

Hon Ginny Andersen
Minister of Justice

Proactive release: Privacy Amendment Bill 2023: Approval for introduction

Date of issue: 6 October 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (23) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	Privacy Amendment Bill 2023: Approval for introduction <i>Cabinet Paper</i> Office of the Minister of Justice 4 September 2023	Some information has been withheld in accordance with the following section of the OIA: <ul style="list-style-type: none">• Section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protects the confidentiality of advice tendered by Ministers of the Crown and officials.
4.	Privacy Amendment Bill 2023: Approval for introduction <i>Cabinet Minute CAB-23-MIN-0418.01</i> Cabinet Office 4 September 2023	Some information has been withheld in accordance with the following section of the OIA <ul style="list-style-type: none">• Section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protects the confidentiality of advice tendered by Ministers of the Crown and officials.

In Confidence

Office of the Minister of Justice

Cabinet Legislation Committee

Privacy Amendment Bill 2023: Approval for introduction

Proposal

- 1 This paper seeks approval to introduce the Privacy Amendment Bill 2023 (the Bill).

Policy

- 2 On 11 April 2023, Cabinet agreed to amend the Privacy Act 2020 (the Act) to introduce a new notification obligation in relation to the indirect collection of personal information [SWC-23-MIN-0034 and CAB-23-MIN-0122].
- 3 While there is a requirement in the Privacy Act for agencies to notify individuals when they collect personal information directly from an individual (Information Privacy Principle 3 (IPP 3) 'direct collection'), there is no requirement for agencies to notify individuals when personal information has been collected about them from a source other than the individual themselves ('indirect collection'). The amendment to the Act is intended to address this gap.
- 4 This amendment will also update New Zealand's privacy laws in line with international best practice and support New Zealand's global reputation for protecting personal information, including maintaining our European Union (EU) adequacy status.¹
- 5 The Bill gives effect to the policy decision by introducing a new Information Privacy Principle 3A (IPP 3A) into the Act. IPP 3A will require agencies to notify individuals of a range of matters if their information has been indirectly collected and the individual is not already aware that their information will be collected. IPP 3A also contains a number of practical exceptions to this requirement to ensure efficient administration of certain public functions and protect against other unintended consequences.
- 6 The Bill also makes minor and technical amendments, as agreed by Cabinet to address minor issues that have arisen in implementing the Act since it came into force.

¹ EU adequacy is an assessment by the EU that a country's domestic privacy regime offers an 'adequate' level of data protection as that afforded by the EU's privacy framework.

Matters individuals should be notified of

- 7 Cabinet agreed that individuals should be notified of the indirect collecting agency's name, contact details, and the purpose of collection. I consider the best way to give effect to the policy objective is to carry over some additional matters from IPP 3(1), into the new notification obligation.
- 8 Additional matters carried over to the new requirement include such matters as the fact that an individual's personal information has been collected and the individual's right to access and correct that personal information. This strengthens transparency for individuals about their personal information and better enables them to exercise their privacy rights.
- 9 While it was noted to Cabinet in April that the new notification requirements will create some additional work for agencies in ensuring that individuals are kept informed about where their personal information is being shared, I consider that the additional matters referred to in paragraph 8 will add only minimally to that compliance burden.

Policy changes to proposed exceptions to new notification obligation

- 10 Cabinet agreed that the new notification obligation would be subject to a number of practical and well-understood exceptions, including those that currently apply to IPP 3(4), for example, exceptions for law enforcement and statistical purposes.
- 11 These proposals are not intended to impact on the ability of Police and other law enforcement and National Security agencies to undertake their lawful and reasonable functions. For the avoidance of doubt, and in the interests of public safety, the amendments are not intended to create an undue administrative burden that may impact on Police's ability to undertake their functions every time they receive information about a person from a third party.

I am seeking agreement to two new exceptions to the notification obligation

- 12 Following agency feedback, I am seeking your agreement to include two new exceptions to the new notification obligation to protect national security and related matters.
- 13 The current drafting of the Bill sets out these two new exceptions. These are, where an agency has reasonable belief:
 - 13.1 that compliance would prejudice the security or defence of New Zealand, or the international relations of the Government of New Zealand
 - 13.2 that compliance would reveal a trade secret.

14 This approach is broadly consistent with other sections of the Act that protect national security, including where there are exceptions to an individual accessing their personal information. In particular, I consider that the two new exceptions to IPP 3A should be broadly consistent with matters set out under section 51 and 52 of the Act.

15 Section 9(2)(f)(iv)

I am no longer seeking to include two other exceptions to the notification obligation

16 In April, Cabinet also agreed to two new exceptions to the indirect notification obligation, that notification is not necessary where:

16.1 notification would be contrary to the interests of a child (Rec 6.3)

16.2 personal information is archived in the public interest and (i) the archived information is not used for measures or decisions about particular individuals and (ii) there are controls on access and use of the archived personal information to protect the privacy of individuals (Rec 6.4)

17 I am now seeking agreement to rescind the recommendations relating to these proposed two new exceptions, following matters raised as part of the drafting process and following recent government agency consultation.

