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PUBLIC REGISTERS

REVIEW OF THE LAW OF PRIVACY: STAGE 2



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The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

The Commissioners are:

Right Honourable Sir Geoffrey Palmer – *President*

Dr Warren Young – *Deputy President*

Helen Aikman QC

Professor John Burrows QC

George Tanner QC

The General Manager of the Law Commission is Brigid Corcoran

The office of the Law Commission is at Level 19, HP Tower, 171 Featherston St, Wellington.

Postal address: PO Box 2590, Wellington 6011, New Zealand

Document Exchange Number: sp 23534

Telephone: (04) 473-3453, Facsimile: (04) 914-4760

Email: com@lawcom.govt.nz

Internet: www.lawcom.govt.nz

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Public Registers

Issues Paper

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This review of public registers is part of the Law Commission's major review of privacy, to be conducted in four stages. The review is being led by Commission President Sir Geoffrey Palmer. The review team also includes Professor John Burrows QC, and five research staff. This is a complex and wide-ranging project in four stages, and it will not be completed until late 2008.

Stage 1 of the review is a high-level policy overview that will set the conceptual framework and help identify issues for more detailed examination in the later stages. The Stage 1 report will consider different ways of conceptualising privacy, and discuss the implications of political, social and technological change for privacy protection. The report will be published in early 2008.

Stage 2 is concerned with public registers. This issues paper is a preliminary publication inviting public submissions and comment by 5 November 2007. These will be taken into account and a report produced in early 2008, in tandem with the Stage 1 report. Stage 3 will examine the adequacy of New Zealand's civil and criminal law to deal with invasions of privacy, and Stage 4 will be a review of the Privacy Act 1993.

How to make a submission

Submissions or comments (formal or informal) on this issues paper should be sent by 5 November to:

Janet November or Rachel Hayward, Senior Legal and Policy Advisers,
Law Commission, PO Box 2590, Wellington 6011, DX SP 23534, or by email to
com@lawcom.govt.nz

The issues paper is available on the Internet at the Commission's website:
<http://www.lawcom.govt.nz>

**Review of privacy values, technology change, and international trends,
and their implications for New Zealand law**

This project will proceed in stages, with reports made at each stage.

In stage 1 of the project, the Law Commission will undertake a high level policy overview to assess privacy values, changes in technology, international trends, and their implications for New Zealand civil, criminal and statute law. The Law Commission will conduct a survey of these trends in conjunction with the Australian Law Reform Commission. A report on this overview will be published.

In stage 2 of the project, the Law Commission will consider whether the law relating to public registers requires systematic alteration as a result of privacy considerations and emerging technology.

In stage 3 of the project, the Commission will consider and report on:

- (a) The adequacy of New Zealand's civil law remedies for invasions of privacy, including tortious and equitable remedies; and
- (b) The adequacy of New Zealand's criminal law to deal with invasions of privacy.

In stage 4 of the project, the Commission will review the Privacy Act 1993 with a view to updating it, taking into account any changes in the legislation that have been made by the time this stage of the project is reached.

PREFACE

Public registers are lists, registers or databases of information, to which the public has some specific statutory rights of access. In this sense they are part of a freedom of information regime. They include, for example, the electoral rolls, land registers, company registers and many occupational registers. The registers usually contain personal information so also fall within the personal data protection principles of the Privacy Act 1993.

All freedom of information regimes seek to balance the public interest in openness or transparency with competing public interests, such as privacy, security and accountability, that might require protection of information, especially of personal information.

Public registers face the same challenges but they have an added dimension. In addition to the general public interest in openness, there will be specific public interests that justify public access. These will often be central to the purpose of the register.

The current legislative regulation of public registers is to be found partly in individual statutes setting up the registers, partly in two sets of principles in the Privacy Act 1993, one of which applies only to “public registers” listed in Schedule 2 of the Privacy Act, and partly in the Domestic Violence Act 1995, Part 6. In addition there is some uncertainty as to whether the Official Information Act 1982 also applies. In our view, these layers of regulation cause a legal indeterminacy, and there is some confusion and inconsistency in the law. The law also has not satisfactorily protected personal information.

Our task was to review public register law and consider whether systematic alteration is necessary. We have concluded that it is necessary. We propose a new legal framework that ensures greater clarity of regulation, the assessment and balancing by Parliament of transparency, privacy, and any competing public interests relevant to access to public registers, and where necessary, the application of mechanisms to protect personal information held on registers.

In this issues paper, we traverse the problems that have arisen with the current regulatory provisions and suggest four options for reform of the regulatory framework. We then discuss a variety of protective mechanisms, many of which are currently, but unevenly, employed in public register statutory provisions. These mechanisms can be used in conjunction with any of the suggested options. Finally, we look at some possible ways of solving one of the main problems of open public registers: electronic bulk downloading of personal information. We ask for your views on these options.

ACKNOWLEDGMENTS We are most grateful to the Privacy Commissioner, Marie Shroff, and Blair Stewart, Deputy Commissioner, for their time and attention to a draft of this issues paper, and for their very helpful comments. We also appreciate the useful comments from Sarah Kerkin, Senior Adviser, Policy and Law, of the Ministry of Justice.

We thank our peer reviewer, Professor Paul Roth, and John Edwards and Wayne Wilson, for their reviews of a draft of this paper, which has benefited from their comments.

We are grateful to all those individuals and agencies who have written to us or met with us to discuss the issues involved in this reference.

Finally, we thank all those agencies who are holders of public registers and who took the time and trouble to respond to a Law Commission questionnaire of March 2007. Their responses provided us with a clear picture of their registers, their uses and some concerns, and have informed our discussion in this paper. They are:

Auckland Regional Council

Cadastral Surveyors Licensing Board

Carterton District Council

Chiropractic Board

Commercial Fisheries Services Ltd (Fishserve)

Department of Building and Housing Electrical Workers Licensing Group

Department of Internal Affairs

Dieticians Board

Dunedin City Council

Electoral Enrolment Centre

Environmental Risk Management Authority

Institute of Professional Engineers of New Zealand

Institute of Registered Music Teachers of New Zealand

Land Information New Zealand

Land Transport New Zealand

New Zealand Food Safety Authority

Medical Council of New Zealand

Ministry of Economic Development

Ministry of Justice (Maori Land Court and Tribunals Unit)

Ministry of Transport
Osteopathic Council of New Zealand
Pharmacy Council of New Zealand
Plumbers, Gasfitters and Drainlayers Board
Podiatrists Board
Psychologists Board
Registered Master Builders Federation
Southland District Council
Veterinary Council of New Zealand
Waitakere City Council
Wellington City Council

Introduction

Background to this Reference

- 1 Until 1 July 1983, most government information in New Zealand was confidential and not open to public inspection, following the approach of the Official Secrets Act 1951, and its predecessors. During this era of secrecy and non accessibility to the public, registers that were open to public inspection and search were an exception to the regime. After the Official Information Act 1982 came into force with its presumption of public access to government information, “public registers” continued to operate as a disclosure regime for some information held both by the government and by other agencies.
- 2 Many of the reasons for maintaining public registers mean that they need to be open to third parties as we show in this paper. However, technological innovation has fundamentally altered the public register landscape. For many years, public registers were available for search only in hard copy, in registry locations which were more or less centralised, with some records being held only in the particular region to which the records related, rather than on a national database. Access to a record required a visit to the registry in person, or a written request and ensuing delay while the records were copied and delivered by post. These logistics operated as a practical impediment to obtaining information from the registers in bulk.
- 3 Advances in computers and electronic technology, and more particularly, the advent of the Internet, have removed those practical barriers in most cases. In 2007, information on most public registers in New Zealand is stored in electronic form. Electronic information can be stored, sorted, manipulated and re-distributed at high speed and minimal cost. Access is potentially available to a nation-wide register from personal computers in people’s own homes. Technology has also made it possible to readily combine publicly available information held across a range of databases, to create a profile of a particular individual:

In sum, the increasing digitization of documents enables more documents to be retained by eliminating storage constraints, increases the ability to access and copy documents, and permits the transfer of documents en masse. Personal information in public records, once protected by the practical difficulties of gaining access to the records, is increasingly less obscure.¹

1 Daniel J Solove *The Digital Person: Technology and Privacy in the Information Age* (New York University Press, New York, 2004) 132.

4 Advances in technology have brought dramatic benefits to the management and administration of public registers, increasing both efficiency and effectiveness of information handling. Some public registers, for example the electoral roll, the national drivers' licence register and the motor vehicle register, contain millions of entries. Without computerisation it would be very difficult to effectively and efficiently compile, maintain and access such registers.²

5 Another significant effect of technology has been to make public registers a much more viable and attractive source of information for commercial entities:³

Technology has given rise to “data warehouses” – commercial enterprises whose lucrative business is centred upon acquiring vast stores of publicly available information for processing and resale. This business trend has been particularly apparent in the United States, where a technologically advanced marketplace and historically broad rights of access to public records have encouraged the development of the so-called “individual reference services”...

... Individual reference services assemble electronic profiles of individuals or groups of individuals for their clientele. Depending upon the data sets available to them, and their own internal policies, they can create an impressively detailed dossier depicting an individual's basic identifiers (name, address, age, telephone number, etc) together with a sizeable array of more detailed information (occupational, travel and criminal history, purchasing habits, licences held, marital status, etc)...

6 Technology does not only have implications for business. In relation to individual searches, information that might previously have been buried in a paper record somewhere may now be available on-line, at the touch of a button. Searches of an individual's name have the potential to bring up a wide range of information, which can be retained indefinitely in a readily accessible form, across a variety of databases.

7 Concerns about emerging technologies and their impact upon access to personal information in public registers have led to this reference. In 1998, the then Privacy Commissioner Bruce Slane considered the privacy issues raised by public registers as part of his review of the Privacy Act 1993.⁴ He noted:

Briefly stated, the central privacy issues with public registers revolve around the fact that individuals have no choice but to supply their public details which may then be published and will be given out on request to whoever wishes to have the information

2 In March 2007, the Law Commission sent a questionnaire to most of the agencies that maintain public registers, including a question about the effect of computerisation of the registers. Almost all respondents mentioned the greatly improved ease of compilation and maintenance, and speed of accessing the registers. The holders of large registers, such as the electoral roll and driver licence register, said it would be almost impossible to effectively and efficiently compile and access the registers without computerisation.

3 Rick Shields, *Publicly Available Personal Information and Canada's Personal Information Protection and Electronic Documents Act* (McCarthy Tetrault, Ottawa, October 12, 2000) 10–11.

4 Report of the Privacy Commissioner, *Necessary and Desirable – Privacy Act 1993 Review*, Wellington, (December 1998) 233.

without regard to the purpose for which that information will be used or the harm that any such use may cause an individual.

8 The Privacy Commissioner noted a number of “typical” privacy problems in relation to public registers, namely their use for tracing individuals for reasons unconnected with the purpose for which the register was established, whether those purposes be relatively benign, (such as preparing a family history) or malign (such as tracking an estranged partner); and the bulk retrieval of personal information on public registers by commercial entities, which may use and sell the information for direct marketing purposes or for profiling individuals (for example, as to their wealth or creditworthiness).⁵

9 The Privacy Commissioner’s report made a number of recommendations for changes in relation to public registers.⁶ These have not yet been implemented, although the recommendations have influenced work on statutory provisions related to public registers in the nine years since the report was released.

10 The Ministry of Justice has been considering a number of amendments to the Privacy Act 1993 which include some proposals relating to public registers. However, the Ministry suggested that the public registers also needed more in-depth consideration and referred the matter to the Law Commission to research as part of our privacy reference. The terms of reference for this research, which is stage 2 of the Law Commission’s four-part review of privacy, are:

the Law Commission will consider whether the law relating to public registers requires systematic alteration as a result of privacy considerations and emerging technology.

11 This issues paper is a result of our initial research. We have attempted to list as many statutory public registers as we can find and have sent a questionnaire to a number of register holders to try to assess their uses and any problems or issues. We have talked to some of those register holders, especially those who have noted problems. We have also talked to some register users, and a few people listed on registers.

12 In this document, after a historical survey of some public registers, we look at a working definition for a “public register”, the statutory framework for regulating public registers, and the principles and interests at stake in considering their regulation. We discuss the main issues and concerns that have arisen from our consideration of the current statutory regimes, responses to our questionnaire, from our meetings and from other reviews. Finally, we set out some options for dealing with the problems identified, and ask for submissions on these proposals.

5 Ibid.

6 These are listed in chapter 5 where we discuss options for reform.

Chapter 1

History of Public Registers

HISTORICAL BACKGROUND

- 13 For well over a century, governments have required their citizens to register personal information such as their children's births, their marriages, their relatives' deaths; their names and addresses and occupations for election purposes; and their land ownership and, later, motor vehicle ownership. Registration has been for a variety of purposes related to the smooth administration and financing of government, and of economic transactions. For a variety of purposes too, these records or registers (initially listed in books) were open to public inspection. The history of some of the early registers is instructive in showing some of the reasons for establishing registers, and for their openness.

Domesday Book

- 14 An early example of a register containing personal information can be found in the Domesday Book, one of Britain's earliest surviving public records.⁷ The Domesday Book was compiled by royal commissioners in 1086 on the orders of William the Conqueror, shortly after the Norman Conquest, with a view to settling clearly the rights of the Crown and the taxable resources of the country.⁸ It contains a general survey of most of the counties in England, and specifies the name and local position of every place, its possessor at the time of King Edward the Confessor and at the time of the survey, together with particulars, quantities and descriptions of the land.⁹ For many years it was regarded as the authoritative register regarding legal title to land and rightful possession, and in later centuries was used mainly for that purpose in the courts of law.¹⁰

7 Public record in this sense means a record created by Government in the normal course of its business, but the information held in it has always been made available. The Domesday Book is held at National Archives in the United Kingdom, and can be searched on line at www.nationalarchives.gov.uk/domesday/ (last accessed 7 June 2007).

8 Theodore F T Plucknett, *A Concise History of the Common Law* (Butterworth and Co. Publishers, Ltd, London, 1956) 12.

9 Halsburys *Laws of England*, Boundaries (Volume 4(1) 2002 reissue, para 935.

10 www.nationalarchives.gov.uk/domesday/ (last accessed 7 June 2007). In *Alcock v Cooke* (1829) 5 Bing 340 and *Duke of Beaufort v John Aird & Co* (1904) 20 TLR 602, extracts from the Domesday Book were given in evidence.

Parochial registration of baptisms, burials and marriages (UK)

- 15 Another very early register was the parish register of baptisms, marriages and burials. The history of registration of baptisms, burials and marriages from 1538 to 1836 in the United Kingdom is summarised in the Select Committee Report on Parochial Registration of 1833.¹¹ The Committee recorded that in 1538 the Lord Privy Seal issued an injunction that directed parsons in all parishes to record in a book all the weddings, christenings and burials weekly. Similar injunctions were repeated in 1547 and 1559 and later mandates issued to enjoin the careful preservation of such records.
- 16 In 1653 an Act of Parliament provided for a register of marriages, births and burials in every parish, (the beginnings of the “parish registers”), with fees and penalties to ensure enforcement. Several Acts, including one of 1694, were passed to enforce registration of marriages, births, christenings and burials as a source of revenue for the state, and all persons concerned were to have free access to these registers. Under the 1694 Act, the Anglican clergy were to collect information of all children born in their parishes, irrespective of what religious denomination their parents were. This duty proved too onerous in respect of births as parents often concealed births to evade the tax imposed. The duty was later extended to dissenting ministers, but this Act was then repealed. An Act of 1812 was the last to provide for the system of parish registers for baptisms, marriages and burials.¹²
- 17 In 1833, Parliament appointed a Select Committee to consider the situation. After looking at the systems of registration in several European countries, especially the civil system in France, the Select Committee concluded that the subject involved matters of great public and national interest, including rights and claims to property; that the present law was imperfect and unjust, especially as it did not include a considerable portion of the population who were Protestant and Catholic dissenters and congregations who disapproved of infant baptism; that the registers were mere registers of baptism and not births, and of burials and not deaths, and therefore supplied no adequate proofs of pedigree or means of tracing ancestral descent. In addition, they were often falsified, stolen, burnt or inaccurate, and so there was no means of obtaining information that other countries possessed as to state of disease, operation of moral and physical causes on the health of people, or the progress of population and so on. The Committee recommended that a national civil registration of births, marriages and deaths be established to include all ranks of society and all religions – to assist medical and statistical inquirers in useful research. Parochial registers could continue.

Births, deaths and marriages registers (UK and NZ)

- 18 As a result of the Select Committee’s findings, the civil registration of births, deaths and marriages was introduced in 1837 in England. The purpose was to bring records of births, deaths and marriages under one unified civil system where previously the only records were in the parish registers. Introducing the

11 “Report of the Select Committee on Parochial Registration”, ordered by the House of Commons to be printed, 15 August 1833.

12 Taken from the “Report of the Select Committee on Parochial Registration”, 15 August 1833.

Bill in 1836, Lord John Russell said that it was:¹³

a most important subject – important for the security of property – important to ascertain the state and condition of individuals under various circumstances – important to enable the Government to acquire a general knowledge of the state of the population of the country – that there should be a general registration of births, marriages and deaths.

- 19 At the second reading, the Attorney General said that it was presently impossible “to find evidence of descent with any certainty beyond two generations, and the consequence was that this uncertainty led to great litigation and expense”. He contended that a general registration would be a great benefit.¹⁴ In the same session Lord John Russell also mentioned the public benefit:¹⁵

The Bill would, in the first place, establish a national register, which would ascertain facts not now ascertained respecting descent.

- 20 There is reference in the debates to the incompleteness of the present records and to their loss, the implication being that these are important public records to be retained for posterity. Similarly, in the House of Lords, Viscount Melbourne spoke of the imperfections of the present system and “the great inconveniences which had arisen from the impossibility of ascertaining facts of great and vital importance. At present nobody could tell what might have elapsed between the birth of a child and the date of its baptism; nobody could tell how many children were not baptised at all.” The registration of marriages was even more irregular. It seemed to be taken for granted that births, marriages and deaths were “public facts” that “anybody” should be able to look into.

- 21 After much debate about the concerns of the Church, in particular that “the great mass” of parents would be reluctant to have their children baptised once they had registered their births, Lord John Russell, moving the third reading in the Commons, may have made the first reference to the term “public register”, saying:

I really cannot see why the mere inserting of their children’s names in a public register, should be of itself an act which would prevent them from [having their children baptised].¹⁶

- 22 Dr Bowring, similarly, said that the aims of the Bill had been misunderstood by those who objected to it. He stated:¹⁷

It had nothing whatever to do with baptism, because that was a religious act in which the whole community was not concerned, but what it had to do with was the fact of birth – a fact which was important to the whole community. What was wanted in this country was a registration of those facts with which the community were interested; the birth, the marriage and the death of individuals. In most countries

13 House of Commons (12 February 1836) vol 31, GBPD ser 3, 368.

14 House of Commons (15 April 1836) vol 32, GBPD ser 3, 1090.

15 Ibid, and “secondly it would enable Dissenters from the Established Church, who did not agree in the ceremonies of that Church, to have a registry without resorting to means for that purpose, to which they conscientiously objected.”

16 House of Commons (28 June 1836) vol 34 GBPD ser 3, 1014.

17 House of Commons, Committee stage, (7 June 1836) vol 34 GBPD ser 3, 143–144.

those facts were registered, so that it was easy to trace any individual from the time of his birth to his death by means of the National Register.

- 23 The contemporary speeches seem to confirm that, at this time, matters of birth, death and marriage were considered to be important public facts. Dr Bowring observed that there was no distinction made in the present system between legitimate and illegitimate children, and consequently no security to the public in cases of disputed titles to property. Mr Pease, in the same session, agreed that “the great object of this Bill was to effect a system of registration which would be complete and satisfactory, not to any particular body, but to the community at large”.
- 24 There was no particular reference to access to the proposed registers, except that although it was not proposed that parties giving the information would have to pay a fee, “they would have to pay for a copy of the register afterwards, should they require it”. Presumably because the parish registers were open to the public, it was assumed that the civil register would be so.
- 25 In New Zealand an Ordinance of 1847 provided for registration of births, deaths and marriages in the colony of New Zealand, the register books and indices to be open for inspection at all reasonable times. In 1858 the Registration of Births, Deaths and Marriages Act replaced this Ordinance. At its second reading in the House of Representatives, Mr Stafford said:¹⁸

There was no particular principle involved in the bill, for it consisted of a mass of details; and therefore further remarks on the subject would be unnecessary.

- 26 This followed a very brief explanation of the purpose of the bill, which was to implement a system to make registration agree with the Marriage Act 1858 and to improve registration, adapting legislation from other jurisdictions.

The motor vehicles registers (New Zealand)

- 27 Another of the early New Zealand public registers was that established by the Motor Registration Act 1905. The purpose of this registration was mainly to control the increasing menace of the motorist who sped through town and country at great speed leaving damage in his wake, but no remedy to those who suffered the damage. So Mr Lewis MP for Courtnay put the reasons for introducing the Bill:¹⁹

In the first place, the motor constituted a greater danger to public safety, inasmuch as horses were not accustomed to them, and therefore they were a menace to that portion of the travelling public that used horses... Another reason was that the motor proceeded at such a pace that it was very difficult to overtake it when any occupant of the motor misbehaved himself. It enabled its owner to take long trips into the country... [where] he was bound to be a stranger to 99 percent of the inhabitants of the district... and if he proved to be the cause of any loss or inconvenience to them he was unknown, and they had no remedy. Then these motorists had the tendency to disguise themselves with caps, coats, masks and goggles, and so on, which rendered identification very difficult.

18 (4 June 1858) 1856-1858 NZPD 492.

19 (12 July 1905) vol CXXXII NZPD 522.

[Under the Bill] all motors would be registered and exhibit a certain letter and also a certain number, so that when it was necessary to find the motorist you would be able to consult the register and any person who had reasonable grounds for complaint could identify the motor he was in quest of.

- 28 At the second reading, the Hon Mr Wigram confirmed this purpose:

The object of the Bill was to make the owners of motor-cars register them and exhibit a number on the car for the purpose of identification. The owners of motor-cars that were driven at a high rate of speed were almost unrecognisable and in case of damage being done by them they could not be pursued or traced.²⁰

- 29 The Act allowed local authorities to introduce a register of motor cars but it was not mandatory. In 1924 the issue of registration was revisited, this time essentially to provide funding for improving the national road system and a “proper means of getting an accurate estimate of the number of cars in the dominion”.²¹ Much of the lengthy discussion in the parliamentary debates of the Motor Vehicles Bill concerned the state of the roads and how much revenue the annual licences would produce. Revenue for the Main Highways Board would be obtained from registration, and from licences for motor cars (scaled according to type and use of vehicle) and revenue for the local authorities would be obtained from drivers’ licences (to be annual payments).²² The Bill also regulated other aspects of motoring, and included driving offences.

Land transfer registration in New Zealand

- 30 The system of land registration was originally inaugurated by the Deeds Registration Ordinance of 1841, subsequently the Deeds Registration Act 1908. EC Adams notes that the general scheme of a land registration statute has been stated thus:²³

The objects of all registrations of transactions relating to land, are, among other things, to afford the public the means of knowing to whom the ownership of the land of a country belongs, what are the interests carved out of it, and what are the charges upon it, and encumbrances affecting it, so that these owners may discharge the liabilities ownership entails, that those who deal with them may be protected, and, in many cases, that the transfer to others of their proprietary interests may be easily and inexpensively effected.

- 31 The deeds system was expensive, uncertain and complex. To remedy its defects the first Land Transfer Act was passed in 1870 in New Zealand. This was a system of registration of title to land (rather than of instruments from which title was derived).²⁴ Registration of title involves the accurate identification of each parcel of land which is to be made subject to the system, and the accurate recording of all the interests subsisting in each parcel of land. The fundamental

20 (27 July 1905) vol CXXXIII NZPD 164.

21 (11 September 1924) vol 204 NZPD 815, and 853, the Hon Mr Bollard, Minister of Internal Affairs.

22 Sir Francis Bell (23 October 1924) vol 205 NZPD 730,.

23 EC Adams *The Land Transfer Act*, (Butterworths, Wellington, 2nd ed, 1971) para 2.

24 Land Transfer Act 1870. This Act was consolidated in 1885, and further consolidations were made in 1908, 1915 and 1952.

objective of registration of title is to remove the need for the investigation of the documents which constitute the chain of title. This is achieved by establishing and maintaining a register, which constitutes a final and unimpeachable record of rights to all parcels of registered land and other valid interests therein.²⁵ This method of registering titles is known as the Torrens system, after its creator, Robert Richard Torrens, who was appointed Registrar-General of Deeds in South Australia in 1853. The register has been described as the keystone of the Torrens system.²⁶

- 32 During the first reading of the Land Transfer Bill 1870, the Hon Mr Sewell talked about the first object of the Bill being to provide an indefeasible title to land and said:²⁷

The second leading principle is that it establishes a public record of all transactions affecting registered land... The object of this measure is to provide a public record in which all transactions affecting land may be recorded, and which may stand open to the public, so that everyone dealing with the land may know exactly what he is dealing with...

There are several references to the register begin available to the public; it is even referred to as a “public register”.

- 33 In 1906, in *Fels v Knowles*²⁸ Edwards J acknowledged the purpose of accessibility to the public, at least to the “intelligent man”, when he said:

The object of the [Land Transfer Act 1885] was to contain within its four corners a complete system which any intelligent man could understand, and which could be carried into effect in practice without the intervention of persons skilled in the law... The cardinal principle of the statute is that the register is everything and that, except in cases of actual fraud... [the purchaser] has an indefeasible title against all the world.

Continuing development of open public registers

- 34 Some of the other late nineteenth century public registers and early twentieth century registers were the electoral rolls, and the companies registers. The reasons that they were made accessible to the public (at a fee) seem obvious but were not generally articulated. For the companies registers, it is clear that the persons “operating behind the veil” needed to be transparent in order to deter malpractices and fraud. Any person has been able to inspect registered company documents at a fee, including the register of prospectuses containing the names, addresses, descriptions and interests of directors, and the register of members, (containing their names, addresses and occupations) since at least the Companies Act 1908, allowing the public to check directors’ credentials and trace them if necessary.

25 Hinde McMorland and Sim *Land Law in New Zealand* (Looseleaf) Lexis Nexis NZ Ltd, para 8.001–8.002.
26 Adams, *The Land Transfer Act* (1st ed 1958) para 46, cited in Hinde McMorland and Sim *Land Law in New Zealand*, above n 25, para 8.022.
27 The Hon Mr Sewell (27 July 1870) NZPD, vol 8, 93–94.
28 *Fels v Knowles* (1906) 26 NZLR 604, 619. EC Adams noted that in practice it has not been found practicable to carry the Act out “without the intervention of persons skilled in the law”.

- 35 Throughout the twentieth century, statutes continued to provide for registers open to the public – for example the Music Teachers Act 1924, the Valuers Act 1948, the Patents Act 1953, and the Designs Act 1953. Such registers and others like the dog registers (first established in the Dog Registration Act 1880) and chattels transfer registers (first established by the Chattels Transfer Act 1889) could be searched and viewed by all persons on payment of a small sum (sixpence or later, one shilling). There were however, some restrictions: for example the adoption registers have always been closed to the general public.
- 36 In the last decades of the twentieth century, especially following the enactment of the Privacy Act in 1993, and in the twenty first century, some public register statutory provisions have been reviewed and amended, and new public register provisions created to allow suppression of personal information from public access in some circumstances. This has been partly in response to data protection concerns and guidelines, and partly perhaps because the amount of personal information held on public registers has increased over time. For example, early births and deaths registers contained less information than more recent ones.²⁹ A number of public registers, however, are still almost completely open.³⁰

Public registers and open access

- 37 This brief historical survey of public registers shows that registration had several purposes originally. In some cases it was to provide revenue for the state; in some cases it was to provide accurate statistical information for research and other public interest purposes: for example, population numbers and movement of population, causes of deaths and the need for medical research, numbers of motor vehicles and the need for road building and improvement. In other cases, it was to enable a clear system of land transfer and indefeasible title to property.
- 38 Such purposes can be derived from the Parliamentary debates and other contemporary dicta but, although there is an assumption that the data on the registers are public facts, there is little overt reference to public access.
- 39 No doubt the reasons for open access were in many cases the same as the reasons for their establishment. In the case of the births, deaths and marriages registers, these would include: to assist medical and statistical inquirers, and to enable people to trace descendants in order to avoid litigation over disputed property titles. Open access enabled accuracy of identification – of one’s ancestors for property devolution, of a motorist who had caused damage to one’s property in the case of the motor vehicles register. In the case of the land transfer registers, open access was also, in part, to allow any intelligent man to understand the system, and deal with it in practice “without the intervention of persons skilled

29 See Department of Internal Affairs “Review of Public Access to Registers held in the Citizenship Office and the registers of Births, Deaths and Marriages”, May 2005; and also responses to a Law Commission questionnaire sent to public register holders, by the Department of Internal Affairs in April 2007.

30 The registers in Schedule 2 of the Privacy Act 1993 open to the public, without restriction, (although subject to the Domestic Violence Act 1995, part 6), include registers maintained under the Companies Act 1993, Te Ture Whenua Maori Act 1993, Designs Act 1953, Trade Marks Act 2002, Land Transfer Act 1952, Rating Valuations Act 1998, Friendly Societies and Credit Unions Act 1982, Incorporated Societies Act 1908, Marriage Act 1955, Animal Products Act 1999, Gambling Act 2003, and most registers maintained under the Births, Deaths and Marriages Registration Act 1995.

in the law”. In the case of company registers, openness assisted in ensuring accountability of directors and in deterring fraud.

