

Privacy Commissioner's submission to the Governance and Administration Committee on the Severe Weather Emergency Recovery Legislation Bill [242-1]

1. I am pleased to provide a submission on the Severe Weather Emergency Recovery Legislation 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 is the second Bill in the legislative response to the heavy rain events in the upper North Island and Cyclones Hale and Gabrielle in early 2023. The general purpose of the Bill is to assist local authorities and communities in the areas affected by the severe weather events.
4. The Bill provides a broad power for the Governor-General to make Orders in Council on the recommendation of the relevant minister to exempt, modify, or extend provisions of certain legislation that are set out in Schedule 2. Cl 19 provides for additional Acts to be added to the application of the Bill by Orders in Council.
5. The Bill has had a one-day turnaround time for submissions to Select Committee. My Office has not had adequate time to review the Bill for potential privacy impacts.
6. I note that the Privacy Act 2020 is not one of the 30 enactments that are included in Schedule 2. However, there are several privacy-related provisions in the enactments listed in the Schedule, including information gathering and sharing powers, such as those in the Immigration Act 2009, Land Transport Act 1998, Local Government (Rating) Act 2002 and the Building Act 2004.
7. This means that these Acts could be amended by Order in Council in a way that would otherwise be inconsistent with the Privacy Act or contrary to privacy good practice. Adding the Privacy Act to cl 11(1)(c) of the Bill (which lists enactments in respect of which orders cannot be made) would not resolve this issue as the provisions in the enactments to Schedule 2 already override the Privacy Act.
8. If the requirements in cl 19 are met, the Privacy Act could be added to Schedule 2 by Order in Council. Cl 18(2) allows orders to be made with retrospective application. Given the sweeping nature of this regulation making power, strict controls on application are required.
9. I consider the appropriate course of action be for more time to occur to allow for both public and interagency consultation. Should the Bill proceed on existing timeframes, I **recommend** a protection be added which would require the Privacy Commissioner to be consulted on any orders which affect or may affect the application of the Privacy Act, or otherwise relate to the use of personal information.
10. I also **recommend** that the administering agency for each relevant piece of legislation, as well as any key regulators and stakeholders, are consulted on Orders in Council relating to their legislation.

11. Cl 20 provides that Orders in Council made under cl 19 are revoked unless a motion to approve the Order in Council is agreed to by the House of Representatives within a set time period. There is no equivalent requirement for Orders in Council made under cl 7. Because Orders made under this clause can override legislation, including legislation that deals with personal information, I **recommend** that all Orders in Council made under the Bill require a motion of approval in the House.
12. I trust my comments are of use to the Committee. I do not seek to be heard on the Bill.



Michael Webster
Privacy Commissioner

29 March 2023