18 For the proposed “contrary to the interest of a child exception”, I consider that there are sufficient existing exceptions that will be included as part of the new notification obligation under IPP 3A(4), along with other relevant legislation (including the Oranga Tamariki Act 1989 which has bespoke information sharing provisions). In consultation, Oranga Tamariki now considers that these should sufficiently cover scenarios where notification would not be appropriate.

19 The proposed “archiving in the public interest” exception is likely to intersect with other IPPs and therefore could have more wide-ranging implications than initially envisaged. I now recommend that this is considered in further detail first, and if after more in depth consideration an exception is still warranted, it could be progressed at a later stage of the Parliamentary process for the Bill.

Implementation

20 The Office of the Privacy Commissioner will be the main agency responsible for implementation in accordance with its functions under the Act. This includes issuing guidance, educating agencies on compliance and ultimately monitoring

compliance. To allow time for agencies to implement the new rules, the proposed changes should come into force six months after Royal Assent.

- 21 Guidance from the Privacy Commissioner will assist agencies to operationalise the changes and minimise compliance cost where possible. The Government Chief Privacy Officer will also support government agencies in embedding the new notification requirements into their privacy practices.

Impact Analysis

- 22 In accordance with Cabinet requirements, a Regulatory Impact Statement was prepared and submitted on 30 March 2023 along with the papers seeking policy approvals for the proposal.
- 23 The proposals relating to minor and technical amendments were exempt from Cabinet's regulatory impact analysis requirements on the ground they had no or only minor impacts on businesses, individuals, and not for profit entities.

Compliance

- 24 The Bill complies with:
 - 24.1 the principles of the Treaty of Waitangi;
 - 24.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 24.3 the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached);
 - 24.4 the principles and guidelines set out in the Privacy Act 2020;
 - 24.5 relevant international standards and obligations; and
 - 24.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 25 The following agencies were consulted on this Cabinet paper and draft Bill: Department of Internal Affairs (including the Government Chief Privacy Officer), Inland Revenue Department, Customs, Te Puni Kōkiri, Ministry of Social Development, Ministry of Health, Ministry of Business Innovation and Employment, Ministry of Education, Ministry for Primary Industries, Statistics New Zealand, Office of the Privacy Commissioner, Police, Corrections, Oranga Tamariki, Ministry of Foreign Affairs and Trade, New Zealand Intelligence

Community, Ministry of Defence, Whaikaha, Land Information New Zealand, the Treasury and the Department of Prime Minister and Cabinet. The following agencies were consulted on this Cabinet paper: Accident Compensation Corporation, Kainga Ora, and Waka Kotahi.

- 26 In the current timeframes, the Department of Internal Affairs has not had the opportunity to fully consider the impacts of rescinding the “archiving in the public interest” exception to the proposed IPP 3A. The Department supports further detailed consideration of this exception and, if warranted, changes to the Bill during the Parliamentary process.
- 27 Officials carried out public engagement on addressing the issue of indirect collection of personal information between 24 August and 30 September 2022. Feedback was mixed. While most submitters saw the potential of the changes to enhance an individual’s privacy rights, many submitters were concerned about the additional compliance burden.

Binding on the Crown

- 28 Bills that amend existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Privacy Act 2020 binds the Crown, and it is proposed that the Privacy Amendment Bill will follow that position. It will therefore bind the Crown.

Creating new agencies or amending law relating to existing agencies

- 29 The Bill does not create any new agencies.

Allocation of decision-making powers

- 30 The Bill does not allocate decision making powers between the executive and judiciary.

Associated regulations

- 31 The Bill does not make amendments to any associated regulations.

Other instruments

- 32 The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

- 33 The Bill does not contain a definition of Minister, department or Chief Executive of a department.

Commencement of legislation

- 34 The Bill will come into force on the day after the date of Royal Assent, except for Part 1 that introduces a new notification obligation for the indirect collection of personal information. Part 1 will come into force six months after Royal Assent in order to give agencies the opportunity to adapt their systems and processes, and for the Office of the Privacy Commissioner to prepare any guidance it considers necessary.
- 35 The Bill sets an estimated commencement date for Part 1 (1 June 2025), in order to make clear that the new notification obligation will apply to information collected indirectly from that date and does not have retrospective effect.

Parliamentary stages

- 36 The Bill should be introduced by 5 September 2023. I expect the Bill to pass through the remaining parliamentary stages over the course of 2024.


