



NATIONAL COUNCIL OF WOMEN OF NEW ZEALAND
TE KAUNIHERA WAHINE O AOTEAROA

19 March 2012

S12.06

**Submission to the Justice and Electoral Committee on the
Privacy (Information Sharing) Bill 318-1**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 51 nationally organised societies and national members. It has 23 branches throughout the country attended by representatives of those societies and some 150 other societies as well as individual members. NCWNZ's function is to represent and promote the interests of New Zealand women through research, discussion and action.

This submission has been prepared by the Public Issues Standing Committee based on policy, previous submissions, and using information gathered from the membership in consultations on other topics. It has been peer reviewed by the Parliamentary Watch Committee.

NCWNZ's current policy supports the protection of privacy in relation to electronic information and the upholding of Article 12 of the United Nations Declaration of Human Rights, which states that no-one should be subjected to arbitrary interference with their privacy and that everyone has the right to protection of the law against such interference.

Part 1 Amendments to Privacy Act 1993

Clause 4 Interpretation

The proposal in **4(1)** to amend the definition of **department** may not necessarily introduce the required clarity. The current definition (Privacy Act 1993, 2(1)(a)) says that

agency — (a) means any person or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector; and, for the avoidance of doubt, includes a department;...

There may well be other agencies of the public sector besides the New Zealand Police with whom the sharing of information is necessary. District Health Boards, for example, are defined as crown entities. It would perhaps be better to remove the words "and, for the avoidance of doubt, includes a department". The nuances of government sector agency classification are not known to many people.

NCWNZ agrees with the addition of a new definition for **serious threat**, as provided in **4(3)**.

Clause 6 Functions of Commissioner

Should Orders in Council be used for an information sharing agreement, it is essential that the Privacy Commissioner make submissions on them **6(a)**, and report on any matter relating to privacy that arises from an approved information sharing agreement **6(b)**.

Clause 8 New Part 9A inserted

The proposed **96D** Interpretation introduces a definition of **public sector agency** as a department, and organisation or a local authority. This does not add clarity to the definition used under **agency** in s.2 of the Privacy Act.

The State Services Commission defines government agencies using the phrases “public service”, “state services” and “state sector”¹. The definition of **public service** proposed in **96D** does not align with this, or with the definition used in the State Sector Act 1988.

NCWNZ has concerns around the use of Orders in Council **96G**, where changes may be introduced without the scrutiny of parliament. While **96K** identifies the issues that the relevant Minister must take into account and **96L** outlines a consultation process, there is no informed consent process with the people affected by the sharing of information, nor how the accuracy of the information will be validated yet **96K2(c)** merely stipulates that the “agreement does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy”. Neither “unreasonably” nor “adequate” are easy to measure, being subjective terminology. It is not sufficient that the affected person is only given notification **96N(1)** when adverse action is to be taken.

While **96K2(d)** introduces a financial factor, NCWNZ believes that where there is a benefit to the sharing of information, cost should not be a prime consideration.

Nor are there safeguards around use of the information for political purposes. It should be compulsory for the Privacy Commissioner to prepare and publish a report (**96M** indicates this is an optional process by using the verb “may”) on any approved information sharing agreement. Likewise reviews **96P** are an optional activity, being at the Privacy Commissioner’s discretion. There should be a regular auditing requirement for all information sharing agreements with the results reported to Parliament.

Another concern is the currency of the information. Some consideration should be given to a clean slate type approach so that the information reflects current

¹ SSC. 2011. A guide to New Zealand’s central government agencies. Available [15 Mar 2012] <http://www.ssc.govt.nz/sites/all/files/guide-to-central-govt-agencies-1sept11.pdf>

behaviours, particularly where there has been no negative activity for a period of time.

NCWNZ agrees that at least one of the agencies must be a public service department **96T** and that a public service department must be the lead agency **96V**. Overseas agencies^{96T} are excluded from being a party to an information sharing agreement, but this may well exclude a potential party where that agency has a branch operating in New Zealand.

Stipulated reporting **96W** is identified as a requirement under the Public Finance Act 1989. There will also be auditable requirements under the Public Records Act 2005.

Conclusion

NCWNZ is supportive of the purpose of the Bill as stated in **96B(1)** – to enable the sharing of personal information to facilitate the provision of public services – but has concerns for the appropriate sharing of the data, and its protection. While the recent incident at ACC² identified the consequences when internal mechanisms fail, the biggest challenge to data privacy today is from external sources such as hacktivism – the act of gaining unauthorized access to a computer system for a politically or socially motivated purpose³ – and firewall attacks.

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² ACC. 2012. *Situation report – breach of privacy, disclosure of claims data*. Available [17 Apr 2012] http://www.acc.co.nz/PRD_EXT_CSMP/groups/public/documents/papers_plans/wpc108730.pdf (NB report incorrectly dated 2011)

³ See <http://searchsecurity.techtarget.com/definition/hacktivism> for a fuller definition.