

Recommendation 37 - Act to apply to Ombudsmen

The Ombudsmen should be deleted from the list of entities excluded from the definition of "agency". The Act will then apply to the Ombudsmen.

Government Response

Modify. New proposal is to:

- Amend the Ombudsmen Act so the Ombudsmen must include in their annual report information about how they handle personal information (including information about the personal information complaints it has received, the systems it has to deal with any complaints, and how it has dealt with those complaints).
- Consider this information the next time the Act is reviewed.

Action taken (or to be taken)

Add to drafting instructions after consulting with the Ombudsmen.

Issue / Problem identified by Law Commission

The Act does not apply to the Ombudsmen. All organisations should be subject to the Act unless there is a good reason to the contrary. Other Parliamentary Officers are subject to the Act as are the Courts. The Law Commission could not see any good reasons to exclude the Ombudsmen.

Government / Justice rationale for response

We agree that there needs to be a good reason for the principles not to apply to agencies.

The Ombudsmen argued against this recommendation for the following reasons:

- The Ombudsmen are the 'last line' check on the exercise of executive power and should not be subject to investigation by an agency such as the Privacy Commissioner that is itself subject to the Ombudsmen's jurisdiction;
- The Ombudsmen Act already contains sufficient protections with respect to the handling of personal information as the Ombudsmen and their staff are required to maintain secrecy;
- Providing for principle 6 access rights in respect of personal information at the margins of the Ombudsmen's secrecy requirements could impede the Ombudsmen's ability to carry out their statutory functions of resolving complaints in a thorough and timely manner.

We consider that these arguments are persuasive, particularly the first point about the Privacy Commissioner being given jurisdiction over an Officer of Parliament, who in turn has jurisdiction over the Privacy Commissioner. We are also not convinced that there is an actual problem with the way Ombudsmen handle personal information now justifying

change.

We are proposing an alternative proposal to ensure the Ombudsmen have incentives in place to encourage maximum compliance with the principles, while retaining the status quo for now. This option would see the Ombudsmen providing information in their annual report about their personal information handling practices. This information could then be used as a basis for a future review of whether the Ombudsmen should become subject to the Privacy Act.

Comment

The Ombudsmen have not yet been consulted on this proposal

References

LC Report paras 4.20 – 4.24

Author: Handley	Georgie	Peer reviewer: MB	Last update: 19/10/11
		Sign off SK: away	Sign off P: 26/11

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

20 May 2014

Mark Gobbi
Parliamentary Counsel Office
Mark.Gobbi@parliament.govt.nz

Dear Mark

First set of drafting instructions for the new Privacy Act

Thank you for meeting with us on Tuesday 13 May 2014 to discuss the best way to instruct Parliamentary Counsel Office on redrafting the Privacy Act.

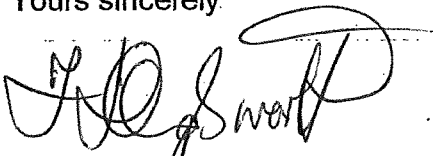
The Government agreed to repeal and replace the Privacy Act with a new Act [SOC Min (12) 3/1 refers] and has recently made policy decisions for the Supplementary Government response that set out the changes required, along with the wider powers proposed for the Office of the Privacy Commissioner [CAB Min (14) 10/5A refers]. Please find attached copies of the relevant Cabinet minutes.

As discussed at our meeting, please find attached the first set of drafting instructions for the new Privacy Act. This set of instructions covers the minor and technical amendments proposed by the Law Commission in its report and by various Privacy Commissioners in *Necessary and Desirable*.

We are working on the next set of drafting instructions, which will cover the more substantive amendments, and plan to have those with you in early June. The additional drafting instructions will include suggestions on the framework of the new Act. We look forward to discussing the framework with you further as the draft develops.

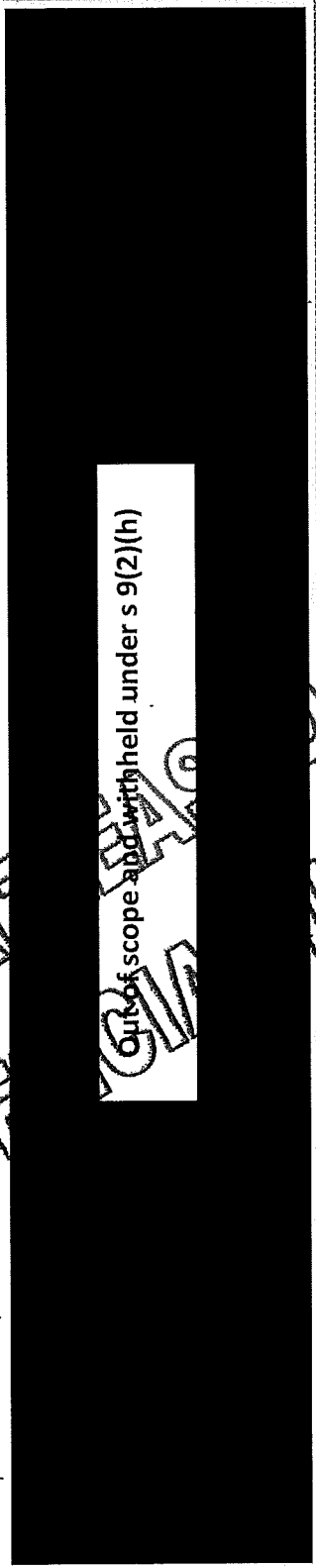
The Ministry's point of contact is Georgie Handley, who can be contacted on (04) 9188695 or Georgie.handley@justice.govt.nz. Georgie will be responsible for coordinating both the Ministry's and the Privacy Commissioner's response to the drafting.

Yours sincerely



Fiona Illingsworth
Policy Manager, Electoral & Constitutional

Consequential amendments to other legislation

LC 37	Modified LC recommendation amended the Ombudsperson Act so that information on how the Ombudsmen deal with personal information must be included in their annual report
	

Out of scope and withheld under s 9(2)(h)

OPENED UNDER THE
INFORMATION ACT

