



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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1 May 2002

S02.21

**Submission to the Law Commission on Discussion Paper No 49
Protecting Personal Information**

INTRODUCTION

The National Council of Women (NCWNZ) is the umbrella organisation representing 43 nationally organised societies. It has 35 branches throughout the country attended by representatives of those societies and some 150 other societies as well as individual members. The Council's function is to serve women, the family and the community at local, national and international level through research, study, discussion and action.

Responses for this submission came from several branches, as well as from Justice and Law Reform Standing Committee. The women are from a wide range of backgrounds and have a particular interest in and concern for issues relating to the disclosure of personal information.

EXECUTIVE SUMMARY

NCWNZ members consider that there is a need for legislation to protect personal information from disclosure and supports the concept of minor refinements regarding education, investigation and enforcement rather than wholesale change of the existing statute. Such legislation should maintain a balance between a respect for people's dignity in personal matters which do not impinge upon others and the general welfare of our society.

NCWNZ suggests that some of the role of the Privacy Commission could be handled by local and/or district level appointees in order to clarify some of the minor matters in relation to breaches of disclosure, to promote better understanding of the principles of the act, and to have an enforcement role. It is also our view that it is better to prevent harm than to pay someone damages after the event.

We wish to make the following comments:

The Privacy Act 1993 should be kept in place. Its provisions are reasonable, especially as the privacy principles are only actionable if a breach is significant. Personal information, which relates to intimate or sensitive facts and communications about an individual, should be kept private, at the discretion of the individual, unless there is good reason for it to be made public.

A mechanism to permit minimal disclosure, when necessary in the public interest, would enhance the effectiveness of the legislation. The "public interest" defence is already established in law relating to breach of confidence. The courts' emphasis is on balancing competing considerations, rather than applying a formula. A similar approach should be taken to public-interest disclosure of personal information. If the type of personal information is particularly sensitive, strong grounds would be required to justify disclosure to the wider public.





However, the act is currently used in some instances to create a barrier for vital information - sharing between agencies with responsibilities for the same individual or families. Special consideration is needed for disclosure to people with an immediate direct interest, such as the family of at -risk mental health patients, or foster carers. Legislation should not be obstructive for those exercising care and responsibility for others, and perhaps these exemptions could be spelt out more clearly in the legislation.

The mode of statutory protection adopted can continue to be founded in prior restraint with an option for damages after the event. Restraint is always preferable if possible, but current local applications of the act appear to suggest that excessive restraint is practiced with only limited interpretation of principle 11. Misquoting of the Privacy Act has maximized the use of prior restraint, and has been known in some instances, as an excuse to deny access to information. On-going education about the overriding nature of serious and imminent threats to public safety would enable agencies in their policy development and decision-making. A process for individuals requesting restraint would need to be reasonably inexpensive, accessible and timely. The Privacy Commission would require further resourcing to fulfill these roles, at local and district levels.

Without sanctions, such as the right to damages after the event, the legislation is weaker. Potential damages for a breach need to be high enough to outweigh the benefits from the breach, and to be mindful of the difference between a Holmes show comment and a neighbourhood rumour.

The individual should always have the right to pursue their own legal action, as a State agency is theoretically susceptible to government influence, and does not have the same safeguards, such as judicial independence, as are built into the court system. Access to the courts is a basic right, and should remain as an alternative for people who for whatever reason do not obtain redress from the government system. However, litigation could be expensive and cumbersome.

CONCLUSION

NCWNZ retains the premise that personal information should not be disclosed contrary to the wishes of the individual, unless there is an overriding good reason for disclosure. A review of this legislation should focus on details which clarify what is deemed to be the public interest.

Barbara Glenie
National President

Brenda Baxter
Convener,
Justice and Law Reform Standing Committee