

Privacy Commissioner's submission to the Finance and Expenditure Committee on the Natural Hazards Insurance Bill (113-1)

Summary

1. I am pleased to provide a submission on the Natural Hazards Insurance Bill (the Bill).
2. The Privacy Act 2020 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.
3. My comments are limited to clauses 139 and 140.
4. I **recommend** that clause 140 be removed from the Bill. I have not seen the policy rationale for the inclusion of such a significant departure from the Privacy Act.

The Bill

5. The Bill would replace the Earthquake Commission Act 1993 and change the name of the Earthquake Commission to Toka Tū Ake – Natural Hazards Commission. The overarching objectives of the changes are to enable better community recovery from natural hazards, to clarify the role of the Commission and the cover provided by the Bill, and to enhance the durability and flexibility of the legislation.
6. One of the intentions of the Bill is to clarify and strengthen the Commission's information-gathering powers and supporting information sharing with other government agencies and other persons with a proper interest in receiving it. It is this aspect of the Bill that my comments relate to.

Clause 139

7. Clause 139 carries over existing s 31A(3) from the Earthquake Commission Act, which provides that the Commission may make available any information in its possession if it believes on reasonable grounds that doing so is necessary to prevent or lessen a serious threat to public health or public safety or to the life or health of any individual.
8. This clause does not limit the Privacy Act 2020 or any other right the Commission may have to collect or disclose information.
9. This provision largely replicates existing exceptions in the information privacy principles which allow for the use and disclosure of personal information where there is a serious threat to public health, safety or the life or health of any individual; however this provision (like its predecessor in the Earthquake Commission Act) also applies to non-personal

information. For that reason, I am not recommending its removal on the basis it is an unnecessary duplication of the exceptions in the information privacy principles.

10. I note for the avoidance of doubt my view on the basis of cl 139(2) that any disclosures made under cl 139 could be investigated by my Office as though it were a disclosure made under the Privacy Act 2020.

Clause 140

11. Clause 140 of the Bill is an information disclosure provision which would allow the Commission to disclose any information (including personal information) to:
 - the Crown or a Crown entity; OR
 - to any recipient if the Commission believes on reasonable grounds that:
 - i. the recipient has a proper interest in receiving it for performing their functions or exercising their powers, or
 - ii. for law enforcement purposes
12. This is an unusually broad basis for the Commission to disclose information. As it is currently drafted, it provides for the Commission to disclose information to the Crown or a Crown entity without any parameters as to the purpose for that disclosure; or to any undefined recipient if they have fall within (i) or (ii) above.
13. I understand from my Office's engagement with officials that this drafting is broader than was intended to be captured, and that the policy intent was to allow EQC to disclose information to another government agency provided the requested/receiving agency has a proper interest in receiving the information for law enforcement purposes, or for the purposes of its functions or exercise of its powers.
14. While the policy intent described by officials is narrower than what is currently drafted, I am not satisfied that the justification for the intended use case is made out.
15. The Bill sets out the Commission's statutory basis for collection information in cl 138 using similar wording to the existing Act (s 31A). The wording of both provisions are based on recommendations made by my Office in 2018 to ensure the Commission's purpose for collecting data was clear as it is the statement of purpose that enables the use and disclosure of the data collected. Accordingly, there is no need for cl 140 as the Commission can already disclose information for one of the purposes for which it was collected (namely performing its functions under the Act), or a related purpose in accordance with information privacy principle 11(1)(a).
16. Should information need to be disclosed for other purposes, I have seen no evidence that there are deficiencies in the information privacy principle exceptions that would mean additionality is required in the Bill. Disclosing information for law enforcement purposes or for the purposes of any public sector agency's functions or exercise of its

powers is significantly broader than the information privacy principles, and I have seen no evidence it is necessary.

17. Including a provision this broad would remove individuals about whom the Commission holds information from having any transparency over who their information will be shared with and for what purpose. It also severely limits any rights of redress should their information be shared in unanticipated ways, as disclosures made under this clause as currently drafted would be permitted regardless of whether the disclosure was appropriate or reasonable.
18. I **recommend** that clause 140 be removed from the Bill.
19. 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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