Supplementary Government Response to Law Commission report on *Review of the Privacy Act 1993*

Presented to the House of Representatives

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Introduction

The Government has considered the Law Commission's report *Review of the Privacy Act 1993* (NZLC 123) tabled in the House of Representatives on 2 August 2011 (the report). On 27 March 2012 the Government tabled its initial response which addressed 51 recommendations, and deferred the majority of the remaining recommendations for further analysis. This supplementary response responds to the remainder of the recommendations of the report. The Government responds to the report in accordance with Cabinet Office circular CO (09) 1.

Executive Summary

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.

Since then information technology has developed significantly. Today large amounts of data can be stored, retrieved and transmitted digitally, and privacy breaches can affect large numbers of individuals. Consequently a regime more focused on early identification and prevention of privacy risks is required.

The Government's key proposals will give the Privacy Commissioner (the Commissioner) a stronger role in earlier identification and prevention of privacy risks. The primary role of the Commissioner in facilitating compliance and working with agencies will be maintained.

These proposals will give the public increased confidence to provide information to businesses and the public sector to enable better delivery of goods and services. The proposals are also in line with developing international expectations for doing business worldwide.

Background

Privacy Act 1993

The Act regulates what can be done with information about individuals and has wide-reaching implications – it applies to every 'agency', including Government, business, the voluntary sector and non-Government organisations.

The Act is designed around 12 information privacy principles which govern personal information at all points of its lifecycle. The principles are intended

to be flexible enough to enable agencies to develop their own information-handling policies, tailored to the needs of the agency.

Law Commission review of the Act

The Law Commission has reviewed the Act and published its report in June 2011. On 27 March 2012 the Government tabled its interim response to the Law Commission review. The Government agreed to replace the Act with a new Act, and retain a principles-based approach to the regulation of privacy. The Government also agreed to defer the majority of the Law Commission's recommendations for further consideration.

Supplementary Government Response

The Government wishes to thank the Law Commission for the report and for its work throughout its comprehensive review of privacy law.

Proposals to amend the Privacy Framework

The Government recognises that changes to New Zealand's privacy regime are required. Since the Act was passed information technology has developed significantly. Today large amounts of data can be stored, retrieved and transmitted digitally. As a result privacy breaches can impact on many people. A regime based on individual complaints is no longer adequate, and a greater focus on early identification and prevention is required.

Since the Law Commission's Report was released the Government has set expectations for a more efficient and effective joined-up service delivery that makes better use of information, including the Better Public Services programme. This introduces challenges for agencies to meet public and government expectations for enhanced service delivery, while at the same time meeting public expectations for protection of personal information

The Government's proposals for inclusion in a new Privacy Act will ensure the Commissioner has adequate tools to address privacy risks. These proposals are good for business and the public sector. They will give the public confidence in providing the information needed to conduct business and deliver public services. The proposals are consistent with international trends. Implementing these proposals will add to New Zealand's reputation as a good place to do business, and will contribute to economic growth and prosperity.

Appendix One provides an overview of all of the recommendations included in the initial and supplementary government response. Appendix Two has two parts. Part A details the less substantive recommendations which are to be implemented. Part B details the remaining recommendations.

Enabling the Commissioner to better identify, investigate and address emerging privacy risks proportionately

The Government has agreed to proposals that will enable the Commissioner to earlier identify, investigate, and respond to systemic privacy risks. The proposals will create an effective means of minimising harm, while retaining the Commissioner's primary focus on conciliation. The Commissioner will

also be able to focus on issues across sectors. The key proposals to be included in a new Privacy Act relate to:

- A two-tier approach to mandatory data breach notification - agencies will be required to take reasonable steps to notify data breaches to either the Commissioner, or the Commissioner and affected individuals, depending upon the seriousness of the breach. This modifies a Law Commission recommendation.

- Enhanced own motion investigations – the Law Commission recommended the Commissioner have the ability to audit agencies. The Government prefers enhancing the Commissioner's existing own motion powers to investigate emerging issues before serious harm occurs and for proactive assessment of agencies' systems and practices, by enhancing penalties for non-compliance and allowing for urgent requests for information. This will continue the Commissioner's current focus on conciliation, and the Commissioner would be better able to focus on issues across sectors.

- The power to issue compliance notices for breaches of the Act – the Commissioner will be able to issue a compliance notice to require an agency to do something, or to stop doing something, to comply with the new Act. This implements a Law Commission recommendation.

Clarifying obligations when private information is transferred across borders

The Government has agreed to proposals that will support New Zealand businesses to operate effectively internationally. The proposals for cross-border outsourcing and disclosure requirements in the new Act will provide New Zealanders with the same level of protection as citizens of other jurisdictions. The proposals implement recommendations from the Law Commission. The proposals will:

- Clarify that an overseas service provider is an agent of the New Zealand agency; and
- Ensure that a New Zealand agency is required to take such steps as are reasonably necessary to ensure that information disclosed to a foreign agency will be subject to acceptable privacy standards.

