be given to including in, or following, section 81(5) a provision that the Prime Minister may refer a report given under section 81(4) to the Intelligence and Security Committee.	• Reject. Privacy Act will be consistent with the review of the security agencies
112	Provision should be made by amending section 82(2), or otherwise, to allow Tribunal proceedings to be brought by the Proceedings Commissioner where there is a breach of an assurance given to the Privacy Commissioner under section 74 (settlement of complaints) or 77 (procedure after investigation).	• Overtaken by Law Commission recommendation 63
113A	Section 88(2) should be amended to enable the Proceedings Commissioner to pay damages recovered directly to the aggrieved individual on whose behalf the proceedings were brought.	• Implemented by Privacy Amendment Act 2003
113B	Consideration should be given to: (a) establishing a separate panel for additional members of the High Court on appeals from that used by the Complaints Review Tribunal; and/or (b) ceasing to apply section 126 of the Human Rights Act to appeals to the High Court taken in respect of Privacy Act cases; or (c) allowing for additional members to be appointed to the High Court on a case by case basis where sought by the parties or ordered by the Court itself.	• Withdrawn by the Privacy Commissioner.
113C	Section 123(4), (revocation of delegations), should be amended to empower the High Court to allow further time to lodge an appeal in appropriate cases.	• Has already been repealed by the Crown Entities Act 2004.
114	Section 92 should be amended so that the Commissioner may require an agency to comply with a requirement made pursuant to section 91 within a shorter period than 20 working days where the urgency of the case so requires.	• Withdrawn by the Privacy Commissioner.

116	Section 95(3) should be amended to specify that: (a) the Prime Minister, in respect of paragraph (a); and (b) the Attorney-General, in respect of paragraph (b); personally may exercise the power to prevent disclosure of information to the Privacy Commissioner.	• Withdrawn by the Privacy Commissioner
117	The definition of "adverse action" in section 97 should be supplemented by a paragraph relating to decisions to impose a penalty and to recover a penalty earlier imposed.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
118	Consideration should be given to amending the definitions of "authorised information matching programme" and "information matching programme" in section 97 so as to exclude manual comparison from their scope.	• Withdrawn by Privacy Commissioner (fourth supplement).
119	Consideration should be given to replacing references in Part X and elsewhere to "information matching" by "data matching".	• Withdrawn by Privacy Commissioner (fourth supplement).
120	The definition of "specified agency" in section 97 should be amended so that the agencies are listed in the Third Schedule alongside the information matching provisions to which they relate.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
121	Consideration should be given to: (a) including in section 97, in addition to the definition of "specified agency" (which could be renamed "participating agency"), definitions of "source agency", "matching agency" and "user agency"; and (b) utilising these newly defined terms in Part X and the Fourth Schedule as appropriate.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
122	Section 98(c) should be amended so that alternative means of achieving the objective of a proposed matching programme are examined with a view to considering whether they would be more, or less, privacy intrusive.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
123	Section 98(e) should be amended so that in considering whether a programme involves information matching on a scale that is excessive, regard is also had to: (i) the amount of detail about an individual that will be disclosed as a result of the programme; and (ii) the frequency of matching.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
124	Section 98(f) should be amended so that the information matching guideline refers not only to the information matching rules but also to Part X of the Act.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
125	Section 99 should be amended to require the parties to review any information matching agreement at least once every three years and to report the results of that review to the Privacy Commissioner.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.

126	Consideration should be given to limiting the Inland Revenue Department's exemptions in section 101(5) and information matching rule 6(3) so that IRD is exempted from obligations to destroy information only where this is an intended objective of the programme.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
127	Section 102 should be amended to make clear that it refers to both the 60 working day time limit in section 101(1) and the 12 month time limit in section 101(2	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
128	Section 103(1) should be amended by substituting a 10 working day period for the present 5 working day period.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
129	Section 103(1A), (notice of adverse action proposed), should be repealed.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
130	Consideration should be given to amending section 103(2)(e) to add aspects of the clause 12(v) of the Australian Data-matching Program (Assistance and Tax) Guidelines.	• Withdrawn by Privacy Commissioner.
131	Section 105 should be amended so that the annual information matching report may be submitted separately from the annual report required under section 24.	• Overtaken by Law Commission recommendation 134. Agree with recommendation 134.
132	Consideration should be given to funding the Privacy Commissioner's information matching monitoring activities by charges on specified agencies involved in carrying out information matching programmes.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
133	Information matching rule 1 should be retitled "Openness and public awareness concerning operation of programme" and consideration should be given to enhancing the rule by detailing mandatory requirements, and a variety of discretionary methods, by which agencies may ensure that individuals who will be affected by a programme are made aware of its existence and effect.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
134	Information matching rule 2 should be amended by deleting the phrase "unless their use is essential to the success of the programme" and replace it with provision for agencies to apply to the Commissioner for approval to use unique identifiers where the Commissioner is satisfied that their use is essential to the success of the programme.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
135	A more informative heading should be given to information matching rule 5 and consideration should be given to redrafting the rule in a clearer fashion possibly drawing upon the Australian approach and using defined terms.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.

