



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.

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CONTENTS

The Law Commission's privacy review.....	5
Terms of reference.....	5
Preface	6
Acknowledgments.....	8

INTRODUCTION

Background to this reference	11
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CHAPTER 1

History of public registers	14
Historical background.....	14
Continuing development of open public registers.....	20
Public registers and open access.....	20
What is a public register?	22

CHAPTER 2

What is a “public register”?.....	22
Categorising public registers.....	27
Why public registers?	30
Diversity of public registers.....	35

CHAPTER 3

Public register regulation.....	37
Privacy Act 1993: main provisions applicable to public registers.....	38
Domestic Violence Act 1995 and Domestic Violence (Public Registers) Regulations 1998	47
Suppression of personal information in statutes establishing public registers	49
Official Information statutes	52
Summary	53

CHAPTER 4

Principles, interests and issues.....	55
Openness and free flow of information	55
Limits on open information – protection of personal information.....	61

CHAPTER 5

- Options for reform 71
 - Reform options..... 71
 - Conduct of the review..... 75
 - Suppression mechanism 79
 - Regulation of bulk access to public register information 84
 - Penalties for abuse of the information obtained from a public register 89
 - Amendments to the Privacy Act 1993 if option 4 is adopted 89
 - Amendments to other Acts 90
 - Government response to recommendations..... 90

RECOMMENDATIONS

APPENDIX

- Statutory provisions for public registers 98**

This report on the law relating to public registers is part of the Law Commission's major review of privacy. The review is being led by Law Commission President Sir Geoffrey Palmer. The review team also includes Emeritus 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 sets the conceptual framework and helps to identify issues for further detailed examination in the later stages. The stage 1 report considers different ways of conceptualising privacy, and discusses the implications of political, social and technological change for privacy protection.

Stage 2 is concerned with the law regulating public registers, and has resulted in an issues paper *Public Registers: Review of the Law of Privacy Stage 2* (NZLC IP3, September 2007, Wellington) that sought submissions on four options for reform, and in this report, which takes into account those submissions and sets out our recommendations for reform.

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.

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 the electoral rolls, land registers, company registers and many occupational registers. The registers usually contain personal information.

All freedom of information regimes seek to balance the public interest in openness and free flow of information 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 the 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 that Act, and partly in the Domestic Violence Act 1995, Part 6. In addition, there is 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 confusion and inconsistency in the law. The protections available under the law where there is a risk to personal safety are also inadequate.

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 increased clarity of regulation, the assessment and balancing by Parliament of the free flow of information, 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 *Public Registers: Review of the Law of Privacy Stage 2* (“the issues paper”)¹, we traversed the problems that have arisen with the current regulatory provisions and suggested four options for reform of the regulatory framework. We asked for comment on these options, and on the variety of protective mechanisms that are currently, but unevenly, employed in public register statutory provisions: the mechanisms could be used in conjunction with any of the suggested options. We also asked for views on possible ways of solving one of the main issues of open public registers: electronic, bulk downloading of personal information. We received 31 submissions, and this report reflects the concerns and views of the submitters, as well as our further research. We recommend one of the options with some modification and a framework to guide its implementation.

Summary of recommendations

We recommend that public registers be regulated primarily through their establishing statutes. This reform to public register regulation should be implemented by way of a review of all “public registers”, as defined in this

¹ New Zealand Law Commission *Public Registers: Review of the Law of Privacy Stage 2* (NZLC IP3, Wellington, 2007).

report. The review would be led by a well-resourced and dedicated team and would be conducted over a year. It would operate in accordance with a specific template that we set out in recommendation 4 of this report. This includes consideration of what personal information should be held on a register and what should be accessible, the purposes for which people should be allowed access to the register, and whether the register should be completely open or there should be restrictions. This review would result in recommendations to Cabinet for legislative changes to the establishing statutes and to the Privacy Act 1993, and consequential amendments to other legislation. Such changes would be introduced by way of a single omnibus Bill.

We further recommend that there be a protective mechanism to apply across all registers containing personal information, based on the mechanism in the Electoral Act 1993. This would enable suppression of names and/or contact details where there is evidence that the safety of a person on the register and/or their family would be put at risk by the disclosure of that information. Applications for suppression (or to be on an unpublished or confidential roll) would be made to the Privacy Commissioner, except in the case of the electoral roll; we do not recommend changing the application process for the unpublished electoral roll at this stage.

Finally, we recommend a system of accreditation for bulk access to some specified registers. This system may not be appropriate for all registers. Where it is, we recommend that a potential bulk user of public register information should apply for accreditation to the minister for the relevant government agency that administers the public register Act. The applicant would need to make a good case for bulk use of register information based on public interest considerations, and to state proposed uses and the registers it wishes to access. The application should be copied to the Privacy Commissioner for comment. The minister should then decide upon accreditation following certain criteria listed in recommendation 10 of this report (such as the proposed uses of the information, the benefits to the public or any section thereof, and the risks to persons on the relevant registers). Accreditation may be on any conditions that the minister thinks fit and would be for five years. There would be penalties for misuse of the information: an accredited user could be “struck off” the list of accredited users.

More generally, the penalty system under Part 8 of the Privacy Act 1993 should apply to breaches of access provisions in public register statutes.



Geoffrey Palmer
President

ACKNOWLEDGMENTS We are most grateful to the Privacy Commissioner, Marie Shroff and her staff, and Blair Stewart, Deputy Commissioner, for their time and attention to the issues paper and this report, 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 the draft issues paper, which 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. We particularly thank those who have submitted comment on the issues paper. They are:

Barrie Wickins, B & D Holdings Ltd

DG McGee, Clerk of the House of Representatives

Safe Home Release Plans Equity Association (SHERPA)

Land Transport New Zealand

Medical Council of New Zealand

Central Otago District Council

Office of the Health and Disability Commissioner

Media Freedom Committee of the Commonwealth Press Union
(New Zealand Section)

Department of Internal Affairs

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Keith Norris, Chief Executive, Marketing Association

Quotable Value Limited

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Simon Pohlen, Data Advisory Network, Marketing Association

Institute of Professional Engineers New Zealand

Department of Labour

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New Zealand Press Council

Archives New Zealand

General Manager Regulation and Democracy Services, Christchurch City Council

Business Services Branch of the Ministry of Economic Development

Office of Film and Literature Classifications

Rae Nield, Solicitor

Association of Market Research Organisations

Privacy Working Party of the New Zealand Law Society

Axiom New Zealand

Office of the Privacy Commissioner.

Finally, we thank all those agencies that are holders of public registers and 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 the issues paper and this report. 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 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.

The commissioners responsible for this reference were Geoffrey Palmer and John Burrows. The senior legal and policy advisers were Janet November and Rachel Hayward.



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 by both the government and other agencies.
- 2 Many of the reasons for maintaining public registers mean that they need to be open to third parties. 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 that 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 many cases. In 2007, information on most public registers in New Zealand is stored in electronic form. Electronic information can be stored, sorted, manipulated and redistributed at high speed and minimal cost. Access is potentially available to a nationwide 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.²

- 4 Advances in technology have brought dramatic benefits to the management and administration of public registers, increasing both the efficiency and effectiveness of information handling. Some public registers, for example the electoral roll,

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

the national driver 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.³

- 5 Another significant effect of technology has been to make public registers a much more viable and attractive source of information for commercial entities:⁴

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, health, 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 online, 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 1993.⁵ 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 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 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

3 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.

4 Rick Shields *Publicly Available Personal Information and Canada’s Personal Information Protection and Electronic Documents Act* (McCarthy Tétrault, Ottawa, October, 2000) 10–11.

5 Report of the Privacy Commissioner, *Necessary and Desirable – Privacy Act 1993 Review* (Office of the Privacy Commissioner, Wellington, 1998) 7.1.8.

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).⁶

9 The Privacy Commissioner’s report made a number of recommendations for change in relation to public registers.⁷ These have not yet been implemented, although the recommendations have influenced work on statutory provisions related to public registers since the report was released.

10 The Ministry of Justice has been considering a number of amendments to the Privacy Act 1993, which include proposals relating to public registers. However, the Ministry suggested that the public registers also needed further 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 In the appendix to this report we have listed as many statutory public registers as we can find. We sent a questionnaire to a number of register holders to try to assess the uses of the public registers they administer, and any problems or issues that they are aware of. We talked to some of those register holders, especially those who noted problems. In the course of this project, we have also talked to some register users and a few people listed on registers. We have received 31 submissions to our issues paper, which came from register holders, register users, and other interested groups and individuals. These submissions have informed and influenced our conclusions.

12 In this report, 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 and submissions to our issues paper, from our meetings and from other reviews. Finally, we set out the option for reform that we recommend, together with a framework for a comprehensive review of public registers.

6 Ibid, 7.1.9.

7 These were discussed in detail in chapter 5 of the *Public Registers* issues paper, above n 1.

Chapter 1

History of public registers

HISTORICAL BACKGROUND

- 1.1 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, 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 reasons for establishing registers, and for their openness.

Domesday Book

- 1.2 An early example of a register containing personal information can be found in the Domesday Book, one of Britain's earliest surviving public records.⁸ 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.⁹ 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.¹⁰ 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.¹¹

8 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 online at www.nationalarchives.gov.uk/domesday/ (accessed 7 June 2007).

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

10 *Halsburys Laws of England, Boundaries* (Vol 4(1) Butterworths, London, 2002 reissue) para 935.

11 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 (United Kingdom)

- 1.3 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 Report of the Select Committee on Parochial Registration of 1833.¹² The Committee recorded that, in 1538, the Lord Privy Seal issued an injunction that directed parsons in all parishes to record weekly, in a book, all the weddings, christenings and burials. Similar injunctions were repeated in 1547 and 1559 and, later, mandates were issued to enjoin the careful preservation of such records.
- 1.4 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 on all children born in their parishes, irrespective of what religious denomination their parents were. This duty proved too onerous in respect of births because 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.¹³
- 1.5 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 on Parochial Registration 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 because 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 the state of disease, operation of moral and physical causes on the health of people, or the progress of population and so on. The Select 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.

