

## **Privacy Commissioner's Submission to the Pae Ora Legislation Committee on the Pae Ora (Healthy Futures) Bill**

### **Introduction**

1. I am pleased to provide a submission on the Pae Ora (Healthy Futures) Bill (the Bill).
2. This Bill provides for a new structure and new accountability arrangements for the publicly-funded health system, in order to protect, promote, and improve the health of all New Zealanders. It provides a new legal framework for the health system and introduces a new set of principles to provide common expectations across all levels of the health system.
3. The special and sensitive nature of personal health information plays a vital role in New Zealand's health system. The Bill heralds a significant overhaul of the health system and it is critical that privacy underpins the design of the health sector to ensure people can trust that their personal information is kept safe. My office looks forward to working with the key agencies to ensure the system is designed with privacy in mind.

### **Privacy law in New Zealand**

4. The Privacy Act 2020 (the Privacy Act) is New Zealand's main privacy law. One of the Privacy Commissioner's functions under the Privacy Act is to examine proposed legislation that may affect the privacy of individuals. The Privacy Act governs the collection, use, storage and disclosure of personal information and provides a mandate for my Office to consider wider developments or actions that affect personal privacy.
5. The health system and privacy are closely connected through the Health Information Privacy Code (the Code), which is a legal instrument issued by the Privacy Commissioner under the Privacy Act. The Code sets specific rules for agencies in the health sector and covers the collection, storage, use, and disclosure of health information by health agencies. Health agencies that are subject to the Code must follow its rules unless another law expressly overrides the Privacy Act.
6. The Code is based on the existing health system structure and organisations established by the New Zealand Public Health and Disability Act 2000. My office is working to ensure the Code aligns with, and supports, the structure of the health system from July 2022 when new health entities are established by legislation.

### **Comments on the Bill**

7. My submission largely focuses on two information sharing provisions in the Bill that have been carried over from the New Zealand Public Health and Disability Act 2000. Given the new legislation, I consider it is timely to review the provisions concerning information sharing to ensure they are fit for purpose.

#### *The Minister may appoint Crown observers (clauses 55-59)*

8. Clause 55 of the Bill enables the Minister to appoint Crown observers to attend meetings of Health New Zealand or the Māori Health Authority if the Minister considers it desirable for the purpose of assisting in improving the performance of that health entity. Under Clause 55(6), the Crown observer may provide to the Minister any information that the

Crown observer obtains in the course of acting as such. Clause 55(7) provides that the disclosure of this information to the Minister is subject to the Privacy Act 2020.

9. The Crown observer provisions have been carried over from the equivalent provisions in the New Zealand Public Health and Disability Act 2000.
10. In the course of their duties, Ministers may have occasion to be provided with or to request personal information held by the departments for which they are responsible.<sup>1</sup> This information is subject to the Privacy Act and Health Information Privacy Code unless legislation overrides the Privacy Act. Clause 55(7) therefore essentially reiterates the law and provides the avoidance of doubt that the Privacy Act applies to personal information provided to the Minister.
11. I consider it unlikely, based on the proposed purpose and functions of the Crown observer, that advice the Crown observer provides to the Minister in accordance with these clauses will require the disclosure of personal information. I therefore recommend consideration is given to specifically prohibiting personal information obtained by the Crown observer in carrying out its functions from being provided to the Minister. The amendment could be similar to clause 93(3) of the Bill which provides that the Director-General must not request any personal health information for the purpose of monitoring the performance of any health entity or the health system in general.

*Provision of information to the Minister of Finance (clause 58 (3))*

12. Clause 58(1) provides that the Minister of Finance may require a health entity to provide economic or financial forecasts or information, relating to the health entity or its subsidiaries, to the Minister or any specified person or class of person. Clause 58(3) then provides that “no requirement under this section may require the supply of any information that would breach the privacy of any natural person or deceased natural person, unless the person (or a representative of the deceased person) has consented to the supply.”
13. The provisions about supplying information to the Minister of Finance have been carried over from the equivalent provisions in the New Zealand Public Health and Disability Act 2000. I recommend the purpose of the provisions is reconsidered by the Committee.
14. Clause 58(1) provides a statutory basis for sharing certain information with the Minister of Finance, which may include personal information. Clause 58(3) then ensures information provided to the Minister of Finance under these provisions does not breach the privacy of natural persons. This clause is essentially replicating the current privacy law that individual privacy should be protected from a breach.
15. The economic and financial nature of the reports is unlikely to require or justify the inclusion of personal information and the disclosure of personal information is not necessary to meet the purposes of the reports. I therefore recommend the wording of clause is clarified to prohibit the disclosure of personal information to the Minister of Finance. This could again be similar to clause 93(3) of the Bill, which provides that the

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<sup>1</sup> Refer [Departmental disclosure of personal information to Ministers and further disclosure of such information by Ministers: Privacy Act considerations](#). Advice developed by the Office of the Privacy Commissioner in conjunction with Crown Law Office

Director-General must not request any personal health information for the purpose of monitoring the performance of any health entity or the health system in general. I recommend 58(3) is amended to state: no requirement under this section may require the supply of personal health information of any identifiable person unless the person (or a representative of the deceased person) has consented to the supply.

*Transfer of information to Health New Zealand (Schedule 1)*

16. Clauses 9(2) and 17(2) of Schedule 1 provide that the transfer of information from a district health board and the Health Promotion Agency to Health New Zealand does not constitute an action that is an interference with privacy under section 69 of the Privacy Act. There is a similar provision in [Schedule 3 \(2\)](#) of the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill. I recommend the Committee considers this drafting for legislative consistency.

*Reference to the Privacy Act*

17. There is a drafting error in *Part 1 Amendment to Acts*, which refers to the Privacy Act 2002 instead of the Privacy Act 2020.

**Conclusion**

18. I trust my comments are of use to the Committee in its consideration of the Bill. I do not seek to be heard on my submission.
19. My office looks forward to working with agencies to ensure privacy is at the forefront of the design and implementation of the health system reforms to ensure New Zealanders can trust their personal information is safeguarded.

John Edwards  
**Privacy Commissioner**

9 December 2021