Streamlining the complaints resolution process to build trust in the system and increase efficiency and effectiveness - access complaints

The Government has agreed to make streamlining changes to enable complaints to be resolved quicker and more efficiently. These changes will enhance complainants' confidence that their complaints can be resolved quickly and efficiently. The proposal will enable the Commissioner to make decisions on complaints relating to access to information, rather than the Human Rights Review Tribunal. The Commissioner's decisions can be appealed to the Tribunal. This implements a recommendation of the Law Commission.

Other proposals

The Government has also agreed to a number of other proposals, including:

- creating new offences relating to misleading an agency and intentionally destroying documents;
- including an express statement of full accountability for domestic outsourcing arrangements, as a parallel provision to cross-border outsourcing arrangements;
- enabling the Commissioner to co-operate with international counterparts;
- undertaking further work to determine whether the APEC cross-border privacy system may provide a mechanism to increase benefits or reduce compliance costs; and
- proposals to clarify the Act, give agencies more certainty in managing personal information, and improve compliance.

Conclusion

Better privacy regulation benefits all New Zealanders. This Government Response proposes a package of reforms that achieves the right balance between protecting people's privacy and allowing businesses and government to conduct business efficiently. It will provide a proportionate approach to enforcement, with a strong emphasis on identifying problems early and assisting agencies to comply, backed up by effective remedies where necessary.

APPENDIX ONE

Government response to Law Commission's recommendations from its review of the Privacy Act 1993 (including both interim and supplementary responses)	
Recommendations	**How addressed**
1, 2, 91	**Agreed** in the interim Government response
5, 7, 8, 11, 12, 13.1, 14, 16-18, 20, 22, 23, 25, 26, 28, 29, 32, 33, 35, 40.1, 41-44, 45.1, 45.2, 47, 48, 51, 54, 56-59, 60, 62, 63, 66.1, 66.2, 80-82, 90, 93, 97, 101, 102.1, 107, 109, 110-112, 117, 119, 120.1, 126, 132, 134 MoJ recommendation regarding duty on agencies and individuals to take reasonable steps to resolve their disputes, 19 from Stage 3 of the Law Commission's review	**Agreed** in the supplementary Government response
3, 37, 64, 65, 67-79, 114-115	**Agreed in a modified form, or partially agreed**, in the supplementary Government response
100,127, 128, 129, 131, 133, 135 and 136	**Deferred** by interim Government response
36, 52, 53, 7 from Stage 2 of the Law Commission's review	**Deferred** in supplementary Government response
104, 105	**Included** in the response to GCIO's report on publicly available systems
125, 18 from Stage 3 of the Law Commission's review	**Rejected** in interim Government response
27	**Rejected** but, instead, the supplementary Government response **invites the Privacy Commissioner and the Ombudsmen** to provide additional education and guidance
103, 106	The supplementary Government response **invites the Privacy Commissioner** to consider these recommendations
6, 13.2, 19, 21, 40.2, 49, 50, 55, 61, 86, 87, 88, 89, 102.2, 122	**Rejected** in supplementary Government response

30, 31, 99, 130 and the eight recommendations in Appendix 1	The Government **responded** to these recommendations on Government information sharing when it introduced the Privacy (Information Sharing) Bill
91	**Implemented** through the Criminal Procedure Act 2011
10, 45.3	**Implemented** in Harmful Communications [CAB Min (13) 10/5]
116	**Considered** by Cabinet in context of the Consumer Law Reform Bill [EGI Min (12) 16/5]
46	To be **considered** by Cabinet as part of policy matters arising from the review of NZSIS [CAB Min (13) 14.1]
83, 84 and 92.2	**Referred** to the Legislation Advisory Committee for its Guidelines, as agreed in **interim response**
4, 9, 15, 24, 34, 85, 92.1, 94, 95, 96, 98, 108, 113, 118, 120.2, 123, 124	The interim Government response **invited the Privacy Commissioner** to consult the Ministry of Justice and relevant partner agencies and submit a plan for developing the guidance and education material recommended by the Law Commission
116	**Transferred** to the Ministry of Business, Innovation and Enterprise
121	**Not for Government**
38, 39	**To be considered** in the Government response to ‘new media, as agreed in **interim response**