¹² “Report of the Select Committee on Parochial Registration”, ordered by the House of Commons to be printed, 15 August 1833.

¹³ Taken from the “Report of the Select Committee on Parochial Registration”, 15 August 1833.

Births, deaths and marriages registers (United Kingdom and New Zealand)

- 1.6 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 Bill in 1836, Lord John Russell said that it was:¹⁴

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.

- 1.7 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.¹⁵ In the same session, Lord John Russell also mentioned the public benefit:¹⁶

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

- 1.8 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”.¹⁷ 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.
- 1.9 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].¹⁸

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

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

16 *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.”

17 House of Lords (11 July 1836) vol 35, GBPD ser 3, 80.

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

- 1.10 Dr Bowring, similarly, said that the aims of the Bill had been misunderstood by those who objected to it. He stated:¹⁹

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 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.

- 1.11 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”.

- 1.12 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 open.

- 1.13 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:²⁰

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.

- 1.14 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 vehicle register (New Zealand)

- 1.15 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 Courtney put the reasons for introducing the Bill:²¹

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

20 (4 June 1858) 1856–1858 NZPD 492.

21 (12 July 1905) vol CXXXII NZPD 522.

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.

[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.

1.16 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.²²

1.17 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”.²³ 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).²⁴ The Bill also regulated other aspects of motoring, and included driving offences.

Land transfer registration in New Zealand

1.18 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:²⁵

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

22 (27 July 1905) vol CXXXIII NZPD 164.

23 (11 September 1924) vol 204 NZPD 815 and 853, the Hon Mr Bollard, Minister of Internal Affairs.

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

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

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.

- 1.19 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).²⁶ Registration of title involves the accurate identification of each parcel of land that is to be made subject to the system, and the accurate recording of all the interests subsisting in each parcel of land. The fundamental objective of registration of title is to remove the need for the investigation of the documents that 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.²⁷ 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.²⁸

- 1.20 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:²⁹

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 being available to the public; it is even referred to as a “public register”.

- 1.21 In 1906, in *Fels v Knowles*³⁰ 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.

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

27 Hinde, McMorland and Sim *Land Law in New Zealand* (looseleaf, LexisNexis NZ Ltd, Wellington) para 8.001–8.002 (last updated September 2007).

28 EC Adams, *The Land Transfer Act* (1st ed 1958) para 46, cited in Hinde McMorland and Sim, *ibid*, para 8.022.

29 The Hon Mr Sewell (27 July 1870) vol 8, NZPD 93–94.

30 *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”.

CONTINUING
DEVELOPMENT
OF OPEN
PUBLIC
REGISTERS

- 1.22 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.
- 1.23 Throughout the twentieth century, statutes continued to provide for registers open to the public – for example, the Music Teachers Act 1924, Valuers Act 1948, Patents Act 1953 and 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.
- 1.24 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 particular 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.³¹ A number of public registers, however, are still almost completely open.³²

PUBLIC
REGISTERS
AND OPEN
ACCESS

- 1.25 This brief historical survey of public registers shows that, originally, registration had several purposes. In some cases, it was to provide revenue for the state; in others 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.

31 See Department of Internal Affairs “Review of Public Access to Registers held in the Citizenship Office and Registry of Birth, Death, and Marriages”, (May 2005); and also response to a Law Commission questionnaire sent to public register holders, from the Department of Internal Affairs in April 2007.

32 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, 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.

- 1.26 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 purposes.
- 1.27 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 – for example, of one’s ancestors for property devolution, or of a motorist who had caused damage to one’s property in the case of the motor vehicle 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 in the law”. In the case of company registers, openness assisted in ensuring accountability of directors and in deterring fraud.
- 1.28 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 certain cases. We discuss the argument for openness in some detail in chapter 4 and 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?

- 2.1 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.

- 2.2 The Privacy Act 1993 has a definition of a “public register” as:³³
- (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.
- 2.3 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.³⁴ Part 1 of Schedule 2 contains a list of about 40 statutes (and the Land Transfer Regulations 2002),³⁵

³³ Privacy Act 1993, s 58. Note that in section 2 a “public register” has the meaning given to it in section 58.

³⁴ 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”.

³⁵ Reference in 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: see further footnote 100.

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 of the Privacy Act 1993.

- 2.4 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.³⁶ 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 the appendix, we have attempted to list as many of both Schedule 2 and other statutory registers as possible.
- 2.5 “Public” may refer either to the publicness of the organisation that maintains the register,³⁷ 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:³⁸
- 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.
- 2.6 Some “public registers” are not held or maintained by public bodies³⁹ (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:⁴⁰

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”.

36 See the Reserve Bank of New Zealand Act 1989, s 69: the Reserve Bank is to keep a public register of persons known as registered banks; Foreshore and Seabed Act 2004, 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.

37 Robert Gellman “Public Records: Access, Privacy and Public Policy” (Discussion Paper, Center for Democracy and Technology, Washington DC, 21 April 1995).

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

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

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

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.

- 2.7 Does the term “public” (if it refers to a public search right) also include government agencies? This is unclear, and some submitters to our issues paper raised the matter of access by government agencies to public registers held by other government departments (usually to check identification on an occasional basis). This issue needs to be considered in relation to the information matching provisions in Part 10 of the Privacy Act 1993, which we discuss in chapter 3. We note that public sector agencies are prohibited from disclosing information pursuant to the official information statutes if the principal or sole purpose for which the information is sought is for use in an information matching programme (section 109 of the Privacy Act 1993).
- 2.8 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.
- 2.9 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 to 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 listed 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.

- 2.10 As Stewart points out, there is no consensus about the definition. Nor is there consensus about the terminology. The Council of Europe Committee of Ministers refers to “public files”, that is, 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.⁴¹ 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).

2.11 The New South Wales Office of the Privacy Commissioner has produced a booklet entitled *A Guide to Public Registers*, which contains a checklist for recognition of a (public) register:⁴²

- 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?

2.12 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 Privacy and Personal Information Act 1998 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) as meaning:

... 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.

2.13 The meaning of personal information is a complex issue and there is an emerging literature on the subject.⁴³ 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 stage 4 of our privacy review.

41 Council of Europe Committee of Ministers "Explanatory Memorandum to Recommendation No R (91) 10 of the Committee of Ministers to Member States on the Communication to Third Parties of Personal Data held by Public Bodies", 1991, paras 6 and 24.

42 Office of the Privacy Commissioner *A Guide to Public Registers* (No 4, Office of the Privacy Commissioner, Sydney, 1999) 5.

43 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.

- 2.14 We note, however, that in replies to our questionnaire sent to most New Zealand 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 particular contexts. Several responses from local authorities concerning complaints noted that there have been objections from dog owners on the dog registers about having to supply their dates of birth.⁴⁴
- 2.15 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.⁴⁵ For the purposes of this privacy reference, we are concerned only with a large subset of public registers: those containing personal information.

Definition of “public register” for this paper

- 2.16 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. 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.
- 2.17 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) that captures the concept of a degree of public access. So long as the characteristics are defined clearly, in our view it is preferable to retain the term. It is used for the remainder of this report, and the definition above is the working definition. But we mainly discuss only those public registers that contain personal information.
- 2.18 Our definition excludes other registers or databases held by government departments or by 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 New Zealand Police, or the Inland Revenue Department’s Kiwisaver registers). The pecuniary interests register, created by Standing Orders of the House of Representatives, would not fit within our definition. It also currently excludes registers, such as the teachers’ register, that are publicly accessible (and may even be on the internet) but

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

45 See, for example, the register of banks under the Reserve Bank of New Zealand Act 1989, the register of historic places under the Historic Places Act 1993, the registers under the various hazardous substances and new organisms regulations.

for which there is no statutory right of search or access. As well, it excludes other lists or registers of personal information, held by government or public bodies, where there is no specific statutory right of search, but the information is subject to the Official Information Act 1982.

- 2.19 Court records should also be excluded from our definition. Some court registers and indexes, which are set up by statute or by rules of court, might otherwise fall within the working definition. However, access to these registers should be treated consistently with access to other court records, which do not come within the public register definition. The Law Commission has recently recommended a specific regime for all court records, including registers and indexes, in its report *Access to Court Records* (NZLC R93, June 2006, Wellington).

CATEGORISING PUBLIC REGISTERS

- 2.20 There are well over a hundred public registers in New Zealand that 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, types of access provisions, any special provisions protective of personal information, and by the amount of personal information recorded on the register. Our table of statutory provisions in the appendix shows some of this information as so categorised.
- 2.21 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. Almost all contain some personal information (at least names and usually contact addresses), although in some cases residential addresses may be accessed by the public only with the consent of the individual concerned.

Categorisation by subject matter

Population registers

- 2.22 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 the appendix for more details), and the published electoral rolls contain names, residences and occupations.
- 2.23 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.
- 2.24 Local authorities are required to keep the burials and cremations register maintained under the Burial and Cremation Act 1964, which contains locations and proper descriptions of graves (with names, birth and death dates). Some authorities have also made the register available on the internet. This register does not contain “personal information” in terms of the Privacy Act 1993

because the definition in section 2 of that Act 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

- 2.25 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 that has 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

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

Property registers

- 2.27 This group includes Land Transfer Act 1952 registers (all grants of land, and certificates of title showing dealings with land, registered proprietors, and 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.
- 2.28 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 access is limited) and also the Securities Act 1978 registers, maintained by the issuers.

Transport registers

- 2.29 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 driver licences. There are also non-Schedule 2 registers such as the ship register, which includes the name, address and nationality of each owner of a share (section 20 of the Ship Registration Act 1992),⁴⁶ and the register of New Zealand aircraft and of civil aviation records (section 74 of the Civil Aviation Act 1990).

46 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.

Local authorities – rates and taxes

- 2.30 Registers held by local government bodies include the Dog Control Act 1996 register, which has limited public access under section 35, and property registers such as the district valuation rolls, maintained by territorial authorities pursuant to section 7 of the Rating Valuations Act 1998. There is also the rating information database (sections 27–28 of the Local Government (Rating) Act 2002), open for public inspection but it does not include ratepayers' names; and the complete rating information database (sections 28A–D of the Local Government (Rating) Act 2002), which includes the names of ratepayers and is open for public inspection, but section 28B allows owners of rating units to ask for their names and/or postal addresses to be withheld from public inspection. The public may not collect names and/or addresses in bulk.