- 40 Open access remained the rule throughout most of the twentieth century, despite the prevailing climate of official secrecy until the 1980s, for similar public interest reasons. In the twenty first century, as will be seen, most registers are still open to the public although there are provisions to protect the publication of personal information in some cases. We discuss the argument for openness in some detail in chapter 4 and some of the interests (particularly public safety, privacy and trust in government) that can sometimes run counter to openness. But first we need to clarify what is a public register, and the current provisions regulating them.

Chapter 2

What is a “Public Register”?

WHAT IS A PUBLIC REGISTER?

- 41 The Oxford English Dictionary defines a “register” as:
- (1) A book or volume in which regular entry is made of particulars or details of any kind which are considered of sufficient importance to be exactly and formally recorded: a written record or collection of entries thus formed: a list; catalogue...
 - (4) The name of certain official or authoritative records or books of record having some public or commercial importance e.g. (a) of baptisms, marriages and burials in a parish, kept by the clergyman; or (in later use) of births, marriages and deaths, kept by an official (a registrar) appointed for the purpose.
- In the past, such a list was normally made in hardcopy in a series of books; more recently it is most likely to consist of a computer database.
- 42 The Privacy Act 1993 has a definition of a “public register” as:³¹
- (a) Any register, roll, list, or other document maintained pursuant to a public register provision:
 - (b) A document specified in Part 2 of Schedule 2 to the Act.
- 43 A “public register provision” means a provision specified in the second column of Part 1 of Schedule 2 to the Act as a public register provision of an enactment specified in the first column of that Part of that Schedule.³² This Part contains a list of about 40 statutes (and the Land Transfer Regulations 2002),³³ several of which provide for the maintenance of more than one register. So the definition is one based on status, not function or features. It provides no assistance in deciding whether a register should be in Schedule 2.

31 Privacy Act 1993, s 58. Note that in section 2 a “public register” has the meaning given to it in section 58.

32 Privacy Act 1993, s 58. Part 2 of Schedule 2 of the Act also deems certain documents to be public registers. These are “documents held by local authorities and containing authorities for the carrying out of any work for or in connection with the construction, alteration, demolition, or removal of a building, where the authority was granted under any bylaw made under the authority of s 684(1)(22) of the Local Government Act 1974 or any equivalent provision of any former enactment”.

33 Reference in the Privacy Act is still to regulation 5 of the Land Transfer Regulations 1966. This referred to the journal book, nominal index and section index. The 1966 Regulations have now been replaced by the Land Transfer Regulations 2002 and the equivalent regulation is reg 31: see further footnote 93.

44 A number of statutes or regulations provide for authorised lists of data that are, at least to some extent, available to the public, but these registers are not listed in Schedule 2. A couple are even called “public registers” in their legislation.³⁴ So in New Zealand there is a distinction between Schedule 2 of the Privacy Act “public registers” (hereafter Schedule 2 registers) and other statutory registers open to the public. In appendix 1 we have attempted to list as many of both Schedule 2 and other statutory registers as possible.

45 “Public” may refer either to the publicness of the organisation that maintains the register,³⁵ or to the fact that “public registers” are “open to the public” – or it may refer to both aspects, as in the definition of “public register” adopted by Blair Stewart of the Office of the Privacy Commissioner in “Five Strategies for Addressing Public Register Privacy Problems”. Stewart suggests a definition of a public register as:³⁶

- A register, list, roll or compendium of personal data under the control or direction of a public body;
- Maintained pursuant to statute, regulation, rule or other requirement of law; and
- Open, in whole or in part, to public inspection, copying, distribution, or search under a specific law or policy.

46 Some “public registers” are not held by or maintained by public bodies,³⁷ (although they may be under the ultimate control of a public body), for example registers of professionals or tradespeople, company records and shareholders, and security registers. In a note on “Drafting Suggestions for Departments preparing Public Register Provisions” Stewart said:³⁸

Generally a register of personal information about identifiable individuals established by law, carrying with it a specific public search right, should be created as a “public register”.

This statement implies that the “publicness” of a register refers to the public search right, and emphasises that, in this view, it is only registers containing personal information about identifiable individuals that should be “public registers” within the definition in the Privacy Act 1993.

47 In the case of government or public bodies, a public register differs from other lists or registers of information held by such bodies in that there is a specific statutory right of search, rather than being simply subject to the Official Information Act 1982.

34 See the Reserve Bank Act 1989, s 69: Reserve Bank is to keep a public register of persons known as registered banks; Foreshore and Seabed Act 2005, s 95: the register is deemed to be a “public register” within the meaning of section 58 of the Privacy Act 1993, but is not in Schedule 2 of that Act.

35 Robert Gellman “Public Access, Privacy and Public Policy” Discussion Paper, Center for Democracy and Technology, 21 April 1995.

36 B Stewart “Five Strategies for Addressing Public Register Privacy Problems” (2005) update of an article originally released in 1999, <http://www.privacy.org.nz/library/five-strategies-for-addressing-public-register-privacy-problems> (last accessed on 29 August 2007).

37 For the purposes of this paper, a public body is assumed to be a state funded body such as a central or local government department or body.

38 B Stewart “Drafting Suggestions for Departments preparing Public Register Provisions” Office of the Privacy Commissioner, 2005, (update of a note originally released in 1999).

48 A “public register” under section 3 of the Privacy and Personal Information Protection Act 1998 (NSW) means a “register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee)”. This would include those not held or controlled by public bodies.

49 Section 3 of the Information Privacy Act 2000 (Vic) defines a “public register” as:

a document held by a public sector agency or a Council and open to inspection by members of the public (whether or not on payment of a fee) by force of a provision made by or under an Act other than the Freedom of Information Act 1982 or the Public Records Act 1973 containing information that –

(a) a person or body was required or permitted to give that public sector agency or council by force of a provision made by or under an Act; and

(b) would be personal information if the document were not a generally available publication.

This definition seems to imply that personal information is no longer “personal” if in a “generally available publication” (such as a public register). In our view, personal information remains personal even if it is no longer private. The definition also includes the element of a “requirement” to give the information, and it excludes registers that are not held by public bodies.

50 As Stewart points out there is no consensus about the definition. Nor is there consensus about the terminology. The Council of Europe refers to “public files” i.e. files containing categories of personal data with a view to their being accessible to third parties, giving as examples telephone directories, electoral registers, land registers, files containing names and addresses of consumers of electricity and gas, patent and trademark registers, files concerning personal data relating to guardianship, commercial registers, vehicle-licensing registers and so on. They are created in accordance with specific legal provisions, and publication of the information they contain is mandated by law.³⁹ This is wider than Stewart’s definition of public registers in that it would include material that might be available only under the Official Information Act 1982 in New Zealand, or that private bodies make public (such as telephone directories).

51 The NSW Office of the Privacy Commissioner has produced a Guide to Public Registers⁴⁰ which contains a checklist for recognition of a (public) register:

- Is there a reference to a registrar or registration in enabling legislation?
- Is entry onto the record a necessary condition for benefits or rights under the relevant legislation?
- Is there legislation which confers specific status on the record for the purpose of evidence?
- Is there legislation conferring rights or terms of public access?

39 Council of Europe Committee of Ministers “Explanatory Memorandum to Recommendation No R (91) 10 of the Committee of Ministers to Member States on communication to third parties of personal data held by public bodies”, 1991, paras 6 & 24.

40 NSW Office of the Privacy Commissioner *A Guide to Public Registers* No 4, 1999 p5.

- 52 For the purposes of the Stewart definition above, and indeed the NSW statutory definition, another question would be “does it contain personal data or information?” “Personal information” is defined in section 4 of the NSW Act as:

Information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

“Personal information” is defined in the Privacy Act 1993 (NZ):

Means information about an identifiable individual; and includes information relating to a death that is maintained by the registrar-general pursuant to the Births, Deaths and Marriages Registration Act 1995, or any former Act.

- 53 The meaning of personal information is a complex issue and there is an emerging literature on the subject.⁴¹ Information about things such as firearms, cars and telephones does not exist in a vacuum; it is generally related to particular individuals, as Professor Roth has noted. Thus the car registration of person X may become part of the personal information on the motor vehicles register. However, labelling such attributes as names, addresses, dates of birth, employment, often listed on public registers, as personal information, is largely uncontroversial and for this reason we do not discuss the complexity of the subject in this paper. The topic will be covered in some depth in Stage 4 of our Privacy review.
- 54 We note, however, that in replies to our questionnaire sent to most register holders, some said that simply a name and address would be considered “sensitive” personal information, while others said such details could be sensitive in some contexts. A number of replies from local authorities concerning complaints noted that there have been complaints from dog owners on the dog registers about having to supply their dates of birth.⁴²
- 55 However, the inclusion of personal information is not a necessary aspect of a public register. There are a few statutory registers open to the public that contain no or very little personal information.⁴³ For the purposes of this privacy reference, we are concerned only with a large subset of public registers: those containing personal information.

41 See, for example, P Roth “What is Personal Information?” (2002) 20 NZULR 441; K Evans “Personal Information in New Zealand: Between a Rock and a Hard Place” paper given at a conference on “Interpreting Privacy Principles”, Sydney, 16 May 2006; S Booth, R Jenkins, D Moxon, N Semmens, C Spencer, M Taylor, D Townend “What are ‘Personal Data’?” A study conducted for the UK Information Commissioner, (University of Sheffield, 2004); European Union Article 20 Data Protection Working party “Opinion 4/2007 on the Concept of Personal Data”, 01248/07/EN. WP 136, adopted 20 June 2007

42 Responses from Dunedin, Southland and Carterton City Councils to the Law Commission’s questionnaire for register holders, March 2007.

43 See for example the register of banks under the Reserve Bank Act 1989, the register of historic places under the Historic Places Act 1993, the registers under the Hazardous Substances and New Organisms Regulations 1998.

Definition of “public register” for this paper

- 56 Public registers are not necessarily always under the control of a public body, nor do they necessarily contain government information. Many contain names and contact details of people in specific professions or trades (the occupational registers, for example); these are public in the sense of being compiled for, and open to, the public. Thus, in our view, a public register would comprise:
- a register, list, or roll of data;
 - created and maintained pursuant to an enactment;
 - open, in whole or in part to public inspection, copying, distribution, or search, and
 - under a specific access provision of the enactment creating the register.
- 57 Because of the present distinction between Schedule 2 “public registers” (those so defined by the Privacy Act 1993) and other statutory public registers, and because the concerns around public registers relate mainly to those containing personal information, it may be necessary to coin a new term for the concept defined above. In 1998, the then Privacy Commissioner suggested the term “statutory register”. On the other hand, “public register” has become a fairly universal term (albeit differentially defined) and captures the concept of a degree of public access. So long as the characteristics are clearly defined, in our view it is preferable to retain the term. It will be used for the remainder of this issues paper, and the definition above will be the working definition. But we mainly discuss only those public registers that contain personal information.
- 58 Our definition excludes other registers or databases held by government departments or the private sector that are not publicly accessible (such as the cancer registers, immunisation registers, Guthrie cards, and other databases maintained by the Ministry of Health, or the prostitutes and sexual offenders’ registers maintained by the Police, or the Inland Revenue Department’s Kiwisaver registers). It also currently excludes registers such as the teachers’ register that are publicly accessible (and may even be on the Internet) but for which there is no statutory right of search or access.

CATEGORISING PUBLIC REGISTERS

- 59 There are well over a hundred public registers which fit the working definition of a public register. In order to consider them in some detail and why they exist, without going through each and every one, it is first worth categorising registers. It is possible to categorise them in several ways – for example, by subject matter, by types of access provisions, by any special provisions protective of personal information, and by the amount of personal information recorded on the register. Our table of statutory provisions in appendix 1 shows some of this information.
- 60 In this section, the registers will be categorised by subject matter. Both Schedule 2 and other statutory registers are included in this subject matter categorisation. All contain some personal information (at least names and usually contact addresses), although in some cases residential addresses may only be accessed by the public with the consent of the individual concerned.

Categorisation by subject matter

Population registers

- 61 The main examples are the Births, Deaths and Marriages Act 1995 registers, the Electoral Act 1993 and Local Electoral Act 2001 rolls (including the main, supplementary, dormant and unpublished rolls, the habitation indexes and a corrupt practices list with names, residence and description of persons). The births, deaths and marriages registers contain a great deal of personal information (including full and previous name, sex, date of birth, parents’ full names, date and venue of event, date of death, cause of death: see appendix 1 for more details), and the published electoral rolls contain names, residences and occupations.
- 62 Of non-Schedule 2 registers, the Status of Children Act 1969 instruments of acknowledgement of paternity are also relevant here, as are the Citizenship Regulations 2002. But, since November 2006, the latter have limited access to the person named or to a person authorised by the named person, or to confirm citizenship of a parent or grandparent.
- 63 Local authorities are required to keep the burials and cremations register maintained under Burial and Cremation Act 1964, which contains locations and proper descriptions of graves (with names, birth and death dates). It is also on the Internet in some places. This register does not contain “personal information” in terms of the Privacy Act 1993 because the definition in section 2 refers only to information about living individuals (unless relating to a death register under the Births, Deaths and Marriages Registration Act 1995). Nonetheless it would fall within our definition of a “public register”.

Incorporations registers

- 64 These include the Companies Act 1993 registers, both those held by individual companies (the shareholder and company records registers), and the section 360 register of companies held by the Registrar of Companies. Other incorporations registers are the register of societies under the Incorporated Societies Act 1908, and the Friendly Societies and Credit Unions Act 1982 register of members and indexed register that have names and addresses of each member. But although the latter are included in Schedule 2 as public registers, inspection of the register is limited to members. The Charities Act 2005 register of charitable entities (which includes names of past and present officers) and the Reserve Bank of New Zealand Act 1989 register of banks (which contains no personal information) are non-Schedule 2 registers in this group.

Insolvency registers

- 65 The Insolvency Act 2006 registers contain details of bankrupts and bankruptcy orders.

Property registers

- 66 This group includes Land Transfer Act 1952 registers (all grants of land, and certificates of title, showing dealings with land, registered proprietors, memoranda of transfer), the Rating Valuations Act 1998 district valuation rolls, and the

Building Act 2004 registers (of building consent authorities, accredited dam owners, licensed building practitioners). The latter also fall within the occupational registers category.

- 67 Other property registers are those maintained pursuant to the Patents Act 1953, Designs Act 1953 and Trade Marks Act 2002, the Personal Property Securities Act 1999 registers (containing debtor and security holder details but accessibility is limited), and also the Securities Act 1978 registers, maintained by the issuers.

Transport registers

- 68 The main transport registers are the Transport (Vehicle and Driver Registration and Licensing) Act 1986 registers of all motor vehicle registration plates and licences (showing vehicle owners and addresses); and the Land Transport Act 1998 section 199 register of drivers' licences. There are also non-Schedule 2 registers such as the ship register, including the name, address and nationality of each owner of a share (section 20 of the Ship Registration Act 1992);⁴⁴ and the register of New Zealand aircraft and of civil aviation records (section 74 of the Civil Aviation Act 1990).

Local authorities – rates and taxes

- 69 The main registers held by local government bodies are the rating information database (sections 27-28 of the Local Government Rating Act 2002), the Dog Control Act 1996 register, which has limited public access under section 35, and the district valuation rolls, maintained by territorial authorities pursuant to section 7 of the Rating Valuations Act 1998.

Permits and licences

- 70 This group includes the Fisheries Act 1996 registers: the section 98 fishing permit, fishing vessel register and high seas permit, the section 124 quota and annual catch entitlement registers, and the section 186K fish farm register; the Transport Services Licensing Act 1989 register (section 29); licensee registers under the Secondhand Dealers and Pawn Brokers Act 2004 (sections 78-9), and under the Sale of Liquor Act 1989 (section 220); the licensed promoters register under section 204 of the Gambling Act 2003; the registers under the Radiocommunications Act 1989, sections 5, 6 and 28: radio frequencies, management rights and licences with modifications. The Medicines Act 1981 section 55 register of licences, and the Crown Minerals Act 1991 section 91 register of petrol permits are in this group but not in Schedule 2.

Occupational registers

- 71 There are a large number of occupational registers that are open to the public and usually contain a reasonable amount of personal information, including suspensions and cancellations of licence, and disciplinary action (subject to any

44 The maritime register established pursuant to section 189 of the Maritime Transport Act 1994) is stated to be publicly available but “in accordance with the Official Information Act 1982” so does not strictly fall within our definition of a public register.

suppression directions). Often residential addresses are not part of the publicly accessible register.

- 72 Some of these registers are held by public bodies, such as the register of motor vehicle traders under the Motor Vehicle Sales Act 2003 (section 52), and the registers of marriage and civil union celebrants (under section 7 of the Marriage Act 1955 and section 29 of the Civil Union Act 2004). Most are held by various occupational boards or bodies. These include registers maintained under sections 70-75 of the Plumbers, Gasfitters and Drainlayers Act 2006; under sections 16-18 of the Chartered Professional Engineers of New Zealand Act 2002; under sections 121-122 of the Social Workers Registration Act 2003; under section 136-138 of the Health Practitioners Competence Assurance Act 2003; and section 22 of the Veterinarians Act 2005.
- 73 Registers accessible to the public must also be kept under section 49 of the Law Practitioners Act 1982; section 23 of the Music Teachers Act 1981; section 21 of the Cadastral Survey Act 2002; section 18 of the Valuers Act 1948; section 36 of the Real Estate Agents Act 1976; section 32 of the Postal Services Act 1998, and sections 85-87 of the Electricity Act 1992. None of these are in Schedule 2, although most of them have the same amount of personal information on them as Schedule 2 registers.

Food safety registers

- 74 This group includes Wine Act 2003 registers of exporters (section 47), of all agencies (section 73), of wine standards management plans; Animal Products Act 1999 registers of risk management programme operators (section 18), homekill and recreational catch providers (section 73) and exporters (section 52); and the Agricultural Compounds and Veterinary Medicines Act 1997 register of agricultural compounds, including trade names, names and business addresses (section 24). This last is a non-schedule 2 register.

Environmental registers

- 75 Finally, there is a group of environmental registers including a number under the Hazardous Substances and New Organisms Act 1996; the Conservation Act 1987 records of applications for concessions (to be reasonably available for public inspection under section 17ZI); and Climate Change Response Act 2002 records of unit holdings (section 18). Of these, only the last are Schedule 2 public registers.

WHY PUBLIC REGISTERS?

- 76 There are two questions to be asked – first, why is the information collected and recorded in the first place? And secondly, why is it open to be searched by “the public”? There are a variety of answers to both questions depending in part on the subject matter of the register in question.

Collection (and retention) of the information

- 77 The information held on public registers is collected and retained for a variety of public interest reasons. Some examples are discussed below.

Births Deaths and Marriages registers

- 78 The draft Bill amending the Births Deaths and Marriages Registration Act 1995 describes the purpose of these registers as being to record the population's births, marriages, deaths, civil unions, name changes, adoptions, sexual assignments and reassignments as a source of demographic information about health, mortality and other matters for research and policy purposes, and as an official record of such matters that can be used as evidence of those events, of age, identity, descent and so on.⁴⁵

Electoral rolls

- 79 The purpose of the electoral rolls is to list as completely and accurately as possible all eligible voters in the country. Voters can then be sent voting papers at election times so that New Zealanders can exercise their democratic right to vote, confident that the system is fair and has integrity.⁴⁶ The electoral roll "is used to ensure that on election day only eligible people vote, that their votes are counted in the correct electorate and that each elector votes only once each for a candidate and a party."⁴⁷ This is vital for the democratic process.

Incorporation registers

- 80 Company registers list directors of public companies for purposes of transparency. There is a strong public interest in the accountability of public companies, enabling prospective investors to check company details, main shareholders and directors. The purpose of the register has been said to be to enable the registrar to monitor corporate affairs and compliance with the statutory regime.⁴⁸

Insolvency registers

- 81 Similarly for the insolvency registers, there is a clear public interest in being able to check whether a person is bankrupt. Their purposes are to provide information about bankrupts, discharged bankrupts, persons subject to summary instalment orders or admitted to "no asset" procedure, as well as to provide information for statistical and research purposes,⁴⁹ and to maintain a record that meets the Official Assignee's administrative and operational obligations.⁵⁰

45 See the purposes listed in clause 1A of the Births, Deaths, Marriages and Relationships Registration Amendment Bill 2007.

46 See response to Law Commission questionnaire, March 2007 by M Wicks, National Manager, Electoral Enrolment Centre, New Zealand Post Ltd.

47 Privacy Commissioner of New Zealand "Report by the Privacy Commissioner to the Minister of Justice on the Electoral Act 1993" 29 April 1997, 2 cited in R Shields, McCarthy Tetrault "Publicly Available Personal Information and Canada's Personal Information Protection and Electronic Documents Act" (12 October 2000), 18.

48 See Office of the Privacy Commissioner "Public Register Search reference project" 1995, unpublished, Response to OPC by General Manager, Public Registries, in letter dated 8 June 1995.

49 See Insolvency Act 2006, s 448. This Act is not yet in force as at August 2007.

50 See Office of the Privacy Commissioner "Public Register Search reference project" 1995, unpublished, Response to OPC by General Manager, Public Registries, in letter dated 8 June 1995.

Property registers

- 82 The objectives of land transfer registration are set out in section 4(3) of the Land Transfer Act 1952, as follows:

In exercising or performing the powers and duties of the Registrar, the Registrar and every delegate of the Registrar must have regard to the following objectives:

- (a) ensuring an efficient and effective system for registering dealings in land;
- (b) managing the risk of fraud and improper dealings;
- (c) ensuring public confidence in the land titles system;
- (d) ensuring the maintenance of the integrity of the register and the right to claim compensation under Part 11.

The main purpose of the register is to protect everyone who deals with the registered proprietor of the land.⁵¹

Transport – motor vehicle registers

- 83 As we have seen, motor vehicle registration was established mainly in order to record and trace motorists and their vehicles. This remains one of the purposes. Since at least 1924, the system was for government revenue purposes, to provide for a good road system, and this is no doubt still another main purpose of the register. The proposed purposes in a draft Bill to amend the Transport (Vehicle and Driver Registration and Licensing) Act 1986 are:

- (a) to identify the owner of a motor vehicle for the purposes of (i) enforcing the law; (ii) maintaining the security of New Zealand; (iii) collecting from the owner of a motor vehicle the charges imposed or authorised by relevant enactments; and
- (b) to facilitate the administration and development of transport law and policy.⁵²

Local Government rating and charges registers

- 84 The purposes of the rating database, the valuation rolls and the dog registers include enabling local public bodies to assess rates or charges, interact with individuals for purposes such as tax or rates collection, and dog control. As the Local Government (Rating) Act 2002 puts it:

The purpose of the database is –

- (a) to record all information required for setting and assessing rates; and
- (b) to enable a local authority to communicate with ratepayers; and
- (c) to enable members of the public to have reasonable access to the information in the database relating to the calculation of liability for rates.

- 85 This database also allows the public to know whether a property is in a residential or commercial rating zone.

51 Land Transfer Act 1952, ss 182 and 183.

52 Email from Hugh Hanna, Principal Adviser, Ministry of Transport, 21 February 2007.

Occupational registers

- 86 Occupational registers exist partly in order to list members of a profession or trade and their qualifications for ease of reference for the public, partly to improve standards in an occupation, and to facilitate administrative and disciplinary functions to this end.

Reasons for public access

- 87 Some of the above reasons for maintaining public registers, and retaining the data provide some answers to the question as to why there should be public access to a particular register. But the purpose of maintaining the register is not necessarily the same as the purpose of allowing public access to it. It is clear that both individuals wanting to access data about themselves and third parties (like prospective purchasers and investors) may have valid reasons for wanting to access personal information from public registers. In some cases the registers may be accessed by intermediaries.
- 88 Where the information is held by government, public access may be permitted for a variety of public interest reasons. “These objectives run the gamut from the reinforcement of democratic ideals and social equity through to consumer protection and public safety and on to the advancement of economic efficiency” as a Canadian report puts it.⁵³ But access also allows other secondary uses which may or may not be in the public interest.
- 89 For example, the births deaths and marriages registers enable people to obtain copies of their birth or marriage certificates, or those of a grandchild for whom they are opening an account. They enable research by genealogists or historians and biographers; or assistance with locating heirs to an estate. They are regularly used by journalists to confirm details such as age or marital status.⁵⁴ But these records can also provide details which may be used to facilitate identity crime.
- 90 The openness of electoral records permits citizens to satisfy themselves that the election process is fair. Open access to the roll could also deter fraudulent enrolment or inaccurate recording. The rolls are also used by the Press and other media to check accuracy of names and addresses and the habitation indexes are used by politicians to contact constituents. But they may also be used by companies for commercial purposes, such as debt collecting agencies for tracing debtors, uses that even if legitimate, are not related to the reason for establishing the register.
- 91 Access to company registers is important for trading and commercial transactions, as well as to enable potential investors and other people to check up on company directors and records. The purposes of public search have been said to be:⁵⁵
- to enable the public to obtain or verify information relating to the structure, nature, capacity and affairs of a company;
 - to assist the public to make informed decisions relating to commercial, credit

53 Shields et al “Publicly Available Personal Information and Canada’s Personal Information Protection and Electronic Documents Act”, above n 47, p 13.

54 Information given to the Law Commission at a Media Forum on 3 July 2007.

55 See Office of the Privacy Commissioner “Public Register Search reference project” 1995, unpublished, Response to OPC by General Manager, Public Registries, in letter dated 8 June 1995.

- or other transactions/dealings;
 - to enable the public to assess or verify the status of a company.
- 92 Removal of personal details from the register of directors would “make it more difficult to locate directors and easier for directors to avoid creditors and perpetrate fraud”.⁵⁶ In the incorporation category of registers, the purposes of the registers are very similar to the reasons for public access. But the registers may also be used for such purposes as data-mining, or data cleansing, or to locate directors for the purposes of protest, or harassment.
- 93 For property registers, open registers promote economic efficiency by providing the market with data, and protect against corrupt practices and fraud. Land registers enable prospective purchasers and mortgagors to establish who is the owner, and any charges on the land and conditions attached to ownership (for example, easements, rights of way, building consents, mortgage priorities, and whether all charges have been paid).
- 94 Similarly, personal property security registers enable prospective purchasers to check ownership (of vehicles for example) and whether the property is subject to other prior interests, and enable lenders to check prior securities. Open access to insolvency registers enables landlords to check whether a prospective tenant has been bankrupt or business people to check whether a prospective business partner is bankrupt.
- 95 Local authority rating registers are open partly so that purchasers of property can find out their rates, so that members of the public can have reasonable access to the information in the database relating to calculation of rates, or can query valuations or rate assessments of their property in comparison with similar properties in the district. In the past the valuation roll was apparently used for secondary, commercial purposes, but an attempt has been made to restrict the bulk provision of information from this roll by permitting its regulation.⁵⁷
- 96 Access to the motor vehicle register enables prospective purchasers to find vehicle information; car dealers to recall a particular vehicle for safety reasons; employers to check relevant driving histories of employees such as truck or taxi drivers; or car owners whose vehicle was damaged by a third party in a road accident to trace that third party. However, the register has been used for secondary purposes such as obtaining names and addresses for direct marketing, and possibly for theft of valuable vehicles.⁵⁸
- 97 Access to information on occupational registers may be in accordance with the public interest in locating the relevant person for a job and checking their credentials and qualifications, whether a medical consultant or builder (for example) is appropriately qualified, or has been disciplined at some stage. Many people listed on occupational registers provide details voluntarily (particularly

56 See Department of Trade and Industry *Directors Home Addresses* Press notice P/98/231) 24 March 1998; also J Phillips “DTI proposals to remove directors’ and secretaries home addresses from the Public Register” (1997) *Credit Management* 20; both cited in JE Davies and C Oppenheim *Study of the Availability and Use of Personal Information in Public Registers* Final report to for the Office of the Data Protection Registrar (Loughborough University Department of Information Science, September 1999) 8.

57 Rating Valuations Act 1998, s 52(f).

58 See response to Law Commission’s questionnaire, March 2007 by Ministry of Transport.

home addresses and phone numbers) and would expect the public to be able to access them for the above purpose. In an English study of 1999 it appeared that the medical register, which is a large and well-accessed occupational register, was not misused or abused for other purposes.⁵⁹

Diversity of public registers

- 98 As will be apparent from this discussion, there is a diverse range of information contained on public registers in New Zealand for a wide range of purposes. The content and purposes are specific to each register. The table in appendix 1 shows some of the differences. In the table we look at access provisions: who may have access, where, whether there is a charge and, where provided, for what purposes. Some registers are open to “the public” but some (such as the dog registers) only to sections of the public. In the table, too, we look at special provisions: some provide for the purposes of the register; protect personal information (especially contact information) in a variety of ways,⁶⁰ and, occasionally, provide for any consequences of use for unauthorised purposes. Finally, we look at the content of the registers, which is invariably set out in legislation but can be minimal, especially in terms of personal information, or comprehensive.
- 99 The table demonstrates that the protective provisions and the type and amount of information on the different registers vary considerably. It also shows that there is no necessary connection between the amount of personal data on the register, the frequency of search and the protective provisions available. For example, births, marriages and deaths registers contain a great deal of personal information, but the Births, Deaths and Marriages Registration Act 1995 does not contain a provision protecting public safety. The Electoral Act 1993 has such a provision in section 115. Some register provisions specify that a breach of their search provisions can be an interference with privacy (for example, section 59 of the Motor Vehicle Sales Act 2003, section 456 of the Insolvency Act 2006, and section 87 of the Plumbers, Gasfitters and Drainlayers Act 2006). The register of aircraft is specifically subject to the Privacy Act 1993, as is the maritime register. But other registers containing as much or more personal information have no such protective provision.
- 100 There are other differences between registers. Some controls may be administrative, as may some content.⁶¹ Many registers are on the Internet,⁶² but only limited information may be accessible, or searchers may need to be registered. The numbers of enquiries per annum also vary greatly, from over 9.4 million in the case of the motor vehicle register; 3 million title searches for the land transfer register; 1.5 million across all the intellectual property registers; 6,454, 283 for the companies registers; and 2,747,787 for 2006 in the case of the

59 JE Davies and C Oppenheim, above n 56, 38.

60 See chapter 5 for a discussion of the various protective mechanisms.

61 For example, the Rating Valuation Act 1998, s 7 provides that the Valuer General may determine the contents of the valuation roll. Other public register provisions are specific regarding content of the register in the relevant statute; some however add a phrase like: “and any other information the registrar thinks necessary”.