Proactive Release

- 37 I have proactively released the Cabinet Social Wellbeing Committee (SWC) paper and minute following Cabinet's decision, with appropriate redactions in accordance with Cabinet Office Circular CO (18) 4.
- 38 Officials have communicated these policy decisions, and shared a copy of that Cabinet paper, and SWC Minute, with appropriate redactions, with the EU through the EU Directorate-General for Justice and Consumers (DG JUST), to enable the commitments in that paper to be considered by the European Parliament as it completes its review of our adequacy status.
- 39 I propose to proactively release this Cabinet paper and the related Cabinet Minute, with appropriate redactions, in accordance with the Government's proactive release policy, following the introduction of the Bill.

Recommendations

- 40 The Minister of Justice recommends that the Committee:

1. **Section 9(2)(f)(iv)**
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2. **note** that the Bill amends the Privacy Act 2020 to introduce a new notification obligation in relation to the indirect collection of personal information, and other minor and technical matters;
3. **note** that the Bill includes a minor policy change in relation to the specific matters an individual should be notified of as part of the new notification obligation;
4. **agree** to two additional exceptions to the new notification obligation, where an agency has reasonable belief;
 - 4.1. that compliance would prejudice-
 - 4.1.1. the security or defence of New Zealand, or the international relations of the Government of New Zealand, or
 - 4.1.2. that compliance would reveal a trade secret;
5. **Section 9(2)(f)(iv)**

6. **rescind** the decisions noted in SWC-23-MIN-0034, which agreed that notification is not necessary where:
 - 6.1. notification would be contrary to the interests of a child (Rec 6.3);
 - 6.2. personal information is archived in the public interest and (i) the archived information is not used for measures or decisions about particular individuals and (ii) there are controls on access and use of the archived personal information to protect the privacy of individuals (Rec 6.4);
7. **note** that further consideration will be given to the “archiving in the public interest” exception, and if it is subsequently determined this exception is needed, this will be reconsidered at a later stage of the Parliamentary process for the Bill;

Approval to introduce

8. **approve** the introduction of the Privacy Amendment Bill;
9. **agree** that the Bill be introduced by 5 September 2023 and pass through the remaining parliamentary stages over the course of 2024;
10. **agree** that the Government propose the Bill be:
 - 10.1. referred to the Justice Committee for consideration; and

10.2. come into force the day after Royal assent, except for:

10.2.1. Part 1 to come into force six months after Royal assent (estimated to be 1 June 2025).

Authorised for lodgement

Hon Ginny Andersen

Minister of Justice



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Privacy Amendment Bill 2023: Approval for Introduction

Portfolio Justice

On 4 September 2023, following reference from the Cabinet Legislation Committee, Cabinet:

- 1 **Section 9(2)(f)(iv)** [REDACTED]
- 2 **noted** that the Bill amends the Privacy Act 2020 to introduce a new notification obligation in relation to the indirect collection of personal information, and other minor and technical matters;
- 3 **noted** that the Bill includes a minor policy change in relation to the specific matters an individual should be notified of as part of the new notification obligation;
- 4 **agreed** to two additional exceptions to the new notification obligation, where an agency has reasonable belief;
 - 4.1 that compliance would prejudice
 - 4.1.1 the security or defence of New Zealand, or the international relations of the Government of New Zealand, or
 - 4.1.2 that compliance would reveal a trade secret;

5 **Section 9(2)(f)(iv)** [REDACTED]

6 **Section 9(2)(f)(iv)** [REDACTED]

7 **noted** that in April 2023, the Cabinet Social Wellbeing Committee agreed that, in addition to the circumstances where notification is not necessary for direct collection, notification is not necessary where:

7.1 notification would be contrary to the interests of a child;

7.2 personal information is archived in the public interest and (i) the archived information is not used for measures or decisions about particular individuals and (ii) there are controls on access and use of the archived personal information to protect the privacy of individuals;

[SWC-23-MIN-0034]

8 **agreed** to rescind the decisions referred to in paragraph 7 above;

9 **noted** that:

9.1 further consideration will be given to the “archiving in the public interest” exception;

9.2 if it is subsequently determined the above exception is needed, this will be reconsidered at a later stage of the Parliamentary process for the Bill;

Approval to introduce

10 **approved** the Privacy Amendment Bill [PCO 25226/11.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

11 **agreed** that the Bill be introduced by 5 September 2023 and pass through the remaining parliamentary stages over the course of 2024;

12 **agreed** that the government propose that the Bill:

12.1 be referred to the Justice Committee for consideration;

12.2 come into force the day after Royal assent, except for Part 1 which is to come into force six months after Royal assent (estimated to be 1 June 2025).

Rachel Hayward
Secretary of the Cabinet

***Secretary's Note:** This minute replaces LEG-23-MIN-0182. Cabinet agreed to add a new paragraph 5 and amend paragraph 6.*