Permits and licences

- 2.31 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 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

- 2.32 Many occupational registers 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 suppression directions). Often residential addresses are not part of the publicly accessible register.
- 2.33 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; sections 16–18 of the Chartered Professional Engineers of New Zealand Act 2002; sections 121–122 of the Social Workers Registration Act 2003; sections 136–138 of the Health Practitioners Competence Assurance Act 2003 and under section 22 of the Veterinarians Act 2005.
- 2.34 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 have the same amount of personal information on them as Schedule 2 registers.

Food safety registers

- 2.35 This group includes the Wine Act 2003 registers of exporters (section 47), of all agencies (section 73) and of wine standards management plans; the 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

- 2.36 Finally, there is a group of environmental registers, including several 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). None of these are Schedule 2 public registers.

WHY PUBLIC REGISTERS?

- 2.37 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 is 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

- 2.38 The information held on public registers is collected and retained for various public interest reasons. Some examples are discussed below.

Births, deaths and marriages registers

- 2.39 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.⁴⁷

Electoral rolls

- 2.40 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.⁴⁸ The electoral roll “is used to

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

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

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”.⁴⁹ This is vital for the democratic process.

Incorporation registers

- 2.41 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.⁵⁰

Insolvency registers

- 2.42 Similarly for the insolvency registers, there is a clear public interest in being able to check whether a person is bankrupt. The purpose of these registers is 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 purposes⁵¹ and to maintain a record that meets the Official Assignee’s administrative and operational obligations.⁵²

Property registers

- 2.43 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.⁵³

49 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 Rick Shields *Publicly Available Personal Information and Canada’s Personal Information Protection and Electronic Documents Act* (McCarthy Tétrault, Ottawa, October, 2000).

50 See General Manager, Public Registries to Office of the Privacy Commissioner in “Public Register Search Reference Project” (unpublished, 8 June 1995).

51 See Insolvency Act 2006, s 448. This Act came into force in December 2007.

52 See General Manager, Public Registries, above n 50.

53 Land Transfer Act 1952, ss 182 and 183.

Transport – motor vehicle register

2.44 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, which would replace the provisions currently in 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 an enactment; and
- (b) to facilitate the administration and development of transport law and policy.⁵⁴

Local government rating and charges registers

2.45 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 section 27(3) of 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.

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

Occupational registers

2.47 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 also to facilitate administrative and disciplinary functions to this end.

Reasons for public access

2.48 Some of the above reasons for maintaining public registers and retaining the data provide 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 or their agents) may have valid reasons for needing to access personal information from public registers.

⁵⁴ Land Transport Amendment Bill (No 4) 2007, clause 235.

- 2.49 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.⁵⁵ But access also allows other secondary uses that may or may not be in the public interest.
- 2.50 For example, the births, deaths and marriages registers enable people to obtain copies of their birth or marriage certificates, or the birth certificate 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.⁵⁶ But these records can also provide details that may be used to facilitate identity crime.
- 2.51 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 used by the press and other media to check the 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.
- 2.52 Access to company registers is important for trading and commercial transactions, as well as to enable potential investors and others to check up on company directors and records. The purposes of public search have been said to be:⁵⁷
- 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 or other transactions/dealings;
 - to enable the public to assess or verify the status of a company.
- 2.53 Removal of contact details from the register of directors would “make it more difficult to locate directors and easier for directors to avoid creditors and perpetrate fraud”.⁵⁸ 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.
- 2.54 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 mortgagees to establish who is the

55 Shields, above n 49, 13.

56 Information given to the Law Commission at a media forum on 3 July 2007.

57 See General Manager, Public Registries, above n 50.

58 See Department of Trade and Industry *Directors Home Addresses* (24 March 1998) Press Notice P/98/231; 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 the Office of the Data Protection Registrar* (Loughborough University, Department of Information Science, Leicestershire, UK, September 1999) 8. However, residential addresses are not required for directors on company registers in New Zealand.

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).

- 2.55 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.
- 2.56 Local authority rating registers are open partly so that purchasers of property can find out their rates, and 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.⁵⁹
- 2.57 The option to withhold one’s name and address from the complete rating information database has been exercised by about 20 percent of ratepayers in Christchurch. Quotable Value Limited argued in their submission to our issues paper that this option can obstruct legitimate public interests such as the Animal Health Board’s requirement to obtain names and addresses of rural property owners for purposes of prevention of bovine tuberculosis. Submissions from councils mainly supported name suppression, particularly where there was a need, such as a risk to personal safety. They were in favour of disclosing ratepayers’ names and addresses for legitimate reasons, such as resource consent applications and fencing agreements, and of inter-council bulk access. However, the council submitters were concerned about bulk access of names and addresses for “improper” or commercial use.
- 2.58 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.⁶⁰
- 2.59 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 (although this information varies from register to register). Many people listed on occupational registers provide details voluntarily (particularly 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

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

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

or abused for other purposes.⁶¹ However, in its submission to our issues paper, the New Zealand Medical Council noted that it does from time to time receive complaints from doctors whose details have been obtained from the register and used for commercial purposes.

- 2.60 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 the appendix 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 others (such as the dog registers) only to sections of the public. In the table, we also look at special provisions: some provide for the purposes of the register, protect personal information (especially contact information) in a variety of ways,⁶² 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, or comprehensive, especially in terms of personal information.
- 2.61 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.
- 2.62 There are other differences between registers. Some controls may be administrative, as may some content.⁶³ Many registers are on the internet,⁶⁴ but only limited information may be accessible, or searchers may need to be registered. The number of enquiries per annum also varies 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 for 2006; and 2,747,787 in the case of the personal property securities register; to “thousands” for the rating information

61 Davies and Oppenheim, above n 58, 38.

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

63 For example, the Rating Valuations Act 1998, s 7 provides that contents of the valuation roll are to be determined by the rules. 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”.

64 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 limited information only or access was limited to subscribers or authorised people. The remaining 17 registers referred to in the responses were not on the internet.

database and driver licence register; 2,000–3000 for the civil aviation register; to 1,200 for the (electronic) fishing permit register; and less than five for the high seas permit register.⁶⁵

- 2.63 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

- 2.64 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 Privacy Act 1993 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 Act 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 several being included.⁶⁶
- 2.65 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 2.⁶⁷ It is not always apparent why some registers are included while others are not.
- 2.66 Against this background, we turn to consider the present New Zealand law regulating public registers.

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

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

67 See, for example, the registers of music teachers, of valuers, of real estate agents, and others mentioned in the table in the appendix.

Chapter 3

Public register regulation

- 3.1 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 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 the appendix to this report. These statutes are the primary source of regulation for public registers.
- 3.2 The second main area of law regulating public registers is the Privacy Act 1993, an Act to promote and protect individual privacy in general accordance with the Recommendation of the Council of the Organisation for Economic Co-operation and Development (OECD) Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.⁶⁸ In late 1980, the OECD issued Guidelines concerning the privacy of personal data, which underpin most current international agreements, national laws and self-regulatory policies.⁶⁹
- 3.3 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 R (91) 10 of the Council of Europe's Committee of Ministers Recommendations on the Communication to Third Parties of Personal Data Held by Public Bodies, adopted 9 September 1991.
- 3.4 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 the *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 No R (91) 10,⁷⁰ which recognised in its preamble:

68 The long title of the Privacy Act 1993 referring to the OECD guidelines.

69 www.cdt.org/privacy/guide/basic/oecdguidelines.html (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 are discussed in detail in the Law Commission's privacy study paper: *Privacy: Concepts and Issues*, published in 2008.

70 Professor Roth suggests that the Council of Europe's Recommendation may be viewed as a response to the European Commission's synergy guidelines: P Roth, *Privacy Law and Practice* (looseleaf, LexisNexis, Wellington, 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.

- 3.5 Recommendation No R 91 (10) goes on to propose 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 to No R 91 (10) include the following:

... the communication, in particular by electronic means, of 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.

- 3.6 Section 13(1)(e) of the Privacy Act 1993 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

- 3.7 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", defined by the Act as being those maintained pursuant to a provision listed in Schedule 2 of the Act. As we have seen, this list omits a significant number of registers that in all other respects have the characteristics of public registers: being required to be maintained by statute or regulation, with specific public access provisions.⁷¹
- 3.8 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.

⁷¹ See the appendix to this report.

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 IPPs.

- 3.9 PRPPs 1, 3 and 4 apply only to agencies maintaining Schedule 2 public registers, and 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), 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, that enactment shall, to the extent of the inconsistency, prevail.
- 3.10 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 greater application of the IPPs.⁷²

Information Privacy Principles (IPPs)

- 3.11 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.
- 3.12 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.
- 3.13 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 IPPs in relation to Schedule 2 public registers.

⁷² 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.

- 3.14 IPP 2 provides that where an agency collects personal information it shall collect directly from the individual concerned. There are a number of exceptions, 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 publication” includes a “public register”,⁷³ 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 compilation⁷⁴ (although not to users of registers who source their information from public registers).
- 3.15 If an agency does collect information from the person concerned, IPP 3 provides that the agency must take reasonable steps to ensure that 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 to 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.⁷⁵
- 3.16 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.
- 3.17 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 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.

73 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 unlikely that the term “public register” as used in other parts of the Act (section 7(6) and section 13(1)(e) for example) would have a different meaning. Non-Schedule 2 public registers may fall within the “publicly available publication” definition in any case as “generally available to members of the public”.

74 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).

75 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.

- 3.18 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.
- 3.19 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 any inconsistent provisions in their own legislation.
- 3.20 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, provided 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 than to Schedule 2 register holders.
- 3.21 The result is that the IPPs cannot consistently regulate the use and disclosure of personal information on public registers. The IPPs will have greater impact on collection, handling and storage of information because these functions are less likely to be dealt with by the statutes providing for registers.