62 From the responses to Law Commission’s questionnaire, March 2007, 43 of the 60 registers noted were on the internet but 17 of the 43 either contained only limited information or access was limited to subscribers or authorised people. The remaining 17 registers referred to in the responses were not on the Internet.

personal property securities register; to “thousands” for the rating information database and drivers’ licence register; 2-3000 for the civil aviation register; to 1,200 for the (electronic) fishing permit register, and less than 5 for the high seas permit register.⁶³

- 101 Like the amount of personal information, the number of enquiries does not seem related to the protective provisions. The Fisheries Act 1996 has a provision for non-disclosure of a data subject’s address if the Chief Executive is satisfied that this would be prejudicial to personal safety, whereas the Land Transfer Act 1952 has no such provision. The result of this unsystematic approach to the protective provisions and controls is that similar situations arising in different register areas can produce different outcomes, and that little used or specialised registers can have greater protections for personal information than much larger, well used registers.

The Schedule 2 and non-Schedule 2 distinction

- 102 There are anomalies in the distinction between Schedule 2 and other statutory public registers. At the time that Schedule 2 was being considered, the Department of Justice (as it then was) made a list of registers it administered to which the Act would apply, and invited other agencies to include registers they administered. This invitation was taken up unevenly by the agencies. As a result Schedule 2 of the Privacy Act 1993 predominantly included registers maintained by the Department of Justice at that time (though some have now changed hands as a result of departmental restructuring). There has been no wholesale review of all public registers since then, although the Office of the Privacy Commissioner has raised the question of inclusion of particular registers in Schedule 2 as various pieces of legislation are reviewed, which has led to a number being included.⁶⁴
- 103 If the basis for inclusion in Schedule 2 is that the register contains personal information and is open to the public, it is odd that the registers of members of friendly societies and credit unions, which are only open to inspection by fellow members, are in Schedule 2. There are a number of occupational registers in Schedule 2, but others that contain names and postal addresses and possibly other personal particulars, such as disciplinary offences or suspensions of licence, are not in Schedule 2.⁶⁵ It is not always apparent why some registers are included while others are not.
- 104 Against this background, we turn to consider the present New Zealand law regulating public registers.

63 Responses to Law Commission’s questionnaire, March 2007.

64 Meeting with Blair Stewart, Office of the Privacy Commissioner, 5 July 2007.

65 See, for example, register of music teachers, of valuers, of real estate agents, and others mentioned in the table in appendix 1.

Chapter 3

Public Register Regulation

- 105 In this chapter we discuss the New Zealand law regulating public registers, and some policy and legal issues that arise. Regulation of public registers is found in two main areas. The first is the statutes and some regulations which provide that various agencies must maintain registers that, at least to some extent, are to be open to public inspection. A list of such legislation, as far as we have ascertained it, is in appendix 1 of this document. These statutes are the primary source of regulation for public registers.
- 106 The second main area of law regulating public registers is the Privacy Act 1993, an Act to protect individual privacy in accordance with the Recommendation of the Council of the Organisation for Economic Co-operation and Development (OECD) Concerning Guidelines for the Protection of Privacy and Transborder Flow of Personal Data.⁶⁶ In late 1980, the OECD issued a set of Guidelines concerning the privacy of personal data, which underpins most current international agreements, national laws, and self-regulatory policies.⁶⁷
- 107 In the Privacy Act 1993, public registers are regulated by Part 7. The origins of this part of the Act can be found in Recommendation No. (91) 10 of the Council of Europe Recommendations on Communication to Third Parties of Personal Data Held by Public Bodies, adopted 9 September 1991.
- 108 The European Community had sought to promote the potential for commercial exploitation by both the public and private sectors of data held by the public sector. In 1989 the European Commission issued Guidelines for Improving the Synergy between the Public and the Private Sectors in the Information Market. This issue formed the backdrop to the Council of Europe's Committee of Ministers Recommendation (91) 10,⁶⁸ which recognised in its preamble:

66 The long title of the Privacy Act 1993 referring to the "OECD" Guidelines.

67 <http://www.cdt.org/privacy/guide/basic/oecdguidelines.html> last accessed 8 May 2007. The guidelines include principles relating to collection limitation, data quality, purpose specification, use limitation, security, openness, individual participation and accountability. These will be discussed in some detail in our stage 1 report.

68 Professor Roth suggests that the Council of Europe Recommendation may be viewed as a response to the European Community Synergy Guidelines: P Roth, *Privacy Law and Practice* (LexisNexis, last updated, July 2007), commentary at PVA 13.4.

... the increasing tendencies on the part of the private sector to exploit for commercial advantage the personal data or personal data files held by public bodies as well as the emergence of policies within public bodies envisaging communications by electronic means of personal data or personal data files to third parties on a commercial basis.

109 Recommendation 91(10) goes on to recommend that Governments of member states take account of the principles set out in the appendix to the recommendation whenever personal data or personal data files collected and stored by public bodies may be made accessible to third parties, and that they have due regard to those principles in their law and practice regarding the automation and communication to third parties by electronic means of personal data. The principles set out in the appendix include the following:

- the communication, in particular by electronic means or personal data or personal data files by public bodies to third parties should be accompanied by safeguards and guarantees designed to ensure that the privacy of the data subject is not unduly prejudiced;
- the purposes for which the data will be collected and processed in files accessible to third parties as well as the public interest justifying their being made accessible should be indicated in accordance with domestic law and practice;
- public bodies should be able to avoid the communication to third parties of personal data which are stored in a file accessible to the public and which concern data subjects whose security and privacy are particularly threatened.

110 Section 13(1)(e) of the Privacy Act provides that one of the Privacy Commissioner’s functions is:

to monitor compliance with the public register privacy principles, to review those principles from time to time with particular regard to the Council of Europe Recommendations on Communication to Third Parties of Personal Data Held by Public Bodies (Recommendation R (91) 10)...

**PRIVACY ACT
1993: MAIN
PROVISIONS
APPLICABLE
TO PUBLIC
REGISTERS**

111 The Privacy Act 1993 includes both general provisions for agencies that collect, hold, use and disclose personal information, and specific provisions with regard to “public registers”, as defined by the Act, being those maintained pursuant to a provision listed in Schedule 2 of the Act.⁶⁹ As we have seen, this list omits a significant number of registers which in all other respects have the characteristics of public registers: being required to be maintained by statute or regulation, with specific public access provisions.

112 In considering legislation relevant to all public registers, it is necessary to look at both the Information Privacy Principles (IPPs) set out in section 6 of the Privacy Act 1993, and the Public Register Privacy Principles (PRPPs) set out in section 59. The IPPs apply to all agencies that collect, store and disclose personal information. This includes agencies maintaining non-Schedule 2 public registers. The IPPS apply to Schedule 2 public registers so far as reasonably practicable. This is because section 7(6) of the Privacy Act 1993 provides:

“Subject to the provisions of Part 7, nothing in any of the information privacy principles shall apply in respect of a public register”.

⁶⁹ See Appendix 1.

In Part 7 of the Act, section 60 provides that the agency responsible for administering any public register shall, in administering that register, comply, so far as is reasonably practicable, with the information privacy principles.

- 113 PRPPs 1, 3 and 4 apply only to agencies maintaining Schedule 2 public registers, and these also apply only so far as reasonably practicable. PRPP 2 applies to “every person” so far as reasonably practicable. Section 60 of the Act provides:

60 Application of information privacy principles and public register privacy principles to public registers

(1) Subject to subsection (3) of this section, the agency responsible for administering any public register shall, in administering that register, comply, so far as is reasonably practicable, with the information privacy principles and the public register privacy principles.

(2) Every person shall, so far as is reasonably practicable, comply with principle 2 of the public register privacy principles.

(3) Where any information privacy principle or any public register privacy principle is inconsistent with any provision of any enactment, then, for the purposes of this Part of this Act, that enactment shall, to the extent of the inconsistency, prevail.

- 114 One effect of the distinction between non-Schedule 2 public registers and those in Schedule 2 is that personal information in the former may have more protection by virtue of the application of the IPPs.⁷⁰

The Information Privacy Principles (IPPs)

- 115 IPP 1 states:

Purpose of collection of personal information

Personal information shall not be collected by any agency unless –

(a) the information is collected for a lawful purpose connected with a function or activity of the agency; and

(b) the collection of the information is necessary for that purpose.

- 116 An “agency” is defined as any person or body of persons whether in the public or private sector, with certain exceptions, none of which apply to public register holders, except courts or tribunals in relation to their judicial functions.

- 117 There are no exceptions to IPP 1 insofar as non-Schedule 2 public registers are concerned; however, for Schedule 2 registers, IPP 1 applies only so far as is reasonably practicable. As noted above, this is so for all the IPPs in relation to Schedule 2 public registers.

- 118 IPP 2 provides that where an agency collects personal information it shall collect directly from the individual concerned. There are a number of exceptions,

70 However, if a non-Schedule 2 register provision is clearly inconsistent with an IPP, the former would most likely prevail to the extent of the inconsistency.

including where non-compliance would not prejudice the interests of the individual, or is necessary for law enforcement purposes, or compliance is not reasonably practicable in the circumstances, the information is non-identifying, or where “the source of the information is a publicly available publication”. “Publicly available information” includes a “public register”,⁷¹ but it is likely that an agency responsible for compiling a public register would source the information from the individual concerned, particularly where up to date information is required. So IPP 2 should generally apply to public register compilation⁷² (although not to users of registers who source their information from public registers).

- 119 If an agency does collect information from the person concerned, IPP 3 provides that the agency must take reasonable steps to ensure the person knows the information is being collected, the purpose for which it is being collected, who is the intended recipient, the law under which it is being collected and the individual’s rights of access and correction of personal information. Similar exceptions apply as for IPP 2. IPP 3 would generally apply to public register holders where their registers are sourced from an individual.⁷³
- 120 IPP 4 concerns the lawful and fair collection of personal information. IPP 5 provides that personal information collected must be protected by reasonable security safeguards against its loss, modification, unauthorised access or misuse. IPP 6 relates to access by the person concerned and IPP 7 to correction of information by the person concerned. IPP 8 provides that the agency must check the accuracy of the information before using it. IPP 9 requires an agency not to hold personal information for longer than is required for the purposes for which the information may lawfully be used. All these principles should apply to non-Schedule 2 public registers, and to Schedule 2 registers subject to section 60(1) and (3) of the Privacy Act 1993.
- 121 Importantly, IPP 10 says that an agency that holds personal information that was obtained in connection with one purpose shall not use the information for any other purpose, except in certain circumstances. The exceptions are very similar to the IPP 2 exceptions, and include “unless the agency believes on reasonable grounds that the source of the information is a publicly available publication”. For most agencies holding public registers, the source of the personal information these contain would be the individual concerned. So IPP 10 should apply to non-Schedule 2 public registers, and to Schedule 2 public registers subject to section 60 of the Act. It would not, however, apply to register users who obtain and hold personal information sourced from public registers.

71 Privacy Act 1993, s 2 (interpretation). “Public register” in section 2 is defined as having the meaning in section 58 of the Act: section 58 gives the Schedule 2 definition of a public register, but specifies that this is “[i]n this Part” (that is, Part 7). However, it is very unlikely that the term “public register” used in other parts of the Act (section 7(6) and section 13(10)(e) for example) would have a different meaning. Non-Schedule 2 public registers probably fall within the “publicly available information” definition in any case as “generally available to members of the public”.

72 For Schedule 2 public registers, this is only so far as reasonably practicable and inconsistent provisions in the specific public register legislation can override the IPPs: Privacy Act 1993, s 60(1) and (3).

73 Again, for Schedule 2 public registers, this is only so far as reasonably practicable and inconsistent provisions in the specific public register legislation can override the IPPs.

- 122 IPP 11 imposes limits on disclosure of personal information, the first being that the disclosure must be for one of the purposes in connection with which, or directly related to the purposes for which, the information was obtained. Again there are exceptions, which include where the source of the information is a publicly available publication. In general, however the specific access provisions for public registers would displace IPP 11 insofar as searches are concerned. IPP 11 still provides some protection to personal information collected for a public register. For example, where an agency collects certain information for administrative purposes, but it does not appear on the public register, IPP 11 should operate to limit the disclosure of that information.
- 123 IPP 12 forbids the assignment of unique identifiers to individuals, unless necessary to enable the agency to carry out one or more of its functions efficiently. This should apply to public registers subject to inconsistent provisions in their own legislation.
- 124 If an action breaches an IPP an individual may bring a complaint to the Privacy Commissioner alleging an interference with privacy under sections 66-68 of the Privacy Act 1993, providing that in the opinion of the Commissioner, that action has caused some loss, damage, detriment, significant humiliation and so on. Although Schedule 2 public register holders must comply with the IPPs as far as reasonably practicable, specific provisions in public register legislation will override these principles, particularly IPP 11. Exceptions to the IPPs may also apply in some cases. So the applicability of the principles and the availability of the complaint procedure are limited, or may not always be clear to the data subject. However, the IPPs apply more comprehensively to non-Schedule 2 register holders.
- 125 The result is that the IPPs cannot consistently regulate the use and disclosure of personal information on public registers. The IPPs will have more impact on collection, handling and storage of information as these functions are less likely to be dealt with by the statutes providing for registers.

Public register privacy principles (PRPPs)

- 126 The public register privacy principles (PRPPs) are set out in part 7 of the Privacy Act 1993, the part that applies specifically to public register personal information. Agencies that hold and maintain public registers that are listed in Schedule 2 of the Act, must comply with the PRPPs,⁷⁴ which are as follows:

PRPP 1 Search references

Personal information shall be made available from a public register only by search references that are consistent with the manner in which the register is indexed or organised.

PRPP 2 Use of information from public registers

Personal information obtained from a public register shall not be re-sorted, or combined with personal information obtained from any other public register, for the purpose of making available for valuable consideration personal information assembled in a form in which that personal information could not be obtained directly from the register.

⁷⁴ Privacy Act 1993, s 59.

PRPP 3 Electronic transmission of personal information from register

Personal information in a public register shall not be made available by means of electronic transmission, unless the purpose of the transmission is to make the information available to a member of the public who wishes to search the register.

PRPP 4 Charging for access to public register

Personal information shall be made available from a public register for no charge or for no more than a reasonable charge.

- 127 These principles apply only to Schedule 2 public registers. Neither the public register principles nor any code of practice issued under section 63 of the Privacy Act 1993 have any application to non-Schedule 2 public registers.
- 128 The PRPPs are generic rules, which apply to existing and future Schedule 2 registers. As a result they are necessarily expressed at a level of generality, and cannot take account of the competing public interests applying to the specific public register and the information held on it. However, they can be overridden by the enactment establishing the public register. While this may create a flexible framework of general principle, it also affects the certainty of application of the principles.
- 129 Even where the PRPPs are not overridden by the specific statute, agencies responsible for administering a Schedule 2 public register must comply with the PRPPs only “so far as is reasonably practicable.” PRPP 2, which relates to the use of information from a public register, also applies to people using the information only “so far as is reasonably practicable”.⁷⁵
- 130 The PRPPs do not confer any legal rights that are enforceable in a court of law.⁷⁶ A complaint about a breach of the PRPPs can result in a report by the Privacy Commissioner to the Minister responsible for the administration of the register, or to the chief administrative officer of the agency.⁷⁷
- 131 The Privacy Commissioner has power to issue a code of practice in relation to public registers under section 63 of the Act. If she were to do so, any complaint that the code was breached might be an “interference with an individual’s privacy” under section 66(1)(a)(ii). If such an interference and ensuing harm was alleged, the Privacy Commissioner could investigate the complaint, attempt conciliation and the matter could be referred to the Director of Human Rights Proceedings or the Human Rights Review Tribunal.⁷⁸ This is a somewhat circuitous route.
- 132 In the 1998 review, the Privacy Commissioner recommended that the PRPPs should become enforceable in a similar manner to the information privacy principles,⁷⁹ but no such amendments have yet been made to the Privacy Act 1993.

75 Privacy Act 1993, s 60(1) and (2).

76 Privacy Act 1993, s 62.

77 Privacy Act 1993, s 61.

78 Privacy Act 1993, ss 82, 83 and 85.

79 Report of the Privacy Commissioner *Necessary and Desirable – Privacy Act 1993 Review*, (Wellington, 1998) recommendation 95. This would require amendment to ss 61(3)–(5), s 66 and other aspects of part 8 of the Act (complaints).

PRPP 1 Search references

- 133 In 1998, the Privacy Commissioner suggested that the brevity and simplicity of this principle belies its importance, noting that search reference limits often act as an effective privacy protection device.

For example, a search by owner's name using the vehicle register would effectively create a national locator of persons, something that would not have been the subject of debate in creating the register.⁸⁰

- 134 Some commentators have suggested that computerisation of registers has had a significant impact on the effectiveness of search references as a privacy protection. PRPP 1 seems to have been designed with a paper based system in mind, where search references would rely upon the way in which the register was organised. If documents were stored in date order, for example, it would be logistically very difficult to search for a particular document by the name of the person. However, information can be searched on an electronic register according to a vast number of references, which, as the Privacy Commissioner noted in 1998, may make PRPP 1 simply ineffective.

- 135 However, despite advances in electronic technology, search references still provide a practical limit to the range of searches available to the public, and therefore the purposes to which the information can be put. In our view, the decision as to which search references should be made available to the public is still a significant one. In 1998, the Privacy Commissioner proposed that the principle should be amended to require search references to be consistent with the purpose of the register.⁸¹

PRPP 2 Use of information from public registers

- 136 Information from public registers is used by a variety of commercial entities. Credit reporters such as Veda Advantage are currently exempt from PRPP 2 when making available credit information. This is because of the Credit Reporting Privacy Code 2004, issued by the Privacy Commissioner under part 6 of the Privacy Act 1993. Rule 11(4) of that Code provides that:

A credit reporter may make available for valuable consideration, in accordance with this rule, credit information sourced from a specified public register that has been re-sorted, or combined with other information sourced from a specified public register, notwithstanding that such re-sorting or combination might otherwise breach public register privacy principle 2.

80 Report of the Privacy Commissioner *Necessary and Desirable – Privacy Act 1993 Review*, above n 79, para 7.4.6.

81 *Ibid.*, recommendation 84.

- 137 The “specified public registers” are the Insolvency Act 1967 (section 118), the Personal Property Securities Act 1999 (section 139) and the Companies Act (section 189).⁸²
- 138 During our research, we came across occasions where no such exemption operated, and PRPP 2 appeared to have been breached by companies combining information from a number of register lists and selling the combined information to consumers as a “value-added” service.
- 139 Privacy specialist John Edwards has noted that the utility of this PRPP is limited by the requirement for “valuable consideration”. This limit was probably intended as a safeguard against aggressive profiling and data mining, but still permitted “in-house” uses of registers.⁸³ This means that while a mailing list vendor is prohibited from generating new configurations of data by combining two public registers, a bank or other institution would not be, if it was recombining the registers not for sale or hire, but for its own use. The information could also be offered gratis as a service by an agency as part of the entitlements of membership of a marketing organisation, for example.⁸⁴

PRPP 3 Electronic transmission of personal information from register

- 140 PRPP 3 has been described as trying to put a brake on making information available from public registers generally by means of electronic transmission.⁸⁵ The object of PRPP 3 reflects the concern expressed in the preamble to the Council of Europe Recommendation (91) 10 and principle 5.2 in the recommendation, which recommends that technical means designed to limit the scope of electronic interrogations or searches should be introduced with a view to preventing unauthorised downloading or consultation of personal data. PRPP 3 endeavours to control the use to which electronic transmissions are put, not so much by technical means, but by limiting the purpose for which the information is to be made available. This raises the question of whether there are adequate controls in place to prevent downloading of the information in question, and subsequent manipulation of it for purposes other than mere “searching of the register.”⁸⁶

82 Veda Advantage (formerly Baycorp Advantage), describes access to public registers as being a vital component in its business. It advises that it needs to obtain personal information from registers for three key commercial uses (identity verification, data accuracy and cleansing, and de-personalised data mining) in order to enhance and maintain the accuracy of credit files or bank customer files, and assist with credit forecasting. Submission to the Law Commission from Baycorp Advantage, dated 5 December 2006. In Veda’s view, the list of registers in the Credit Reporting Privacy Code 2004 is too restricted.

83 Professor Roth has suggested that the probable reasoning behind the imposing of the “valuable consideration” limitation can be found in the Council of Europe Recommendation (91) 10, art 7, which is however more strict in its terms. See Appendix 3 for this Recommendation.

84 See P Roth *Privacy Law and Practice* (LexisNexis Ltd, last updated, July 2007) PVA59.6

85 Report of the Privacy Commissioner, above n 79, para 7.6.4.

86 P Roth, *Privacy Law and Practice* (LexisNexis), PVA59.7.

- 141 In 1998, the Privacy Commissioner recommended that PRPP 3 should be amended by adding the words “in New Zealand” after the words “a member of the public”. He expressed concern at the prospect of a rush to place New Zealand public registers containing personal information on the Internet, making personal information generally available in jurisdictions which have no privacy or data protection laws.⁸⁷
- 142 The Privacy Commissioner suggested that one practical effect of the amendment he proposed would be that personal information contained in public registers could not be made available for search on the Internet unless:
- There was a mechanism established for limiting searches to people in New Zealand; or
 - PRPP 3 is modified by a code of practice, dealing with relevant privacy issues such as the sensitivity of the data, the explanations that had been given to individuals at the time of collection, and the degree of compulsion used in obtaining the information; or
 - The electronic disclosure to overseas enquirers is authorised by an enactment.
- 143 No such code of practice has yet been issued. Barrister John Edwards has suggested that this principle may have made some sense when the Internet was in its relative infancy in 1993, in terms of requiring that registrars act cautiously when exposing their registers to new media, but it is difficult to see what ongoing relevance it has today.
- 144 Answers to the Law Commission’s questionnaire indicated that many of the public registers for which questionnaires were completed are available in whole or in part on the Internet. Indeed some are available only in electronic form (such as the personal property securities register and the New Zealand Emission Unit Register, both of which are administered by the Ministry of Economic Development). For some registers, the information available on the Internet is limited, either by content, (for example, certain information such as addresses or contact numbers is not included), or by search parameter.⁸⁸

PRPP 4 Charging

- 145 In 1998, the Privacy Commissioner considered that PRPP 4 goes further than is necessary to protect privacy interests, extending to apply to third parties as well. He noted that keeping charges to third parties low does not necessarily protect privacy, and could in fact work against privacy interests if commercial organisations could obtain information which has been collected compulsorily for no charge, or for only a modest fee.⁸⁹ This could place the Privacy Commissioner in the position of adjudicating on complaints about excessive charging for access to information where the use is likely to be detrimental to an individual’s privacy. For that reason, he recommended that PRPP 4 should

⁸⁷ Report of the Privacy Commissioner, above n 79, para 7.6.12. The Privacy Commissioner also recommended that there should be a power in the Privacy Act 1993 to make regulations in respect of any public register to authorise and control the electronic transmission of personal data which is not limited to members of the public within New Zealand: recommendation 89.

⁸⁸ For example a number of occupational registers, and the registers maintained by FishServe.

⁸⁹ Report of the Privacy Commissioner, above n 79, paras 7.7.3, 7.7.4.

be amended to provide that personal information on a public register should be made available *to the individual concerned* for no charge or no more than a reasonable charge.

- 146 However, we note that as presently drafted, PRPP 4 has an effect which, while not privacy related, is very important from a policy point of view. This principle not only enhances individual access to personal information, but also ensures that charges do not create barriers for members of the public who require the information for various of the purposes for which public registers were intended – such as purchasing land or confirming vehicle ownership. This aim would be undermined if the principle of access at no more than a reasonable charge applied only to the individual whose information was listed. Whether the Privacy Act 1993 is the most appropriate place for such a principle to be set out is a different question.

Sections 61 and 63 of the Privacy Act 1993

- 147 Section 61 concerns complaints by any person or on the Commissioner’s own initiative about non-compliance with any of the information privacy principles or public register privacy principles. Section 63 provides that the Commissioner may issue codes of practice in relation to any public register, modifying the application of any of the IPPs or the PRPPs in relation to a public register. This section has never been used although code has been issued relating to public registers under section 46 of the Privacy Act 1993.⁹⁰

OTHER RELEVANT STATUTES

Domestic Violence Act 1995, and Domestic Violence (Public Registers) Regulations 1998.

- 148 The other important law in relation to public registers is the Domestic Violence Act 1995, Part 6 (Non-publication of information relating to protected person on public registers) and the Domestic Violence (Public Registers) Regulations 1998. Section 108 of the Domestic Violence Act 1995 allows a “protected person”⁹¹ at any time to apply to an agency administering any Schedule 2 public register⁹² for a direction that identifying information on the register is not to be publicly available. The regulations purport to apply to public registers maintained under any of the provisions specified in Schedule 1 of the regulations, and public registers maintained under regulation 31 of the Land Transfer Regulations 2002.⁹³

90 The Credit Reporting Privacy Code 2004.

91 This is a victim of domestic violence in whose favour a court protection order has been made.

92 The wording of section 108 of the Domestic Violence Act 1995 is “any public register” but “public register” is defined in section 107 as having the same meaning as in section 58 of the Privacy Act 1993, that is a Schedule 2 public register.

93 The reference in the Schedule 2 of the Privacy Act 1993 is still to regulation 5 of the Land Transfer Regulations 1966. This referred to the journal book, nominal index and section index. The 1966 Regulations have now been replaced by the Land Transfer Regulations 2002 and the equivalent regulation is reg 31, which refers to the records of all instruments received for registration, an indexing system that enables provisional registers, certificates of title or computer registers to be identified by name of the registered proprietor or description of the land; and a record of all applications to bring land under the operation of the Land Transfer Act 1952 or the Land Transfer Act 2002.

149 However, Schedule 1 of the Domestic Violence (Public Registers) Regulations 1998 contains a limited list of public register provisions.⁹⁴ This list is similar to the original Schedule 2 list of public register provisions in the Privacy Act 1993, although somewhat updated, but it is significantly shorter than the list in the present Schedule 2 of the Privacy Act 1993. It omits, for example, sections 33 and 50 of the Land Transfer Act 1952, section 199 of the Land Transport Act 1998, and several recent additions to Schedule 2. Section 108 of the Domestic Violence Act 1995 should prevail over the Domestic Violence (Public Registers) Regulations 1998, which means that all agencies administering a Schedule 2 public register should be subject to the Domestic Violence Act 1995, Part 6. This leaves the non-Schedule 2 registers out of the ambit of this protective mechanism.

150 A protected person who wishes to apply for a direction must do so in writing and, in certain cases (for example, to the Registrar of Companies), on an approved form.⁹⁵ A decision must be made by the agency without delay. If the agency agrees to make the direction, the applicant must be informed of the effect, and if it declines to make the direction the applicant must be informed of steps that he or she can take to complain to the Privacy Commissioner.

151 Where there has been a successful application under the Domestic Violence Act 1995, the information on the register that will not be made available may relate to the protected person applying or to a protected person who is a child of the applicant's family, or both.⁹⁶

152 With respect to the births, deaths and marriages registers, even if a direction is in force, the information will still be included in an index maintained under section 74 of the Births, Deaths and Marriages Registration Act 1995.

153 Of the responses to the Law Commission's questionnaire, the highest numbers of applications for directions were under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 for the motor vehicles register, being 29 in 2006. Land Information New Zealand receives fewer than 10 applications a year in relation to the registers it administers. The Registrar of Births, Deaths and Marriages had four applications in 2006, and the Ministry of Economic Development has only one or two applications a year for the companies register. The majority of agencies who responded to the questionnaire had never received a request under the Domestic Violence Act 1995 or the regulations. This is not

94 Deeds Registration Act 1908 (ss 21, 22 and 30); Incorporated Societies Act 1908 (section 33); Companies Act 1993 (ss 87, 88, 189 and 360); Marriage Act 1955 (s 7); Local Elections and Polls Act 1976 (ss 7B, 7BA, 7BB, 7BC and 7BD); Friendly Societies and Credit Unions Act 1982 (ss 5, 40 and 130); Transport (Vehicle and Driver Registration and Licensing) Act 1986 (s 18); Rating Powers Act 1988 (s 113); Personal Property Securities Act 1999 (s 139); Civil Union Act 2004 (s 29); Building Act 2004 (ss 216, 273 and 298); Te Ture Whenua Maori Act 1993, s 263) Electoral Act 1993 (ss 100, 101, 103-109, 211-212); Births, Marriages and Deaths Registration Act 1995 (ss 5, 7(2), 8, 24, 25, 34, 36, 48(3), 50, 53, 56, 58); Dog Control Act 1996 (s 34); Rating Valuations Act 1998 (section 7); Insolvency Act 2006 (s 62). The regulations were brought into force by the Domestic Violence Act Commencement Order 1998 which repeats the list in its Schedule 2. The explanatory note to this order on the one hand, states that the directions relating to non-disclosure of a protected person's whereabouts can only be made in respect of the above registers "and the other public registers to which sections 108-120 of Part 6 of the Domestic Violence Act 1995 applies" (ie, presumably, all Schedule 2 of the Privacy Act 1993 public registers); and on the other hand, states that there a number of Schedule 2 registers to which the regulations do not apply. At the least, clarification seems to be needed.

95 Domestic Violence (Public Registers) Regulations 1998, rr 4-5.

96 Domestic Violence Act 1995, s 108.

surprising given that many registers do not contain residential addresses, or do not make them accessible to the public, and the Act may appear (through the Domestic Violence (Public Registers) Regulations 1998) to be more limited than it actually is.