Government response to Privacy Commissioner's recommendations from its review of the Privacy Act 1993: Necessary and Desirable and four supplementary reports	
Recommendations	**How addressed**
4, 5, 6, 7, 7A, 8, 8A, 10, 12, 17A, 19A, 20, 21, 23, 23A, 24, 25, 25B, 26, 28, 28A, 29, 30, 31, 32, 33, 34, 34A, 35, 37B, 40, 41, 42, 44, 46A, 48, 49, 52, 56, 56A,58A, 65, 66, 71, 75, 75A, 79, 82, 82A, 83, 102A, 107A, 112, 117, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 131, 132, 133, 134, 135, 135A, 136, 137, 138, 148, 149, 154	**Overtaken** by Law Commission recommendations
1, 2, 3, 16, 17, 25A, 39, 39A, 43, 47, 53, 54, 55, 58, 60, 60A, 64, 68, 69, 69B, 70, 73, 74, 78, 80, 81A, 101, 101A, 101C, 101D, 101E, 101F, 102, 103, 104A, 107, 109, 110, 112A, 112B, 113, 115, 116A, 144, 145, 146, 147, 149A,153	**Agreed**
9, 37, 38, 113B, 114, 116, 118, 119, 130, 150	**Withdrawn** by Privacy Commissioner
19, 22, 36, 37A, 45, 46, 59, 61, 63, 113A, 113C	**Implemented** through the enactment of or amendment to other legislation
51, 81, 83A, 106, 108	**Referred** to (or addressed in) another work stream, **or** overtaken either by work in another work stream **or** overtaken by a MoJ recommendation **or** addressed through bid for baseline increase
11, 13, 14, 15, 50, 57, 62, 67, 69A, 72, 76, 77, 101B, 104, 105, 111, 151, 152	**Rejected**
18, 27, 67A, 84-100, 139-143	**Deferred**

APPENDIX TWO: LESS SUBSTANTIVE RECOMMENDATIONS

Part A: Recommendations to be implemented

Law Commission recommendations		
#	**Recommendation**	**Discussion and impacts**
3	The Privacy Act should have a purpose section, with specific clauses as drafted by the Law Commission	Agree the new Act should have a new purpose section. Final wording (agreed during drafting) will build upon the Law Commission's suggestions and focus on balancing privacy interests with important social and business interests.
5	The Act should provide that codes of practice may apply any of 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 provide clarification.
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
13.1	Principles 3(4)(a) 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.*	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. *Principle 8 provides that the accuracy of information is to be checked before use*	Minor and technical amendment
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.	Agee with the intention of this recommendation. Will work with PCO during the drafting phase to determine the best way to implement the recommendation
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.*	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
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 or 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.
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.*	Agree. Will provide third parties with increased protection
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	Enhances the protection of individuals and ensures that information requested only applies to the

	a victim.	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. A consequential amendment should be made to section 15A of the Official Information Act.
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. *Section 54 relates to the Commissioner authorising collection, use or disclosure of information. Principal 9 relates to agency not to keep personal information for longer than necessary.*	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 in relation 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*	Minor and technical amendment. Since enactment, no personal directory has been published.

	information.	
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 of the Law Commission's report.	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.
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 • provide that in future regulations should not override the privacy principles unless the empowering Act expressly so provides.	Minor and technical amendment. Wording of the new section 7 will be determined during the drafting phase.
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	Minor and technical amendment.

	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 information.*	
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.	Minor and technical amendment, 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.
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 obtain specialist advice.

132	There should no longer be a requirement of five-yearly review 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		
#	**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
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.	Agree. Minor drafting change.
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 those 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.	Agree. Minor drafting change.

	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	
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. Note: some Acts are no longer in force. Amendments should be made to the new Act where relevant provisions have been carried across
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. A consequential amendment should be made to section 14 of the Official Information Act
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.
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)".	Agree with intention of this recommendation. Will determine the best way to implement this recommendation during drafting
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. *Section 44 states that reasons for refusal are to be given*	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	Agree. Minor drafting change.

	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*	
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. *These sections relate to referring complaints*	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.	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. Minor drafting change.
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.

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, codified in the Law Reform 1936, 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]
13.2	3(4)(f)(ii) should be deleted. *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*	Reject. There has been considerable uptake by government in the use of administrative data for statistical and research purposes. The Department of Statistics considers that it would be impractical and inefficient to implement this recommendation.
19	"Authorise" should be defined in section 2 as excluding situations in which an individual's agreement is obtained under duress	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.
21	Sections 27 to 29 should be amended to incorporate the agency "belief on reasonable grounds threshold, for consistency with principles 10 and 11	Reject. The change would weaken principle 6 – the cornerstone of the Act.
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 1,5,8 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*	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.	Defer as above.
55	The role of the Director of Human Rights Proceedings should be removed in privacy cases. The Privacy Commissioner should decide which cases are to proceed to the Human Rights Review Tribunal and act as the plaintiff in those cases, and perform the other roles currently preformed by the Director.	Reject. The primary conciliation role of the Commissioner is maintained, and the continued separation of compliance and litigation functions ensures that parties can freely engage in conciliation Prosecutorial resources and expertise will not need to be duplicated in OPC.
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
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.
91	Section 42(2) of the Criminal Disclosure Act 2008 should be amended to refer to the Evidence Regulations 2007	Implemented in the Criminal Procedure Act 2011
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.	Included in the response to the Government Chief Information Officer's report on its 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.	As above.
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 matters the Commissioner must have regard to*	Reject. UNCROC is considered in developing 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.