Public register privacy principles (PRPPs)

- 3.22 The 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,⁷⁶ 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.

⁷⁶ 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.

- 3.23 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.
- 3.24 The PRPPs are generic rules that 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 that apply to a 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.
- 3.25 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”.⁷⁷
- 3.26 The PRPPs do not confer any legal rights that are enforceable in a court of law.⁷⁸ 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.⁷⁹
- 3.27 The Privacy Commissioner has the power to issue a code of practice in relation to public registers under section 63 of the Act. If the Commissioner were to do so, any complaint that the code was breached might be an “interference with the privacy of an individual” 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.⁸⁰ This is a somewhat circuitous route.
- 3.28 In the 1998 review, the Privacy Commissioner recommended that the PRPPs should become enforceable in a similar manner to the information privacy principles,⁸¹ but no such amendments have yet been made to the Privacy Act 1993.

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

78 Privacy Act 1993, s 62.

79 Privacy Act 1993, s 61.

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

81 Report of the Privacy Commissioner, *Necessary and Desirable – Privacy Act 1993 Review*, (Office of the Privacy Commissioner, 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

- 3.29 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.⁸²

- 3.30 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 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.
- 3.31 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.⁸³

PRPP 2 Use of information from public registers

- 3.32 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.

- 3.33 The “specified public registers” are the Insolvency Act 1967 (section 118), the Personal Property Securities Act 1999 (section 139) and the Companies Act 1993 (section 189).⁸⁴

⁸² Ibid, para 7.4.6.

⁸³ Ibid, recommendation 84.

⁸⁴ 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.

- 3.34 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 several register lists and selling the combined information to consumers as a “value-added” service.
- 3.35 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 the “in-house” use of registers.⁸⁵ 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.⁸⁶

PRPP 3 Electronic transmission of personal information from register

- 3.36 PRPP 3 has been described as trying to put a brake on making information from public registers generally available by means of electronic transmission.⁸⁷ Professor Roth has noted that the object of PRPP 3 reflects the concern expressed in the preamble to the Council of Europe’s Recommendation No R(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”.⁸⁸
- 3.37 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.⁸⁹
- 3.38 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:

85 Professor Roth has suggested that the probable reasoning behind the imposing of the “valuable consideration” limitation can be found in the Council of Europe’s Recommendation No R (91) 10, art 7, which is, however, more strict in its terms than PRPP 2.

86 See Roth *Privacy Law and Practice*, above n 70, PVA59.6

87 Report of the Privacy Commissioner, above n 81, para 7.6.4.

88 Roth, *Privacy Law and Practice*, above n 70, PVA59.7.

89 Report of the Privacy Commissioner, above n 81, 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.

- 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.
- 3.39 No such code of practice has yet been issued. John Edwards has suggested that this principle may have made 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.
- 3.40 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 other 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.⁹⁰

PRPP 4 Charging

- 3.41 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 were to obtain information that has been collected compulsorily for no charge, or for a modest fee only.⁹¹ 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 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.
- 3.42 However, we note that, as presently drafted, PRPP 4 has an effect that, while not privacy related, is 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 the various 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.

⁹⁰ For example a number of occupational registers, and the registers maintained by FishServe.

⁹¹ Report of the Privacy Commissioner, above n 81, paras 7.7.3, 7.7.4.

Information matching: Part 10 of the Privacy Act 1993

- 3.43 Part 10 of the Privacy Act regulates certain types of information matching programmes, primarily those that will be used for the purpose of taking adverse action against individuals and that have been authorised by statute.⁹² The Privacy Act 1993 does not prohibit data matching: rather government policy has been that as new information matches are proposed, they are brought within the Privacy Act framework by enacting an information matching provision which is added to the list in Schedule 3.⁹³ In 1998, the Privacy Commissioner noted a number of practical problems that an agency would have in carrying out an information matching programme and taking adverse action against individuals without seeking specific legislative authority, including the fact that any such programme would involve a collection of information from a source other than the individual concerned, which would require an applicable exception to IPP2.⁹⁴
- 3.44 Public registers are defined as publicly available publications under the Privacy Act, and thus fall within exception 2(a) to IPP 2. Although using public registers as a basis for a matching programme might not be within the spirit of the Privacy Act, or government policy, it is not a breach of the Act. In 1998, the Privacy Commissioner recommended that section 109 of the Act be amended to cover off this exception, but that amendment has not been made.⁹⁵
- 3.45 Our understanding is that Part 10 is aimed at matching sets of records, not single searches, and that, even if section 109 was amended as the Privacy Commissioner recommended, a one-off search of a register would not breach the spirit of Part 10 of the Act. However, arguably at the moment, an agency could match its entire database against a public register. If public registers were to be used on a large scale for linking and verifying information about citizens by government agencies, this may undermine the protections built into the information matching programmes under Part 10. This can have very unfortunate results: for example, in the late 1990s, the Department for Courts matched its list of fines defaulters against personal details on the motor vehicle register, without using an authorised matching programme. Cards warning people that they had 48 hours to pay fines or face penalties were wrongly sent to up to 4,000 people.⁹⁶
- 3.46 At present, we simply note this issue: we do not intend to make any recommendations about information matching and public registers in this report. The Law Commission will review Part 10 as part of its wider assessment of the Privacy Act 1993, and any amendments required to the regime will be addressed as part of that review.

92 Ibid, para 10.1.2.

93 Ibid, para 10.1.14.

94 Ibid, para 10.1.15.

95 Ibid, Recommendation 138.

96 Office of the Privacy Commissioner *Unauthorised Information Matching between Department for Courts and Motor Vehicle Register: Report to the Ministers of Justice, Courts and Transport in relation to an inquiry into events surrounding unauthorised information matching programme operated in mid-1998*, (Wellington, 25 August 2000) www.privacy.org.nz (accessed 29 November 2007).

Sections 61 and 63 of the Privacy Act 1993

3.47 Section 61 concerns complaints made to the Privacy Commissioner by any person or on the Commissioner's own initiative about non-compliance with any of the IPPs or PRPPs. As noted above, 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 PRPPs in relation to a public register. This section has never been used, although a code has been issued relating to public registers under section 46 of the Privacy Act 1993.⁹⁷

DOMESTIC VIOLENCE ACT 1995 AND DOMESTIC VIOLENCE (PUBLIC REGISTERS) REGULATIONS 1998

3.48 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"⁹⁸ to apply to an agency administering any Schedule 2 public register⁹⁹ 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 2002.¹⁰⁰

3.49 However, Schedule 1 of the Domestic Violence (Public Registers) Regulations 1998 contains a limited list of public register provisions.¹⁰¹ 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 of the Privacy Act 1993. Section

97 The Credit Reporting Privacy Code 2004.

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

99 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.

100 The reference in 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 (Computer Registers and Electronic Lodgement) Amendment Act 2002.

101 Deeds Registration Act 1908 (ss 21, 22 and 30); Incorporated Societies Act 1908 (s 33); Industrial and Provident Societies Act 1908 (s 3D); 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, Deaths, and Marriages 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] already apply" (that is, presumably, all Schedule 2 of the Privacy Act 1993 public registers). On the other hand, the explanatory note states that there a number of Schedule 2 registers to which the regulations do not apply. At the least, clarification seems to be needed.

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.

- 3.50 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.¹⁰² 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 the agency declines to make the direction, the applicant must be informed of steps that he or she can take to complain to the Privacy Commissioner.
- 3.51 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.¹⁰³
- 3.52 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.
- 3.53 Of the responses to the Law Commission's questionnaire, the highest number of applications for non-identifying directions was under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 for the motor vehicle 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 that responded to the questionnaire had never received a request under the Domestic Violence Act 1995 or the regulations. This is not 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.
- 3.54 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 apply is dated and limited and includes some provisions that are not open to the general public¹⁰⁴ or that hold little personal information, whereas other registers holding personal information are omitted.¹⁰⁵

102 Domestic Violence (Public Registers) Regulations 1998, rr 4–5.

103 Domestic Violence Act 1995, s 108.

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

105 For example, the Land Transfer Act 1952 registers.

3.55 As well as the generic protection afforded to data subjects by the Domestic Violence Act 1995, some of the individual public register statutes contain specific protective provisions. The mechanisms discussed here relate mainly to non-disclosure or suppression of some personal information from public access, rather than the protection that operates when a register can be searched only in accordance with specific purposes set out in a public register Act.¹⁰⁶ 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 1993,¹⁰⁷ which is an added protection, or searches are subject to the Privacy Act 1993.

3.56 We discuss the following protective mechanisms below:

- name and address restrictions;
- restrictions regarding sensitive information;
- limiting access to certain users;

Name and address/contact detail restrictions

3.57 Not all public registers provide people's names and addresses as part of the publicly available register. For example, the national register of driver licences maintained pursuant to section 199 of the Land Transport Act 1998 contains the licence holder's full name and address, date and place of birth, photo images, endorsements of the licence and court orders, but names, addresses and photos are not available to the public. One protective mechanism that operates in some public registers is to provide for name and address removal, or simply address (and other contact details) removal under certain conditions. The threshold for removal varies from an "opt-out" choice by the data subject to a requirement to show safety concerns.

Suppression of name and/or address by choice

3.58 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.¹⁰⁸

3.59 Under section 28A of the Local Government (Rating) Act 2002, the complete rating information database (including ratepayers' names and addresses) must be available for public inspection. Ratepayers 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 addresses.¹⁰⁹

106 See, for example, the Building Act 2004, ss 305–306, Charities Act 2005, ss 28, Insolvency Act 2006, ss 454–455, Motor Vehicle Sales Act 2003, s 58.

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

108 Examples of public register legislation that permits addresses to be withheld on request include many of the occupational 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 and Professional Engineers of New Zealand Act 2002 (s 18) and the Registered Architects Act 2005 (s 18). The Radiocommunications Act 1989 (s 28) also allows withholding of addresses.

