

**Government Response to Law Commission Report on
*The Public's Right to Know: Review of the Official Information
Legislation***

**Presented to the House of Representatives
4 February 2013**

Government Response to Law Commission Report on *The Public's Right to Know: Review of the Official Information Legislation*

Introduction

The government has carefully considered the Law Commission's Report *The Public's Right to Know: Review of the Official Information Legislation* (NZLC 125) (the Report) tabled in the House of Representatives on 25 July 2012. The government responds to the Report in accordance with Cabinet Office circular CO (09) 1.

The government wishes to thank the Law Commission for the comprehensive and detailed report, which is a major contribution to this important area.

Law Commission Report

The Law Commission notes in its report that:

"our initial impressions were that the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 are central to New Zealand's constitutional arrangements and that their underlying principles are sound and that they are fundamentally working well. These have been confirmed as the review has progressed... However, the Commission has reached the view that much could be done to improve the operation and efficiency of the official information legislation, through a mix of legislative and non-legislative means." (para 1.33 - 1.34, pg 25).

The Law Commission's major recommendations include:

- A new Act – redrafting the Official Information Act 1982 (OIA) completely and potentially combining the OIA and the Local Government Official Information and Meetings Act 1987 (LGOIMA)
- New Ombudsmen guidelines – including case reports, commentary and comprehensive guidance
- Statutory creation of a new oversight office – establishing a high-level government leadership role for official information
- Proactive release – agencies to take reasonable steps to make information available to the public
- Extending the OIA – to include the administration of the courts, the Offices of Parliament, Parliamentary Counsel Office, Office of the Clerk and Parliamentary Service, and the Speaker
- New commercial protections – including competitive positions, financial interests and relationship with the public sector
- Notifying third parties – a duty to notify parties prior to release of official information (this relates to both commercial protections and privacy).

Response

The government recognises that the Official Information Act 1982 (OIA) is an Act of constitutional importance that provides the necessary checks and balances to ensure New Zealanders can participate effectively in government and the democratic process. The Local Government Official Information and Meetings Act 1987 (LGOIMA) fulfils a similar role for local government.

The official information legislation is designed to promote accountable governance through transparency and balanced freedom of information about public sector actions and decisions. The government supports these aims and has carefully considered the Law Commission's detailed report and recommendations.

Having considered the Law Commission's findings, the current fiscal environment and the range of other urgent government priorities, the government response is focused on priority recommendations rather than on major reform of the official information legislation.

The Law Commission has identified a range of measures to improve the workings of both Acts. This response targets the major recommendations of the Law Commission's Report. Due to the range of other urgent legislative priorities currently being undertaken, the government is not in a position to undertake a full reform of the OIA or LGOIMA at this time. Recommendations for legislative amendment to the OIA that have been identified by the government as a priority will be progressed in the context of other relevant work programmes and form part of the following response:

- The Law Commission recommends improved education and guidance, including: improving the current Ombudsmen's guidelines, creating a case notes directory, and creating an analytical commentary to accompany the case notes. The Ombudsmen have already made significant progress in planning to implement these recommendations. The government supports the work that the Ombudsmen are undertaking to progress the Law Commission recommendations regarding guidance.
- The Law Commission recommends extending the OIA to the Offices of Parliament, Parliamentary Counsel Office, the Office of the Clerk and Parliamentary Service, and the Speaker of the House. The government does not agree with the Law Commission's recommendation and supports the status quo. New Zealand has an open Parliament by international standards and Parliament currently makes a great deal of information available. Parliament has processes for developing rules around access and use of information and this is more likely to achieve the desired balance between access to information and the proper functioning of Parliament. This approach is consistent with the approaches taken in the Australian and Canadian federal parliaments and the US Congress. The Law Commission recommended that the OIA be extended to include administrative and financial information of the Offices of Parliament (excluding any audit,

assurance work, inquiry or investigation by them). Given the proposed exclusion of the substantive aspects of the work undertaken by the Offices of Parliament, the existing scrutiny provided through the Parliamentary estimates and financial review processes is considered appropriate. This scrutiny is publically accessible and provides transparency in the work and spending of the Offices of Parliament.

- The Law Commission recommends extending the OIA to the administrative functions of the courts. This would include information about expenditure, resources and statistical information about court cases. Not included in any potential extension would be any information about specific court cases, judicial communications, or information about judges' performance and functions. The Law Commission consulted extensively with the judiciary to achieve broad agreement as to the substance of this amendment. The government agrees that the administrative functions of the courts should be covered by the OIA and intends to progress this recommendation as part of courts-related policy work in the context of the current review of the Judicature Act 1908.
- The Law Commission recommends that new commercial protections be provided where material prejudice to competitive positions or financial interests could result, and to clarify how the legislation applies to the commercially sensitive information of companies in commercial relationships or interacting with the public sector. The government considers these recommendations are an important issue for business and intends to progress work in this area.
- The Law Commission recommends the statutory creation of a new oversight office. The Office of the Ombudsman currently provides specific training and education to agencies subject to the Act, as well as publicly available information and guidance. The government considers that the oversight provided by the Ombudsmen is effective, including responsibility for complaints and guidance, and that government departments and agencies should continue to look to the Office of the Ombudsman for guidance.
- The Law Commission recommends that consideration be given to combining the OIA and LGOIMA into one Act. The government does not consider that work to consider combining the two Acts should be progressed. The Law Commission notes that the arguments are 'finely balanced'.
- A number of the Law Commission's recommendations relate to the relationship with the Privacy Act 1993. Most of these do not recommend major legislative change, but improved guidance or clarifying legislative amendment may be appropriate. These recommendations for legislative amendment to the OIA will be progressed in the context of the review of the Privacy Act 1993.

- The Law Commission makes a number of recommendations to clarify existing provisions and to make minor or technical legislative changes. The government will assess these recommendations for inclusion in appropriate legislative vehicles (such as the Statutes Amendment Bill) as they become available.
- While major legislative reform of the official information legislation will not be progressed at this time, the government will keep the operation of the official information legislation under review and consider whether it will progress any of the remaining recommendations, as competing priorities allow.