135A	The Commissioner should be empowered to grant exemptions from information matching rule 6(1). (Third Supplement: 2.21 refers)	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
136	Information matching rule 8(2) should be repealed or, if retained, its purpose and effect made plain.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
137	Provision should be made for terms used in Part X, and the information matching rules, to be able to be defined in the information matching rules themselves.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
138	Section 108 should be amended to replace the reference to "subclause (2)(d)(i) of principle 2 or paragraph (e)(i) of principle 11" with a reference to all of the exceptions to principles 2 and 11.	• Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.
139	Section 112 providing for local authorities to be authorised to have access to law enforcement information should be repealed together with the definition of "local authority" in section 110 and the references to local authorities in the Fifth Schedule.	• Defer until the information-sharing provisions of the Privacy Amendment Act 2013 have been in place for a couple of years and their impacts can be felt.
140	If section 112 is not repealed in its entirety then the reference to local authorities in the Fifth Schedule relating to the national register of drivers' licences should be repealed.	• As above
141	All existing approvals given under section 4E of the Wanganui Computer Centre Act 1976 should be reviewed and: (a) any that are unnecessary should be revoked; (b) any which need to be continued should be replaced, within a reasonable time, with a new notice carrying appropriate conditions issued under section 112.	As above
142	Provision should be made to allow the Fifth Schedule to be amended by Order in Council subject to a five year sunset clause.	• As above
143	Consideration should be given to the merits of making consistent amendments to: (a) section 115 of the Act; (b) section 48 of the Official Information Act 1982; and (c) (section 41 of the Local Government Official Information and Meetings Act 1987, to meet the perceived difficulties of interpretation raised by the distinction in the first and second subsections of each of these provisions between "the making available of information" and the "making available of, or the giving of access to, information".	• Defer to enable all recommendations relating to public registers to be considered as a package.

148	There should be an offence provision created concerning any person who intentionally misleads an agency by: (a) impersonating the individual concerned; or (b) misrepresenting the existence or nature of authorisation from the individual concerned; (c) in order to make the information available to that person or another person or to have the personal information used, altered or destroyed.	• Overtaken by Law Commission recommendations 66.1 and 66.2. Reject recommendation 66.1 and agree with recommendation 66.2.
149	There should be an offence created of knowingly destroying documents containing personal information to which the individual concerned has sought access in order to evade an access request. Update: First Supplementary Report (April 2000) for additional recommendation 149A	• Overtaken by Law Commission recommendations 66.1 and 66.2. Reject recommendation 66.1 and agree with recommendation 66.2.
150	Section 107 should provide that every information for an offence must be laid within 12 months from the time when the matter of the information arose.	• Withdrawn by Privacy Commissioner.
151	A provision should be included to prohibit employers, prospective employers, and providers of services, requiring individuals to exercise their access rights to obtain criminal history information as a condition of obtaining employment, continuing employment, or obtaining services.	• Reject – criminal records are an important check during the employment application process
152	Provision should be made to constrain contractual requirements that oblige individuals to supply copies of health records.	• Reject – health records are an important check during the employment application process
154	The Ministry of Justice, together with the Privacy Commissioner and the specified agencies, should study the Fourth Schedule to consider whether: (a) the information matching rules might be expressed more clearly; (b) the clarity or effectiveness of the rules would be enhanced by the use of new concepts, which might be defined, or by defining existing concepts that are used; (c) the use of flow-charts would improve presentation. Update: see paras 2.18.1 – 2.18.2 of Second Supplementary Report (January 2008) recent developments	Overtaken by Law Commission recommendations 127 to 136. Government agreed in its initial response to defer these recommendations for consideration after the Act has been reformed.

Comparison of V9 of the Privacy Bill with Law Commission and Necessary and Desirable Recommendations

Law Commission recommendations			
#	Recommendation	Cabinet and Ministerial decisions	How has it been implemented into the introduction version of the Bill (as at March 2018) Outstanding issues are in red text
37	The Ombudsmen should be deleted from the list of entities excluded from the definition of "agency".	Modified proposal is to amend the Ombudsmen Act so that information on how the Ombudsmen deal with personal information must be included in their annual report.	Schedule 8 (consequential amendments) does not seem to include this amendment to the Ombudsmen Act.

[redacted]

OUT OF SCOPE