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

Suppression for safety reasons

- 3.60 A mechanism with a higher threshold before suppression is available provides for a separate register for persons who can satisfy the registrar that their (or their family's) personal safety 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 their family (under section 115 of the Electoral Act 1993).¹¹⁰ Choice or a concern about privacy is not sufficient for inclusion on the unpublished roll. An application requires supporting evidence, such as a copy of a protection order, a harassment order or a statutory declaration from a police officer that the applicant or their family members could be prejudiced by publication, or a letter from a lawyer, Justice of the Peace or employer supporting the application. In the case of bodies such as the New Zealand Police or Accident Compensation Corporation, 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 applies it liberally, using the statutory grounds as a benchmark.¹¹¹ 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, and it is quite widely advertised.¹¹²
- 3.61 Another variation of protection where there are safety concerns is simply non-disclosure of a person's address and contact details, rather than a separate register. 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.

Suppression for safety and privacy reasons

- 3.62 A 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.¹¹³ 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.

110 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 any 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.

111 Meeting with M Wicks, National Manager, Electoral Enrolment Centre, 3 May 2007.

112 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.

113 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."

- 3.63 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 this power should be exercised.¹¹⁴ 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.¹¹⁵

- 3.64 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 1982.¹¹⁶
- 3.65 The Land Transport Amendment Bill (No 4) 2007, which replaces the registration provisions of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 (inter alia), retains an equivalent section to section 19(5). Clause 240 of the Land Transport Amendment Bill (No 4) provides that the registrar can grant "confidential status" in respect of a specified motor vehicle on the same grounds as in section 19(5), including the privacy or personal safety of any person.

Restrictions for sensitive information

- 3.66 Another possible mechanism for protecting personal information is to allow 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.

Restrictions regarding use or users

- 3.67 Certain public registers are not strictly open to the public at large, but instead may be searched only 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

114 *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.

115 *Ibid*, para 28.

116 *Ibid*, para 34.

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 be searched only by persons such as ratepayers or solicitors or estate agents acting for a transaction involving the relevant rateable unit.¹¹⁷ The Hazardous Substances and New Organisms Act 1996 has registers of test certifiers that can be searched only with the individual’s consent in accordance with the Privacy Act 1993, or by approved persons for specified purposes.¹¹⁸

OFFICIAL INFORMATION STATUTES

- 3.68 The Official Information Act 1982 introduced a presumption 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 provide specifically 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.
- 3.69 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. Access to 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.
- 3.70 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 1982, in particular by commercial entities.¹¹⁹ 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.¹²⁰ However, requesters have continued to use the official information legislation on occasions to attempt to access information (especially in bulk) held on public registers.¹²¹

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

118 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.

119 See for example Ombudsman’s *Case No A5621* (1998) 11 CCNO 91. The requester sought a local authority’s complete rate records under the Local Government Official Information and Meetings Act 1987 for direct marketing. The request was declined under s 7(2)(a) of the Act but the decision was overruled by the Ombudsman.

120 Report of the Privacy Commissioner, *Necessary and Desirable – Privacy Act 1993 Review*, (Office of the Privacy Commissioner, Wellington, 1998) para 7.16.

121 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 *Report of the Ombudsman for the year ended 30 June 2006* (Office of the Ombudsmen, Wellington, 2006) 33–34.

- 3.71 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 at present unclear. Registers maintained by local authorities are many and varied, and there seems to be some question as to which of these would currently be classified as “public registers”.¹²² There are 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 access to them.
- 3.72 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 1991 or section 216 of the Building Act 2004) are public registers.¹²³ 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 these lists 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 of 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.
- 3.73 Other lists of data held by government departments include a number of registers under the Hazardous Substances and New Organisms Act 1996 and the various hazardous substances regulations. However, many of these lists often contain little or no personal information.¹²⁴

SUMMARY

- 3.74 The overlap with the official information legislation 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 statutes as an alternative access regime.

122 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 local 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’ listings for reservations and so on, not statutorily required. In their submission to our issues paper, Christchurch City Council listed the Building Act 2004 applications and consents and so on, the Burial and Cremation Act 1964 interment register, the Dog Control Act 1996 register, the Impoundment Act 1955 register, the Local Electoral Act 2001 local roll and the Local Government (Rating) Act 2002 registers and Rating Valuations Act 1988 roll.

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

124 Note that some Schedule 2 public registers also contain little personal information, for example, lists of homekill and recreational catch service providers maintained pursuant to section 73 of the Animal Products Act 1999.

3.75 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” may refer only to Schedule 2 registers, but this is unclear. It is also inaccurate, because several 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, Part 6, and of the protective provisions in public register statutes, in protecting people who have fears for their safety.

Chapter 4

Principles, interests and issues

- 4.1 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.
- 4.2 These principles are not necessarily opposing and the public interests in open access to public registers can be served, as can the protection of people's reputation and privacy, in different situations. In our view, it is necessary to consider the various principles that apply in detail, so that the law relating to public registers can be guided by those principles. This chapter first considers the rationale of openness, and then turns to other principles and public interests that need to be taken into account in deciding to what extent public registers should be open to the public, interests such as privacy, accountability of, and trust in, government by its citizens, and the public interest in preventing crime.

OPENNESS AND FREE FLOW OF INFORMATION The "open society": a summary historical survey

- 4.3 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".¹²⁵ 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. Individuals are rarely in a position of wondering how best to act; the "right way" is determined for them by the leaders of the community and the taboos. Popper calls this tribal or collectivist society a "closed society".
- 4.4 Early Athenian democracy was, in Popper's view, the start of the "open society", albeit a society relying on slaves. This was a society in which "the people", and not simply the aristocratic rulers, took responsibility for the governance of the

¹²⁵ K Popper *The Open Society and its Enemies* (Routledge Classics London & New York, 2003, first published 1945) vol 1 "The Spell of Plato", 184. D Brin *The Transparent Society* (Addison Wesley, Reading, Mass, 1998) ch 1 "The Challenge of an Open Society".

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.

- 4.5 Early democracy and the beginnings of open government did not, however, survive.¹²⁶ 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 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.¹²⁷
- 4.6 The twentieth century saw a move back to closed government during the Bolshevik revolution, the growth of the Soviet Union, and the rise of the 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.
- 4.7 Calls for free speech and increased openness in the interests of participatory democracy were made, however, by philosophers like Alexander Meiklejohn.¹²⁸ 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. In the 1970s, freedom of information Acts in many countries inaugurated modern, open government and freedom of official information.
- 4.8 When New Zealand enacted its “freedom of information” statute, the Official Information Act 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.

126 The following is a summary, and therefore simplified, account.

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

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

Presumption of access to government information

- 4.9 The Danks report by the Committee on Official Information *Towards Open Government* in 1980, said that:¹²⁹

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.

- 4.10 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.¹³⁰

- 4.11 The Danks Committee considered that the case for increased openness in government was compelling for four main reasons:¹³¹

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.

- 4.12 The participation argument is that a well-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.¹³² The accountability argument is that politicians and administrators are not infallible and can be accountable only if the information on which they base decisions is transparent and accessible by the public.¹³³ The effective government argument is that improved information flow assists in the flexible development of policy.¹³⁴ 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.¹³⁵ These arguments in favour of openness remain cogent today.

- 4.13 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

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

130 *Ibid*, 7.

131 *Ibid*, 14–16.

132 *Ibid*, 14.

133 *Ibid*, 14–15.

134 *Ibid*, 15–16.

135 *Ibid*, 16.

natural persons” (including that of deceased people).¹³⁶ The purposes of that Act, while 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.
- 4.14 For public registers, openness and transparency can also have protective value for the benefit of data subjects (people whose personal information is listed on the register) so long as the public interest in permitting public access is articulated clearly in the statutory provisions setting up the register.
- 4.15 In the United States, Alan Charles Raul has described citizens as deriving many tangible benefits from open access to their state’s records,¹³⁷ 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 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.¹³⁸
- 4.16 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.¹³⁹ The media also rely on information contained in government databases as an indispensable resource for investigative reporting.

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

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

138 *Ibid*, 40.

139 *Ibid*, 41.

- 4.17 It has 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 particular activities or lines of business.¹⁴⁰

Freedom of expression and the right to receive information

- 4.18 Section 14 of the New Zealand Bill of Rights Act 1991 affirms 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.¹⁴¹ The right to receive “public” information is a necessary concomitant of the right of free expression in a democracy.¹⁴² Without this right, freedom of expression would be impoverished and the market place of ideas¹⁴³ 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 discussed below.

Commerce and the free flow of information

- 4.19 Section 14(a) of the Privacy Act 1993 requires the Privacy Commissioner to “have due regard, in the performance of his or her functions and exercise of his or 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”.
- 4.20 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 the title of any property 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.
- 4.21 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, because they are able to obtain a large volume of information that otherwise may

140 Ibid, 42. The counter-arguments, that such uses of public records can result in harassment or stalking, are discussed below.

141 See also Article 19(2) of the International Covenant on Civil and Political Rights (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”.

142 See also A and 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”.

143 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 J S Mill’s “collision of adverse opinions” *On Liberty*, above n 127, 59.

not have been cost-effectively available.¹⁴⁴ Access to cheap, accurate information about potential customers can reduce the cost of doing business, and allow for targeted marketing. The revenue collected from the sale of public information may be significant.

- 4.22 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.¹⁴⁵ Quotable Value Limited, in its submission to our issues paper, noted that it uses information from public registers (such as the district valuation rolls held by individual local authorities and property registers held by Land Information New Zealand) in order to produce its property information website reports. These are of significant value for purchasers and vendors of property, and for policy and economic analysis. For example, the Reserve Bank apparently uses the QV Quarterly House Price Index with other data, when assessing change to the official cash rate.
- 4.23 Veda Advantage expressed concern, in its 2006 submission to the Law Commission, that there is a trend in legislation governing public registers that is contrary to the “inherent purpose” of those registers (which it describes as being to inform the public) and to the facilitation of commerce. It suggests there is a danger that the move toward 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

- 4.24 The ability of government agencies to receive and disclose information from and to 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, mean that identity verification has become increasingly important, not only for credit checking and commercial reasons, but also to help prevent terrorism.
- 4.25 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 press¹⁴⁶ 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. In its submission to our issues paper, the Media Freedom Committee of the

¹⁴⁴ Raul, above n 137, 42.

