

Submission on the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill

Introduction

1. Thank you for the opportunity to submit on Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (“the Bill”).
2. The Privacy Act 2020 (“Privacy Act”) which I oversee is the main legal framework governing the use and sharing of personal information in New Zealand.
3. Under the Privacy Act, the functions of the Privacy Commissioner include examining new legislation for possible impacts on individual privacy. It is also part of my role to monitor emerging privacy issues, and to offer guidance on how people in industry, government agencies, and across broader society can uphold their privacy obligations.
4. This Bill proposes new powers to collect, use, and share personal information about taxpayers through amendments to the Tax Administration Act 1994 (“TAA”).
5. My focus in this submission is to ensure these provisions align with the Privacy Act and uphold the privacy expectations of New Zealanders. My submission addresses:
 - New powers to share taxpayer information in emergencies.
 - Implementation of the OECD crypto-asset reporting framework.
 - Sharing taxpayer information to promote New Zealand Business Numbers.

New powers to share taxpayer information in emergencies

6. This Bill proposes law changes enabling the tax system to respond to emergencies in a more standardised way, including through sharing of information about taxpayers affected by an emergency. I support this policy goal.
7. I understand that the policy intent is to override specific confidentiality provisions which apply under section 18 of the Tax Administration Act 1994 (“TAA”), allowing the Commissioner of Inland Revenue to authorise information sharing consistent with and governed by requirements under the Privacy Act 2020. I welcome this approach.
8. The Privacy Act 2020 operates both to uphold New Zealanders’ privacy expectations, and to enable information sharing which serves important policy purposes, including information sharing which is necessary to support emergency response measures.
9. Recognising the importance of information sharing in emergencies, my Office issued and continues to administer the Civil Defence National Emergencies (Information Sharing) Code 2020 (“Civil Defence Code”).

10. The Civil Defence Code was issued under the Privacy Act to provide a framework enabling information sharing in emergencies.¹ In summary, where a state of national emergency has been declared under section 66 of the Civil Defence and Emergency Management Act 2002, the Code permits disclosure of information to a public sector agency or a private or community sector organisation or business involved in managing the emergency for specific permitted purposes. These permitted purposes include “assisting individuals involved in the emergency to obtain services such as (...) financial and other humanitarian assistance”.²
11. In my view the type of information sharing proposed under this Bill is accommodated by the existing framework of the Privacy Act, and specifically the Civil Defence Code.
12. I welcome the proposed approach of aligning new powers for emergency information sharing to the existing provisions under the Privacy Act. Clause 118 of the Bill would amend Schedule 7 of the TAA, and specifically overrides the general confidentiality provisions under section 18 of the TAA, to enable information sharing under the Civil Defence Code which is needed to supply relief through the operation of the tax system.
13. I also welcome the approach of aligning the requirements to trigger this information sharing to the existing provisions under the Civil Defence Code issued under the Privacy Act. Under clause 118, making regulations to override section 18 of the TAA and enable information sharing would require that a state of national emergency had been declared under the Civil Defence Emergency Management Act 2002.
14. This same requirement is the trigger condition for information sharing under the Civil Defence Code. Aligning these conditions allows for consistent processes and standards to apply both under general privacy law and the more specific confidentiality requirements which apply to Inland Revenue in this context.
15. My Office is ready to work with officials and the broader emergency response sector to ensure the Civil Defence Code remains fit-for-purpose. However, it may be difficult for my Office to prioritise any work on this Code in the near term on current resourcing.

Implementation of the OECD crypto-asset reporting framework

16. To align New Zealand’s tax system with international standards, the Bill proposes measures to implement the OECD’s crypto-asset reporting framework (CARF). These include new powers for IRD to collect, use, and share personal information in relation to holders of crypto-assets.³

¹ Office of the Privacy Commissioner, “Civil Defence National Emergencies (Information Sharing) Code 2020” <privacy.org.nz>.

² Civil Defence National Emergencies (Information Sharing) Code 2020 at clauses 5(2)(b) and 6(1)(c).

³ Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill at cl 185U (specifying information required).

17. My interest is to ensure that New Zealanders' privacy has been adequately considered in the approach taken, particularly in relation to information gathering powers.
18. The OECD framework involves:⁴
 - Service providers sharing transaction and customer information to tax authorities;
 - Users providing service providers with information on their own activity; and
 - Exchanges of information between participating tax authorities.
19. Under the Bill, both service providers and users would face financial penalties for failing to provide information which is required under the CARF.⁵
20. I am concerned about the apparent lack of consideration of New Zealanders' privacy in relation to these proposals.
21. The Bill is accompanied by a Regulatory Impact Statement from Inland Revenue, which acknowledges that these proposals will involve substantial collection and sharing of New Zealanders' personal information, stating "[c]ryptoasset intermediaries will also be required to gather and report personal information on their users".⁶
22. While I am not opposed to measures enabling reporting on crypto-assets for tax purposes, including new powers to gather information, I would like to see more detailed analysis of potential privacy impacts and mitigations necessary before this aspect of the Bill proceeds into law.
23. I am particularly concerned given recent reports that the value of cryptocurrency hacking thefts doubled to US\$1.4 billion in the first half of 2024 and that the increased value of tokens is likely to further motivate cybercriminals to pursue information on holders of these assets.⁷ Personal information shared by tax authorities will also be a target for cybercriminals, so it is important to consider whether and how New Zealanders' privacy is being upheld in the design and operation of this framework.
24. In my view, more analysis is needed to understand specific privacy risks in relation to:
 - Requiring users of crypto-asset services to provide information to third parties, with penalties for non-compliance;
 - Providing information on New Zealand taxpayers to overseas tax authorities;