- 154 The Domestic Violence Act 1995 protection allows suppression of personal information only if a person is a “protected person”. As noted, the list of registers to which the Domestic Violence (Public Registers) Regulations 1998 is dated and limited and includes some provisions that are not open to the general public or hold very little personal information,⁹⁷ whereas others holding personal information are omitted.⁹⁸
- 155 For persons more generally concerned about their own or their families’ safety and who are not “protected persons” in terms of the Act, there are only a very few suppression mechanisms in public register provisions. One such is the unpublished electoral roll pursuant to the Electoral Act, s 115. Applications need to be accompanied by a protection or restraining order, a statutory declaration from a member of the police or letter from a barrister or solicitor. In comparison with the Domestic Violence Act 1995 suppression mechanism, a far greater number of people take advantage of the unpublished electoral roll. There are currently 10,000 people on this roll.⁹⁹ Other protective provisions will be discussed in chapter 5.

Official Information Act 1982

- 156 The Official Information Act 1982 introduced a regime of public access to “official information” except where there are good reasons for withholding it. The Act applies generally to government departments and Crown entities, although not to information held by courts. The Local Government Official Information and Meetings Act 1987 applies similarly to access to local government information. These Acts do not derogate from provisions in other enactments authorising official information to be available, so where enactments specifically provide for access to public registers, those provisions should prevail over the official information legislation. This includes all statutory registers to which the public has access and that contain official information, not just Schedule 2 public registers.
- 157 Public register access processes usually require a person to fill in a search form and/or pay a fee, after which the material will be released, so long as the request complies with the requirements of the register holder. Accessing official information under the Official Information Act 1982 sometimes requires an official to make a decision weighing the various public interest factors, which may or may not result in the requester receiving all or part of the information requested.
- 158 It is obviously far simpler for a requester to use the public register access provisions to access information where possible, but sometimes requests for bulk data from public registers have been made under the Official Information Act

97 For example, Friendly Societies and Credit Unions Act 1982.

98 For example, Land Transfer Act 1952.

99 Information from M Wicks, National Manager, Electoral Enrolment Centre, May 2007; and see “Confidential electoral roll”, LawTalk, 7 May 2007, 15.

1982, in particular by commercial entities.¹⁰⁰ In his 1998 review of the Privacy Act 1993, the Privacy Commissioner described this as problematic, and suggested that something needed to be done to avoid the Official Information Act being used to upset any carefully crafted balance established in the public register provisions in particular statutes and under the PRPPs. He recommended exclusion of the official information statutes from questions of release of personal information from public registers.¹⁰¹ However, requesters have continued to use the official information legislation on occasions to attempt to access information (especially in bulk) held on public registers.¹⁰²

159 Consideration of the Official Information Act 1982 and the access overlap with public register provisions highlights another problem: the line between what is and what is not a public register is presently not clear. Registers maintained by local authorities are many and varied, and there seems to be some question as to which of these would presently be classified as “public registers”.¹⁰³ There are some publicly held lists or databases of information held by local government where access is very limited or not specified in a statute, for example, local authority lists of moorings. These are not Schedule 2 public registers, and possibly not otherwise public registers, so the Local Government Official Information and Meetings Act 1987 would apply to their access.

160 Some councils consider that lists of monitoring of resource consents and grants, plans and other building information to be made reasonably available at their offices, (pursuant to section 35 of the Resource Management Act or section 216 of the Building Act 2004), are public registers.¹⁰⁴ However, the requirement is not to keep a “register” and the former is not a “public register provision” in Schedule 2 of the Privacy Act 1993; nor are they considered to be public registers by all councils. In addition, where the information is kept pursuant to section 216 of the Building Act 2004, access is subject to the Local Government Official Information and Meetings Act 1987 (section 44A which concerns land information memoranda). The information is to be reasonably available, but in Wellington, at least, permit and consent records are transferred to the City Archives six months after completion where they can be viewed over a five day period for \$25 (first record plus an additional \$5 per record). Copying fees are extra.

100 See for example Ombudsman’s *Case No A5621* (1998) 11 CCNO 91. The requester sought a local authority’s complete rate records under the LGOIM Act for direct marketing. The request was declined under s 7(2)(a) of the Act but the decision overruled by the Ombudsman.

101 Report of the Privacy Commissioner, above n 79, para 7.16.

102 On one occasion, in an application under the Official Information Act 1982, Land Transport New Zealand refused to supply a list of vehicles owned by named individuals to a person who could not supply the licence numbers. On appeal, the Ombudsman upheld this decision. See Annual Report of the Office of the Ombudsman for the year ended 30 June 2006, 33–34.

103 Seven local authorities responded to the Law Commission’s questionnaire about public registers (it was sent to 18). All mentioned the rating information database, and the dog register. Two mentioned the burials and cremation register, three mentioned the electoral roll, three the liquor licence applications; three mentioned building consents, two the district valuation register, and one the health regulations. A regional council mentioned mooring permits and various regional parks’ listing for reservations and so on, not statutorily required.

104 Answers to Law Commission’s questionnaires March and April 2007, listed by Auckland CC, Wellington City Council and Southland District Council. The other councils that responded did not include these lists as public registers.

- 161 Other lists of data held by government departments include a number of registers under the Hazardous Substances and New Organisms Act 2002 and the various Hazardous Substances Regulations. However, many of these lists often contain little or no personal information.¹⁰⁵

Summary

- 162 The overlap with the official information Acts increases the complexities of the statutory framework for regulation of public registers by the Privacy Act 1993, in particular where it differs according to whether or not the public register provision is in Schedule 2. These problems are compounded in that public registers are subject to a primary regulatory regime by their own Acts. Requesters wanting information in bulk have sometimes used the official information legislation as an alternative access regime.
- 163 In addition, as we have seen, the extent to which the IPPS apply to Schedule 2 registers is uncertain, and the “publicly available information” exception that includes “public registers” probably only refers to Schedule 2 registers, but this is unclear. It is also inaccurate, as a number of public registers contain information that is not in fact publicly available. The problems with the PPRPs have been canvassed above, in particular their inability to prevent uncontrolled use by private commercial sector interests, as have the limitations of the Domestic Violence Act 1995 and its regulations in protecting people who have real fears for their safety.

105 Note that some second schedule public registers contain little personal information also e.g. lists of homekill and recreational catch service providers maintained pursuant to section 73 of the Animal Products Act 1999.

Chapter 4

Principles, Interests and Issues

- 164 As described in chapter 2, traditionally public registers were open to the public for reasons such as economic efficiency, transparency (of company records for example), or to assist in detection of crime. However, information on public registers can also include personal data that is, or in some contexts can be, sensitive. This may lead to tension between freedom of information and transparency on the one hand, and accountability of government and the need to protect personal information on the other.
- 165 These principles are not necessarily opposing and the public interests in open access to public registers can be served, as well as protection of people’s reputation and privacy, in different situations. In our view, it is necessary to consider the various principles that apply in some detail, so that the law relating to public registers can be guided by those principles. This chapter will first consider the rationale of openness, and then turn to other principles and public interests which need to be taken into account in deciding to what extent public registers should be open to the public, such as privacy, accountability of, and trust in, government by its citizens, and the public interest in preventing crime.

OPENNESS AND TRANSPARENCY The “open society”: a summary historical survey

- 166 In *The Open Society and its Enemies* Karl Popper, noted in 1945, that: “Our Western civilization originated with the Greeks. They were, it seems, the first to make the step from tribalism to humanitarianism.”¹⁰⁶ In Popper’s view, in tribal type societies the group is all-important. Everyone has a particular place in the community, and taboos regulate and dominate all aspects of life. An individual rarely is in a position of wondering how best to act; the “right way” is determined for him or her by the leaders of the community and the taboos. Popper calls this tribal or collectivist society a “closed society”.
- 167 Early Athenian democracy was, in Popper’s view, the start of the “open society”, albeit still a society relying on slaves. This was a society in which “the people”, and not simply the aristocratic rulers, took some responsibility for the

106 K Popper *The Open Society and its Enemies* (Routledge Classics London & New York, 2003, first published 1945) vol 1 “The Spell of Plato”, p 184. D Brin *The Transparent Society* (Addison Wesley, Reading, Mass, 1998) ch 1 “The Challenge of an Open Society”.

governance of the community. The ideal was government of the people, by the people and for the people. This means that the people ideally participate in government, influence policy making, may disagree with policy decisions and have the right to do so. In order to do so, they need information that in times of despotism is kept closed.

- 168 Early democracy and the beginnings of open government did not survive however.¹⁰⁷ For centuries despotic monarchies ruled in Europe, and even in countries like England, where governments included rudimentary representation of “the people” in parliament, the dissemination of accurate political information was very limited. The development of printing, literacy and the non-conformist religions increased the spread and publication of information generally and thinkers such as John Milton pleaded for freedom of expression. But essentially the business of government was kept secret, and it was not until the end of the eighteenth century and the age of the Enlightenment that the orthodox political secrecy approach was challenged. Around this time there was the emergence of the coffee house, newspapers and gazettes wherein public issues were discussed and debated. Parliamentary reporting began in 1774. More and more political and economic information was published. The American and French revolutions led to their republican Constitutions that endorsed liberal philosophies, and thinkers such as Kant, Bentham, De Tocqueville and, later, JS Mill, argued for increased publicity.¹⁰⁸
- 169 The twentieth century saw a move back to closed government during the Bolshevik revolution, the growth of the Soviet Union, and the rise of Nazis, lasting into the Cold War era. In 1911, the United Kingdom passed the Official Secrets Act, applicable throughout the Dominions. New Zealand’s Official Secrets Act 1951 was based on this legislation. The Act assumed that official information was the property of the government, and should not be disclosed without specific reason and authorisation.
- 170 Calls for free speech and greater openness in the interests of participatory democracy were made, however, by philosophers like Alexander Meiklejohn.¹⁰⁹ The Universal Declaration of Human Rights in 1948 confirmed the right to freedom of opinion and expression, including freedom to hold, receive and impart information through any media, as did subsequent declarations, and in the 1970s Freedom of Information Acts in many countries inaugurated modern open government and freedom of official information.
- 171 When New Zealand enacted its “freedom of information” statute, the Official Information Act in 1982, the Official Secrets Act 1951 was repealed, unlike in some other countries. Since 1983 there has been a presumption of availability of official information. New Zealand government in the twenty first century can claim to be democratically accountable and open, and New Zealand can claim to have an open society in Popper’s terms.

107 The following is a very summary, and therefore simplified, account.

108 I Kant *Political Writings* trans H Nisbet (1991 Cambridge University Press) – all actions whose maxims are consistent with publicity are in accord with moral law; J Bentham “Political Tactics” in *The Collected Works* (republished 1999, Clarendon Press Oxford); JS Mill *On Liberty and other essays* (republished 1998, OUP Oxford - World Classics Series),

109 See A Meiklejohn *Free Speech and its Relation to Self-Government* (Harper & Bros, New York, 1948).

Presumption of access to government information

- 172 The Danks report by the Committee on Official Information *Towards Open Government* in 1980, said that:¹¹⁰

Nowadays it is generally accepted that the Government has a responsibility to keep the people informed of its activities and make clear the reasons for its decisions. The release and dissemination of information is recognised to be an inherent and essential part of its functions.

- 173 The outcome of the Danks report's recommendations for a presumption of access to government information was the enactment of the Official Information Act 1982. The main purpose of the new system was seen as improving communications between the people of New Zealand and their government, to narrow differences of opinion, increase the effectiveness of policies and strengthen public confidence in the system of government.¹¹¹

- 174 The Danks Committee considered that the case for more openness in government was compelling for four main reasons: ¹¹²

It rests on the democratic principles of encouraging participation in public affairs and ensuring the accountability of those in office; it also derives from concern for the interests of individuals. A no less important consideration is that the Government requires public understanding and support to get its policies carried out. This can come only from an informed public.

- 175 The participation argument is that a better informed public is better able to play the part required of it in a democratic system, by, for example, participation in public meetings and free, informed debate, in order to judge policies and electoral platforms.¹¹³ The accountability argument is that politicians and administrators are not infallible and can only be accountable if the information on which they base decisions is transparent and accessible by the public.¹¹⁴ The effective government argument is that better information flow assists in more flexible development of policy.¹¹⁵ Finally, concern about individuals relates to citizens' concern to have access to information collected and held by the government on their personal affairs, in order, for example, to challenge administrative decisions about them.¹¹⁶ These arguments in favour of openness remain cogent today.

- 176 The presumption of access is subject to exceptions however, and one of the "good reasons" for withholding information under the Official Information Act 1982 is where non-disclosure would be necessary "to protect the privacy of natural persons" (including that of deceased people).¹¹⁷ The purposes of that Act, while

110 Committee on Official Information (Danks Committee) *Towards Open Government: General report 1* (Wellington 1980), p 5.

111 Above n 110, 7.

112 Above n 110, 14–16.

113 Above n 110, 14.

114 Above n 110, 14–15.

115 Above n 110, 15–16.

116 Above n 110, 16.

117 Official Information Act 1982, s 9(2)(a).

essentially to make official information more accessible, also include the preservation of personal privacy. Section 4 provides that the purposes of the Official Information Act 1982 are:

- (a) To increase progressively the availability of official information to the people of New Zealand in order—(i) To enable their more effective participation in the making and administration of laws and policies; and (ii) To promote the accountability of Ministers of the Crown and officials,—and thereby to enhance respect for the law and to promote the good government of New Zealand:
 - (b) To provide for proper access by each person to official information relating to that person:
 - (c) To protect official information to the extent consistent with the public interest and the preservation of personal privacy.
- 177 In the United States, Alan Charles Raul has described citizens as deriving many tangible benefits from open access to their state’s records,¹¹⁸ including government accountability. If citizens are to monitor and hold accountable their representatives, they need access to the data that informs government decision-making, and the records of what decisions have been made. But this still leaves room for personal privacy in the management of state records. The process of informing citizens and holding the state accountable can usually be equally effective if the public knows what categories of information the state is gathering, how it is obtaining and managing it and to what use it is put. While the public may need to know that the state is keeping a database of citizens’ drug prescriptions, citizen control of government is not usually meaningfully served by having the state inform citizens what drugs their friends and neighbours are taking.¹¹⁹
- 178 Raul also describes as a tangible benefit the contribution of open access to state records in helping the press report on government. The press performs a valuable public watchdog role, and legal rights and presumptions in favour of disclosing public records facilitate its efforts to discover and report on government activities. On this view, information specific to individuals may be required to maximise this benefit, helping to identify citizens who are involved with or affected by specific issues and providing the information necessary to contact them.¹²⁰ The media also rely on information contained in government databases as an indispensable resource for investigative reporting.
- 179 It has also been suggested that open public records can provide communitarian benefits by promoting ease of identification and communication. For example, the press, community groups, family members and others can use public records to identify those who live in a certain area, or who are involved in certain activities or lines of business.¹²¹

118 Alan Charles Raul *Privacy and the Digital State: Balancing public information and personal privacy* Kluwer Academic Publisher, Boston 2002, 37–45.

119 Raul, above n 118, 40.

120 Raul, above n 118, 41.

121 Raul, above n 118, 42. The counter-arguments, that such uses of public records can result in harassment or stalking, are discussed below.

Freedom of expression and the right to receive information

180 Section 14 of the New Zealand Bill of Rights Act 1991 affirmed that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.¹²² The right to receive “public” information is a necessary concomitant of the right of free expression in a democracy.¹²³ Without this right, freedom of expression would be impoverished and the market place of ideas¹²⁴ would be detrimentally affected, because discussion and debate could be ill-informed and hindered. However, there are limits on the right of freedom of information and the freedom to receive information, as will be discussed below.

Commerce and the free flow of information

181 Section 14(1) of the Privacy Act 1993 requires the Privacy Commissioner to have due regard, in the performance of her functions and exercise of her powers, to the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information, and the recognition of the right of government and business to achieve their objectives in an efficient way.

182 Free flow of information is a necessary condition for an efficient and democratic economic system. It is, as we have seen, critical to our system of property ownership that purchasers are able to check good title of any property that they are buying, and that lenders, insurers and others are able to verify title ownership. It is likewise important for information on company and other incorporation registers to be transparent, in order to assist the public to make informed decisions relating to investment, credit or other commercial activities, for the prevention of fraud and to enable the public to verify the status of a company.

183 A number of utilitarian arguments can be made for the free flow of information held on public registers. Commercial entities benefit from economic efficiencies associated with access to the personal information held on public records, as they are able to obtain a large volume of information that otherwise may not have been cost-effectively available.¹²⁵ Cheaper, more accurate information about potential customers can reduce the cost of doing business, and allow more targeted marketing. The revenue collected from the sale of public information may be significant.

122 See also Article 19(2) of the International Covenant on Civil and Political Rights (the ICCPR) (signed by New Zealand on 12 November 1968 and ratified on 28 December 1978) which states: Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

123 See also, A & P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis NZ Ltd, Wellington, 2005)13.7.31 “The right to receive information and opinions is a logical component of the right to freedom of expression”.

124 The phrase originated in *Abrams v US* (1919) 250 US 616 per OW Holmes J, dissenting, and is related to the need for open discussion in a democracy in order to discover the truth. See also JS Mill’s “collision of adverse opinions” *On Liberty*, above n 108, 59.

125 Raul *Privacy and the Digital State: Balancing public information and personal privacy*, above n 118, 43.

- 184 Public records can also be used to verify identity and improve the accuracy of information used by legitimate businesses to make credit and other decisions. Banks, finance companies and non-bank financial institutions all rely on the availability of adequate information, including information held on public registers, to verify identity and assess risk.¹²⁶
- 185 Veda Advantage expressed concern in its submission to the Law Commission that there is a trend in legislation governing public registers contrary to the “inherent purpose” of public registers (which it describes as being to inform the public), and the facilitation of commerce. It suggests there is a danger that the move towards specific provisions, which it considers is aimed at addressing public anxiety about public register uses such as direct marketing, will unintentionally inhibit other key commercial uses that have a commercial and/or public benefit.

Other public interests in openness and freedom of information

- 186 The ability of government agencies to receive and disclose information with other government agencies can also apply to disclosing personal information where it is justified in terms of the maintenance of law and order, or the security of the state. Free flow of information assists the state to trace persons suspected of serious criminal offences such as drug dealing, terrorism and money laundering. New Zealand’s membership of the Financial Action Task Force (an international inter-governmental body set up to develop policies to combat terrorist financing and money laundering), and the enactment of legislation such as the Financial Transactions Reporting Act 1996, means that identity verification has become increasingly important, not only for credit checking and commercial reasons, but also to aid the fight against terrorism.
- 187 In addition, open access allows verification of information (such as name spelling, birth dates, whether or not a person is bankrupt, or has died) by the Press¹²⁷ and the public, particularly historians and biographers. Public registers are an official source of information that is very likely to be accurate for such verification.
- 188 Open access also permits a number of the beneficial purposes of access to the various types of registers that we have discussed in chapter 2. The occupational registers need to be open and to contain a reasonable amount of information so that the public can check that the people they intend to engage are qualified, and that they have not been subject to suspension or disciplinary proceedings, for example,¹²⁸ (although sometimes name suppression is granted by a court in such proceedings).
- 189 But open access also permits some more problematic uses of register information. For example, free flow of information is not always beneficial in a commercial context. Sound commercial relationships also involve respecting the rights of the

126 Discussion with the Executive Director, Financial Services Federation Inc, on 25 July 2007. The public registers mostly relied on are the companies registers, motor vehicles registers, LINZ register, register of personal property security interests and local authority rating information database.

127 The press apparently use the births, deaths and marriages registers, the electoral roll and the motor vehicle registers regularly: information given to the Law Commission at a Media Forum, July 2007.

128 See for example the Chartered Professional Engineers Act 2002, the Health Professionals Competence Assurance Act 2003, Registered Architects Act 2005, Plumbers, Gasfitters and Drainlayers Act 2006 and provisions for most other occupational registers.

customer: a pertinent question is whether the client or customer would be aggrieved at what the organisation is doing with their personal information.¹²⁹ Personal information given to agencies for purposes of a public register is usually given without choice and for specific purposes, on the assumption that it will only be used for those purposes (or related or approved purposes). Where there has been no consent to use of information sourced from a public register, for example, clients or customers may well be upset. Where there has been consent, it is important that the consent be informed in order to avoid an aggrieved client or loss of customer trust.

- 190 In addition there may be safety concerns about personal identifying information being publicly available in some cases. In our view, because of these considerations, personal information on public registers should not be presumed to be public information simpliciter; there may be countervailing public interests to openness that should protect personal information in some cases.

LIMITS ON OPEN INFORMATION – PROTECTION OF PERSONAL INFORMATION

191 The right to receive information (like free expression) may be limited by other rights and freedoms, for the benefit of the community or for the respect of the rights or reputations of others.¹³⁰ Where personal information is included on government or public files, databases or registers, interests such as a person's perceived privacy, their trust in government or the prevention of crime may sometimes prevail over the free flow of information in the interests of openness.

Privacy interests

- 192 Although there is no “right to privacy” confirmed in the New Zealand Bill of Rights Act 1990, there is a right to freedom from an unlawful or arbitrary interference with privacy under the ICCPR.¹³¹ Privacy values – in the sense of protection of personal information in the public domain – have become increasingly a concern. As Judith Bannister has put it:¹³²

Before the development of computer databases, we had certain expectations about privacy and accepted a certain level of public disclosure of personal information. With the development of new... technologies, our expectations of privacy have been heightened. Our conceptions of privacy are not fixed; they are socially constructed over time.

Bannister goes on to compare technological advances in photography as, in part at least, leading to Warren and Brandeis' argument for a law of privacy in 1890.¹³³

129 See D Ireland “The Privacy Review and the Financial Services Sector: Storm Clouds Ahead” (1999) 5 Human Rights Law & Practice 31. See also “Microsoft Presses Privacy Button”, an interview with Peter Cullen of Microsoft, *The Independent*, 18 July 2007; J Gustaven (President and CEO of the Canadian Marketing Association) “Protecting Privacy makes Business Sense”, *Toronto Star* 30 July 2007, <http://www.thestar.com/Business/article/241130>, last accessed 3 August 2007.

130 Article 19(3) of the International Covenant on Civil and Political Rights states that these rights may be limited by law to the extent necessary “for the respect of the rights or reputations of others”.

131 Article 17 of the International Covenant on Civil and Political Rights states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

132 J Bannister “The public/private divide: personal information in the public domain” [2002] PLPR 3.

133 S Warren and Brandeis “The Right to Privacy” (1890) 4 Harvard L Rev 193.

- 193 Forty percent of New Zealanders responding to the 2001 census question “would you mind if we make your census records available after 100 years?” said they wanted their records destroyed.¹³⁴ Fifty-seven per cent of New Zealanders say they are worried about invasion of privacy through new technology.¹³⁵ In a 2006 public opinion survey by UMR Research, fifty-four per cent of people polled were concerned about the availability of personal details on public registers, and sixty seven percent were concerned about the privacy of personal details held for credit reporting.¹³⁶
- 194 The debate about the Births, Deaths, Marriages and Relationships Registration Amendment Bill 2007 has included expressions of concern that “anyone can obtain my birth/father’s death certificate”. In the context of this debate, the Minister of Internal Affairs has said: “There is a balance to be struck between the rights of individuals to their privacy and the access to information... There will be occasions when [details of how a person died] is family information they might not want all of the world to have access to”.¹³⁷
- 195 Clearly many New Zealanders do have a concept of privacy which manifests itself in a desire to keep certain personal information private, or at least to retain some control of their personal information, even if there is no consensus as to the boundaries of this concept. In the course of our research and consultation for this project, we frequently heard concern expressed that in some circumstances, access to personal information held on public registers amounted to an “invasion of privacy.” It is useful to try to identify what people mean by that phrase – what “harms” or “invasions” they consider result from the use of public register information. This in turn may help to identify the privacy values that arise in relation to public registers.
- 196 As part of Stage 1 of its privacy review, the Law Commission is assessing privacy values, changes in technology, and international trends, and their implications for New Zealand law. That review will include a detailed discussion of the many approaches that can be taken to privacy. For present purposes we discuss briefly those aspects that are relevant to public registers.

Risk and privacy invasion

- 197 One way of considering privacy in the context of the collection and use of personal information is as a claim for protection against a series of risks. The most relevant to public registers are those which can be broadly categorised as involving risks of injustice, including risks of significant inaccuracies, leading to cases of mistaken identity or unjust treatment; risk of unjust inferences, caused by collecting or linking data originally intended for different purposes; and the risk of “function creep”, where data collected for one purpose is gradually

134 Information by email from Statistics New Zealand, 31 May 2007. These records were destroyed immediately and the remaining 60 % were archived to be made public after 100 years.

135 Kris Herbert “Digital Tracks – your information thumbprint in cyberspace” 83 *New Zealand Geographic* 2007, 64, 65.

136 UMR Research “A Summary Report” survey for the Privacy Commissioner <http://www.privacy.org.nz/filestore/docfiles/24153322.pdf> (last accessed 20 August 2007). This and other public opinion surveys are discussed in detail in our privacy review: Stage 1, together with a caveat about the limitations of public opinion surveys.

137 *NZ Herald* “The Real Cost of Identity Theft”, 12 May 2007.

used for others to which the individual concerned has not consented.¹³⁸

198 Use of public register information may also create risks to dignity by exposure or embarrassment where the information contained on a register is particularly sensitive (for example, some causes of death included on the register of deaths).

199 In *The Digital Person: Technology and Privacy in the Information Age*,¹³⁹ Daniel J Solove suggests that traditional conceptions of violations of privacy understand it to be a kind of invasion, in which somebody invades and someone is invaded, and the victims experience embarrassment, mental harm or harm to their reputations; or work around a secrecy paradigm, where privacy is invaded by uncovering one's hidden world and disclosing concealed information. Solove maintains that while these traditional ways of understanding privacy can still be helpful, they do not account for key aspects of the unique problems that the digital age has introduced.¹⁴⁰

Bureaucracy often results in a routinized and sometimes careless way of handling information – with little or no accountability. This makes people vulnerable to identity theft, stalking, and other harms. The problem is not simply a loss of control over personal information, nor is there a diabolical motive or plan for domination as with [George Orwell's] Big Brother. The problem is a bureaucratic process that is uncontrolled. These bureaucratic ways of using our information have palpable effects on our lives because people use our dossiers to make important decisions about us to which we are not always privy.

200 On this view, the invasion conception of privacy is less useful for considering the privacy issues raised by public records, as public record information often consists of what Solove describes as fairly innocuous details – birth date, address and so on. These are not normally considered to be personal, intimate or embarrassing pieces of information, and so disclosure does not amount to a harm in the traditional sense of an invasion. But Solove argues that the harm in the release of certain information in public records stems from the “aggregation effect”. Viewed separately, these pieces of information may be seen as innocuous, but viewed in combination, they begin to paint a portrait of our personalities, and greatly increase our vulnerability to a variety of dangers such as identity fraud, stalking or harassment.¹⁴¹ And as those dossiers are increasingly relied upon for important decisions, the problems that errors in any of the information can cause increase in magnitude.

201 At a more abstract level, Solove suggests the existence of these digital dossiers of information about us alters the nature of our society, taking us closer towards a system of de facto national identification. Identity systems and documents have a long history of use and abuse for social control, having been used for example during slavery, in Nazi Germany and in Rwanda.

138 For discussion of this analysis, see Colin J Bennett and Charles D Raab, *The Governance of Privacy: Policy instruments in global perspective* (2ed) MIT Press, Cambridge Massachusetts, 2006, 58; Perri 6, *The Future of Privacy, Volume 1 Private life and public policy* Demos, London, 1998, 39.

139 Daniel J Solove *The Digital Person: Technology and Privacy in the Information Age* (New York University Press, New York, 2004).

140 Solove, above n 139, 7, 9. Solove describes the digital information collected and stored about individuals as “digital dossiers.”

141 Solove, above n 139, 146.

- 202 Records of personal information could also be used by government leaders and officials for improper monitoring of individuals, depending on the issue of the day. Solove's concern is that we do not currently know the full consequences of living in a "dossier" society, but we are rapidly moving towards becoming such a society without sufficient foresight or preparation. This concern extends beyond the uses to which government might put such digital information, to the growing power of businesses, which source much of the information in their databases from public records.¹⁴²

Government accountability and trust in government

- 203 Citizens in the modern state are often filling in forms which ask for their personal information, a fair amount of which is included in public registers. It is usually given for specific purposes (such as elections, recording births and deaths, buying land, owning dogs, driving a motor vehicle, buying shares); often there is no choice but to give the information, if the person wants or need to carry out a certain activity. Citizens often assume that the information is used only for purposes relevant to its collection. If the government allows, or does not prevent, the use (or the sale) of the information for quite other purposes, the government may fail in its accountability to its citizens for fair handling of their personal information in accordance with the information privacy principles and OECD guidelines. This failure of accountability can lead to aggregation of personal data by third parties and use for commercial purposes, without the data subject's consent, or more obviously harmful uses, such as stalking and identity theft.
- 204 As a consequence, citizens may be harmed or at least may feel aggrieved by a loss of informational self-determination, and lose their trust in their government. This is damaging to the state and could lead to information being withheld,¹⁴³ or wrong or inaccurate information being given.
- 205 The Inland Revenue Department has an accountability approach to information sharing or data matching with other government departments, on the basis that people trust that giving their information to the Inland Revenue Department is purely for taxation purposes. Such trust encourages voluntary compliance; use for secondary purposes reduces this trust.¹⁴⁴ Section 6 of the Tax Administration 1994 Act provides that the integrity of the tax system includes:

The rights of taxpayers to have their individual affairs kept confidential (section 6(2)(c), and

The responsibilities of those administering the law to maintain the confidentiality of the affairs of taxpayers (section 6(2)(e).

