

Privacy Commissioner's submission to the Finance and Expenditure Committee on the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill

Executive summary

1. The Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill (the Bill) proposes changes to modernise and improve the administration of the tax system, sets annual rates of income tax for 2018-19, and amends tax rules to ensure the even treatment of alternative forms of income and expenditure.
2. Inland Revenue (IR) consulted on the proposals in this Bill in three earlier public consultation documents. In my submission on modernising the Tax Administration Act 1994 (TAA) I encouraged a first-principles approach to modernising the confidentiality rules. I urged IR to consider whether the Official Information Act 1982 and Privacy Act 1993 could provide a sufficient legal framework to ensure an appropriate level of confidentiality applies to information IR holds as an alternative to the TAA tax secrecy provision.
3. The Bill retains the complex tax secrecy framework but provides a clearer exceptions framework by grouping exceptions into categories.
4. My submission focuses on improving the privacy safeguards in the Bill. Specifically it focuses on Clause 15 in Part 2 of the Bill which inserts new subpart 3A into the TAA covering the collection, use, and disclosure of revenue information.
5. I make recommendations to:
 - amend the matters that the Minister of Revenue must consider before recommending the regular collection of bulk information under new section 17L;
 - restrict the on-sharing of information collected under new sections 17, 17B and 17L unless explicitly provided for in an Order in Council;
 - amend new section 17L(2)(b) to also require the regulations to prescribe how the information is necessary for revenue purposes;
 - amend new section 18E(3) to provide for consultation with the Privacy Commissioner prior to the signing of any agreement;
 - amend the matters the Minister of Revenue must consider before recommending the sharing of information under new section 18F(1); and
 - amend section 18F to carry over an existing obligation to provide for the monitoring of sharing arrangements by the Privacy Commissioner.

Minister's bulk data collection review lacks an assessment of privacy impacts

6. New section 17L(3) provides that the Minister of Revenue (the Minister) may recommend regulations approving the regular collection of bulk data. The Minister must be satisfied the regulations are necessary and consistent with a purpose relating to the administration or enforcement of the Inland Revenue Acts or matters arising from or connected to the functions of the Commissioner of Inland Revenue (the Commissioner). Consultation with the Privacy Commissioner and other appropriate parties must also take place.
7. I support the measures in section 17L that provide for transparency, oversight and review. Section 17L(3) requires consultation with my Office on proposed bulk collections, regulations are scrutinised by the Regulations Review Committee, and the operation of the section must be reviewed before the expiry of 6 years from commencement.
8. The Commissioner has existing powers under section 17 of the TAA to compel the collection of personal and corporate information where that information is considered "necessary or relevant" to the Commissioner's functions. That power is broad, but it is not unfettered – an important safeguard against disproportionate or unreasonable collection is the requirement that the information sought is necessary or relevant to revenue purposes.
9. Historically section 17 has been used on an ad-hoc basis and IR now seeks to extend this to regular collections of datasets that may include the sensitive personal information of millions of citizens. Regulations must necessarily only provide for proportionate or reasonable collection so as to comply with section 21 of the New Zealand Bill of Rights Act 1990. To help ensure regulations provide for proportionate and reasonable collection of information, and for better transparency, I recommend that new section 17L(2)(b) also require the regulations to prescribe how the information is necessary for revenue purposes.
10. I support the requirement in new section 17L(3) to consult with the Privacy Commissioner before the Minister recommends the making of regulations. However, the matters which the Minister must consider before recommending regulations lack any assessment of privacy impacts. Section 96N in the Privacy Act requires a Minister who is recommending approval of an information sharing agreement to have regard to particular matters. I recommend that a subset of these matters should apply to the collection of bulk data.
11. **Recommendation:** I recommend the Committee amends new section 17L(2)(b) to also require the regulations to prescribe how the information is necessary for revenue purposes.

12. **Recommendation:** I recommend the Committee amends new section 17L of the Bill to include the following matters of which the Minister must be satisfied:

- that the type and quantity of personal information to be collected under the agreement are no more than is necessary to facilitate the purposes of the Inland Revenue Acts and the functions lawfully conferred on the Commissioner; and
- that the agreement does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy.

Extra safeguards are needed for the collection and on-sharing of personal information obtained using mandatory collection powers

13. New section 18E provides mechanisms for IR to on-share both personal and non-personal information with government and non-government agencies for the broad purpose of delivering public services. Special consideration needs to be given to the circumstances of how this information was originally collected before on-sharing it with other agencies that will use it for a different set of purposes.

14. The Select Committee needs to consider together the exercise of the mandatory power to collect personal information under new Sections 17, 17B and 17L with the provisions in new section 18E that enable information sharing for broad public service purposes. Section 18E may effectively expand the purpose for collecting information under those sections.