Necessary and Desirable recommendations		
#	**Recommendation**	**Reason for response**
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.	Overtaken by Law Commission recommendation 1, which has been previously agreed.
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 as above.
7	Consideration should be given to whether it is appropriate to replace the total exemption for the Parliamentary	Overtaken as above.

	Service Commission in subparagraph (b)(v) of the definition of "agency" with a partial exemption.	
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 as above.
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 as above.
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 as above.
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.
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.	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 which is agreed.
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 which is agreed.
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”.	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 which is agreed.
20	Information privacy principle 3(4)(a), (non compliance is authorised by the individual concerned), should be repealed.	Overtaken by Law Commission recommendation 13 which is agreed.
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 which is agreed.
22	Consideration should be given to establishing a judicial warrant process in relation to the use of covert video surveillance in the investigation of offences.	Implemented by the Search and Surveillance Act
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 which is agreed.
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 those recommendations.
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 which is agreed.

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 as above.
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 which is agreed.
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 which is agreed.
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)	Overtaken by Law Commission recommendation 117 which is agreed.
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 12(2).	Overtaken by Law Commission recommendation 54 which is agreed.
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 13(1)(d) should be repealed and the content of section 21(1)(a) to (f) transferred to a rewritten section 22 (Commissioner may require agency to supply information).	Overtaken by Law Commission recommendation 48 which is agreed.
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 which is agreed.
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 which is agreed.
44	Section 23 (privacy officers) should be amended to delete the words “within that agency”.	Overtaken by Law Commission recommendation 126 which is agreed.
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. These recommendations are rejected.
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.	Reject. This is not deemed necessary at this time.
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.	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 agreed 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 which is agreed.
56A	Consideration should be given to simplifying or omitting the definition of "medical practitioner" in section 29(4).	Overtaken by Law Commission recommendation 26 which is agreed.
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, 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.	Reject. 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 which is agreed.
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 which is agreed.
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 which is agreed.
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 which is agreed.
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 which is agreed.
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

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 which is agreed.
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.	Overtaken by Law Commission recommendation 45 which is agreed.
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 work stream.
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.	Deferred 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.	Deferred as above.
87	Public register privacy principle 2 should be re-enacted with a structure which more clearly leads users to identify its elements.	Deferred as above.
88	Public register privacy principle 3 should be amended by adding “in New Zealand” after the words “a member of the public”.	Deferred 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.	Deferred 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.	Deferred 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.	Deferred 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).	Deferred 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".	Deferred as above.
94	Section 60(2) should be amended: (a) by omitting the words "as far as is reasonably practicable"; and (b) by substituting an exception based upon the authorisation of the individual concerned.	Deferred 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.	Deferred 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.	Deferred 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.	Deferred 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.	Deferred 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.	Deferred as above.
100	The official information statutes should be excluded from questions of release of personal information from public registers.	Deferred 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 unreasonable compliance costs
102A	Consideration should be given to providing for the registration and handling of representative complaints.	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: (a) the complainant has not complained to the agency concerned and the Commissioner considers that the	Overtaken by MOJ recommendation

	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.	Overtaken by Law Commission recommendation 114 which is agreed.
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 bid for baseline increase.
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.
119	Consideration should be given to replacing references in Part X and elsewhere to "information matching" by "data matching".	Withdrawn by Privacy Commissioner.
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 as above.
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 as above.

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 as above.
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 as above.
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 as above.
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 as above.
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 as above.
128	Section 103(1) should be amended by substituting a 10 working day period for the present 5 working day period.	Overtaken as above.
129	Section 103(1A), (notice of adverse action proposed), should be repealed.	Overtaken as above.
130	Consideration should be given to amending section 104(2)(e) to adopt 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 which is agreed.
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 as above.
134	Information matching rule 2 should be amended by deleting the phrase “unless their use is essential to the success of the programme” and replaced 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 as above.
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 as above.
135A	The Commissioner should be empowered to grant exemptions from information matching rule 6(1).	Overtaken as above.
136	Information matching rule 8(2) should be repealed or, if retained, its purpose and effect made plain.	Overtaken as above.
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 as above.
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 as above.
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 bedded down.
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.	Deferred 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.	Deferred as above
142	Provision should be made to allow the Fifth Schedule to be amended by Order in Council subject to a five year	Deferred as above

	sunset clause.	
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. Agree with both recommendations.
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.	Overtaken as above.
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.	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.