142 Solove, above n 139, 149.

143 Anecdotally this is the case for the electoral roll: persons with heavy debts apparently do not enrol for fear of use of their personal information by their creditors or debt collection agencies. Arguably, this is a use (tracing debtors) of the roll that should be allowed. However, there may be other more dubious uses that deter people from registering on this and other registers.

144 Tax Administration Act 1994: Part 4 concerns the obligation of officers of the IRD to maintain secrecy relating to the Inland Revenue Acts and certain other Acts "except for the purpose of carrying into effect the Acts referred to": s 81(1)(a).

- 206 Clearly, trust that the state will deal responsibly with personal information that citizens hand over either voluntarily or without any real choice is an important factor to take into account when considering to whom and for what purposes such information could be disclosed.

Public safety and security

- 207 A consumer survey of New Zealanders published in December 2006 (the Unisys Security Index New Zealand) shows that New Zealanders are concerned about their personal security as well as their internet and financial security, and national security.¹⁴⁵ A repeat of this survey in August 2007 showed a very similar level of concern. The two main areas of concern were people obtaining their credit card/debit card details and unauthorised access to, or misuse of, personal information.¹⁴⁶

Crime prevention

- 208 The spectre of criminal activity resulting from accessing and aggregating personal information from registers (amongst other sources) is a serious concern. Such criminal activity can include stalking (even leading to murder), locating and subsequently harassing an abused partner or other target person, and identity crime. Such concerns have led to restrictions on access to registers overseas.
- 209 Even in the United States, where the First Amendment makes freedom of speech a preferred right, many states have restricted access to their public records during the 1990s in response to concerns about crime prevention, often excluding access for commercial use.¹⁴⁷ California passed the Driver's Privacy Protection Act in 1989 restricting access to motor vehicle records after the murder of the actress Rebecca Schaeffer outside her home. The murderer had located her home address with the help of a private investigator who obtained it from the California motor vehicle records.¹⁴⁸
- 210 In New Zealand, concerns about the need to balance the availability of public register information with personal safety and security has led to the development of some protective mechanisms which are used in a number of the statutes that establish public registers to enable access to information to be restricted in certain circumstances. Presently, there are inconsistencies between registers as to the grounds on which information may be suppressed, and there are some significant gaps in the grounds available. The problem with this ad hoc approach is that while one piece of legislation may provide adequate safeguards, these may

145 *Unisys Security Index New Zealand* A Consumer Link Survey December 2006 <http://www.unisys.com.au/services/security> last accessed 27 July 2007. On a scale of 0-300 concerns in all these four areas were around 110. In August 2007 the index had dropped slightly to 108. See also UMR Research Ltd reports in 2001 and in 2006 that found that 84% of New Zealanders raised security of personal details on the internet as the most concerning privacy issue: <http://www.privacy.org.nz/filestore/docfiles/24153322.pdf> (last accessed 20 August 2007).

146 *Unisys Security Index New Zealand* A Consumer Link Survey December 2006, 5.

147 For example, Florida barred access of driver information in traffic citations from those seeking it for commercial solicitation purposes. Daniel J Solove, above n 139, 140.

148 Daniel J Solove, above n 139, 147. Note however that the information used in the Schaeffer case would still have been available even after the passage of the new law, as private investigators are still allowed access to motor vehicle records – Alan Charles Raul *Privacy and the Digital State: Balancing public information and personal privacy*, above n 118, 46.

become pointless if a person's details are easily accessible from another public register. We discuss the various protective mechanisms available in chapter 5.

Identity Crime

- 211 Recently there has been considerable discussion in the media about the risks of misuse of personal information held on public registers for the purposes of identity crime. The New Zealand Police describe identity crime as any offence involving the misuse of identity. They avoid including traditional theft and misuse of credit cards and cheques in either the description or the statistics of identity crime, as those offences are already well established and understood here. In this New Zealand's approach differs from that taken in the United States, which describes such offending as identity fraud or identity theft.
- 212 Identity crime is difficult to measure, as it fits into a variety of existing offences. The Police describe it as widespread, with new technologies presenting increased opportunities for offenders. The purposes of identity fraud are primarily financial, but may include money laundering, computer hacking, or terrorist offences. Collation of identity crime statistics is relatively new in New Zealand, and most of the information is currently sourced from government agencies, rather than from the private sector, so accurate estimates of rates of offending are not yet possible. However, the Police estimate that misuse of a genuine identity makes up about half of all identity crime. This includes situations in which offenders use their own identity, or variations such as changes of name, for the purposes of offending. About a quarter of cases involve the use of fictional identities, and the remaining quarter involves the unauthorised use of another identity – what is usually thought of as identity theft. The misuse of identities of deceased people is a small but significant component of identity crime.
- 213 Identity theft was cited by the Department of Internal Affairs as a concern underlying recent proposals to amend the Births Deaths and Marriages Registration Act 1995, as key pieces of information required to steal a person's identity are their full name, date and place of birth, and their parents' names. All of this information is readily accessible on the register of births. However, during consultation, the Police indicated that they do not know how much information used for the purposes of identity crime is sourced from public registers. Access to the equivalent Australian registers has been restricted for several years, without the incidence of identity theft declining.
- 214 In the United States and Canada, moves have been made to create new criminal offences related to identity theft and identity fraud. During consultation, the Police indicated that they did not consider any new offences were required in New Zealand at this stage to deal with identity crime: the existing range of criminal offences is considered sufficient.

Harassment

- 215 Feedback from the Institute of Directors who had surveyed members for their views about the company registers revealed that a clear majority of those who responded thought that residential addresses of directors should not be available on the public register for reasons of privacy, personal safety and

security. Some mentioned incidents of criminal activity against directors' homes where addresses had been discovered from some source. One director noted: "I am keen not to have my personal address easily accessed by the public. I know of several instances where pharmacists have been targeted at home by drug seekers".¹⁴⁹

Annoyance

- 216 Information from a number of public registers in New Zealand is released in bulk to commercial entities for a range of purposes, including direct marketing, credit checking and identity verification. Information from public registers is also used for the purposes of "telemarketing", which might be broadly described as unsolicited telephone calls from companies and organisations. There are of course many categories of such calls. Some may be for commercial purposes, such as encouraging sales of a particular product, while others may be for non-commercial purposes, such as research or encouraging charitable donations.¹⁵⁰
- 217 People may want to restrict access to their contact details for the purposes of avoiding the calls and correspondence of direct marketers.¹⁵¹ Raul describes this as the flip side of one benefit of access to state records: "While more and better information allows marketers to more accurately determine who would be interested in hearing about their products and services, many consumers claim not to want to hear about *any* products or services at their home."¹⁵²
- 218 In New Zealand, until the late 1980s, the electoral roll was the main source of data for out-bound mail campaigns.¹⁵³ However the Electoral Law Reform Act 1989 removed access to the electoral roll for marketing purposes, and organisations began to compile lists which could be purchased or rented for use in mailing campaigns.¹⁵⁴ In his 1998 review of the Privacy Act 1993, then Privacy Commissioner Bruce Slane noted that certain registries had been revealed as having a commercial value, and were subject to constant and continuing requests for bulk data that was used to create and sell lists, which were then used for purposes of direct marketing to the individuals concerned.¹⁵⁵

149 Email from the Institute of Directors to Law Commission, 21 June 2006. We note that residential addresses are not specifically required for the companies registers.

150 Federal Department of Communications, Information Technology and the Arts Introduction of a Do Not Call Register, Possible Australian model, Discussion Paper, October 2005, 5 < http://www.dcita.gov.au/communications_for_consumers/telephone_services/do_not_call > last accessed 30 May 2007.

151 The Minister of Transport (NZ) has received a number of letters of complaint about the use of names and addresses of people on the motor vehicles register, for telemarketing and mailouts by advertisers, and letters voicing concerns about personal security and security of their vehicles: discussion with Hugh Hanna, Principal Adviser, and Clif Corbett, Solicitor, Ministry of Transport.

152 Alan Charles Raul *Privacy and the Digital State: Balancing public information and personal privacy*, above n 118, 46.

153 Briefing paper provided by the New Zealand Marketing Association to the Law Commission, 22 February 2007.

154 Now s116 of the Electoral Act 1993. This section provides that it is an offence to knowingly and wilfully supply, receive, or use information supplied in electronic form, or derived from information supplied in electronic form, under section 112, 113, or 114 of the Act for a purpose other than a purpose authorised by those sections. In the case of information supplied, received, or used for a commercial purpose, the person is liable to a fine not exceeding \$50,000.

155 Report of the Privacy Commissioner *Necessary and Desirable – Privacy Act 1993 Review*, (Wellington 1998) para 7.8.3.

- 219 A current example of a register from which information is downloaded in bulk for commercial purposes, including direct marketing and telemarketing, is the motor vehicles register, which is maintained by the Ministry of Transport under section 18 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986. The register holds the records of 2.3 million vehicle owners and four million vehicles.¹⁵⁶ It is available electronically via the Internet on a website called Motochek. More than 99% of the records released are made available over the Internet.
- 220 The motor vehicle register holds names and addresses, provides details of car model and age (which may in turn indicate socio-economic status), and it is kept up to date, thanks to regular re-licensing requirements. The information is available in bulk: up to 10,000 records may be disclosed at a time. These bulk enquiries are processed by way of an overnight computer run, and cost considerably less than an immediate query via the Registry website.
- 221 In the 2006 calendar year, the Ministry of Transport received 9.4 million requests for vehicle records. In addition there were about 36,000 enquiries made over the counter at motor registration agents. The two largest users of the register were data marketing companies, who between them accounted for more than 2 million of the requests. Other significant users include companies which sell information obtained from Motochek, together with information from the personal property securities register, to car dealers and private buyers of second hand vehicles.¹⁵⁷
- 222 The Ministry of Transport has received a number of complaints about access to information on the register, from vehicle owners, mostly relating to the use of names and addresses for mail-outs by advertisers, which some perceive as an invasion of their privacy, although concerns have also been expressed about personal security and the potential for theft of valuable vehicles.¹⁵⁸ The legislation that establishes the motor vehicles register is currently under review, and, at the time of writing, it is likely that new legislation will be introduced.
- 223 There is debate about whether the use of public register information for direct mail and telemarketing raises a privacy issue. In a 2005 ruling relating to the use of information obtained from the motor vehicle register for direct marketing, the Attorney-General said that the concern that an individual may be subject to direct mail appeared much less serious than the concern that the information might be used to target vehicles for theft, or to subject an individual to harassment.¹⁵⁹ The Attorney-General quoted a 1983 report by the Australian Law Commission which noted that there were very strong market arguments in favour of unsolicited communications, and argued that their “minimal interference” must be offset against the wishes of that sector of the community

156 Information obtained from the answers provided by the Ministry of Transport to the Law Commission Questionnaire on public registers, March 2007.

157 For example, the AA Lemoncheck website states: “The AA LemonCheck® Vehicle History Report searches more than 3 million car records held in various government and private databases and interrogates this data for New Zealand stolen cars, security interests (money owing), adverse accident history, ownership history, odometer history plus much more. All of this information is then placed into an easy-to-read report immediately (typically under 10 seconds).” www.aalemoncheck.co.nz last accessed 29 May 2007.

158 See letters of complaint sent to the Minister of Transport (NZ), above n 151.

159 *In the Matter of an appeal under s19(5A) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, [W] v Registrar of Motor Vehicles*, Decision of Attorney General dated 18 May 2005, para 29 – 30.

which wants, needs and uses those services offered by such communications.¹⁶⁰ The Attorney-General also noted that in the case of the particular complainant, the same information could be found in the telephone book.

- 224 However, others would describe the issue differently, focussing on the fact of the disclosure of the information for purposes other than those for which it was collected, rather than emphasising the particular use. Levels of concern around the issue may differ – it may matter significantly more, for example, to an older person living alone who is uneasy about how someone obtained their name and contact details, or to people who choose not to be listed in the phone book for reasons of privacy, but are contacted by companies who have obtained their details from a public register, for which they were compelled to provide the information.
- 225 Whether it is because it is perceived as irritating, or as an active intrusion into privacy, direct marketing, and telemarketing in particular, generates debate. In a recent New Zealand survey of marketing methods, telemarketing was the most negatively perceived advertising or promotional channel, with 56 % of those polled considering this method of advertising to be annoying and irritating.¹⁶¹ In the United States, telemarketing became a substantial issue, with some consumers receiving up to 15 calls a day. In the three days after the establishment of a Do Not Call register was announced, 10 million numbers were submitted for inclusion on the National Do Not Call Registry.¹⁶²
- 226 In the United States, Daniel J Solove argues that governments collecting personal information should limit the “uncontrolled drift” that occurs in the use of that information, where the purposes for which it is ultimately used vary widely from those for which it was collected. Access should be granted for uses furthering traditional functions of transparency such as the watchdog function, but should be denied for commercial solicitation uses because these do not adequately serve the functions of transparency. Rather, they make public records a cheap marketing tool, resulting in the further spread of personal information, which is often resold among marketers.¹⁶³
- 227 On the other hand, as we have also heard in the course of our review, not everyone objects to receiving direct marketing material, or telemarketing phone calls, and even if they do, it is arguably more accurate to describe the effect as an irritant, rather than an invasion of privacy.

160 Australian Law Reform Commission Report 22 *Privacy* 1983, para 509.

161 Results of an independent survey conducted by Colmar Brunton, reported in *Consumer Media Preference 2005* www.nzpost.co.nz (last accessed 1 June 2007). By way of contrast, the same survey found that only 13 % of respondents considered advertising received by way of addressed mail to be annoying and irritating.

162 Department of Communications, Information Technology and the Arts, *Introduction of a Do Not Call Register, Possible Australian Model, Discussion Paper*, October 2005, 13. See further discussion in chapter 5.

163 Daniel J Solove *The Digital Person: Technology and Privacy in the Information Age* New York University Press, New York, 2004, 153.

Chapter 5

Options for Reform

- 228 Over recent years the legislature has engaged in a series of ad hoc balancing exercises, making decisions as to whether public access should be allowed to the information on various public registers depending on the nature of the subject matter of the register and the interests involved. That balancing act has been influenced in many cases as new registers have been established or existing ones reviewed by the recommendations made by the Privacy Commissioner in 1998, and ongoing input from that office.
- 229 Technological developments have created new challenges in relation to access to information held on public registers, as the potential for data capture, storage, integration and dissemination has been dramatically increased while the corresponding costs have been dramatically reduced.
- 230 Our terms of reference require us to consider whether the law in this regard requires systematic alteration. We consider that it does. In the previous chapters we have discussed the need for government accountability in the handling of personal information, the drivers in favour of transparency, and the interests which weigh in favour of protecting personal information on public registers. We have also identified a number of issues of concern in the way public registers are currently regulated, in particular:
- (a) The existing statutory framework for regulatory control is problematic as we have discussed in chapter 3 (and summarise below);
 - (b) There are problems about the use of personal information from public registers, especially in relation to bulk downloading; and
 - (c) The existing protections for personal information provided in the various statutes establishing public registers and the Domestic Violence Act 1995 are uneven.
- 231 In our view there are a number of features which should form part of any option to regulate public registers. First, whatever model is adopted, it should be compatible with the principles of openness and transparency, and it should ensure that agencies administering public registers are accountable for the fair handling of personal information.
- 232 Secondly, where decisions have to be made as to whether personal information should be disclosed on a public register, the model needs to allow for the balancing

and weighing of various public interests by an appropriate decision maker. In our view, the appropriate decision maker is Parliament, which is best placed to balance the often competing interests involved, taking into account the views of all affected parties.

233 Thirdly, the model needs to be flexible, allowing for tailored solutions. As we have demonstrated, public registers are highly diverse. The volume and nature of personal information held on them varies widely, as do the public interests for or against disclosure. Whatever regulatory model is adopted, it must be able to accommodate these differences, and to allow the legislature to respond to changes in policy or technology.

234 Fourthly, the model adopted must be administratively efficient and effective: cost-effective, administratively simple, and capable of operating effectively in an on-line environment. This may weigh against a model which relies too much on the use of discretion by a decision maker in response to requests for access to public registers, as this can create inefficiencies, delay and uncertainty. In our view it can also inappropriately devolve the decision-making as to who should be legally entitled to access to a particular register to the registrar, rather than having that decision made by the legislature.

235 We now turn to discuss four possible regulatory models. Our final report will include a detailed economic analysis of the various options identified. At this stage we discuss the advantages and disadvantages of each model. We then examine some legislative mechanisms which could be used to protect personal information, regardless of which regulatory model is adopted. Finally we look at various approaches to bulk downloading of public register information. At the end of the report we set out a table comparing the key features of the regulatory models proposed.

Privacy Act framework for public registers?

236 Before considering some possible models for regulating public registers, we look at the question of the links between public register regulation and the Privacy Act 1993. The Privacy Act presently has a section devoted to regulation of public registers, Part 7, which we discussed in chapter 3. There are also other sections of the Act that are relevant, notably the information privacy principles (IPPs), and Schedule 2 of the Act that sets out the public registers regulated by Part 7.

237 As we have seen in chapter 3, there are a number of unsatisfactory aspects of the present Privacy Act regulation of public registers. The first problem is that it creates a distinction between public registers in Schedule 2 and non-Schedule 2 public registers. The PRPPs apply only to Schedule 2 public registers; they apply only so far as reasonably practicable, are enforceable only if a code has been produced and then only in limited circumstances, and do not prevent bulk downloading of personal data or use of such data for improper purposes.

- 238 The IPPs apply variably to public registers. Section 7(6) provides that, subject to Part 7, nothing in the IPPs applies to public registers, (which means Schedule 2 public registers). Section 60 then provides that the IPPs apply to public registers as far as reasonably practicable, so long as they are not overridden by public register provisions in specific statutes. Thus the actual application of the IPPs to Schedule 2 public registers is indeterminate and dependent in each case on what is “reasonably practicable” as well as specific overriding provisions. However, for non-Schedule 2 public registers the IPPs apply (unless a provision in their own statute specifically overrides any of them or an exception is activated).
- 239 The compliance and enforcement provisions apply likewise inconsistently for Schedule 2 and non-Schedule 2 registers.
- 240 Also, the definition of “publicly available information” under the Privacy Act 1993 includes “public registers”, although not all personal information on public registers is publicly available, and not all public registers are fully open to the public. “Publicly available information” probably includes both Schedule 2 and non-Schedule 2 public registers.
- 241 Some of these problems might be addressed by reform of the Privacy Act 1993, but there is a more fundamental question. Is it appropriate to regulate public registers, (which vary considerably as to their purposes, their uses and the amounts of personal information they contain), not only by rules in their own statutes but also by the flexible principles in the Privacy Act 1993, which may or may not apply in a particular case? This issue is reflected to some extent in the omissions from Schedule 2 of registers that contain very little personal information, (although there is no consistency here: some of the Schedule 2 registers also contain little personal information). Is it satisfactory to protect personal information in public registers partly by their own statutes, partly by the Privacy Act 1993 and partly through the Domestic Violence Act 1995 and regulations? The present multi-layered legislative regulation of public registers can result in indeterminacy, and has sometimes failed to protect personal information when, in our view, clear rules set out in the establishing statutes could solve these problems.
- 242 On the other hand, the Privacy Act 1993 gives some protection to personal information on public registers. The Act also gives effect to OECD guidelines for management of personal information by agencies, and support for European Union data protection compliance by giving the Privacy Commissioner the function of reviewing public register principles with particular regard to the Council of Europe Recommendation (91) 10.¹⁶⁴
- 243 In addition, regulation of the registers partly in a Privacy Act regime ensures that the Privacy Commissioner has a role in ensuring compliance with and enforcement of the IPPs, and in the amendment and creation of public register provisions where privacy issues are to the fore. These protections could be lost were public registers to be regulated only by their own statutes, unless the relevant IPPs and roles of the Privacy Commissioner were incorporated by cross reference into each public register statute.

164 See Privacy Act 1993, s 13(10)(e) and discussion in chapter 3.

244 There are a number of models which could be adopted for the regulation of public registers. We set out four options below:

- Option 1: Retaining the status quo, with public registers being regulated as at present both by the Privacy Act 1993 and their establishing statutes. Amendments could be made to Part 7 and Schedule 2 of the Act, and to the various individual establishing statutes, to address the particular problems of bulk downloading and any problematic individual uses of information from public registers;
- Option 2: Creating a system of access which allows people to advise if they wish their details to be available only to those requesters whose search is in accordance with the purposes of the register, with other requests to be dealt with under the Official Information Act 1982;
- Option 3: Creating a separate public register statute to set out principles and provisions to apply to all public registers;
- Option 4: Reviewing all public registers, and regulating them solely through the individual establishing statutes. This would involve repealing Part 7 of the Privacy Act 1993, and incorporating those of the IPPs which should apply into the establishing statutes by way of cross-reference. Any protections presently available under the PRPPs which are of value should be crafted to suit the particular register and specifically included in the establishing statutes. Amendments required to each statute would be made under omnibus legislation, and a template could be set out in the Cabinet Manual or in a Cabinet Office Circular to be applied in the development of new registers.

245 One way of approaching the issues we have identified in relation to public registers would be by amending the current framework provided by Part 7 of the Privacy Act 1993. In 1998, the Privacy Commissioner made a number of recommendations for changes to Part 7, which have not yet been implemented. In summary, these included:

- Continuing with Schedule 2 of the Privacy Act 1993, and making a systematic effort to add public registers to Schedule 2, rather than adopting a general definition of public register;
- As new public register provisions are enacted, or existing ones reviewed, consolidated or amended, consideration should be given to including statutory statements of purpose;¹⁶⁵
- Amending the existing PRPPs;¹⁶⁶
- Enacting a new public register privacy principle that provides that personal information containing an individual's name, together with their address or telephone number, is not to be disclosed from a public register on a volume or bulk basis unless this is consistent with the purpose for which the register is maintained;¹⁶⁷
- Bringing the application and enforceability of the public register controls more closely into line with the general approach of the Privacy Act 1993, by

165 Report of the Privacy Commissioner *Necessary and Desirable – Privacy Act 1993 Review*, (Wellington 1998), Recommendation 85.

166 *Ibid*, Recommendations 84, 87, 88, 89, 90.

167 *Ibid*, Recommendation 91.

addressing the problems with section 7(6) and section 60, and making the PRPPs enforceable in a similar manner to the IPPs,¹⁶⁸

- Enacting a new PRPP obliging agencies maintaining public registers to adopt a process to hold details of an individual's whereabouts separately from information generally accessible to the public, where it is shown that the individual's safety or that of their family would be put at risk through the disclosure of the information,¹⁶⁹ and establishing a single generic suppression regime in the Privacy Act 1993 to replace Part 6 of the Domestic Violence Act 1995, but extending to a wider range of circumstances concerning personal safety and harassment.¹⁷⁰

Extending Schedule 2

- 246 In 1998, the Privacy Commissioner considered whether the term “public register” should be redefined to include all statutory registers open to public search rather than just those listed in Schedule 2. While he considered that it would be possible for the public register regime under the Privacy Act 1993 to work suitably on the basis of a general definition, he recommended continuing with the present definition and coupling this with a systematic effort to identify registers having the characteristics of public registers and adding them to Schedule 2.¹⁷¹ He considered that this approach retained certain advantages over the adoption of a general definition, including certainty with respect to the scope of any extension of the regime, while the delay in bringing further registers into the regime had little downside, as the information on non-Schedule 2 registers remains subject to the IPPs.
- 247 The Privacy Commissioner recommended the use of section 65 of the Privacy Act 1993, which provides for the use of Orders in Council to amend Schedule 2 of the Privacy Act 1993, as a mechanism to bring existing registers within the public register controls.¹⁷²

Purpose statements

- 248 In *Necessary and Desirable*, the Privacy Commissioner recommended that, as new public register provisions are enacted, or existing ones reviewed, consolidated or amended, consideration should be given to including statutory statements of purpose,¹⁷³ and that PRPP 1 should be amended so that search references are required to be consistent with the purpose of a particular register.¹⁷⁴
- 249 Although these recommendations have not been implemented, the Office of the Privacy Commissioner encourages agencies to include purpose statements when public register provisions are enacted or amended. Many register provisions introduced or amended since the Privacy Act 1993 include purpose provisions,

168 Ibid, Recommendations 92–95.

169 Ibid, Recommendation 98.

170 Ibid, Recommendation 99.

171 Ibid, paras 7.2.6–7.2.11.

172 Ibid, Recommendation 96.

173 Ibid, Recommendation 84.

174 Ibid, Recommendation 83.

and require searches to be in accordance with these purposes. The Legislation Advisory Committee Guidelines, which are designed to act as a guide to making good legislation, explicitly advise policy advisers when setting up a public register to include statements of purpose in the legislation, including both the purpose of creating the register and the purpose of having it open for search by the public. This is intended to guide the operation of the register and assist in reconciling privacy with desired policy objectives.¹⁷⁵

250 Examples of registers which include statutory statements of purpose include the Insolvency Act 2006,¹⁷⁶ the Building Act 2004,¹⁷⁷ the Radiocommunications Act 1989,¹⁷⁸ the Motor Vehicle Sales Act 2003,¹⁷⁹ the Charities Act 2005,¹⁸⁰ and the Plumbers, Gasfitters & Drainlayers Act 2006.¹⁸¹ Most of these registers list at least personal names and addresses.¹⁸² Other Acts have purpose provisions but searches are not prima facie limited (for example the Wine Act 2003, and the Animal Products Act 1999).

251 The current Privacy Commissioner has indicated that her preferred approach to public registers is that every statute setting up or amending a public register should state the purposes of the register and the purposes of public access to it.¹⁸³ Public access to the register should only be permitted for the stated purposes of the register and for any other purposes that Parliament considers to be in the public interest.

252 Under this approach, the public interest in privacy protection should be weighed with other public interests and fully debated at the stage of setting up or amending a public register. Departments and Parliament should take the following steps when establishing or amending a public register:

- (a) Identify the purposes of the register
- (b) Identify the purposes of allowing public access to the register. Public access falls into two types:
 - primary uses – access falls within the purposes of the register itself;
 - secondary uses – allowing access to those with a legitimate public interest, despite not being anticipated by the purposes of the register.
- (c) There may be a need for the registrar to retain a residual discretion to release information, to cover unexpected one-off situations (for example,

175 Legislation Advisory Committee Guidelines (2006) para 15.2.5.

176 Insolvency Act 2006, ss 448, 454 and 455.

177 Building Act 2004, ss 274, 299, 305–6.

178 Radiocommunications Act 1989, ss5, 28.

179 Motor Vehicle Sales Act 2003, ss 53, 58, and 80.

180 Charities Act 2005, ss 22, 28.

181 Plumbers, Gasfitters and Drainlayers Act 2006, s 86 – searches only for s 72 purposes.

182 The Insolvency Act 2006 registers include names, addresses, occupations and details of bankruptcy (or no asset process or summary instalment orders). The Motor Vehicle Sales Act 2003 includes name, residential address, date of birth, occupation or company name, registration details. The Plumbers, Gasfitters and Drainlayers Act 2006 registers include name, address, status and work history, licence date, suspensions or disciplinary action (sections 70–75).

183 Submission by the Privacy Commissioner to the Government Administration Committee on the Births, Deaths, Marriages and Relationships Registration Amendment Bill, dated 7 May 2007, para 3.1.

public safety concerns, such as recall of dangerously faulty goods). The legislation should spell out when and how this residual discretion may be exercised.¹⁸⁴

- 253 One of the advantages of requiring statements setting out the purpose of the register, particularly when a register is first being established, is that they assist in focusing the collecting agency on what information is actually required to be collected and held on the register. Identification of the purpose of the register also guides compliance with IPPs 2, 3, 9, 10 and 11, which refer to the purposes for which information was obtained and/or collected.
- 254 If purpose statements are prepared by Parliament, this approach allows a full debate *at the time* legislation is being designed or amended about the purpose for which the register is established, the need for public access to it, and various legitimate uses of a register that are in the public interest. Privacy and other interests in favour of withholding information can be identified and weighed against competing public interests in favour of access. This is important for democratic decision-making, especially where change is likely to be controversial, as the recent heated discussions about the Births Deaths Marriages and Relationships Registration Amendment Bill have shown.
- 255 An alternative to setting out the purposes of the register and the purposes of search in each statute would be to allow each agency to set the purpose of the public register it maintains, and to make such purposes an administrative rather than a statutory requirement. However, in our view it is preferable that this exercise is done at a Parliamentary level. Making purpose statements an administrative requirement to be carried out by the agency concerned limits the opportunity for consultation and debate about key issues. It also means that the right of search may not be clearly specified in the establishing statute. Setting out the purposes of access in the legislation is also consistent with the interests of transparency.
- 256 Another significant advantage of the approach preferred by the Privacy Commissioner is that limited discretion is given to the register holder: the legislation itself determines access except in a minority of cases. This increases the efficiency of handling of requests, and improves certainty for requestors.
- 257 However, purpose provisions may not be easy to articulate in relation to some public registers, or may be unnecessary in others, resulting in redundancy in the establishing legislation. Where purpose statements are too narrow, they may unduly restrict access to the register. Where they are too general, or are circular in nature, they provide little or nothing in the way of guidance, or a workable control mechanism. For example, section 22 of the Charities Act 2005 states that the purpose of the register is:
- (a) to enable a member of the public to – (i) determine whether an entity is registered as a charitable entity under this Act; and (ii) obtain information concerning the nature, activities, and purposes of charitable entities; and know how to contact a charitable entity; and
 - (b) to assist any person – (i) in the exercise of the person’s powers under this Act or

¹⁸⁴ *Ibid*, para 3.4.

any other enactment; or (ii) in the performance of the person's functions under this Act or any other enactment.

