

# Privacy Commissioner's submission to the Social Services and Community Committee on the Redress System for Abuse in Care Bill (209-1)

1. I am pleased to provide a submission to the Social Services and Community Committee (the Committee) on the Redress System for Abuse in Care Bill (the Bill).
2. The Privacy Act 2020 is New Zealand's main privacy statute. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.
3. The Bill would establish a framework for the provision of redress to survivors of abuse in state care. Notably, it introduces a presumption against financial redress for serious violent or sexual offenders, but includes a process for such offenders to apply to have this presumption overturned.

## Provisions of the Bill relating to personal information

4. Clauses 13, 14, 15, and 17-24 are relevant to privacy of personal information. For the purposes of this submission, the following are most relevant:
  - Clause 13: an applicant for redress must consent to a criminal record check being undertaken and make a declaration as to whether they have been convicted of a violent, sexual or firearms offence for which they were sentenced to imprisonment for 5 years or more (whether or not that sentence was also imposed in relation to any other offence).
  - Clause 14: an applicant convicted of a violent, sexual or firearms offence after making the application but before receiving redress must disclose that conviction to the redress agency.



- Clause 15: the redress agency may conduct a criminal record check in relation to an applicant.
5. Information about a person’s criminal record, and other information that is likely to be collected or reported on under the above clauses, is sensitive personal information that needs to be handled with care.

## Access to survivors’ criminal records and related information

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6. My office was not consulted about the Bill while it was in development. According to the disclosure statement for the Bill, this is because:
- the Bill is a consent-based regime that relies on people applying for financial redress providing consent for a criminal record check by a redress agency and consent for the Redress Officer to collect and consider certain information (e.g. relevant Corrections information) for the purposes of making decisions about whether the presumption against financial redress should be overturned.
7. Under the Privacy Act, information about an individual can be disclosed from one organisation to another with the authorisation of the individual concerned. Meaningful authorisation, either under the Privacy Act or a different statutory regime, should include the individual having some choice about whether or not to agree to the disclosure.
8. Any survivor wanting to apply for redress, and any serious violent or sexual offender seeking to have the presumption against redress overturned, will have no choice but to consent to the disclosure of their criminal record and other required information. At best, the consent requirement provides an opportunity for a survivor to decide not to proceed with an application, because they do not wish their criminal record to be disclosed.



9. At the same time, given the policy decision to introduce a presumption against redress for serious violent and sexual offenders, redress agencies and redress officers will need the information in question in order to make decisions under the redress framework. Since the framework cannot operate without this sensitive information, I recommend other safeguards should be introduced to protect survivors' information.

### **Retention and disposal of information**

10. It seems likely that redress agencies will need to retain information about applicants who are serious violent or sexual offenders, so that their decisions about granting or not granting redress to these applicants are documented. They will also need to retain information about applicants for whom there has been a determination by a redress officer not to grant redress, in case those applicants later make a second application or otherwise challenge the decision.
11. However, I can see no reason why redress agencies would need to retain criminal record information about individuals who are not serious violent or sexual offenders. I recommend that, having obtained the applicant's criminal record and determined that the individual is not covered by the presumption against redress to serious violent or sexual offenders, the agency should be required to delete the applicant's criminal record information. The Bill should be amended accordingly.

### **Use of information**

12. Redress agencies should use applicants' criminal record information, and other the additional information obtained in the course of making a determination about a serious violent or sexual offender, only for the purposes of administering the redress scheme. Information privacy principle 10 (IPP 10) of the Privacy Act would usually prohibit them from using the information for any other purpose, but IPP 10 includes exceptions that would allow information to be used for another purpose in some circumstances. Given the sensitivity of the information in



question, I think it would be appropriate for the Bill to include an absolute prohibition on redress agencies using the information for any purpose other than the administration of the redress scheme.

## Reports on decisions to overturn the presumption against redress for serious violent and sexual offenders

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13. It is unclear how detailed the annual reports under clause 22 by redress officers about determination that a serious violent or sexual offender should be eligible for financial redress are intended to be. These reports are to provide ‘an anonymised summary of the basis on which and circumstances in which’ the determinations have been made. While the summaries may be anonymised, if they provide any level of individual detail about applicants, it seems likely that the applicant could be identified.

14. I encourage the Committee to consider whether there is a sound policy basis for such reports to be made public and, if there is, whether any additional protections are required. For example, the summary could be at a very general level, such as ‘applicant has showed good progress in rehabilitation’.

## Recommendations

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15. I **recommend** that the Bill be amended to:

- require redress agencies to delete criminal record information about applicants who are not serious violent or sexual offenders, once the agency has determined that the applicant is not covered by the presumption against redress to such offenders
- prohibit redress agencies from using information about applicants’ criminal records, and the additional information provided when serious violent or sexual offenders apply for the presumption against redress to be



overturned, for any purpose other than the administration of the redress scheme.

16. I trust my comments are of use to the Committee. I do not seek to be heard on my submission but am happy to appear before the Committee if that would be of assistance.



pp Michael Webster  
**Privacy Commissioner**

25 November 2025

