

Privacy Commissioner's submission to the Social Services and Community Committee on the Oranga Tamariki Amendment Bill 2021 (95-1)

1. I am pleased to provide a submission on the Oranga Tamariki Amendment Bill 2021 (**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 only issue I wish to raise in my submission on the Bill is repeal of the compulsory information sharing provisions in the Oranga Tamariki Act 1989 (**the OT Act**).

Overall comment on the Bill

4. I support the Bill's overall intent.
5. I have not identified any privacy concerns with the partial repeal of the subsequent child provisions, and I have no concerns with the other technical amendments.
6. I support the repeal of the section 66D dataset provisions. These provisions were brought into force by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act (**the CYPF OT Act**), which was passed in 2017. The proposal to repeal them aligns with the Privacy Commissioner's submission at the time, which noted that it was unclear what the provision was intended to achieve.¹

Compulsory information sharing provisions

7. My submission focuses on the compulsory information sharing provisions, and related code of practice, found at sections 66E to 66J and 66L to 66P of the OT Act.
8. These provisions were also brought into force by the the CYPF OT Act. My submission outlines the concerns that the previous Privacy Commissioner raised at the time.²
9. The compulsory information sharing provisions authorise requests for information from and to authorised child welfare and protection agencies or authorised independent persons about children and young people. They state that such requests must be complied with unless one of the specified grounds for declining a request outlined in the OT Act applies.

¹ Paragraphs 27 to 29, <https://privacy.org.nz/assets/New-order/Resources/Publications/Reports-to-Parliament-and-Government/Submission-on-the-CYPF-Oranga-Tamariki-Legislation-Bill.pdf>

² Paragraphs 22 to 26, <https://privacy.org.nz/assets/New-order/Resources/Publications/Reports-to-Parliament-and-Government/Submission-on-the-CYPF-Oranga-Tamariki-Legislation-Bill.pdf>

10. In practice, this will amount to compelling people to provide information. For example, a social worker could compel information from a Family Planning Clinic about whether a client is pregnant with no explanation. Conversely, the current provisions would allow for a dialogue about the reason for the request, whether the disclosure is warranted and whether any alternative approaches could be taken.
11. Section 66E of the OT Act stipulates that the compulsory information sharing provisions do not come into force until a code has been approved by the Minister. A code has not been developed, so these provisions are not currently in force.
12. Even though the provisions are not in force, I remain concerned about the framework. My view is that the current legislative process provides a useful opportunity to repeal them and provide certainty to the sector, children and young people, parents, and carers.
13. I do not consider that there is any evidence that compulsory information sharing is necessary. The voluntary information sharing provisions brought into force by the CYPF OT Act appear to be working well and supporting better sharing of information to help support the sector's work with tamariki and whānau. In the absence of any issue with current information sharing systems there would be no need to bring these additional provisions into force, particularly when they may have significant adverse impacts.
14. The concerns with the framework outlined by the previous Privacy Commissioner in 2017 remain relevant:
 - There could be a potential deterrent effect. Families who may need support may be unwilling to have their information shared widely. These families may be deterred from engaging with support services.
 - There would be a reduction of transparency and the need for professionals to build strong relationships. Currently if information sharing is being considered, the professionals involved will need to engage in a dialogue. Under this system they will have to share without engaging in the particulars of the situation - the reasons why information is needed and the risks that may be involved.
 - There would be a removal of discretion and flexibility for professionals to work with clients in a manner most suited to their situation. The ability to apply professional judgement to a situation would be reduced.
15. If the provisions are not able to be repealed as part of the current process, I recommend that Oranga Tamariki expedite a process of review/consultation on them.

Conclusion

16. **I recommend** that the Committee consider removing the compulsory information sharing provisions of the OT Act as part of the current legislative process.
17. I consider that there is no evidence that these provisions are necessary. They are concerning as they may reduce trust, transparency, discretion, and create a deterrent effect to accessing services.
18. Removing the provisions now would provide certainty to the sector that they will not be brought into force at a future date.

19. Including the repeal of the compulsory information sharing provisions in the current Bill would also be consistent with the Bill's repeal of another redundant information sharing provision (section 66D).
20. 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.



Liz MacPherson
Acting Privacy Commissioner

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