¹⁴⁵ Discussion with the Executive Director, Financial Services Federation Inc, on 25 July 2007. The public registers relied on mostly are the companies register, motor vehicle registers, Land Information New Zealand register, register of personal property security interests and the local authority rating information database.

¹⁴⁶ The press apparently use the births, deaths and marriages registers, the electoral roll and the motor vehicle register regularly: information given to the Law Commission at a media forum, July 2007.

Commonwealth Press Union argued that the news media can only fulfil its role as a public watchdog if “it is able to check, check and check again. Public registers are one reliable source for that checking”.

- 4.26 Open access also permits several 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, for example, been subject to suspension or disciplinary proceedings, (although sometimes name suppression is granted by a court in such proceedings).¹⁴⁷

LIMITS ON OPEN INFORMATION – PROTECTION OF PERSONAL INFORMATION

- 4.27 But open access also permits 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 customer: a pertinent question is whether the client or customer would be aggrieved at what the organisation is doing with their personal information.¹⁴⁸ Personal information supplied to agencies for purposes of a public register is usually given without choice and for specific purposes, on the assumption that it will be used only 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 the loss of customer trust.
- 4.28 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 particular cases.
- 4.29 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, and for the protection of national security.¹⁴⁹ 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.

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

148 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>, (accessed 3 August 2007).

149 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”, and “for the protection of national security or of public order (ordre public) or of public health or morals”.

Privacy interests

- 4.30 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 International Covenant on Civil and Political Rights.¹⁵⁰ Privacy values – in the sense of protection of personal information in the public domain – have increasingly become a concern. As Judith Bannister has put it:¹⁵¹

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 and subject to change 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 1890.¹⁵²

- 4.31 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.¹⁵³ Fifty-seven percent of New Zealanders say they are worried about invasion of privacy through new technology.¹⁵⁴ In a 2006 public opinion survey by UMR Research, 54 percent of people polled were concerned about the availability of personal details on public registers, and 67 percent were concerned about the privacy of personal details held for credit reporting.¹⁵⁵
- 4.32 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 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”.¹⁵⁶ The controversy generated by the Bill as to whether access to births, deaths and marriage records should be restricted, and the failure of the Select Committee to reach agreement over the Bill, indicates that this balance is not an easy one to strike.

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

“1.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.

2. Everyone has the right to the protection of the law against such interference or attacks”.

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

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

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

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

155 UMR Research “A Summary Report”, survey for the Privacy Commissioner <http://www.privacy.org.nz/filestore/docfiles/24153322.pdf> (accessed 20 August 2007). This and other public opinion surveys, together with a caveat about the limitations of public opinion surveys are discussed in detail in the Law Commission’s privacy study paper: *Privacy: Concepts and Issues*, published in 2008.

156 P Oliver “The Real Cost of Identity Theft”, *The New Zealand Herald* (12 May 2007).

- 4.33 Further, many people have elected to have their names withheld from the complete rating information databases: in Christchurch, for example, this is about 20 percent of ratepayers. 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.
- 4.34 As part of stage 1 of its privacy review, the Law Commission has assessed privacy values, changes in technology, international trends, and their implications for New Zealand law. That review includes 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

- 4.35 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. Those most relevant to public registers 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 used for others to which the individual concerned has not consented.¹⁵⁷
- 4.36 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).
- 4.37 In *The Digital Person: Technology and Privacy in the Information Age*,¹⁵⁸ 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.¹⁵⁹

157 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.

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

159 *Ibid.*, 8–9. Solove describes the digital information collected and stored about individuals as “digital dossiers”.

Bureaucracy often results in a routinized and sometimes careless way of handling information – with little to 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.

- 4.38 On this view, the invasion conception of privacy is less useful for considering the privacy issues raised by public records, because 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.¹⁶⁰ As those dossiers are increasingly relied upon for important decisions, the problems that errors in any of the information can cause increase in magnitude.
- 4.39 At an 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.
- 4.40 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 toward 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.¹⁶¹

Government accountability and trust in government

- 4.41 Citizens in the modern state are often filling in forms that 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); usually there is no choice but to provide the information, if the person wants or needs to carry out a certain activity. Citizens may well assume that the information is used only for purposes relevant to its collection. If the government allows, or does not prevent, the use (or sale) of the information for quite other purposes, it may fail in its accountability to

¹⁶⁰ *Ibid*, 146.

¹⁶¹ *Ibid*, 149.

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 obviously harmful uses, such as stalking and identity theft.

- 4.42 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,¹⁶² or wrong or inaccurate information being supplied.
- 4.43 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.¹⁶³ Such trust encourages voluntary compliance; use for secondary purposes reduces this trust. Section 6 of the Tax Administration Act 1994 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)).
- 4.44 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

- 4.45 A consumer survey 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.¹⁶⁴ A repeat of this survey in August 2007 shows a similar level of concern. The two main issues were people obtaining their credit card/debit card details and unauthorised access to, or misuse of, personal information.¹⁶⁵

162 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.

163 Tax Administration Act 1994: Part 4 concerns the obligation of officers of the Inland Revenue Department 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).

164 *Unisys Security Index New Zealand; A Consumer Link Survey December 2006* <http://www.unisys.com.au/services/security> (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 percent 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> (accessed 20 August 2007).

165 *Ibid.*, 5.

Crime prevention

- 4.46 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 issues have led to restrictions on access to registers overseas. For example, California passed the Driver's Privacy Protection Act restricting access to motor vehicle records after the 1989 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.¹⁶⁶
- 4.47 In New Zealand, concerns about the need to balance the availability of public register information with personal safety and security have led to the development of some protective mechanisms that are used in several of the statutes that establish public registers. These mechanisms 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 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 become pointless if a person's details are easily accessible from another public register. We discussed the various protective mechanisms available in chapter 3, and our recommendation is set out in chapter 5.

Identity crime

- 4.48 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, because 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.
- 4.49 Identity crime is difficult to measure, because it fits into a variety of 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. The 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 involve 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.

¹⁶⁶ Solove, above n 158, 147. Note however that the information used in the Schaeffer case would have been available even after the passage of the new law, because private investigators are still allowed access to motor vehicle records: Raul, above n 137, 46.

- 4.50 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, because 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.
- 4.51 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 do not consider any new offences are required in New Zealand at this stage to deal with identity crime: the existing range of criminal offences is considered sufficient.

Harassment

- 4.52 Feedback from the Institute of Directors, which had surveyed members for their views about the companies 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. Members 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".¹⁶⁷
- 4.53 In its submission to our issues paper, the Ministry of Social Development referred to a website on which readers were invited to "stone a social worker", and the private addresses and car registration numbers of some social workers were listed. It appeared to the Ministry that this information had been sourced from public registers.

"Annoyance"

- 4.54 Information from several public registers in New Zealand is released in bulk to commercial entities for a range of purposes. One of these purposes is direct marketing.¹⁶⁸ There is debate about whether this is appropriate,¹⁶⁹ and whether, where people object to their contact details being obtained by direct marketers from public registers, it amounts to a breach of privacy, or is what Raul describes as an "annoyance", which in his view is the flip side of one benefit of access to state records:

¹⁶⁷ 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.

¹⁶⁸ In the issues paper we also referred to the use of information from public registers for the purposes of compiling lists for telemarketing, but submitters have indicated that public registers are not a useful direct source of this information for telemarketing, because few New Zealand public registers contain telephone numbers accessible to the public.

¹⁶⁹ The Minister of Transport has received several letters of complaint about the use of names and addresses of people on the motor vehicle register for mail-outs 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 in March 2007.

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.¹⁷⁰

- 4.55 In New Zealand, until the late 1980s, the electoral roll was the main source of data for out-bound mail campaigns.¹⁷¹ However, a change to the legislation in 1990 removed access to the electoral roll for marketing purposes, and organisations began to compile lists that could be purchased or rented for use in mailing campaigns.¹⁷² In his 1998 review of the Privacy Act 1993, the then Privacy Commissioner Bruce Slane noted that certain registers 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.¹⁷³
- 4.56 A current example of a register from which information is downloaded in bulk for commercial purposes, including direct marketing, 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.¹⁷⁴ It is available electronically via the internet on a website called Motochek. More than 99 percent of the records released are made available over the internet.
- 4.57 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.
- 4.58 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 agencies. The two largest users of the register were data marketing companies, which between them accounted for more than 2 million of the requests. Other significant users include companies that sell information obtained from Motochek, together with information from other sources, to car dealers and private buyers of second-hand vehicles.¹⁷⁵

170 Raul, above n 137, 46.

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

172 Electoral Amendment Act 1990 s 28: this section created a new s 64BB of the principal Act, which in substance forms the basis of s 116 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 ss 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.

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

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

175 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 (accessed 29 May 2007).

- 4.59 The Ministry of Transport has received a number of complaints from vehicle owners about access to information on the register, 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.¹⁷⁶ The legislation that establishes the motor vehicle register is currently under review, and, at the time of writing, it is likely that new legislation will be introduced.
- 4.60 For the last 20 years, the Marketing Association has operated a Name Removal Register, which enables people to have their names removed from mailing lists of members of the Marketing Association. People can be added to the Name Removal Register online on the Marketing Association’s website, or by writing to the Association. 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 to the annoyance problem, and coverage is limited to those marketers who are members of the Marketing Association.
- 4.61 In the United States, there have been legislative proposals in a number of states to create state-run “Do Not Mail” registries that would have a similar effect.¹⁷⁷
- 4.62 There is debate about whether the use of public register information for direct mail 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.¹⁷⁸ 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 that wants, needs and uses those services offered by such communications.¹⁷⁹ The Attorney-General also noted that, in the case of the particular complainant, the same information could be found in the telephone book.
- 4.63 However, others would describe the issue differently, focusing 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 considerably 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 that have obtained their details from a public register, for which they were compelled to provide the information.

176 See letters of complaint sent to the Minister of Transport, above n 169.

177 “Update on State Do Not Mail Registry Bills (updated on October 23, 2007)” www.the-dma.org/donotmail (accessed 20 November 2007).

178 *[W] v Registrar of Motor Vehicles*, above n 114 para 29 – 30.

