

Privacy Commissioner's Submission to the Economic Development, Science, and Innovation Committee on the Incorporated Societies Bill

Executive summary

1. The Bill appears to appropriately balance the public's legitimate needs to have access to personal information about those involved with incorporated societies, with the need to limit that access only for legitimate purposes, and to take account of personal safety and privacy.
2. I recommend one change to the Bill—
 - 2.1. That it includes an express reference in clause 225 to protection orders and other name suppression mechanisms as grounds for the Registrar having to remove and omit personal information.

Introduction

3. Thank you for inviting me to submit on the Incorporated Societies Bill ("the Bill"). The Privacy Act 2020 ("Privacy Act") governs agencies' collection, retention, use and disclosure of the personal information of the individual. As such, my interests lie primarily in ensuring the appropriate protection of natural persons. In this context, this extends to members of societies and, in some cases, officials of such societies.
4. The Privacy Act is New Zealand's primary privacy law. One of my functions as Privacy Commissioner under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals.
5. My comments concern the establishment of an electronic register of incorporated societies ("the Register").

Background – Part 6 of the Bill

6. The Bill establishes the Register under clause 222 (Part 6). Clause 223 sets out the Register's purposes, which includes enabling a member of the public to determine whether an entity is a society under the Bill, obtain information about the nature, activities, and purposes of a society, and find out how to contact a society.
7. In terms of personally identifiable information, clause 224 provides that the Register must contain (amongst other things) the following information for each society—
 - 7.1. The names of society officers and all persons who have been officers since the society was first registered.
 - 7.2. Notices of appointment of officers.
8. Clause 228 provides that a person may search the Register using the name of an officer of a society as a reference. It also sets limits on the criteria by which a person may search the Register, one criterion being the name of an officer of the society.

9. Clause 229 states that a search of the Register may be carried out only by the following persons for the following purposes –
- 9.1 a person for the purpose of determining whether an entity is a society under the Bill.
 - 9.2 a person for the purpose of obtaining information about the nature, activities, and purposes of a society.
 - 9.3 a person for the purpose of knowing how to contact a society.
 - 9.4 an individual, or a person with the individual's consent, for the purpose of searching for information about that individual.
 - 9.5 a person for the purpose of assisting the person in the exercise of the person's powers under this Act or any other enactment.
 - 9.6 a person for the purpose of assisting the person in the performance of the person's functions under the Bill or any other enactment.
10. Clause 230 further provides that a search of the Register for personal information that has not been carried out in accordance with clauses 228 and 229 constitutes an action that interferes with the privacy of an individual under section 69 of the Privacy Act.

Specific comments

11. When establishing a public register, agencies should consider the associated risks to privacy and their corresponding obligations. This means that agencies should consider what information collected for the register needs to be made public to meet some legitimate public interest.
12. Under clause 224(i), the Register must contain "any other information prescribed by the regulations" with respect to each society. Clause 245(1) enables the Governor-General to prescribe, by way of regulations, the information that must be included or provided for the purposes of the Bill. I recommend that due regard is given to whether the information prescribed by regulations contains personal information, whether it needs to be included, and whether my Office needs to be consulted prior to the Minister recommending such regulations to ensure that the personal information is adequately protected.
13. I always recommend that agencies consider implementing measures that allow individuals to withhold their details to protect their privacy or safety. Agencies should also consider whether there should be grounds that individuals can rely on to request their information is removed from public access altogether, or to correct the information if it is incorrect.
14. I am pleased to see that under clause 225(2), the Registrar may, on a request from a society or an individual or on the Registrar's motion, prevent or restrict public access to any information that relates to an individual if the Registrar considers that public access to that information would be likely to prejudice the privacy or personal safety of any person. I would like to see express reference in clause 225 to protection orders and other name suppression mechanisms as grounds for the Registrar having to remove and omit personal information. I recommend some additional wording be added to clause 225, which I set out in the Schedule to this submission.

- 15 Overall, however, I am pleased to see that the Registrar has the discretion to prevent or restrict public access to information.

Implementation

- 16 A public register containing personal information carries some implementation risk, notwithstanding the protections written into law. It will be important for example that technical constraints are put in place to prevent scraping the register by bots, and to have some means of monitoring and enforcing compliance with clause 229. We intend to raise these matters with the Department as it develops its business rules and technology for administering the register.

Conclusion

- 17 Thank you for the invitation to submit on the Bill. I do not seek to be heard on my submission but am happy to appear before the Committee if that would assist.



John Edwards
Privacy Commissioner

31 August 2021

Schedule Suggested wording for clause 225 of the Bill

225 Registrar may remove or omit information and may restrict public access

- (1) The Registrar may remove or omit from the register any information that relates to a society if the Registrar considers, in the public interest, that the information should not form part of the register.
- (2) The Registrar may, on a request from a society or an individual referred to in paragraph (b) **or (c)** or on the Registrar's own motion, prevent or restrict public access to any information that relates to—
 - (a) the society if the Registrar considers, in the public interest, that public access to that information should be prevented or restricted; ~~or~~
 - (b) an individual if the Registrar considers that public access to that information would be likely to prejudice the privacy or personal safety of any person; **or**
 - (c) **an individual if that individual is subject to a protection order under the Family Violence Act 2018 or any other suppression order which has the force of law.**
- (3) For the purposes of subsection (2), the Registrar may prevent or restrict access subject to any terms and conditions that the Registrar thinks fit.
- (4) This section does not limit the Official Information Act 1982.