- 258 The purposes of each of the Building Act 2004 registers are set out in section 274:
- (a) to enable members of the public to know – (i) in the case of the register of building consent authorities, the names and contact details of those building consent authorities, and if applicable, the scope of their accreditation; and... (iii) in the case of the register of accredited dam owners, the names and contact details of those dam owners; and (iv) in the case of the register of accredited product certification bodies, the names and contacts details of those bodies; and (v) in the case of the register of certified building methods or products, which building methods or products are certified; and
 - (b) to facilitate the compliance, audit, and other supporting and administrative functions of the chief executive under this Act.
- 259 Where searches are restricted by the use of purpose provisions, practical issues may arise around policing these restrictions, particularly where a register is held and searched primarily or solely in electronic form. An example can be found in the personal property and securities register, which was established under the Personal Property and Securities Act 1999. The register contains names, addresses and dates of birth of debtors, and names and addresses of secured parties. Searches may only be performed by specified persons, using specified criteria, for specified purposes, (although there are a large number of specified persons and purposes).¹⁸⁵ A search not carried out in accordance with the Act constitutes an interference with privacy under section 66 of the Privacy Act 1993.¹⁸⁶ Where an enactment specifies the purposes for which a register can be searched, and those purposes are not complied with, several enactments provide that this constitutes an interference with privacy.¹⁸⁷
- 260 The personal property securities register is a wholly electronic register, and is searched over the Internet. There are about one million searches of the register each year. A search fee of \$1 a search applies, to defeat screen scraping technology that could otherwise be used to mine the information held on the register.¹⁸⁸ Requesters must be registered as users to access the register, and must confirm that they are a specified person searching for a specified purpose, but the register is essentially self-regulating: while a log is maintained of the purposes of search, in reality it is seldom policed. However, it does provide for an audit trail, which could be used to ensure that only specified persons are conducting searches. In this sense, electronic technology increases the potential for identifying and tracing non-compliant searches.
- 261 Some would argue that the issues which have caused concerns about the use of public register information are limited to a handful of key public registers, and one or two particular uses, such as direct marketing. Rather than requiring

185 Personal Property and Securities Act 1999, ss 171–173.

186 Personal Property and Securities Act 1999, s 174.

187 See for example, the Building Act 2004, ss 307 and 308; s 456 of the Insolvency Act 2006; and s 59 of the Motor Vehicle Sales Act 2003. There does not always appear to be a requirement to show harm has been suffered as a consequence of the breach, unlike under section 66 of the Privacy Act 1993.

188 Meeting with Ministry of Economic Development, 17 April 2007.

purpose statements for all public registers, another approach would be to specifically prohibit the uses to which objection is taken, and to rely on suppression mechanisms to control the risk of one-off abuses (such as harassment or stalking of a particular individual). We discuss ways in which this might be done in the section on protective mechanisms below.

Amending the public register privacy principles and making them enforceable

- 262 In 1998, the Privacy Commissioner recommended a number of amendments to the PRPPs, which have been discussed in chapter 3. He also recommended the creation of two new PRPPs: one to deal with issues of bulk downloads of personal information from public registers; and another to oblige agencies to hold details of an individual's whereabouts separately from information generally accessible to the public where it is shown that the individual's safety, or that of their family, would be put at risk through the disclosure of the information. The Privacy Commissioner also recommended that the PRPPs should be enforceable in a similar manner to the IPPs.
- 263 In our consultation to date we found little support for the continued use of the PRPPs, and we are interested in receiving comments on this issue. If the concern is only about the lack of enforceability of the PRPPs, then this is a matter which could be rectified by making the PRPPs enforceable in the manner suggested in *Necessary and Desirable*. But are the PRPPs, even if enforceable, an appropriate mechanism for regulating public register issues? The high level of variation between registers that has been previously described makes generic controls difficult to craft and apply. In our view it would be preferable to place any protections provided by the PRPPs, which are considered necessary in the case of a particular register, into the establishing statute itself.
- 264 We will discuss the recommendations for the creation of new PRPPs relating to bulk downloading and holding information separately for reasons of safety in the context of protective mechanisms.

New South Wales Privacy and Personal Information Protection Act 1998

- 265 Before we leave option 1, we take the opportunity to set out another example of a purpose based approach to public registers within a data protection statute, namely the New South Wales Privacy and Personal Information Protection Act 1998. This Act proceeds by way of rules set out in the central statute that, unless specifically excluded, prevail over the individual establishing statutes, rather than by way of establishing principles. This could provide an alternative model for amendment of the Privacy Act 1993 (NZ).
- 266 The Act introduced a statutory definition of “public registers”¹⁸⁹ and in Part 6 contains specific provisions that regulate when New South Wales public sector agencies can disclose personal information¹⁹⁰ contained in public registers, and

189 A “public register” under the Act means a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).

190 Personal information is defined in section 4 of the NSW Act as “Information or an opinion (including information or an opinion forming part of a database and whether or not recorded in material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion”. Information contained within a publicly available publication is excluded from this definition.

when individuals can ask for their personal information to be suppressed from a public register.

267 In general under the Act, if there is a request to access information from a register, the agency concerned must first establish why access is sought. The agency can only disclose personal information if satisfied that the information is to be used for the purpose relating to:¹⁹¹

- The purpose for which the register is kept; or
- The law under which the register is kept.

268 Unlike the New Zealand public register privacy principles (and the IPPs), the New South Wales provisions prevail over any provision of the law under which the register was established, except if the Attorney General makes a regulation or a privacy code of practice. Thus the public registers held by Land and Property Information have been excluded from the public register provisions by regulation, and privacy codes of practice have been approved to modify these provisions for some registers, particularly those relating to local government.

269 The purpose provisions are directed against the misuse or commercial exploitation of personal information obtained through public access to registers. The register holders are responsible for establishing that every applicant intends to use the information obtained only for legitimate purposes.¹⁹² The Office of the New South Wales Privacy Commissioner, in *A Guide to Public Registers*, has suggested registrars might require applicants to complete a statutory declaration or tick box for proposed use, or, if the register is on-line, require registration and use of a password.¹⁹³

Discussion of the NSW model

270 The New South Wales public register regime is more comprehensive than that in the New Zealand Privacy Act 1993, and appears more protective of privacy. Access to registers is tied specifically to the purposes of a register or its specific law, and the Act contains a statutory mechanism for suppressing personal information in the interests of the safety or wellbeing of any person in some circumstances¹⁹⁴ that will be discussed further below. Part 6 of the Privacy and Personal Information Protection Act 1998 (NSW) prevails over specific public register laws, which avoids the indeterminacy of the New Zealand provisions that operate “so far as reasonably practicable” and subject to exceptions.

271 On the other hand, the increased focus on the protection of personal information introduced by the New South Wales provisions means that generally the registers are no longer simply accessible as of right. However, the New South Wales Office of the Privacy Commissioner has indicated that the public register provisions are not intended to significantly restrict the way information held in public registers is made available to the public. “The whole point of a public register is to give members of the public access to relevant information of public interest.

191 Privacy and Personal Information Protection Act 1998 (NSW), s57(1). The requester of the information may be required to produce a statutory declaration as to the intended use of the information: s 57(2).

192 Office of the New South Wales Privacy Commissioner *A Guide to Public Registers* No 4, 1999, p 8.

193 Above n 192, p 10.

194 Privacy and Personal Information Protection Act 1998 (NSW), s 58.

In most instances this will continue to be the case provided that agencies adopt the procedures which the Part requires.¹⁹⁵

- 272 Another disadvantage, in our view, is that the regime places a large burden on the register holders to establish legitimate purposes for access and gives them considerable discretion. Some local councils have limited on-line access to public registers to six records in order to minimise the possibility that the information is being used for the purpose of direct marketing.¹⁹⁶ But methods of ensuring that access is for a legitimate purpose (such as a statutory declaration, tick box, or on-line registration) are not fool-proof, and in the case of on-line information, may interfere with the maximum efficiency in the on-line operation of the register. If they are to operate effectively, such methods usually involve increased administration costs, in checking legitimacy of requests.
- 273 As a matter of law, it is arguable whether the provisions of the Act could in fact prevail over any subsequent legislation specifically establishing a public register that contains contrary provisions. But in the view of the NSW Office of the Privacy Commissioner, subsequent legislation dealing with public registers would need to specifically address the intention to override the public register provisions, and should include specific reference to section 59 of the Privacy and Personal Information Protection Act 1998 to be valid.¹⁹⁷

OPTION 2: REBUTTABLE PRESUMPTION OF ACCESS

- 274 In a recent article, privacy specialist John Edwards suggested a possible analytical template for the regulation of public registers.¹⁹⁸ The first task is to assess each public register, and ask whether there is still a legitimate reason for the information on the register to be freely available to the public. If not, the public register provision should be removed (in other words, any access provisions should be removed from the establishing legislation, and the establishing legislation removed from the second schedule to the Privacy Act 1993). Access to the information would then be covered by the Official Information Act 1982, allowing privacy and any competing public interest to be balanced on a case by case basis.
- 275 If it appears that there is still a legitimate reason for information on the register to be freely available to the public, the question is: should provision be made for the recognition of privacy? If not, access to the register will be unrestricted. (This does not include removal of names from a register for reasons of personal safety or maintenance of the law). However if provision should be made for privacy, John Edwards proposes that there should be a rebuttable presumption of a right of public access to the register. If people wish to have their information suppressed for privacy reasons, then that information will be accessible only for a limited range of reasons consistent with the purpose for which the register is publicly available. Those seeking access to this information would need to declare that their reason is legitimate, and face penalties for false declarations. People who want access to the register for reasons other than those consistent with the purpose reasons (for example, journalists or marketers) could request the information under the Official Information Act 1982. Decisions would be reviewable by the Ombudsman.

195 Above n 192, p 8.

196 Email correspondence with the NSW Office of the Privacy Commissioner, 6 August 2007

197 Ibid.

198 John Edwards, *Public registers and privacy*, NZLJ May 2007, 146.

276 This proposal effectively creates three categories of public register access. The most restricted category includes those people whose details are suppressed for reasons of personal safety. Their personal information would be held on a confidential register. The middle category would be made up of people who do not want their personal information to be generally accessible. The onus is on them to request that their details only be made available for the purposes for which the register is publicly available. The third category is everybody else on the register, who has not made a request for any restrictions of access. Presumably, their personal information is available to anybody, for any purpose.

Discussion of option 2

277 The starting point of reviewing all public registers to determine whether there is still a legitimate reason for the information on the register to be available to the public is a sensible one. One question is who should make this initial assessment, and the subsequent decision as to whether there should be provision for the recognition of privacy in relation to a particular register. Presumably there would need to be public debate at the time each register was amended or created. We consider that Parliament would be the appropriate decision maker in this regard, being best placed to assess all the factors which bear on access.

278 This model would require the purposes of each register and the purposes of each search to be considered and specified, in order to protect information where people claim a concern for privacy. It may create some administrative complexity by adding another layer of categorisation of the information held on the register.

279 One advantage of this model is that it allows people to express their preferences as to how their information is to be accessed, rather than assuming that all subjects share the same concerns about access to public registers. In the course of our review, it has been apparent that information which may feel highly personal to one individual is of less concern to another. This model would allow an element of individual choice in the level of access – always assuming that individuals are aware of their rights to claim privacy, and exercise them. In this regard we note that the model adopts an “opt-out” approach, which requires individuals to take action to exercise their preference, as opposed to an “opt-in” approach, which sets the default position as protection of personal information, and requires individual action to make the information open to secondary uses.¹⁹⁹

280 A major disadvantage with this model is that it requires the registrars to make decisions about access to the register outside the specified purposes, and so effectively shifts the policy decision as to whether access for a particular purpose is in the public interest away from Parliament and on to individual registrars, who will inevitably find their decisions challenged, particularly where large commercial interests in access to the register are involved. In our view, the decision as to whether, for example, a direct marketing company should be able to access the motor vehicle register, is a policy decision that should not be left to a registrar. It may also result in inconsistencies of approach between registers, and will be more resource heavy than having a clear regime of rules relating to access.

¹⁹⁹ Opt-in and opt-out provisions protect privacy to differing degrees. Opt-in provisions are usually considered as more protective of privacy.

281 There is another possible problem with this approach: under the model, the basis on which people can claim privacy is subjective: if they do not want the information to be available for reasons of “privacy”, then requesters would have to apply to the Registrar for access to the information under the OIA (unless it is within the purposes of the register) and could appeal to the Ombudsman. But the decision by the Registrar and the Ombudsman as to whether the information should be withheld may take a different view of privacy, under section 9 of the Official Information Act 1982. Thus it is likely that on occasions a person’s details will initially be withheld at their request (on grounds of privacy), and then on application under the OIA, the ground of privacy claimed will not be made out under the OIA. This may create a risk of confusion for members of the public, and may even reflect on the credibility of the public register system itself.

OPTION 3:
A PUBLIC
REGISTER ACT

282 A third option would be to create a specific Public Register Act to deal with all public registers. The Public Register Act could contain principles to apply to all public registers, or could specify prohibited and permitted uses. Such a stand alone statute could take many forms. In this option, we discuss a model proposed by Baycorp (now Veda Advantage), in a submission to the Law Commission.

283 Baycorp suggested the creation of a Public Registers Act along the lines of the Crown Entities Act 2004. It proposed that the new Act could be principles based, and would apply to all public registers and prevail over a public registers establishing statute, except to the extent that the individual statute expressly provided otherwise. Key permitted uses for registers, including commercial uses, would be specified in a schedule that could be amended by Order in Council to allow for technological and commercial developments.

284 On this model, applications for access would be made to the registrars for each register, who would be responsible for decisions as to uses permitted under the schedule and other uses. Protective mechanisms would include name suppression if certain criteria are met, and high penalties for non-permitted uses.²⁰⁰

285 The suggestion is that the Public Register Act would set out the circumstances in which registrars could make decisions about non-schedule secondary uses. A connection to the primary purpose of the register might be relevant for these decisions. There could also an opt-in for register subjects to tick a box if subjects are happy for their details to be passed on for non-schedule uses such as direct marketing. Monitoring of uses is also suggested and powers for a registrar to authorise wider access for some uses (relating to security and monitoring).

286 This proposed regulation of uses is based on the assumption that the facilitation of commerce through the free-flow of information is a key objective underlying the maintenance of public registers. But while there is no question that many commercial entities have come to rely on the information contained in public registers for the conduct of their business, whether this should be the driver for regulation of those registers is a different issue. As discussed in chapter 4, there are a number of principles and interests to be weighed. The assumption is often made that by including personal information on a “public register”, Parliament has made the decision that that information should be public. This

200 Submission to Sir Geoffrey Palmer, President of the Law Commission from Baycorp Advantage on the Public Registers Reference, 5 December 2006.

overstates the case: many public registers, and most of those that have been amended or established since the passage of the Privacy Act 1993, are not wholly open to public access at present. Parliament is already engaged in the business of balancing interests, and sometimes coming down on the side of protecting personal information through the use of a variety of mechanisms. The facilitation of commerce may be an objective that has more relevance to some public registers than others.

Discussion of option 3

287 A risk with this option is that it could create a Procrustean bed: an arbitrary pattern or standard to which exact conformity is forced.²⁰¹ In other words, rather than the Act being tailored to fit the range of public registers that exist, changes would be required to the registers to make them fit the statutory framework. In our view, the differences between public registers are too many, and the common matters requiring legislation too few, to justify an over-arching Act. The public interests to be weighed in relation to each register may differ from one register to another, or might be accorded different weight depending on the nature of the personal information held. Thus it may not be realistic to suggest that the same uses, commercial or otherwise, are appropriate for all registers. A more tailored approach is required.

288 The degree of registrar discretion involved in this model also raises the issues of certainty, appropriateness of decision-maker, and administrative cost and efficiency that have already been discussed.

OPTION 4: STATUTE BY STATUTE APPROACH

289 A fourth option, and that currently preferred by the Law Commission, is to regulate public registers solely through their establishing statutes. This would involve reviewing all public registers, whether currently included in Schedule 2 or not, and identifying those which contain personal information, in order:

- to determine what information should be collected, and whether there are reasons for the information on the register being available to the public;
- to identify as clearly as possible who should be entitled to search each register, and the purposes for which the register may be searched. These may include the primary purposes for which the information was collected, and other legitimate uses which have developed over time, which are considered to be in the public interest;
- to identify whether changes are needed to each by way of the addition of protective mechanisms to protect personal information held on the register.

290 The fundamental difference between this option and the option of retaining the status quo with amendments to the Privacy Act 1993 is the legislative vehicle: rather than adopting an overarching framework in conjunction with the individual statutes, this proposal would see the regime for each register encapsulated in the register's own establishing statute. The end result may be much the same in terms of the effect on any particular register, but the mechanism delivers greater legislative clarity and certainty.

²⁰¹ Procrustes was a legendary robber who would stretch or mutilate his victims to conform them to the length of his bed.

- 291 Each agency would be responsible for reviewing the public registers it administers, but a single Act could be used as the vehicle for making any amendments to the establishing enactments which are identified from the various reviews. A template of guidelines for new public registers should be drafted, to ensure that the same matters are considered and specified in relation to the creation of any future public registers. This template would not need to be set out in legislation: it could be set out in the Cabinet Manual or in a detailed Cabinet Office Circular instead.
- 292 Under section 13(1)(o) of the Privacy Act 1993, one of the functions of the Privacy Commissioner is to examine any proposed legislation or policy that the Commissioner considers may affect the privacy of individuals and to report to the responsible Minister with the results of that examination. That power should ensure that the Privacy Commissioner is consulted and reports to the Minister on all Bills amending or establishing public registers. Once the Bill has been introduced into Parliament, we suggest the Privacy Commissioner should also have power to table another report on the Bill as introduced.
- 293 Under the proposed model, each enactment should state that the IPPs apply unless otherwise provided, and then specifically list those IPPs which do not apply to that public register. This would avoid the layering and current indeterminacy that exists for Schedule 2 public registers.
- 294 Where the PRPPs are considered to provide useful protections for a particular register, those matters should be set out in the individual statutes as legislative requirements. In this way, they could be set at a more specific level than that at which they currently operate, and remedies for breach could be provided as appropriate.
- 295 If restrictions on who can access information held on a public register are required, the establishing statute should state who should be able to access the register. If required, penalties for misuse of information could also be dealt with in the statute: either by way of penalty provisions (for example, those contained in the Electoral Act 1993), or by reference to an interference with privacy under section 66 of the Privacy Act 1993, (as for example in the Motor Vehicle Sales Act 2003).

Discussion of option 4

- 296 This option sets out all the rules that apply to a particular register in the establishing statute, which promotes legislative clarity. On the other hand, this may be at the expense of the flexibility of an over-arching framework of principle such as that provided by the Privacy Act 1993.
- 297 This option allows tailored solutions for each register, suited to the amount and nature of personal information held, and the varying public interests at stake. It satisfies the democratic ideal of Parliamentary assessment of the relative weight of those interests. Further, it minimises the need for registrars' discretion. Including the template for new registers in the Cabinet Manual or in a Cabinet Office Circular may have the advantage of greater flexibility than if it is set out in legislation: conversely it will not have the force of legislation.

298 However, this option would require a significant, systematic and detailed process of legislative review and amendment. The size and likely cost of the task is a significant factor, as it attempts to achieve in one exercise a task which is currently being undertaken incrementally. We note that similar costs would be involved if the 1998 recommendation of a systematic review of all public registers and their statutes were to be implemented.

299 This option would require a clear definition of a “public register”, and specific identification of the registers which should be considered, reviewed and amended. It is not proposed that those registers would be listed in a statutory schedule.

PROTECTIVE MECHANISMS

300 We turn now to consider a number of protective mechanisms which can be used to protect personal information held on public registers. These mechanisms could be used with any of the models proposed above, and could be implemented in a number of ways. The mechanisms we are discussing here mainly relate to non-disclosure or suppression of some personal information from public access, rather than the protection that operates when a register can only be searched in accordance with specific purposes set out in a public register Act.²⁰² In some of those cases searches not in accordance with the specified purposes are considered to be an interference with privacy under section 66 of the Privacy Act 1993,²⁰³ which is an added protection, or searches are subject to the Privacy Act 1966.

301 As discussed in chapter 3, the law currently allows for people who have obtained a protection order under the Domestic Violence Act 1995 to request that identifying information about them on public registers not be made publicly available.²⁰⁴ As we have shown, this protection mechanism is very little used, and there is a lack of clarity about the application of the Domestic Violence (Public Registers) Regulations 1998.

302 Domestic violence is not the only situation in which a person may not want their address and identifying details to be accessible to the public. There are other forms of harassment and stalking which may create risks to safety or wellbeing, but do not occur in a domestic situation. People in certain professions, such as judges and police officers, may have concerns about the risk of threats being made to them or their families. Some registers allow for wider suppression mechanisms, which extend the grounds on which people can ask to have their details suppressed. During consultation we heard expressions of concern that a ground related to personal safety was not more widely available in relation to other public registers. For this reason, as well as for the seeming lack of success of protection under the Domestic Violence Act 1995, we favour considering alternative suppression mechanisms.

303 There is a variety of protective suppression mechanisms which are used in some of the statutes which establish public registers. There may be much to be gained from wider and more consistent use of some of these provisions, whatever regulatory model is adopted, but there are also a number of issues to consider.

202 See for example the Building Act 2004, ss 305–306, Charities Act 2005, ss 28), Insolvency Act, ss 454–455, Motor Vehicle Sales Act 2003, s 58.

203 See Insolvency Act 2006, s 456, Motor Vehicle Sales Act 2003, s 59 and Personal Property Securities Act 1999, s 174, for example.

204 Domestic Violence Act 1995, Part 6; Domestic Violence (Public Registers) Regulations 1998.

First, if there are valid reasons for information held on a public register to be generally available to the public, in what circumstances should people be allowed to have their details withheld? Should the only available ground be safety, or should the grounds be wider?

- 304 Secondly, should such mechanisms be left to operate from register to register, with people having to make their case to each registrar as required, or is it possible to create a centralised mechanism, which means that people only have to establish the grounds once to have personal information restricted across a range of registers? If so, who is the appropriate decision maker?
- 305 Thirdly, how will such protective mechanisms operate in practice: are they administratively difficult to implement and maintain, and are there significant consequences for other uses of the information held on the register?
- 306 Fourthly, if a more consistent approach is desirable, what should the mechanism for managing it be? Should it be set out in a new public register privacy principle, or in a general legislative provision, or included in each establishing enactment?
- 307 We discuss the following protective mechanisms below:
- Name and address restrictions
 - Restrictions regarding sensitive information
 - Limiting access to certain users
 - Penalties for abuse of the information obtained from a public register.

Name and address restrictions

- 308 One protective mechanism that operates in some public registers is to allow for name and address restrictions, or simply address (and other contact details) restrictions. For example, the national register of all drivers' licences maintained pursuant to section 199 of the Land Transport Act 1998 contains the holder's full name and address, date and place of birth, photo images, endorsements of the licence and court orders, but personal details and photos are not available to the public. Residential addresses can be withheld from many of the professionals' registers as a matter of preference: the listed person does not need to show that safety issues are involved. This is an option protective of privacy, which is appropriate where there is no good reason for the personal information to be publicly accessible, even if it is required for administrative purposes.²⁰⁵
- 309 A different mechanism is to provide for a separate register for persons who can satisfy the registrar that the personal safety of any person is at risk. The electoral roll includes the name, residential address and occupation of people on the main and supplementary rolls. But a person may apply to be on an unpublished version of the roll if publication would prejudice the personal safety of the person or

205 Examples of public register legislation that permits addresses to be withheld on request include many of the professionals' registers, such as those required by the Social Workers Registration Act 2003 (ss 124 and 135 provide that home addresses are not for public inspection), the Chartered Professional Engineers of New Zealand Act 2002, s 18, the Registered Architects Act 2005, s 18. The Radiocommunications Act 1989, s 28 also allows withholding of addresses.

their family (under section 115 of the Electoral Act 1993).²⁰⁶ A concern about privacy is not sufficient for inclusion on the unpublished roll. Supporting evidence is required, such as a copy of a protection order, or a harassment order, or a statutory declaration from a police officer that the applicant or his or her family members could be prejudiced by publication, or letter from a lawyer, Justice of the Peace or employer supporting the application. In the case of bodies such as the Police or Accident Compensation, applications are referred to risk assessment divisions within those agencies, and the head office usually provides a report in support. The Chief Registrar has a wide discretion and uses it liberally, using the statutory grounds as a benchmark.²⁰⁷ As noted, the unpublished electoral roll is well used, and it is quite widely advertised.²⁰⁸

310 Another variation of protection where there are safety concerns is to not disclose a person's address and contact details. Under section 102(3) of the Fisheries Act 1996 a person's address may not be disclosed if disclosure would be prejudicial to a person's safety. These registers contain names, addresses, details of allowable catch and quota shares, names and addresses of transferees, mortgages, and forfeitures.

311 More rarely, name and address removal from the publicly accessible register may be permitted without any need to show reasons of safety or similar reasons. Under section 28 of the Local Government (Rating) Act 2002, the rating information database must be available for public inspection. Ratepayers must supply their name and address, but they have the option of requesting that their name and/or postal address be withheld. The ratepayer does not need to provide reasons for the request. Local authorities must annually inform owners of the right to withhold their names and or their address.²⁰⁹

312 Another broad suppression mechanism is provided in section 19(5) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, which governs the motor vehicle register.²¹⁰ This provision includes privacy as a ground on which the Registrar may withhold particulars, including names and addresses of registered owners recorded on the register. The language of subsection 5 is very similar to that of section 6 of the Official Information Act 1982, (which provides conclusive reasons for withholding official information such as prejudice

206 The Electoral Act 1993 also includes an offence section: section 117 makes it an offence punishable by a fine of \$50, 000 to process, manipulate or change by optical scanning or other electronic or mechanical means an information obtained pursuant to section 112, 113 or 114 of the Act or contained in any habitation index or printed roll, in such a way as to produce that information or part of that information in a different form from that in which it was supplied under this Act.

207 Meeting with National Manager, Electoral Enrolment Centre, 3 May 2007.

208 Information from M Wicks, National Manager, Electoral Enrolment Centre, May 2007. See also the pamphlet by the Electoral Enrolment Centre, New Zealand Post "Everything you need to know about the unpublished electoral roll"; and "Confidential electoral roll", LawTalk, 7 May 2007, 15,

209 Local Government (Rating) Act 2002, ss 28B and 28C.

210 Section 19(5) provides: Where the [Registrar] certifies that the supply of any particulars under this section in respect of any specified motor vehicle would be likely to prejudice the security or defence of New Zealand, the international relations of the Government of New Zealand, the maintenance of the law, including the prevention, investigation, or detection of offences, the right to a fair trial, or the privacy or personal safety of any person, the particulars specified in subsections (1) and (2) of this section shall not be supplied to any person unless the [Registrar] approves the supplying of the particulars to that person, or that person is one of a class of persons to whom the [Registrar] has approved the supplying of the particulars.

to the security and defence of New Zealand), with the addition of the privacy or personal safety of any person, (which under section 9 of the OIA is a reason which may be outweighed by other considerations which make disclosure desirable in the public interest).

- 313 While extending this provision to privacy concerns might appear to be wide, in practice the provision is little used, and the meaning of privacy has been applied in a restrictive fashion. In May 2005, in ruling on an appeal under section 19(5A), the Attorney-General noted that the way in which the courts had interpreted similar provisions of the Official Information Act 1982 was relevant to the interpretation of section 19(5) and how his power should be exercised.²¹¹ The complainant in that case considered that his privacy had been infringed when the register was searched and he was contacted by an insurance company and a car sales firm seeking to solicit his business. The Attorney-General concluded that the Registrar must be satisfied that the disclosure of particulars of a motor vehicle would mean that there was a distinct possibility of a real and substantial risk of prejudice to the complainant's privacy.

...the very fact that the Motor Vehicle Register is a public register and the personal information it contains is required to be made publicly accessible suggests to me that the legislation itself contemplates some inroads into Mr [W]'s privacy. It therefore follows that the prejudice to Mr [W]'s privacy that needs to be shown for the purposes of s 19(5) needs to be something more than the concern of an individual not to have his or her information made accessible.²¹²

- 314 The Attorney-General considered that section 19(5) could not have been intended to enable any person who has a concern about their privacy to determine conclusively whether or not their information was available, noting that such a wholly subjective concept of privacy would be at odds with the approach adopted to privacy by the Ombudsman under section 9(2)(a) of the Official Information Act.²¹³
- 315 Steps are now being taken to amend the Transport (Vehicle and Driver Registration and Licensing) Act 1986 to increase the privacy protections available for personal information.²¹⁴

Preferred approach to name and address restrictions

- 316 It should be decided at the outset whether it is necessary for good reason, such as transparency, for a public register to require a person's name and/or residential address to be generally accessible to the public. If names and addresses do need to be available to the public, such public register provisions can include a process by which people could have their contact details removed from the publicly accessible register where they can show a genuine reason relating to their or their family's safety, their particular vulnerability or the likelihood of harassment. These details can be held on a confidential register, which is not available for

211 *In the Matter of an appeal under s19(5A) of the Transport (Vehicle and Driver Registration and Licensing) Act 1986, [W] v Registrar of Motor Vehicles*, Decision of Attorney General dated 18 May 2005, para 23.

212 *[W] v Registrar of Motor Vehicles*, above n 211, para 28.

213 *Ibid*, para 34.

214 Meeting with Hugh Hanna, Principal Adviser, and Clif Corbett, Solicitor, Ministry of Transport, 13 March 2007.

public search, as is presently the case with the electoral roll. The listed individual would need to show an issue of personal safety or high sensitivity was involved to be on the confidential register.

