



**Submission to Privacy Commission on:
Proposed Amendment No. 6 to the Telecommunications Information Privacy
Code 2003**

14 July 2017

This submission is made by the New Zealand Telecommunications Forum Incorporated (**TCF**). The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. The TCF enables the industry to work together and to discuss issues and topics collaboratively, to reach acceptable solutions that can be developed and implemented successfully. Its members represent 95% of the sector.

This submission sets out TCF members' collective views on the Proposed Amendment No.6 to the Telecommunications Information Privacy Code 2003 (**Proposed Amendments**). Individual members may be making their own submissions on aspects that are of particular importance to them.

In this submission, the TCF recommends a specific drafting change to the Proposed Amendment to ensure that the Code is consistent with the changes to the Intelligence and Security Act 2017 (the Act).

The TCF believes that requests to industry participants for assistance, access to technology, or access to personal information of customers, should be made on the basis of compulsive powers. The TCF notes that the industry has obligations of confidentiality to its customers in its role as a holder of their personal information. These obligations are taken seriously and if personal and confidential information is going to be accessed by law enforcement or intelligence agencies, then the rights and obligations should be clear.

The industry does not wish to be put in a position where it is required to exercise discretion as to whether to disclose information to which obligations of confidentiality apply. The changes to the Intelligence and Security Act 2017 recognise that the industry is not best placed to determine whether the disclosure of information is necessary to enable an agency to perform its function. Consequently, under the Intelligence and Security Act 2017, the Director General of the relevant agency has the ability to compel an RSP to provide customer information by obtaining a warrant, or

by using a business records direction if they are satisfied that the information requested is necessary to allow the agency to perform its function and may certify that the information is necessary for this purpose.

The TCF considers that this requirement in the Act offers an important protection for consumers and the industry. As a result, the proposed amendment to the Code should reflect the requirements under the Act. This will provide clarity that any decision to provide access to information is not left entirely to the discretion of industry participants.

The Proposed Amendment is as follows:

Insert: as subclause (1)(ga)

that the disclosure of the information is necessary to enable an intelligence and security agency to perform any of its functions;

The TCF recommends that the Proposed Amendment be amended as follows:

Insert: as subclause (1)(ga)

*that the disclosure of the information is ~~necessary to enable~~ an intelligence and security agency **whose Director-General has confirmed in writing to the telecommunications security agency it has requested such information in performance** ~~to perform any~~ of its functions;*

Contact

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