15. I consider that additional safeguards are needed for the on-sharing of personal information obtained using mandatory collection powers. The privacy implications of on-sharing information that IR collects using its mandatory collection powers are different to those of sharing information that has been obtained voluntarily. Additional safeguards will help ensure that the exercise of those powers remains reasonable and Bill of Rights compliant.

16. **Recommendation:** The personal information that IR collects under sections 17, 17B and 17L should be explicitly tagged so it can be traced through IR systems. Such information should only be shared under section 18E if it is explicitly provided for in an Order in Council.

The Privacy Commissioner's oversight and Ministerial privacy review need enhancing

17. Sections 18E(4) and 18F in new subpart 3A replace section 81BA of the TAA, enabling IR to enter into agreements to share revenue information for public service purposes. IR has signalled that the provision will be used to approve the sharing of primarily non-personal information.

18. Existing section 81BA was enacted prior to a comparable information sharing mechanism being available in the Privacy Act. In 2013, Part 9A (Information Sharing) was added into the Privacy Act to allow for Approved Information Sharing Agreements. While IR has since been an early adopter of the agreements there is a risk that new sections 18E(4) and 18F could be used to authorise information sharing more appropriately approved under Part 9A.
19. The criteria the Minister must consider before recommending regulations under section 18E(4) falls short of the comparable safeguards in the Privacy Act. There should be equivalent safeguards in order to appropriately protect the privacy of individuals.
20. The provision for monitoring of agreements by the Privacy Commissioner under existing section 81BA of the TAA has not been carried forward into new section 18F. Where personal information is to be disclosed under section 18F, the Privacy Commissioner's monitoring of the information sharing arrangement remains relevant and should continue.
21. **Recommendation:** I recommend the Committee amends new section 18F(1) so that the matters the Minister must be satisfied of include:
- that the type and quantity of personal information to be shared under the agreement are no more than is necessary to facilitate the provision of that public service or those public services;
 - that the agreement does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy; and
 - that the mechanism being used to share information is the most appropriate mechanism taking into account the type and quantity of personal information to be shared.
22. **Recommendation:** I recommend the Committee amends new section 18F to carry over the existing provision in section 81BA, that provides for the monitoring of information sharing arrangements by the Privacy Commissioner.

Privacy Commissioner should be consulted on new sharing agreements

23. The Commissioner can enter into an information sharing agreement under new section 18E(3) to share information for public services purposes. Such agreements must specify certain safeguards and ensure processes will be met, including that the consent of individuals has been received. Approval by Order in Council is not required.
24. I am concerned that there is no requirement for consultation with the Privacy Commissioner prior to any information sharing agreement under new section 18E(3) being made. I consider that my Office should review any proposed agreements as a check to ensure appropriate safeguards and consent processes are in place.
25. **Recommendation:** I recommend the Committee amends new section 18E(3) to provide for consultation with the Privacy Commissioner prior to the signing of any agreement.

I support Inland Revenue disclosing information to protect health and safety

26. I support the inclusion of section 18J (Disclosures for risk and harm purposes) in the TAA, which provides for the override of tax secrecy rules to allow IR to disclose sensitive revenue information (as defined in section 16C of subpart 3A) when it considers this is necessary to prevent or lessen a serious threat to public health or public safety, or to the life or health of a person. Section 18J reproduces the 'health and safety' disclosure exception in the Privacy Act that applies to other agencies. Normally, it is sufficient for an agency to rely on the Privacy Act exception but IR requires a specific provision to overcome the tax secrecy limitations in the TAA.

I support Inland Revenue using information it collects for other revenue purposes

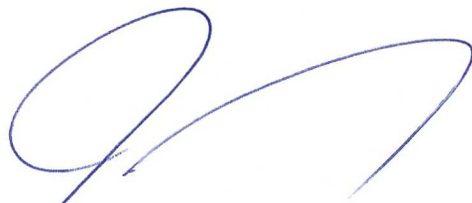
27. I support section 17M in subpart 3A that makes it clear that the Commissioner may use information collected for one revenue purpose for any other revenue purpose.

28. Often, the Commissioner receives information from a customer about a particular revenue product (for example, Working for Families Tax Credits) but that information is also relevant for other revenue purposes (for example, managing the customer's student loan account). I support the requirement that the Commissioner make the most efficient use of information in order to fulfil her functions.

Conclusion

29. I support this Bill's intention to modernise and simplify the revenue system. I make several recommendations in this submission in relation to the collection, use, and disclosure of revenue information designed to enhance transparency, privacy considerations and strengthen privacy safeguards.

30. I do not seek to speak to this submission but would be pleased to appear before the Committee should the Committee find that helpful in its consideration of this Bill.



John Edwards
Privacy Commissioner

13 August 2018