- 317 There may be other consequences if people are not included on the publicly accessible register. In the case of the electoral roll, the result of being included on the unpublished roll is that the person's name cannot be provided to local bodies for local body elections, or to the courts for jury service, although being on the unpublished roll is not actually a ground for exemption from jury service. At the time of local body elections, the Enrolment Centre advises those on the unpublished roll that the elections are taking place and that they need to register.²¹⁵
- 318 Of the name and address restrictions mechanisms described above, in our view the restrictions which are based on safety are preferable to those based on wider grounds of "privacy", or on no specified grounds at all. If there is a valid reason to collect and hold information on a register, and to allow members of the public to have access to it, then in our view, the grounds on which that information can be withheld should be strictly construed. Otherwise the integrity of the register as a whole may be affected. If people can simply opt off the register without having to specify a reason, why collect, hold and manage access to the information at all?
- 319 In a submission to the Law Commission, Veda Advantage stressed the importance of adopting a suitably robust process and criteria for suppression, to avoid criminals seeking suppression in order to avoid detection through electronic identity verification or other processes. The same rationale applies to a number of uses of the registers: if the registers are to operate properly, suppression of details should be the exception, not the rule.
- 320 That is not to say however that where personal safety is at stake, the grounds should be hard to establish. Nor should they be based solely on the narrow ground of being a protected person under the Domestic Violence Act 1995. The approach taken under the Electoral Act 1993, which requires supporting evidence, but allows for liberal use of a wide discretion, seems to us to be appropriate in this context. How could such an approach be implemented across public registers?

Implementation of suppression mechanism

- 321 One possibility is to adopt a generic statutory mechanism, by way of amendment to the Privacy Act 1993. This was one of the recommendations made by the Privacy Commissioner in 1998. He also recommended the creation of a new public register privacy principle, to operate in conjunction with this mechanism. The new PRPP would oblige agencies maintaining public registers to adopt a process to hold details of an individual's whereabouts separately from information generally accessible to the public, where it is shown that the individual's safety or that of their family would be put at risk through the disclosure of the information.²¹⁶

215 Ibid.

216 Ibid, Recommendation 98.

322 In New South Wales, a statutory mechanism is used for suppression. An individual concerned about the safety or wellbeing of any person can request that the public sector agency responsible for a public register:²¹⁷

- Removes or does not place the relevant personal information on the register; or
- Does not disclose the information from the register to the public.

If the agency concerned is satisfied that the safety or well being of any person would be affected by not suppressing the information, then the agency must suppress the information, unless the agency believes that the public interest in maintaining public access to the information outweighs any individual interest in suppressing it.

323 This provision is much wider than the Domestic Violence Act 1995 (NZ) provisions for protected persons under that Act, and also avoids the use of a separate layer of legislation. However, it still adopts a register by register approach, and means that a number of applications must be made.

324 An alternative option might be to provide a statutory mechanism which allows for one decision to be made that applies to contact information on all relevant public registers, where such information would otherwise be accessible to the public. There are obvious advantages to a single, centralised mechanism: it would save time and effort for the applicant, and would reduce the risk of inconsistencies arising between registers. Each of the establishing statutes could cross-reference a relevant section of the Privacy Act 1993. But if this approach is adopted, who should the decision maker be? There are several possibilities, including a judge, the Privacy Commissioner, or the Ombudsman.

325 Another possibility would be to make amendments to all the establishing statutes, to insert provisions similar to those in section 115 of the Electoral Act 1993 where access to the personal information on the register could lead to safety concerns. A guideline for following such a process could be contained in guidelines for establishing a public register. A disadvantage of this approach is that making individual registrars responsible for the decisions may lead to inconsistencies of approach that undermine the effectiveness of the protections.

326 The administrative costs and considerations involved in operating a suppression mechanism are important. Not all registers will require such a mechanism: some do not hold sufficient personal information to make stalking or harassment possible. For those that do, is it viable to separate the information held on the register? In its questionnaire to agencies administering public registers, the Law Commission asked how easy it would be to separate the information on the register into that which should be publicly available and that which should be suppressed except for good reason. The vast majority of respondents did not consider that there would be any significant administrative issues around separating the register in this way: most of the registers are organised and maintained electronically, some already have separate “unpublished” registers, and several already operate under the Domestic Violence regulations regime.

217 Privacy and Personal Information Protection Act 1998, s 58.

- 327 We invite submissions on the issue of the suppression options and how a suppression mechanism should operate.

Restrictions re sensitive information

- 328 Another possible mechanism for protecting personal information is to allow some categories of information held on a public register to be treated as confidential. The births, deaths, marriages, civil union and name change registers are currently open records, but sections 75 – 78 of the Births, Deaths and Marriages Registration Act 1995 restrict searches for adoption, sexual reassignment and some new identity records. The Citizenship Regulations 2002 provide for registers of persons granted citizenship and persons who have renounced or been deprived of citizenship. There is very limited access to these registers. This is a mechanism which may be appropriate for other public registers where there are categories of particularly sensitive information.

Searches only by specific persons – authorised users

- 329 Some Schedule 2 “public registers” are not strictly open to the public at large, but instead may only be searched by specific persons or by the public for limited purposes. Examples include section 173 of the Personal Property Securities Act 1999, which provides for search only by listed persons for listed purposes related to the Act, and section 35 of the Dog Control Act 1996, which lists specific persons who may have access, and “anyone” for specific purposes. Similarly, the local government rate records can only be searched by persons such as ratepayers or solicitors or estate agents acting for a transaction involving the relevant rateable unit.²¹⁸
- 330 The Hazardous Substances and New Organisms Act 1996 has registers of test certifiers that can only be searched with the individual’s consent in accordance with the Privacy Act 1993, or by approved persons for specified purposes.²¹⁹ The authorised or accredited users approach to regulating public registers is discussed below with reference to bulk access.

REGULATION OF BULK ACCESS TO PUBLIC REGISTER INFORMATION

- 331 The issues raised by bulk access to information on public registers have been discussed earlier in this paper. In our view, regulation of the use of bulk access is required. There are several possible approaches to regulating bulk access to public registers. Whichever approach is adopted, we consider the starting point is that a decision needs to be made by Parliament as to which bulk uses are acceptable in relation to a particular register, and which require regulation, or perhaps even prohibition.
- 332 In 1998 the Privacy Commissioner proposed a new public register privacy principle directed towards solicitation lists created directly from a register.²²⁰ He recommended a new PRPP providing that personal information containing an

²¹⁸ Local Government (Rating) Act 2002, ss 37–38.

²¹⁹ These are the Hazardous Substances and New Organisms Act 1996, section 82A register of certificates issued by test certifiers showing the name of the test certifier and, if issued in reference to a person, their name and address of workplace, and the section 85 register of test certifiers, with their names and addresses. These are not Schedule 2 registers.

²²⁰ Report of the Privacy Commissioner, above n 166, para 7.8.10.

individual's name, together with their address or telephone number, is not to be disclosed from a public register on a volume or bulk basis unless this is consistent with the purpose for which the register is maintained.²²¹ The provision was similar to one adopted in section 52(1)(f) of the Rating Valuations Act 1998.²²²

333 Another approach is to use section 46 of the Privacy Act 1946 to issue a code of practice, such as the Credit Reporting Code. Such codes are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989.

334 Yet another approach would be to specifically prohibit those uses which give rise to concern by legislation. For example, if after consultation and debate, the conclusion is that bulk access to public registers for the purposes of direct marketing should not continue, then that use could be prohibited under legislation: either in the Privacy Act 1993, or in other consumer protection legislation such as the Fair Trading Act 1986. Some Canadian jurisdictions have legislated to specifically prohibit or restrict bulk downloads of personal information.²²³

335 Another possible approach would be to focus on the user, rather than just the use, of the information. Users could be authorised, or accredited, to access all or part of the information held on particular public registers. A version of this mechanism is discussed in "Transparency, Reciprocity, Safeguards: a proposal for reform of the regulation of personal information in public registers in Australia and New Zealand".²²⁴

336 The paper recommends a freer flow of personal information that has been collected for particular purposes, suggesting that accredited users should be able to access some or all of this information in bulk and use it for other purposes, subject to certain safeguards. The decision as to who should be an accredited user would be made by an appropriate decision maker: the paper recommends the Privacy Commissioner. The public interests to be balanced by the decision maker would be set out in legislation and could include privacy, good public administration, and efficiency of commerce. Parliament could also set out the criteria to be considered by the decision maker, including:

- The circumstances and lawful interests of the applicant user;
- The benefits to the public or any section of the public, flowing from the handling by the user of the public register data;
- The benefits to the data subjects flowing from the handling by the user of the public register data;
- The risks to the lawful interests of the data subjects, and in particular to their privacy which the user's handling of the public register data presents or is likely to present;

221 Report of the Privacy Commissioner, above n 155, para 7.8.9.

222 This section allows regulations to be made prescribing limitations or prohibitions on the bulk provision of district valuation roll information for purposes outside the purposes of this Act or the Local Government (Rating) Act 2002 or related legislation, or to persons not having responsibilities in relation to the administration of this Act or the Local Government (Rating) Act 2002 or related legislation:

223 See for example the Freedom of Information and Protection of Privacy Act 1997 (Manitoba) s 17(6); Freedom of Information and Protection of Privacy Act 1997 (Nova Scotia) s 20(3)(i).

224 Paul Chadwick "Transparency, Reciprocity, Safeguards: a proposal for reform of the regulation of personal information in public registers in Australia and New Zealand" 22 November 2006 – unpublished draft.

- The adequacy, in the light of all the above, of the safeguards provided or to be provided by or on behalf of the user;
- The cost to the user or others of providing additional safeguards.²²⁵

337 The “Transparency, Reciprocity, Safeguards” draft suggests that there are three guiding principles which should operate as touchstones for the use of this mechanism, and which might be written into the legislation: transparency, reciprocity and safeguards. Transparency requires that proper notice be given at the time of collection about what may be done with public register data, including the possibility that it may be disclosed, subject to safeguards, under the accredited user procedure. In addition, the procedure for handling applications for accredited user status would be transparent.

338 The safeguards principle requires that provision be made in every context for the suppression of personal information from public register data where there is a risk of physical harm to any person. The reciprocity principle would mean that the accredited user can be required to reciprocate for the benefits the user will extract from having bulk access to the data.²²⁶ This might include payment, but other forms of reciprocity, such as providing information as to the quality of the source data, might also be appropriate.

339 There are advantages to using a mechanism which allows a focus on users, as opposed to just uses. The decision as to accreditation would be made after consultation, and with consideration of privacy interests. The person seeking accreditation would need to make a good case for access.

340 However, there are issues with this mechanism. It may not be suitable for all registers. Who should the decision maker be? The Privacy Commissioner has been suggested, but there are other interests to be balanced besides privacy. Is it more appropriate for accreditation decisions to be made by Parliament?

341 If there are concerns about specific uses of information, such as use for direct marketing, there remains a risk that the decision maker may still accredit a user who then uses the information for an end which is considered objectionable. Once an agency, company or person is an accredited user, it may be hard to police their actual use of the information from public registers.

Do not call registers

342 For the last 20 years the New Zealand Marketing Association has operated a Name Removal Register, which enables people to have their name removed from mailing lists of members of the Marketing Association. People can be added to the Name Removal Register on-line on the Marketing Association’s website, or by writing to them. Currently the Name Removal Register includes the details of over 30,000 New Zealanders. The list incorporates the Deaths Index. This is a voluntary, self-regulatory response, and coverage is limited to those marketers who are members of the Marketing Association.

225 Above n224, 22 November 2006 draft – the list of criteria were adapted from the *Report of the Committee on Data Protection* (Lindop Committee, UK) 1978 Cmnd 7342. London, HMSO, para 21.12.

226 Above n 224, 19–21.

- 343 Other jurisdictions have adopted other regulatory models. In relation to telemarketing, the United States, United Kingdom²²⁷ and Australia²²⁸ have all adopted “do not call” registers. Canadian legislation to introduce a Do Not Call List was passed in November 2005, although the registry is not yet operational.²²⁹
- 344 In the United States, a National Do Not Call registry was established by the Federal Trade Commission in 2003. Individuals can register to have their telephone numbers removed from telemarketers’ contact lists. Numbers remain on the registry for five years from the date of confirmation. Charities, market researchers, non-profit organisations and political organisations are exempt from the application of the legislation. In July 2005, there were more than 98 million numbers registered.
- 345 The establishment of such registers does not mean an end to all telemarketing. An argument made against the Do Not Call Registry in the United States was that it would encourage American businesses to relocate offshore to avoid the effect of the legislation. However, a recent Australian report notes that while there was some relocation following the introduction of the Registry, cheaper running costs and wages were the principal motivating factors in their relocation, and a number have since moved back on shore in response to complaints from customers about the poor level of service they received from off-shore centres.²³⁰

**PENALTIES FOR
ABUSE OF THE
INFORMATION
OBTAINED
FROM A PUBLIC
REGISTER**

- 346 At present there are few penalties for misuse of information obtained from a public register except that may be an interference with privacy or breach of privacy if access is obtained otherwise than in accordance with the purpose of the register.²³¹ Section 117 of the Electoral Act 1993 makes it an offence punishable by a fine of \$50,000 to process, manipulate or change by optical scanning or other electronic or mechanical means an information obtained pursuant to section 112, 113 or 114 of the Act or contained in any habitation index or printed roll, in such a way as to produce that information or part of that information in a different form from that in which it was supplied under this Act. There have not been any prosecutions under section 117.²³²
- 347 If the option of reforming the Privacy Act 1993 is considered (without removing public register provisions from that Act) and/or gradually reforming public register provisions, it may also be wise to consider more serious penalties for non-compliance with these provisions.

227 UK Telecommunications (Data Protection and Privacy) Regulations 1999. The regulations establish a Telephone Preference Service (TPS) and a Corporate Telephone Preference Service (CTPS). These prohibit callers including charities and political organisation from contacting subscribers to promote their goods, services, aims or ideals. They do not prohibit market research by telephone. In June 2005 there were approximately 8 million numbers registered on the TPS.

228 The Australian Do Not Call Register Act 2006 was passed in June 2006, and the Do Not Call Register was launched on 3 May 2007 by the Minister for Communications, Information Technology and the Arts. It will be fully operational and enforceable from 31 May 2007. Exemptions apply to charities, market and social research and political parties. A national industry standard will apply for minimum levels of conduct by research callers and telemarketing callers: www.donotcall.gov.au last accessed 29 May 2007.

229 Telecommunications Act S.C. 1993 c 38, s 41; Carol Goar *Do not wait for do-not-call list* thestar.com, 4 April 2007 < <http://www.thestar.com/printArticle/199121> > last accessed 29 May 2007.

230 Department of Communications, Information Technology and the Arts, *Introduction of a Do Not Call Register, Possible Australian Model, Discussion Paper*, October 2005, 16.

231 See for example, Motor Vehicles Sales Act 2003, s 59; Insolvency Act 2006, s 456.

232 Information from M Wicks National Manager, Electoral Enrolment Centre, email 30 May 2007.

348 The Law Commission values any submission or comment on this issues paper on public registers. In particular we ask for your comments on the options for reform discussed in this chapter. For ease of reference the models discussed are:

- Retaining the status quo, with public registers being regulated as at present both by the Privacy Act 1993 and their establishing statutes. Amendments could be made to Part 7 and Schedule 2 of the Act, and to the various individual establishing statutes, to address the particular problems of bulk downloading and any problematic individual uses of information from public registers;
- Creating a system of access which allows people to advise if they wish their details to be available only to those requesters whose search is in accordance with the purposes of the register, with other requests to be dealt with under the Official Information Act 1982;
- Creating a separate public register statute to set out principles and provisions to apply to all public registers;
- Reviewing all public registers, and regulating them solely through the individual establishing statutes. This would involve repealing Part 7 of the Privacy Act 1993, and incorporating those of the IPPs which should apply into the establishing statutes by way of cross-reference. Any protections presently available under the PRPPs which are of value should be crafted to suit the particular register and specifically included in the establishing statutes. Amendments required to each statute would be made under omnibus legislation, and a template could be set out in the Cabinet Manual or in a Cabinet Office Circular to be applied in the development of new registers.

349 In addition we would appreciate your comment on:

- Mechanisms for protecting personal information in public registers;
- Mechanisms for dealing with bulk access of information from registers;
- A definition of a “public register”;
- Any additional issues or problems that we have not discussed.

350 The table on the next page shows the four options and how (in summary form) they address the main issues of concern.

SUMMARY FEATURES FOR EACH OPTION

OPTION/ REGULATORY FRAMEWORK	APPLICATION OF PRINCIPLES IN PRIVACY ACT 1993	WHO IS DECISION MAKER	AMOUNT OF REGISTRAR DISCRETION RE PUBLIC ACCESS TO REGISTER	PURPOSES OF THE REGISTER & OF ACCESS TO REGISTER	MECHANISMS PROTECTIVE OF PERSONAL DATA	DEFINITION OF PUBLIC REGISTER (PR)
1. Amend Privacy Act 1993	IPPs apply so far as reasonably practicable, & PRPPs apply (but need amendment)	Decisions preferably made in PR statute by Parlt specifying primary and secondary purposes of access	Some limited registrar discretion but not re primary or secondary purposes of access	Both purposes should be in PR statute	A new PRPP requiring suppression mechanism where individual safety concerns made out	Those listed in Schedule 2 of Privacy Act (needs revision)
2. Rebuttable presumption of access (some registers to be accessed via Official Information Act 1982 (OIA))	IPPs applicable – PRPPs only apply to open access registers	Parlt to decide if information should be on a publicly accessible register; or access should be under the OIA	Registrars decide re access outside specific purposes, & whether person eligible for the unpublished register; review by Ombudsman	Both would need to be considered at review stage	Separate unpublished register for safety reasons – otherwise open registers but with some opt-out possibilities	Those listed in Schedule 2 of Privacy Act (revised and limited)
3. A Public Register Act for general principles and provisions	Principles to be in a Public Register Act – not in Privacy Act (IPPs not applicable)	Parlt to decide re permitted &/or prohibited primary uses (to be in a schedule to the PR Act)	Registrars retain discretion re secondary uses (those not in the schedule)	Access purposes to be considered in terms of permitted & prohibited uses	Name suppression if threshold met & high penalties for non-permitted use	Changes could be required to make registers fit the statutory framework
4. Use only individual public register establishing statutes	IPPs to be incorporated in each public register statute by reference to Privacy Act or specifically excluded; PRPPs could be in PR statutes where relevant, or eg in Fair Trading Act	Parlt to decide re primary and secondary purposes of access/uses	Minimal registrar discretion if access request is not within primary or secondary purposes	Primary and secondary purposes of access to be in public register statutes	Protective mechanisms for personal information where safety reasons – cross reference to new provision in Privacy Act or provision in each PR statute	A general definition of public registers – in guidelines

How to make a submission

- 351 Submissions or comments (formal or informal) on this issues paper should be sent by 5 November 2007 to:

Janet November or Rachel Hayward, Senior Legal and Policy Advisers, The Law Commission, PO Box 2590, Wellington 6011, DX SP 23534, or by email to com@lawcom.govt.nz

The issues paper is available on the internet at the Commission's website: <http://www.lawcom.govt.nz>

Appendix 1

Statutory Provisions for Public Registers

Domestic Violence Act 1995, & pt 6 (& Domestic Violence (Public Registers) Regulations 1998 apply to all schedule 2 registers

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
Agricultural Compounds & Veterinary Medicines Act NZ Food Safety Authority <i>not in schedule 2</i>	S 24: D-G to keep register of agricultural compounds – all registered trade name products under s 21 or s 27 (provisional register)	S 24(5): every person has the right to inspect the register during office hours		S 24: trade name, name & principal bus address of registrant, application number conditions on reg, any termination, expiry date, other matters DG thinks fit
Animal Identification Act 1993 <i>not in schedule 2</i>	S 4(1): D-G to keep register of identification systems	S 4(2): register to be open for public inspection during office hrs on fee payment		
Animal Products Act 1999 NZ Food Safety Authority	S 18: DG to keep register of risk mgt programmes (RMP) S 52: DG to keep register of exporters S 73: DG to keep register of homekill & recreational catch providers S 112: List of agencies operating RMP	S 18(3): register open for public inspection at all reasonable hrs, copies on payment of reasonable charge S 52(3): as above S 73(3): as above On internet S 112(4): as above	Purposes to enable public to know: what bus ops are subject to RMP, DG to ensure traded animal products are fit for intended purpose - s 18(2); who auth to export & DG to ensure safeguards re export - s 52(2); who recognised to provide homekill/recreational catch services + facilitate compliance/audit etc functions of Ministry – s 73(2); operators of RMP – s 112(2)	S 18: who responsible for RMP S 53: register of exporters to contain – name, address, electronic address if avail, date of regulation/de-regulation/expiry, other particulars required under the Act S 73: names of providers S 112: names of agencies & persons, functions and activities
Antarctic Marine Living Resources Act 1981 <i>not in schedule 2</i>	S 6: Minister shall cause register of permits to be kept	S 6(2): register to be open for public inspection during office hours on payment of fee		Purpose for which permit granted + conditions

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
<p>Births, Deaths & Marriages Registration Act 1995 Registrar of Births, Deaths & Marriages (Dept Internal Affairs)</p>	<p>S 5, 7(2), 8: Births</p> <p>S 24, 25: Adoptions</p> <p>S 34, 36, 48(3), 50,: Deaths (also overseas deaths)</p> <p>S 53, 56, 58: Marriages</p> <p>S 62D: Civil unions</p> <p>(see also citizenship registers under Citizenship Regulations, no longer public)</p> <p><i>Note – proposed register of name changes</i></p>	<p>S 73-74: all registered information and indexes can be inspected on payment of fee & copies/print outs provided – subject to ss 75-78</p> <p><i>Not available on internet</i></p>	<p>S 75-78: restrictions eg for adoptions, sex realignment</p>	<p>See The Births, Deaths & Marriages Registration (Prescribed Information and Forms) Regs 1995 for details: eg for birth certs: full name and changes of name, sex.– date and place of birth, whether multiple birth, parent’s full names, dates of birth, & places of birth, full names at birth; for marriages: present full name and at birth, date of birth, usual occupation, status before marriage, if previous marriage or union, how and when dissolved, place of birth, usual residential address, parents’ of bride and groom’s full names , date of marriages, place of marriage</p> <p>S 74: indexes to contain name of persons; their age; parents’ names; date & venue of event</p>
<p>Building Act 2004 Dept of Building & Housing</p>	<p>S 216: TAs required to keep specified info re buildings</p> <p>S 273: CE must keep registers of – building consent authorities (s 191), accredited dam owners (s 260), & accredited product certif. bodies (s 267)</p> <p>S 298: register of licensed building practitioners</p>	<p>S 216(1): to be “reasonably available to enable public to be informed of obliges & participate effectively”</p> <p>S 273(2): registers to be available for public inspection without fees (copies for reasonable charge)</p> <p>S 305-6: any person may search the register in accord with the Act or regs only by reference to specified search criteria (s 306) & s 299 purposes (s 307)</p> <p>S 308: interference with privacy if search not per ss 305-7 (s 66 PA)</p> <p>S 309: Registrar may charge a cost fee for searches</p>	<p>S 217: – person has right of access to the info during office hours subject to Local Govt OI&M Act</p> <p>Restriction on access to plans marked “confidential”</p> <p>S 274: purpose of each register to enable public to know names & contact details of building consent authorities, dam owners, accredited product certif. bodies, and which building methods are certified;</p> <p>S 299: enable public to - know whether person is a licensed building practitioner, their status & history; choose a suitable building practitioner; know which have been disciplined; facilitate administration etc of the Board</p>	<p>S 216(2)(a)-(g): plans & specs + other bldg info including consents, codes, complaints re bldg</p> <p>S 275:– details on any limits on functions, accreditation etc</p> <p>S 191: building consent authority register may contain person’s name.</p> <p>S 298: names of licensed building practitioners & info specified in s 301(1)(a)-(m): aliases, birth dates, addresses & other contact details, status</p> <p>S 301(2): whether licence suspended in last 3 years & why</p>

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Burials & Cremation Act 1964 (admin by local authorities) <i>not in schedule 2</i>	S 50(1): all burials in any cemetery to be registered and kept by the LA	S 50(2): every register to be open for inspection at all reasonable times on payment of a fee [50c] per inspection		Location of grave and proper description of grave
Cadastral Survey Act 2002 <i>not in schedule 2</i>	S 21: Board to maintain a register of licensed cadastral surveyors	S 21(2) & (4)(b): register to be open to public during office hrs; certif. copy of any entry avail to any person on payment of fee (no more than OIA fee) On internet	S 21(5): Bd may cause register or part to be published in the form it thinks fit – fee for any p requesting a copy	S 21(2): to contain name and address of every licensed person, other entries as required by the Act
Charities Act 2005 Charities Commission <i>not in schedule 2</i>	S 21: register of charitable entities to be established (commencing 1 Feb 2007)	S 27: searches of the register by reference to name of charitable entity, registration no, name of officers, other prescribed criteria S 28: search of register only for certain purposes – searching for info with consent of individual, determining whether entity is a registered charity & details, admin functions	S 22: Purposes of the register to enable public to determine whether charitable entity & obtain info about it & contacts; assist person in exercise of powers u the Act S 25: Commission may allow removal of some info from register if in the public interest & restrict access S 29: re privacy breaches	S 24: to contain names of past & present officers of entity, name of entity & address for service
Chartered Professional Engineers of New Zealand Act 2002 (Inst of Professional Engineers)	S 16: Reg Authority to keep register of chartered professional engineers	S 19: register is to be open for public inspection without fee during reasonable office hours at head office & Auth to supply copies of extract at reasonable charge	S 16(2): purpose is to enable public to know who is a chartered profess engineer, status & history of reg, their contact, & to select a suitable engineer & know who has been disciplined within last 3 years; also to facilitate admin, disciplinary and other functions of the Reg Auth	S 18: lists matters to be shown including name of person, address details <i>if the person consents</i> , status & history of reg, date of reg, disciplinary orders, suspension etc – only if person has not exercised rights of appeal u ss 35 & 38 or has unsuccessfully appealed; any other info reg auth thinks nec or desirable for purposes of reg
Citizenship Regulations 2002 Registrar of BDM (DIA) <i>not in schedule 2</i>	R 11: register of citizenship by descent to be set up R 12: reg of persons granted citizenship R 13: register of ps who have renounced or been deprived of citizenship	R 15: info from registers can only be disclosed on request in respect of a named individual, by that individual or person authorised by that person, or person confirming citizenship of parent or g'parent or p with genuine and proper interest	S 11: purpose – to record p who have reg citizenship by descent R 15: additional disclosure to avoid prejudice to maintenance of the law, security of NZ, court proceedings, statistical or research purposes if p not identified	

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Civil Aviation Act 1990 Civil Aviation Authority <i>not in schedule 2</i>	S 73: Authority to establish a register of NZ aircraft (no personal info) S 74: Authority to establish a Civil Aviation Registry	S 74(3): documents to be made available for inspection by the public free of charge, subject to the Privacy Act 1993 On internet (aircraft register)		S 74(2): Civil aviation register to include Register of Aircraft, address for service of every current applicant for an aviation document & of every current aviation document holder, service charter etc
Civil Union Act 2004 DIA	S 29: RG to prepare list of civil union celebrants	S 29: list to be published yearly in the Gazette on internet		Name & address of celebrant
Climate Change Response Act 2002 (admin by Min Environ) <i>not in schedule 2</i>	S 18: Registry must have a unit register (all transactions to be registered) Electronic register	Ss 26 & 27: unit register to be open for search and certain info is available to search – name of a/c holder, type of a/c, repress identifier, full name, mail address, phone, fax * email of representative of a/c holder; holding and transactional info by serial no for each year S 28: Reg must issue search copies on payment of fee	S 10: Purpose of the Registry to ensure accurate accounting of issue, holding, transfer, cancellation etc of units and exchange of info with overseas registries	S 18(2): register to contain record of the holdings of units in NZ and particulars of transactions & other matters required under the Act or regulations
Companies Act 1993 Registrar of Companies (MED)	S 11-13: Registration of co/applications S 87-88: Share register S 189: Company records – includes an interests register, directors' names & addresses, and share register S 360: Register of companies (NZ & Overseas) S 360A: rectification	S 189, 191: Inspection by directors of company records S 215: Public inspection of co records includes share register & full names & addresses of directors S 216-7: Inspection by shareholders & manner of inspection; S 218: copies of docs inspected. S 363: inspection of register of companies (internet searches available)		S 87: Names, address & numbers of shares & trading of each shareholder S 189(1)(f): Names & addresses of directors

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Conservation Act 1987 <i>not in schedule 2</i>	S 17Z1: DG to keep records of each application for a concession, public notification of the application and decision made re the application	S 17Z1: records to be reasonably available for public inspection during usual business hours in the relevant locality		Concession applicants
Crown Minerals Act 1991 <i>not in schedule 2</i>	S 91: Sec to keep a register of permits re petroleum, & other registers as considered necessary	S 91(2): register open to public inspection, also a copy of every permit during office hours on payment of fee prescribed		S 91(1): Register to have brief particulars of all permits, changes, leases & transfers
Deeds Registration Act 1908 (for land not under LTA) Land Information NZ	S 21: Book of primary entry of Crown grants of land & instruments S 22: Record of book S 30: Copies/extracts	S 50: Registrar to supply copies from indexes, & books kept to any person entitled to the same – and that person can examine the index etc	Most are in dungeons in various places – not publicly accessible	Crown grants and instruments
Designs Act 1953 Commissioner of Designs MED	S 25: register of designs S 27: register of assignments	S 25(2): open to inspection by public & certified copies available on fee On internet		S 25: names and addresses of proprietors of registered designs, assignments etc
Dog Control Act 1996 (controlled by territorial authorities)	S 34: TA to keep dog register (DVA pt VI applies to s 34) [S 35A: national dog control info database (Not open to public: S 35AB)]	S 35: supply of information only per this section – to specified persons like Police, SPCA, animal inspector, vet. Any person may apply if for S 35(5) purpose	S 35(5): purposes for access to info eg complaint v Animals Protection Act 1960; costs for damage to property by dog, to advise re destruction of dog	S 34(2): includes name, DOB, address of owner & where dog kept, breed, sex & age of dog, registered no. if working or dangerous
Education Act 1989 <i>not in schedule 2</i>	S 128: Teacher's council to keep a register	No access provisions in the Act but NB accessible on the internet		List of people for time being registered as teachers
Electoral Act 1993 Registrar of Electors (NZ Post)	S 82-3: Registration of electors S 100: Corrupt practices list S 101, 103-6, 107: Electoral rolls (main, supplementary & composite) S 83C, 95A, 96: Removal of names S 109: Dormant roll S 108: Habitation indexes (residential addresses of electors) S 115: Unpublished names	S 110: public inspection of main & supplementary rolls, latest index, & dormant roll print-out on day before polling day, by any person without payment. On payment of fee a person may obtain copy of main or supplementary roll & s 108 indexes S 211: Returns available for public inspection Internet – enrolment status only	S 115: restrictions if Chief Registrar satisfied that publication of name would prejudice personal safety of person or their family – name, address & occupation not published in rolls or available for inspection S 116: an offence to use info for a purpose other than authorised under ss 112-114; fine of \$50,000 if used for commercial purposes S 117(1): fine of \$50,000 where person by optical scanning etc manipulates/processes any information obtained to produce it in a different form	S 100: Name, residence, description of persons on Corrupt Practices list (for 3yrs) S 106: Names, residences & occupations of persons on main & supp rolls S 210: Candidate returns