⁴ Explanatory Note to the Bill at p 5.

⁵ Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill at cl 144 (creating penalties).

⁶ Inland Revenue, "Regulatory Impact Statement: Crypto-asset Reporting Framework" (8 May 2024) <taxpolicy.ird.govt.nz> at p 5.

⁷ Reuters, "Crypto hacking thefts double to \$1.4 bln in first half of 2024, researchers say" (6 July 2024) <reuters.com>

- Ensuring that all local and international systems involved meet high standards of data security and integrity to safeguard New Zealanders against privacy and cybersecurity risks.

25. I would welcome further information on how these privacy matters are being considered and addressed by officials in the design and implementation of this framework.

Sharing taxpayer information to promote New Zealand Business Numbers

26. Clause 153 of the Bill proposes new powers for the Commissioner of Inland Revenue to share taxpayer information to the agency responsible for administration of the New Zealand Business Number Act 2016, by amending Schedule 7 of the TAA.

27. My understanding is that the goal of sharing this information is to increase the uptake of New Zealand Business Numbers (NZBNs), by enabling the sharing of contact information about taxpayers to the agency responsible for NZBNs.

28. Contact addresses and tax information for unincorporated bodies will include personal information, including personal work, home, and email addresses used by sole traders and other small businesses.

29. Proposed new clause 25(3B) reads:

The Commissioner may disclose to an authorised officer of the department for the time being responsible for the administration of the New Zealand Business Number Act 2016 information held by the Commissioner related to the contact address or tax file number of an unincorporated body for the purpose of enabling the department to carry out the duties or functions of the department.

30. Unlike other provisions in Schedule 7 which explicitly refer to section 18 of the TAA, this wording could be read as overriding general requirements and information sharing provisions under the Privacy Act 2020.

31. I am open to the sharing of this information where there is a clear purpose for doing so. However, in my view the proposed approach under cl 25(3)(B) presents two problems:

- Firstly, I have not seen a strong policy case showing the need for a legislative override on the Privacy Act, when the Privacy Act can enable this sharing;
- Secondly, the language proposed is far too broad, enabling open-ended and ongoing sharing of a taxpayer's contact information for no defined purpose in a way that presents a range of risks to New Zealanders' privacy.

The Privacy Act can accommodate this sharing without a need for specific law changes

32. The Privacy Act provides a range of ways to enable this type of information sharing. For example, the agencies involved could work through an information sharing agreement. This would preserve the general approach and safeguards under the Privacy Act.

33. Given the availability of these alternatives, I expect to see a strong policy case showing that this proposed legislative override of the Privacy Act is necessary and justified. I have not seen that strong policy case.
34. The desired goal of promoting NZBNs to taxpayers can be accommodated without an override of the Privacy Act, and that is the approach I would recommend.

Clause 25(3)(B) creates privacy risks from open-ended sharing of taxpayer information

35. In general the Privacy Act requires that personal information is collected for a particular purpose, and is only used, retained, and shared in ways connected with that purpose.
36. Clause 25(3)(B) enables sharing of taxpayer information to the agency responsible for administration of NZBNs for the purposes of enabling any of the functions of that agency. The agency currently responsible for the administration of NZBNs is the Ministry of Business, Innovation and Employment (MBIE). As drafted, this clause would enable MBIE to access any contact information or tax file numbers of an unincorporated body held by IRD to enable any of its very broad range of duties and functions.
37. New Zealand benefits from the general application of the Privacy Act 2020 as the main framework governing personal information. Having a standard privacy framework across all organisations is efficient and supports New Zealanders' expectations of privacy.
38. Part of those expectations is that agencies will say why they are collecting personal information, and what they will use it for and that the privacy regulator is able to provide effective oversight. This is particularly important in relation to taxpayer information held by Inland Revenue.
39. Paying tax is not a choice, and it is important to trust in the tax system that personal information is treated with respect. The recent case of hashed information being given by IRD to social media platforms for the purposes of targeting advertising campaigns demonstrates that NZ citizens not only expect high standards of the tax system, they also expect that the privacy regulator has the ability to provide oversight.

Conclusion

40. I do not seek to be heard on this submission.

Ngā mihi nui,



Michael Webster
Privacy Commissioner