179 Australian Law Reform Commission *Privacy* (ALRC R22, Canberra, 1983) para 509. In a recent New Zealand survey of marketing methods, only 13 percent of respondents considered advertising received by way of addressed mail to be annoying and irritating: results of an independent survey conducted by Colmar Brunton, reported in *Consumer Media Preferences 2005* www.nzpost.co.nz (accessed 1 June 2007).

- 4.64 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 that further 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.¹⁸⁰
- 4.65 On the other hand, as we have also heard in the course of our review, not everyone objects to receiving direct marketing material, and even if they do, it is arguably more accurate to describe the effect as an irritant, rather than an invasion of privacy.

180 Solove, above n 158, 153.

Chapter 5

Options for reform

- 5.1 In chapter 5 of the issues paper we set out the view that the law regulating public registers requires systematic alteration. This was confirmed by the submissions we received in response to the issues paper. While the views of submitters varied as to the best regulatory model, there was general agreement that the current position in relation to public registers is unsatisfactory, and requires reform.
- 5.2 We propose that the regulatory model adopted should have the features outlined below:
- (a) It should be compatible with the principles of openness and transparency, and it should ensure that the agencies administering public registers are accountable for the fair handling of personal information.
 - (b) Where decisions have to be made as to whether personal information should be accessible on a public register, the model needs to allow for the balancing of various public interests by an appropriate decision maker, which in most cases will be Parliament.
 - (c) Given the highly diverse nature of public registers, the model needs to be flexible, allowing for tailored solutions that can take account of the volume and nature of personal information held on a particular register, and the interests for and against disclosure; as well as accommodating changes in policy or technology.
 - (d) It should be administratively simple, efficient and cost-effective, and capable of operating effectively in an online environment. This weighs against a model that 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 to the registrar as to who should be legally entitled to access to a particular register.
- 5.3 In the issues paper, we discussed four possible models that could be adopted for the regulation of public registers.
- Option 1: Retain 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.

REFORM OPTIONS

- Option 2: Create a system of access that 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: Create a separate public register statute to set out principles and provisions to apply to all public registers, with key permitted uses for registers being specified in a schedule to the Act. Applications for access would be made to the registrars for each register. The registrars would be responsible for decisions as to uses permitted under the schedule, and other non-schedule secondary uses.
 - Option 4: Review all public registers according to a template of considerations, and regulate them primarily through the individual establishing statutes. This would involve repealing Part 7 of the Privacy Act 1993, and incorporating those of the IPPs that should apply into the establishing statutes by way of cross-reference. Any protections available presently under the PRPPs that 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.
- 5.4 Most submitters favoured option 4, which the Law Commission had identified in the issues paper as its preferred option, but there was also support for options 1 and 3. Having reviewed the options in light of the submissions we received, we still consider that option 4 provides the most suitable model for the regulation of public registers, for the reasons set out below.

Option 1

- 5.5 As several submitters pointed out, there are similarities between the approaches proposed in options 1 and 4. The main difference is the legislative vehicle: option 1 maintains the central regulatory role of the Privacy Act 1993, while option 4 proposes that the establishing statutes should be the key regulatory vehicle.
- 5.6 In its submission, the Office of the Privacy Commissioner described the incremental nature of the approach outlined in option 1 as being one of its advantages: it builds on a framework that has been in operation for 14 years, and accepts a gradualist approach to reform of scores of public register provisions.
- 5.7 However, as the earlier chapters of this report indicate, this gradualist approach has not resulted in a significant degree of consistency being developed across public registers. The approaches taken to many public register issues (such as protective mechanisms, restrictions on purposes of search and even inclusion in Schedule 2) vary widely from one register to another. In 2007, the Births, Deaths, Marriages, and Relationships Registration Amendment Bill and the Land Transport Amendment Bill (No. 4) proposed two very different approaches to amending legislation governing access to public registers. In our view, a more comprehensive review is required to create consistency.
- 5.8 In the issues paper we identified some difficulties with the way the provisions of the Privacy Act 1993 operate in relation to public registers. Even if all of these individual matters were ironed out by amendments to the Privacy Act 1993, we continue to have reservations about the overlapping nature of regulation that would result, involving the interplay of the IPPs, PRPPs, other provisions of the

Privacy Act 1993 and the provisions of the statute establishing the register. We remain of the view that, properly resourced and implemented, option 4 will deliver greater legislative clarity and certainty than option 1.

- 5.9 The Business Services Branch of the Ministry of Economic Development, whose business units are responsible for administering a significant number of public registers, noted that while the PRPPs have a number of generally beneficial effects, they have been difficult to apply in practice. In their current form, they are somewhat confusing and their application can be ambiguous in the context of some registers. The submission also noted that it was difficult at times to establish the relationship between the PRPPs and the IPPs. The Business Services Branch suggested that a better approach might be to clarify the principles, and then incorporate them into the individual establishing statutes as appropriate.

Option 2

- 5.10 Submissions echoed the concern raised in the issues paper that option 2 left too much decision making up to the registrars administering individual public registers, thus increasing their workload, and potentially undermining a standardised approach to access decisions.
- 5.11 Moreover, option 2 assumes that all register holders are subject to the Official Information Act 1982, when in reality, many registers are held by organisations that are not subject to that Act.

Option 3

- 5.12 There was support for option 3 from several submitters, particularly organisations that presently use personal information from public registers for commercial or economic purposes. The Financial Services Federation, for example, said that it preferred option 3 as recognising the need for clear core rules around the operation of, and access to, public registers, and recognising that that need transcends privacy considerations. It also considered that option 3 was the most economically efficient model, reducing the complexity of layers of regulation.
- 5.13 Veda Advantage suggested in its submission that concerns raised by the Law Commission in relation to this option in the issues paper were overstated, and that they could all be dealt with. However, some of the agencies that administer public registers expressed doubt as to whether a single over-arching Act would be flexible enough to accommodate the wide diversity of existing public registers. The Business Services Branch of the Ministry of Economic Development commented that it is unlikely such an approach would satisfy the differing purposes, intentions and objectives of the broad range of registers that it administers, which include property registers (such as the patents or designs registers) and incorporation registers (such as the companies and incorporated societies registers). It suggested that even if the Act specified prohibited and permitted uses, it would be insufficiently flexible.
- 5.14 Another concern raised by some submitters in relation to option 3 was the degree of registrar discretion it involved. The concern expressed was not that registrars are incapable of exercising such discretions: indeed, as the Business Services Branch noted, many registrars are already very experienced in this

regard. The issue was rather whether such a discretion is appropriate. Quotable Value Limited noted that registrars can be put into a difficult position, especially where there might be financial gain to an agency in allowing commercial access to a register.

Preferred option: Option 4

Summary

- 5.15 We recommend option 4, namely that public registers be regulated primarily through their establishing statutes, and that this option be implemented by way of a review, led by a dedicated team. The review would result in recommendations to Cabinet for such legislative changes to the establishing statutes as is required. Such changes would be introduced by way of an omnibus Bill.
- 5.16 We further recommend that there be a central protective mechanism that could apply across all registers that contain personal information, and that bulk downloads of information held on public registers be regulated by a system of accreditation.
- 5.17 While most submitters preferred option 4, concerns were expressed about the possible cost, the time that reform might take and the risk of inconsistencies emerging between registers as a result of having a statute-by-statute approach to regulation. We have taken those concerns and other issues raised in submissions into account in formulating our final recommendations.

Cost and time involved in option 4

- 5.18 Some submissions expressed concern that option 4 carried with it a risk that reform would be considerably delayed or would never eventuate, as it requires each and every statute to be reviewed before reform is introduced. We agree that this is a real risk if the review is left to be carried out in a piecemeal fashion. To be effective, it will require a dedicated and properly resourced team, working in a defined timeframe.
- 5.19 We recommend that the review should be carried out over a 12 month period, by a team comprising six reviewers and a manager, with some administrative support. Ideally, the review team would be located in one of the main government departments that hold and maintain public registers, for example the Ministry of Economic Development, so that there would be no rental expenses. We estimate that the total cost of the review (assuming rental is excluded) would be approximately \$800,000, made up of the following costs:
- (a) Six research and policy advisers full-time for 12 months: being a mixture of senior and junior advisers.
 - (b) A manager, and some administrative support staff.
 - (c) Additional short-term consultants if necessary.
 - (d) Provision for administrative overheads, such as disbursements and computers.

- 5.20 In terms of ongoing costs, once the register provisions are amended, costs for register holders should be no greater than at present. The new protective mechanism that we propose below seems unlikely to cause additional costs or administrative issues for register holders: in many cases some sort of separate “unpublished names” register or means of protecting particular personal information on registers exists already.
- 5.21 Once the review team has completed its task and considered all the public registers, it should make recommendations to Cabinet for such legislative amendments as it concludes are necessary. Concern was expressed in some submissions that the process of amending all the statutes establishing public registers would take too long and would result in piecemeal change, but this risk can be averted by any such amendments being made by way of an omnibus Bill that deals with all the issues. This Bill would include amendments to the Privacy Act 1993, the various establishing statutes and Part 6 of the Domestic Violence Act 1995.
- 5.22 While the general principle is that a Bill must relate to one subject area only, the Standing Orders of the House of Representatives provide for certain types of Bills to be introduced, even though they are omnibus in nature. Standing Order 264(a) provides:
- A law reform or other omnibus bill to amend more than one Act may be introduced if –
- (a) the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy ...
- 5.23 In our view, the reform of the law regulating public registers that we propose is an appropriate reform to be introduced by way of a single omnibus Bill. The combination of a dedicated review team conducting its review in a defined period, and recommending changes by way of one legislative vehicle, will reduce the risk of delay in reform, and unintended inconsistencies arising between registers.

RECOMMENDATION

- R1 We recommend that public registers be regulated primarily through their establishing statutes. We further recommend that this option should be implemented by way of a review, led by a dedicated team and resulting in recommendations to Cabinet for such legislative changes as are required. Such changes would be introduced by way of a single omnibus Bill making all such amendments as are necessary to existing legislation.