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Electricity Act 1992 <i>Not in schedule 2</i>	S 87: the Board to maintain & Registrar to keep registers in re all persons registered under the Act	S 87(4): registers to be open for public inspection on payment of the prescribed fee during office hours		S 85: particulars of application and any limits on registration (provisional licence, non-grant of licence)
Engineering Associates Act 1961 <i>Not in schedule 2</i>	S 11: registration by Board of certain persons with basic engineering training and 6-12 yrs experience	S 11(5): register open for public during office hours on payment of fee		
Films Videos and Publications Classification Act 1993 <i>not in schedule 2</i>	S 39: Chief Censor to maintain register o classification decisions	S 39(3): register to be open for public inspection		S 39(2): register to state classification given by classification office and Board, such other particulars as may be prescribed
Fisheries Act 1996 (Min of Fisheries Devolved to Fishserve See also Fisheries (Registers) Regulations 2001 for particulars to be shown)	S 98: fishing permit register; fishing vessel register & high seas permit register to be kept S 124: quota & annual catch entitlement registers to be kept See also S 186K & M: fish farmer register & S 186ZE: aquaculture agreements (<i>not in schedule 2 although fish farmer reg is stated to be a public register for purposes of the Privacy Act 1993</i>)	S 102: access to registers – the permit, fishing vessel, and high seas permit registers are public registers and open for inspection by the public on payment of fee copies on reasonable charge. See Fisheries (Location & Inspection of Registers) Notice 2002 S 129: quota & annual catch entitlement registers are public registers open to inspection Some limited information on internet	S 102(3): if CE satisfied that disclosure of person's address would be prejudicial to personal safety it may not be disclosed S 129(3): similarly for quota and annual entitlement registers And for S 186M(5): fish farmer registers	S 100: particulars required by regulations under s 297 S 127: matters to be shown in quota reg include allowable catch, details of quota shares, names & addresses of any transferees, provisional catch history with names of transferor/ee, forfeitures, settlement quota interests & mortgages S 128: similarly for annual catch entitlement register S 186L: fish farmer reg to contain info per regs
Foreshore & Seabed Act 2004 MoJ <i>not in schedule 2</i>	S 92 CE: to keep public foreshore & seabed register – in process of development	S 94: all docs in the register open for public inspection & copying on payment of fee if any	S 95: register is a public register within meaning of s 58 PA (<i>but not in schedule 2</i>)	S 92: Maori Land Court & HC orders, agreements, mgt plans, Conservation restrictions. (matters of public record)
Forest and Rural Fire Act 1977 <i>not in schedule 2</i>	S 17(2): Fire Authority to keep a forest area register (applications by registered landholders)	S 17(6): copies of application, plan and notice to be made available for public inspection		

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<p>Friendly Societies and Credit Unions Act 1982 MED</p>	<p>Every registered society or branch to keep:</p> <p>S 40: indexed registers of members of friendly society</p> <p>S 130: register of members of credit union</p>	<p>S 5(3): some documents open to inspection by the public during office hours on payment of any fee – new trustees, annual returns, actuarial reports, name changes</p> <p>S 8: powers of inspection of accounts by registrar or person authorised by Reg for purpose of ascertaining compliance with Act etc</p> <p>S 40(3) & 130(4): members register to be open for inspection <i>by any member of the society /credit union</i></p>		<p>Ss 40 & 130: names and address of each member with joining date and cessation</p> <p>(not open to public inspection)</p>
<p>Gambling Act 2003 DIA</p>	<p>S 204(1): Secretary to keep a register of licensed promoters</p> <p>S 90: gambling machines</p>	<p>S 204(3): register to be available for inspection to members of the police and public</p>		<p>S 204(1): record name and contact details of licensed promoters</p>
<p>Hazardous Substances & New Organisms Act 1996 (ERMA) <i>not in Schedule 2</i></p>	<p>S 20: obligation to maintain register of all applications to Auth</p> <p>S 82A: register of test certificates issued by test certifiers</p> <p>S 85: register of test certifiers</p> <p>(Various other registers maintained by ERMA under the HSNO Act and regs (eg regs 75-78 HS (Compressed Gases) Regs 2004) like Tank Wagon register, Gas Cylinder register, Special Gas Cylinder register – don't appear to have personal information in them)</p>	<p>S 20(5): Everyone has right to inspect the register during office hours</p> <p>S 82A(4): search of the register by an individual or person with consent of the individual to search for info in accord with the PA; a test certifier; an approved person for purpose that relates to the register, or prevent serious & imminent threat to public safety, or avoid prejudice to law maintenance, or auth u s 54(1) Privacy Act. On internet for approved people</p> <p>S 85: Everyone has right to inspect the register of test certifiers during office hours</p>	<p>S 82(2): purpose to facilitate compliance with & enforcement of HSNO, Agricultural Compounds, health and Safety in Employment and Resource Management Acts</p>	<p>S 20(2): To include name & address of applicant, description of substance, purpose of application, approval or not</p> <p>S 82A(3): to specify date of certif., name of test certifier, if issued in re a person, the name of the person and address of place of work</p> <p>S 85: HSNO register – name and address of person approved as test certifier</p>

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Health Practitioners Competence Assurance Act 2003 (Regional boards secretariat & about 10 other boards eg Dieticians Board, Chiroprac- tic Board, Medical Council, Osteopaths Council of New Zealand, Pharmacy Council of New Zealand, Podiatrists Board, Psychologists Board).	S 136: Each authority to keep a register of health practitioners registered Many are on internet but often only limited information is available	S149: authorities must publish the register – may include address info if the practitioner has not objected in writing S 150: published form of register to be open for inspection during office hours with copies available May charge a fee	S 138(2): other matters the auth thinks appro- priate are not part of the register open to public inspection S 140: health practi- tioner to notify Registrar of current addresses Personal details often not public (residential address, phone no.s email)	S 138: info to be registered includes name, particulars of qualifications, scope of practice, whether annual or interim practising cert held, any suspensions; other matters the auth thinks appropriate
Human Assisted Reproduc- tive Technology Act 2004 DIA <i>not in schedule 2</i>	Part 3: registration of info re people who have donated sperm, eggs, embryos to use in AR procedures & people born as a result of these procedures		Access is restricted to people entitled under the HART Act (named on the register & agents, guardians, medics etc	Info re donors & their offspring and parents
Impounding Act 1955 <i>not in schedule 2</i>	S 13: LA to keep records of all stock impounded in a Pound Book and an impound- ing register	S 13 (4): Pound book and impounding register to be open to public at all reasonable times free of charge		Impounding register – record of all stock impounded and fees and charges Pound book – initial record of stock impounded made ASAP
Incorporated Societies Act 1908 MED	33: registers to be kept of societies On internet	S 34: inspection of documents by any person (copies on payment of fee)		Name, registered office, address + for communica- tion, date of incorporation; number, rules, financial statements AGM month
Industrial and Provident Societies Act 1908 MED	S 3D: registers to be kept in each district registry On internet	? <i>access by public?</i>		
Insolvency Act 1967	S 118: in a case where the Court refuses to grant a discharge of a bankrupt the fact may be published			

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<p>Insolvency Act 2006 MED (not yet in force)</p>	<p>S 62: Assignee to maintain public register of discharged & undischarged bankrupts</p> <p>S 308: Information re Court's refusal of bankrupt's discharge must be in s 62 register</p> <p>S 354: Register of persons subject to summary instalment order</p> <p>S 368: Register of persons admitted to no asset process</p>	<p>S 447: Accessibility to public in business hours – all info in s 449(1), subject to ss 447(2) & 451(1)</p> <p>S 449(5): Registers must not contain any info re persons whose bankruptcy was annulled under s 309(10(a) or 310(2)(a)</p> <p>S 447(2): Assignee may refuse access if not practicable or pursuant to regulations</p> <p>S 449(4): Info re a person discharged must be removed from a s 62 register after 4 yrs</p> <p>S 450: restricted info in s 62 public register re person B not accessible unless person entitled under s 100;</p> <p>S 451: assignee may remove or restrict access to info in register if disclosure would be prejudicial to safety of person or their family</p>	<p>S 448: purposes of public registers - to provide info about bankrupts & discharged bankrupts (s 62 reg); about persons subject to summary instalment orders (s 354 reg); about persons admitted to no asset procedure (s 368 reg) + facilitating admin of the Act & provide info for statistical and research purposes</p> <p>S 452 & 453: searches must be according to specific criteria such as bankruptcy no., name of person or court, insolvency status</p> <p>S 455: info in public reg may be used for statistical purposes so long as non-identification of persons;</p> <p>S 456: breaches of privacy principles if search not for specified purposes</p> <p>S 454: searches to be in accord with search purposes – eg searching for info related to a bankruptcy, or s448(4)(a) or (b) purposes</p>	<p>S 449: info that must be held includes name, address, occupation if known, details of adjudication & bankruptcy or no asset admission or summary instalment order</p>
<p>Land Transfer Act 1952 Admin by Registrar at LINZ</p>	<p>S 33: Register to be kept of every grant of land and C/T; and duplicates</p> <p>S 50: Provisional registration</p>	<p>S 45A: registrar may issue search copies to any person applying for same of any grants, C/T, lease or deed entered into the register (also land-online can be searched by solicitors, conveyancers if they sign up)</p>		<p>Particulars of all instruments and dealings with the land, registered proprietor, memos of transfer</p>
<p>[Land Transfer Regulations 1966] repealed and replaced by Land Transfer Regulations 2002</p>	<p>Reg 31: registrar to keep a record of all instruments received for reg; indexing system that enables identification by ref to name of registered prop or description of land; Record of applications to bring land under the LTA</p>			<p>Record to specify reference no, date & time rec'd, ref no. of provisional registration, C/T or computer registration to be effected</p>

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Land Transport Act 1998 (maintained by Land Transport NZ)	S 199: national register of all drivers' licences to be maintained	S 199(4): person who pays the fee & describes driver & obtains driver's consent is entitled to licence no; s 199(6) person who pays fee is entitled to know expiry date & class of vehicle; s 199(5) doc- tor entitled to organ donor information On internet – limited access	Personal details such as address, DOB etc, endorsements are not available to the public S 200: no-one other than person acting in official LTA duties or police with consent or warrant, may access photo images	S 199(2): Register to show: holder's full name, address, DOB, place of birth. Lic no, date of issue and expiry; endorsements, conditions, court orders, suspensions, revocations etc
Law Practitioners Act 1982 <i>not in schedule 2</i>	S 49: every registrar to keep a roll of barristers and solicitors of the Court	High Court Rule 67: the roll of barristers and solicitors kept pursuant to s 49 of the LPA 82 may be searched, inspected and copied by any person during office hrs without fee		Includes the names of those struck off the roll – purpose of having a pub- lic roll would be defeated by suppressing the name of a practitioner who had been struck off <i>Walshaw v NZ Law Practitioners Disciplinary Tribunal</i> (1998) 12 PRNZ 133
Life Insurance Act 1908 <i>not in schedule 2</i>	S 24: every company not reg under the Companies Act shall keep a register of shareholders S 79: every co. to deposit statements with MED of all life insurance business transacted in NZ and entire assets in NZ	S 24: list available to every shareholder and policy holder – on payment of not more than 10c for 100 words copied S 26: Any docs re- quired to be deposited with Chief Executive of MED under s 79 may be inspected by any person on payment of fee		
Local Electoral Act 2001 (local authorities)	S 38: TA electoral roll S 45-47: Completion & amendments	S 42: roll available for public inspection		Names & details from Chief Registrar of electors: S 113 Electoral Act 1993

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<p>Local Government (Rating) Act 2002 (admin by Dept Internal Affairs)</p>	<p>S 27: Rating info database S 37: rate records to be kept</p>	<p>S 27(6): Database maintained to enable search by ref no of unit, address of unit, or ref set out in code of practice (issued under s 63 Privacy Act 1993)</p> <p>S 28: inspection during office hours of database not including persons' names - no fee except for copying – reasonable fee</p> <p>S 28A: inspection of complete database – includes name and address of owners of rating units if consent (s 28D)</p> <p>S 38: inspection of rates records by rate-payer or p authorised, p liable to pay rates under ss 61 or 62, solicitor or estate agent acting for transaction re the unit & reasonably required the info, public re rates assessed</p>	<p>27(3): Purpose of the database: record information for setting rates, LA communicate with ratepayers & public access to information re calculation of liability for rates</p> <p>S 28A: A person may make a series of re-requests so long as related and for purposes other than collection of names and/or addresses of people in the database</p> <p>S 28B: LA must inform owners of right to withhold name and address</p> <p>S 28C: owner may require LA to withhold above information</p>	<p>S 11: name of ratepayers to be entered in the rating info database & district valuation roll, owners; lessees & licencees in some circs</p> <p>S 27(4): All info re rating unit in the LA's district required for calculating rate</p> <p>S 37: to show amount of ratepayer's liability and info re the unit required to be kept under s 117K(2) Rate records</p> <p>S 92: If Maori freehold land is owned by 1+ owners all must be entered on information database and valuation roll</p>
<p>Maritime Transport Act 1994 Maritime NZ <i>not in schedule 2</i></p>	<p>S 189: Authority to establish a maritime registry</p>	<p>Documents at the Registry shall be made available by the Auth in accord with OIA for inspection by public free of charge: s 189(3)</p>	<p>S 189(3): is subject to the Privacy Act 1993</p>	<p>Includes – maritime docs & protection docs, accidents, mishaps, address for service of every applicant or holder of a maritime doc or marine protection doc, service charter</p>
<p>Marriage Act 1955 DIA</p>	<p>S 7: list of marriage celebrants to be published in Gazette</p>	<p>On internet</p>		<p>Names of persons entitled under the Act, date into force (address)</p>
<p>Medicines Act 1981 <i>not in schedule 2</i></p>	<p>S 55: every licensing authority to keep a register of licences</p>	<p>S 55(2): any person may have access to the register for purposes of inspection on hrs & days appointed by regs</p>		

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Motor Vehicle Sales Act 2003 Registrar of Motor Vehicle Traders (MED)	S 52: register of motor vehicle traders S 61: registrar to establish S 73: list of banned persons to be kept by registrar	Ss 56-57: searches by ref to criteria – name, address, registration no., date of reg etc S 58: Search purposes – who is responsible for motor vehicle trading, how to contact & whether registered S 78: a persons may search list in accordance with the Act or regs S79: search criteria – search by specific references On internet	S 53: Purpose of the register to enable public to - know who is responsible for m/v trading, contacts for traders, & if registered facilitate Min of Commerce enforcement; S 59: search can be interference with privacy under s 66 Privacy Act. S 80: search by persons to determine whether a person is a banned person	S 54: register to include name, residential address, DOB, occupation (or co. name, address, managers' details), registration no., date of reg & cancellation Phone no.s and emails not included in public register S 75: list to include full name, last known address, date of birth or company details, any unique identifier, trading name, period of ban, reasons for ban, any conditions
Music Teachers Act 1981 <i>not in schedule 2</i>	S 23: register of music teachers to be kept	S 23(2): register open for inspection at all reasonable times without fee (also listed on website)	S 24: names of persons who have died or registered in error or requested in writing may be removed – if convicted of an offence punish by prison that Board believes renders p unfit to be a music teacher or guilty of misconduct re music teaching Board may direct name removed	S 23(1): to contain name & postal address, categories for which reg, relevant qualifications, such other particulars as Board may direct S 24: Requests for address to be suppressed occasionally
NZ Sports Drug Register Agency Act 1994 <i>(not in schedule 2 – not a publicly available register)</i>	S 17: Agency to maintain a sports drug register to record competitors who did not have reasonable cause for not providing a sample or have committed a doping infraction	S 18: notification of an entry to be given to competitor and national sporting orgs concerned. CE of Sports & Recreation NZ to be notified also Agency may publish statistical info re entries	No other person to be advised re entries in the register nor permitted to inspect the register	If determination quashed by DC entry in the registry to be deleted – notice to be given to competitor and national sporting orgs concerned (s 17(3)-(6))
Patents Act 1953 Commissioner of Patents (MED)	S 83: register of patents S 84: Registration of assignments etc	S 83(2): open to public for inspection on payment of fee – certified copies available S 90: any person may request info relating to a patent On internet		S 83(1): particulars of patents, assignments etc, matters affecting validity or proprietorship

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
Personal Property Securities Act 1999 Registrar of PPS	S 139: register of personal property security interests to be kept	Ss 171-172: searches by criteria – name, address, DOB, incorporation no., collateral or registration no. On internet (electronic only)	S 173-4: purposes of access - by or with consent of individual for info in accord with Privacy Act; by debtor or secured party in re security interest; by person to establish whether ppty subject to a security interest, whether to provide credit, obtain guarantee, invest; by liquidator, receiver, OA, executor - for related purposes; creditor, bailiff re enforcement, news media re verification etc	S 140: name, address DOB of debtor - if organisation, person acting & incorporation no. Name & address of secured party, collateral & date of any prior reg
Plumbers, Gasfitters and Drainlayers Act 1976	S 20: Board to set up following registers – craftsman plumbers, craftsman gasfitters, gas inspectors, plumbers, gasfitters, drainlayers, holders of limited certificates	S 20(6): registers to be open to inspection by the public during office hours-S 20(7): registers can be published		S 20(4): names + prescribed particulars
Plumbers, Gasfitters and Drainlayers Act 2006	S 70: Board to establish registers of plumbers, gasfitters and drainlayers	S 82: register to be open for public inspection during office hours – copy of entries on payment of fee S 84: any person may search register in accord with the Act S 85: search criteria spec in regs S 86: searches only for s 72 purposes Limited internet access	S 72: purpose of the register: to enable public to determine whether P is registered or hold licence and their status & history & any disciplining, choose suitable p for the relevant work, & contact them; to facilitate admin, disciplinary & other Board functions S 87: interference with privacy if not per ss 84-6	Ss 71, 74 & 75: includes name and addresses, status & history of registration and licence (if any)- date, expiry, any suspensions or disciplinary action, incorporation no. if co. (provisional and former reg also)
Postal Services Act 1998 <i>not in Schedule 2</i>	S 32: Sec to maintain a register of reg postal operators	S 34: inspection by public during office hours – copies on request at payment of reas charge		S 32: partics to include p's name, place of business, date of reg. p's postal identifier, any other partics Sec considers appropriate
Private Investigators and Security Guards Act 1974 <i>Not in schedule 2e</i>	S 13: Registrar to compile reg of persons to whom private investigators & security guards/ licences have been issued + approved responsible employees of same	S 14: any person may inspect registers during normal working hrs on payment of fee		S 13(2): full name, residential address & occupation of licence or certif. of approval holder, date of issue, renewal, any suspensions etc

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
Radiocommunications Act 1989 Registrar of Radio Frequencies MED	S 5: register of radio frequencies S 10: registration of management rights of radio frequencies S 26: reg of licences & modifications where mgt rights mortgaged	S 28: register to be open for search on payment of prescribed fee On internet	S 5: Register is for the purpose of maintaining records of interests or uses relating to radio frequencies S 28(1): Searches are for the purpose of determining whether or not any radio frequency is subject to a record of mgt rights, a spectrum licence or a radio licence and determining the identity of the owner of a mgt right, right-holder or holder of radio licence	Names, addresses (can withhold address) S 6: record of mgt rights has particulars of transfer, particulars of spectrum and radio licences
Rating Valuations Act 1998 LINZ	S 7: District valuation rolls	S 41: certified copies of entries in rolls available to the public upon payment	S 52(f): regs may be made to limit or prohibit bulk provision of the roll for non-Act purposes Valuer General to determine contents of the roll: s 7	S 41: certified copies to contain matters required by rules: names of owners/ratepayers, situation address, ref no., legal description, rateable value, improvements
Real Estate Agents Act 1976 <i>not in schedule 2</i>	S 36: Registrar of RE Agents to maintain register of agents S 39: Reg to keep copies of permits to carry on specified business	S 36(2): register open to public inspection during office hrs on payment of fee (if any)- reg to send copies of entries on payment of fee S 39(2): permit file open to public inspection during office hrs on fee		S 37: register to record issue of licence, renewals, suspensions, cancellations – name & address of licensee + qualifications, address of offices, name of branch manager
Registered Architects Act 2005 NZ Registered Architects Board	S 18: Board to maintain register of registered architects May be electronic	S 22: register to be open for public inspection without fee during reasonable hours, supply of copies at reasonable charge	S 19: purposes of the register – to enable public to determine if person a registered architect, their status & history; to choose a suitable reg architect, if address is listed know how to contact architect, know re disciplines in last 3 yrs; Facilitate Board's admin, disciplinary functions	S 18(2): Name of every person registered – info in s 21: status & history of persons' reg, date of reg & expiry, disciplinary penalties, contact details <i>if person consents</i> , other info Board thinks necessary, suspensions
Reserve Bank of New Zealand Act 1989 <i>not in schedule 2</i>	S 69: Reserve Bank to keep a public register of persons known as registered banks	S 69(3): Bank to take all reasonable steps to ensure info in register available to the public at all reasonable times	No personal information	Bank to determine the form of the register

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Sale of Liquor Act 1989 Liquor Licensing Authority	S 220: Sec of Licens- ing Auth to set up and maintain a register S 221: Secretary to keep a record of applications filed and a register of licensees	S 220(2): Any member of the public may obtain an extract from the register on pay- ment of fee S 221(3): public may obtain an extract from any s 221 record or register on payment of fee	S 223: every licensee and manager is to notify an address for service	S 220(1): All particulars re applications, licences and managers' certificates as prescribed S 221(2) register of licen- cees to record all particu- lars re special licences as prescribed
Secondhand Dealers and Pawnbrokers Act 2004 MoJ	S 78: Licensing Auth to 2 public registers: a licence holders register & a certificate holders reg	S 81: public access – Lic Auth must take all reasonable steps to ensure the info in the registers is avail- able to the public at all reas times& copies at a reasonable cost [S 82: Police access re any info in a licence or certificate] On internet		S 79: licence holders reg to include full name of holder & place of business, with street address, date & no of licence, <i>email of holder if consents</i> S 80: Certificate holder reg to include full name of holder, date & no of certif
Securities Act 1978 Issuer – a person on whose behalf any money is paid for allotment of security (MED)	S 51: Issuers to keep registers of all equity & participatory securities, units in unit trusts, interests in superan- nuation schemes, life ins policies	S 52: registers to be open to any holder free, and any other person on payment of fee, copies available on payment of fee- registers to be open at least 2 hrs per day	S 60: fine of up to \$1000 if ss 51 or 52 are contravened S 66: registrar can keep such registers as consid- ers necessary	S 51(2): Every register to have name & address of holder, date of allot- ment, nature of security and amount, due date of security
Security Markets Act 1988 <i>not in schedule 2</i>	S 19Z: a public issuer must keep an interests register for disclosure	S 19ZA: register to be kept open for inspec- tion by any person between 9 am and 5 pm each working day of inspection period; copies or extracts on reasonable fee		
Ship Registration Act 1992 <i>not in schedule 2</i>	S 20: Registrar to reg a ship in Part A of Register S 21: registrar to regis- ter partics in part B of the register S 24: partics of master to be endorsed on cert of reg in ship leaving NZ S 22: reg of property in a ship (64 shares)	Register is available on website if name of ship is known		S 20: Part A register to include: name & no. of ship, port of reg; name, address & nationality of each owner of a share in the ship per s 13 declara- tion, name & address of any representative party, date of entry Part B of register: details re the ship: s 21

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
Social Workers Registration Act 2003 Board	Ss 121-2: Board to keep register of social workers in 3 parts Register to be kept up to date and revised (ss 125-129)	S 124: On payment of a fee if any person who asks can obtain certificate of all cur- rent info entered in the register re a particular person other than his or her home address S 135: Board must publish the register in any form it thinks fit (not home addresses) S 136: register open for public inspection in office hours – copies	S 124, s 135: home address exception to disclosure	S 123: Information to be registered – name, home or work address, partic of qualifications, type of reg, date should be reg and date of reg; any other matters prescribed by regs or thought appropriate; also conditions of reg, any suspension or restrictions, partics of practicing certs
Status of Children Act 1969 DIA <i>Not in schedule 2</i>	S 9: instruments of acknowledgement of paternity to be filed in the office of the Reg General who must maintain on index of same	On request and payment of fee by requester, RG shall cause a search to be made, permit any per- son to inspect a copy, issue with certif. copy of instrument or cert of search results		
Te Ture Whenua Maori Act 1993 held at Maori land Court	S 263: Maori incorpo- ration to have share register	S 263(6): Share register open to public inspection on payment of fee		Index of names of share- holders & information re their share – 263(3) (Court records)
Trade Marks Act 2002 Commissioner of Trade Marks (MED)	S 181: register of trade marks to be kept by Commissioner	S 184: a person may search the register on payment of fee when office open & certified copy of an entry must be given on payment of fee On internet		S 182: contents to include all reg trade marks with names & addresses of own- ers, assignments, transmis- sions, names & addresses of licensees, conditions
Transport (Vehicle and Driver Registration and Licensing) Act 1986 CE MoT (maintained by Land Transport NZ)	S 18: Registrar to keep registers of all motor vehicle, reg plates & licences of motor vehicles	S 19(1): any person on payment of a fee entitled to certificate of partic of all per- sons recorded in s 18 registers as past & present reg. owners of specified m/v S 19(2): entitled to cert containing name and address of reg. owner, expiry of warrant, info re vehicle standards compliance on pay- ment of a fee (if any) On internet	S 19(4)-(5) Registrar can decline to issue certif. in some cases: for se- curity or defence of NZ, maintenance of the law, privacy of any person or personal safety of any person	S 20: Information to be given to Registrar by new owners includes full name and occupation, addresses & DOB <i>[not all on certificate given to public]</i>

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
Transport Services Licensing Act 1989 (Land Transport NZ) <i>not in schedule 2</i>	S 29: Authority to keep a register of service licences granted, suspended, revoked, surrendered	S 29(2): register available for public inspection at any reasonably time on payment of fee, is any	Public notice to be given of applications for passenger service licences or vehicle recovery service licences	
Unclaimed Money Act 1971 <i>not in schedule 2</i>	S 6(1): every holder (banks, companies, real estate agents etc) to keep an alphabetical register of particulars of unclaimed money	Register open to inspection by all persons at head office during ordinary business hours of the holder		
Valuers Act 1948 Registrar of valuers <i>not in schedule 2</i>	S 18: register of valuers to be kept	S 18(2): register of valuers to be open to inspection by the public on payment of fee		S 18: name & address of applicant, qualifications etc
Veterinarians Act 2005 Council	S 22: register of veterinarians & other registered persons be kept	S 22 (3) Reg to ensure register is open for public to inspect free ;(5) on payment of prescribed fee must issue certif. copy of entry in register to any person <i>Handbook has name, address (with consent) – used by vets. Website has practice address</i>	Info under s 22(c): info that Council considers necessary or desirable for purposes of the register - and info under s 22(e)(iii) – other registered persons - is not part of the register for purposes of public inspection	S 22(2)(d): to include details of conditions of practice, whether reg or practising cert suspended and for how long, S 22(2)(e) (separately) info re specialists, vets with limited reg, other reg persons
Wildlife Act 1953 <i>not in schedule 2</i>	S 55: DG may authorise public museum to have dead bodies of any species of absolutely or partially protected wildlife or game, subject to conditions	S 55(1)(b): the register available for inspection at all reasonable times by authorised officers of the Dept (not public)		Register to show animal held, person from whom received, area from which received and cause of death of animal
Wine Act 2003 NZ Food Safety Authority	S 17: DG to keep register of wine standards management plans S 47: register of exporters to be kept S 73(1): DG to keep register of all agencies in relation to verification or other specialist functions under the Act	S 17(4): DG must keep register open for public inspection, free & supplies copies of extracts at reasonable charge S 47(4): DG to keep registers open for public inspection free, copies at reasonable charge S 73(4): DG must keep register open for public inspection free, copies at reasonable charge	S 17(2): Purpose to enable public & business to know what operations are subject to plans and who is responsible for functions under them; to facilitate DG's functions and audit & admin functions of the Ministry S 47(2): to enable public and businesses to know who is auth to export wine and facilitate DG & admin functions S 73(2): purpose to enable public to know who is recognised to undertake functions & activities u the Act	S 17(3): Plans to include name & address of winemaker or business operator, name and position of person responsible for day to day mgt, date of reg, types of wine, location of premises, other particulars as prescribed S 47(3): include name and address of exporter and agent, date of reg etc S 73(3): register to include name & address of person or body, description of recognised function