CONDUCT OF THE REVIEW

Principles for review

- 5.24 Under our recommendations, a team would be established to conduct a review of all public registers, as defined in chapter 2 of this report. The guiding principle for the reviewers should be to retain a public register regime that is as open and transparent as possible, while protecting personal information where necessary.

- 5.25 We consider that the following principles should inform the framework for the review:
- (a) free flow of information;
 - (b) transparency;
 - (c) privacy interests (including the protection of personal information);
 - (d) accountability for fair handling of personal information;
 - (e) public safety and security.

Free flow of information

- 5.26 As the Office of the Privacy Commissioner acknowledged in its submission, the need for publicly searchable registers implies that there are public interests that in some sense prevail over individual interests. The review should provide for assessment of these public interests by establishing:
- the purposes for which a register was set up, (“primary purposes”); and
 - other (“secondary”) purposes of accessing the relevant register as appropriate.
- 5.27 Access to the relevant register should then be in accordance with those primary and secondary purposes, enacted in each public register statute.
- 5.28 The framework should also provide for a discretion to allow access to “accredited users” for specified purposes (and possibly on conditions). This is discussed in detail below.

Transparency

- 5.29 Transparency is particularly important for information held by agencies (especially government agencies) where people have been required by law to supply personal information that will become part of a public register. The incorporation of the purposes of public access into the public register statute will enhance transparency. Citizens can then know where they stand.
- 5.30 It should be clear that uses not specified in the legislation should not be permitted unless a requester is an accredited user (for the purposes listed and for a specified period). Accredited users should be listed publicly for transparency reasons also, on the websites of the relevant register holders.

Protection of personal information

- 5.31 In chapter 3, we discussed some of the uncertainties that arise in the present regime around the application of the IPPs to information held on public registers. In our view, the application of the IPPs should be spelt out in the establishing statute. The review team should consider the application of the IPPs in the case of each register, and whether there are any IPPs that should not apply, and ensure that those that are applicable are incorporated into the establishing statute by reference.
- 5.32 In addition, the reviewers should ensure that each statute provides that any person listed on any public register may apply to the Privacy Commissioner for a direction for protection of their personal information, as described below.¹⁸¹

181 This would not apply to the Electoral Act 1993 for the reasons given below.

- 5.33 In chapter 3, we also referred to PRPP 1, which provides that personal information shall be made available from a public register only by search references consistent with the manner in which the register is indexed or organised. We noted that, despite advances in electronic technology, search references still provide a practical limit to the range of searches available to the public, and that for that reason the decision as to which search references should be made available to the public remains significant. As they review each register, the reviewers should turn their minds to the search references by which information is made available, and decide whether it is necessary to spell out any limits on search references in the establishing statute.

Accountability for fair handling of personal information

- 5.34 In chapter 4 we discussed this concept primarily in the context of government accountability and trust in government, but we have phrased it generally here to make it clear that the same principle also applies to the non-government agencies that administer public registers. Register holders should be accountable to the individuals who provide personal information for public registers. This accountability should include informing those individuals of the consequences of their provision of information: what will that information be used for and by whom?
- 5.35 To this end, specifying both primary and secondary purposes of access in the public legislation will ensure that people know to what uses their personal information can be put. This is also the reason that the accreditation system we propose below must be transparent.

Public safety and security

- 5.36 The protective mechanism we propose below should ensure that people's safety is protected where there is a risk of harm. Another way of protecting personal safety is to provide for an audit trail of searches, such as that which is currently in place in the personal property and securities register: people searching the register have to sign in, and confirm the purposes for which they are accessing the information.

RECOMMENDATION

- R2 We recommend that the following principles are taken into account in the review of public registers, and in drafting or amending the legislation that establishes public registers:
- free flow of information;
 - transparency;
 - privacy interests (including the protection of personal information);
 - accountability for fair handling of personal information;
 - public safety and security.

Review step 1: Identification of public registers.

- 5.37 It will first be necessary to identify all the public registers to be reviewed. We suggest that the working definition of “public register” as proposed in this report be adopted: that is, that the review team identifies all those registers that are created and maintained pursuant to an enactment, and are open in whole or in part to public inspection, copying, distribution or search, under a specific access provision of the enactment creating the register. A list of all such public registers identified by the Law Commission is attached as the appendix to this report. This includes a number of registers that are not currently included in Schedule 2 of the Privacy Act 1993.
- 5.38 This part of the review may also result in a change in status for some registers that are currently included in Schedule 2. A few of these registers do not really fit within the definition set out above. For example, registers maintained under the Friendly Societies and Credit Unions Act 1982 appear in Schedule 2 of the Privacy Act 1993 are in fact open only to members.¹⁸² Another example is the Industrial and Provident Societies Act 1908 register (section 3D); this is not open to the public, yet is in Schedule 2.
- 5.39 The maritime register (under section 189 of the Maritime Transport Act 1994) is publicly available but in accordance with the Official Information Act 1982 so would not fall within our working definition. Likewise, the register of building plans, consents and other specified building information is accessible subject to the Local Government Official Information and Meetings Act 1987, rather than under another specific statutory provision.
- 5.40 Decisions should be made about any such registers: should the establishing legislation be amended to ensure they do fall within the definition of public register, or should these registers not be considered “public registers”?
- 5.41 Once the list of public registers is finalised, it should be ordered in terms of priority. Those main registers that are most often accessed (particularly by third parties – the press, credit reporters, direct marketers and other commercial users, for example) should be reviewed first. Those that are least accessed or about which there appear to be no issues can be reviewed last.

RECOMMENDATION

- R3 We recommend that the review team first identifies all public registers that fit within the working definition of a public register as adopted in this report.

Review step 2: Template of considerations

- 5.42 In the issues paper, we suggested that the review should be conducted in accordance with a template, which could also be used whenever a new public register is created, to ensure that the same matters are considered. In relation to

¹⁸² One submission had concerns that such information should be shared amongst members because it might give commercial advantages to competitors: an amendment to the Friendly Societies and Credit Unions Act 1982 could allay this concern, providing for specified purposes of access, and an audit trail. Or it may be that the register should not be open at all.

each register in turn, the review team should consider the matters listed below, and, with the exception of (a), should ensure that they are specified in the relevant statute establishing the register.

- (a) The purposes for which a register was set up. We do not recommend that this purpose be set out in the legislation itself: it is intended to inform the decisions of the review team as to what information should be collected for each register, who should be entitled to access, or whether bulk access is appropriate. In our view such purpose statements when set out in legislation are often redundant.
- (b) What personal information is required to be held on the register, and what personal information should be accessible.
- (c) The purposes for which people should be able to access the register.
- (d) Whether the register should be completely open or whether there should be restrictions relating to users and/or purposes of access.
- (e) Of the information privacy principles in section 6 of the Privacy Act 1993, which ones should apply to the information held on the register, and which should not.
- (f) How access will take place – for example, via the internet or over the counter.
- (g) Whether the search references by which information should be made available need to be specified.
- (h) Any need for access conditions, such as “sign in”, a subscription or a password, together with an audit trail of access to data.
- (i) Reference to a suppression mechanism to protect personal information in some circumstances, as discussed below.
- (j) Whether bulk access should be permitted for the particular register.
- (k) Where bulk access is permitted, an accreditation mechanism for some users, (in particular public register statutes) as discussed below.
- (l) Reference to a complaints procedure (Part 8 of the Privacy Act 1993).
- (m) Penalties for improper use, as discussed below.

RECOMMENDATION

- R4 We recommend that the review team applies the template set out above in reviewing each public register, and ensures that, with the exception of (a), the relevant considerations are specified in the legislation establishing the public register.

SUPPRESSION MECHANISM

- 5.43 As discussed in chapter 3, the law currently allows for people who have obtained a protection order under Part 6 of the Domestic Violence Act 1995 to request that identifying information about them on public registers not be made publicly available.¹⁸³ As we have shown, this protection mechanism is little used, and there is a lack of clarity about the application of the Domestic Violence (Public Registers) Regulations 1998.

¹⁸³ Domestic Violence Act 1995, Part 6; Domestic Violence (Public Registers) Regulations 1998.

- 5.44 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 that may create risks to safety, but do not occur in a domestic situation. People in certain professions, such as social workers, judges and police officers, may have concerns about the risk of threats being made to them or their families.
- 5.45 During consultation, we heard expressions of concern that a ground related to personal safety was not widely available in relation to other public registers. Many of the submissions agreed that a coherent and consistent approach to protective mechanisms is required. For this reason, and because of the seeming lack of use of protection under the Domestic Violence Act 1995, we recommend an alternative suppression mechanism.
- 5.46 As described in chapter 3, as well as Part 6 of the Domestic Violence Act 1995, there is a variety of protective suppression mechanisms used in some of the statutes that establish public registers. The threshold for name and/or address removal ranges from choice (Local Government (Rating) Act 2002) to removal for reasons of privacy as well as safety (Transport (Vehicle and Driver Registration and Licensing) Act 1986) to removal for reasons of safety (Electoral Act 1993). We consider there is much to be gained from adopting a uniform mechanism across all public registers. But there are several issues to consider.
- 5.47 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?
- 5.48 Secondly, should such a mechanism 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 system, 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?
- 5.49 Thirdly, how should such a mechanism be implemented? Should it be set out in the Privacy Act 1993, or included in each establishing enactment?
- 5.50 Fourthly, are there significant administrative costs or consequences for other uses of the information held on the register?

Recommended approach to name and address restrictions

Grounds for withholding name and/or address details

- 5.51 It should be decided at the outset whether it is necessary for good reason, such as a public need for contact, for a public register to require a person's name and/or residential address to be generally accessible to the public. It may be decided that such details not be generally accessible as has been done for section 199 of the Land Transport Act 1998. Residential addresses are not required to be made public for many registers; business contact details should often suffice for occupational registers, for example.

- 5.52 If names and/or (more rarely) residential addresses do need to be generally available on a publicly accessible register, on what grounds should people be able to apply to have such details removed?
- 5.53 Of the name and address restriction mechanisms described in chapter 3, in our view, the restrictions based on reasons related to the safety of the data subject, or their family, 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 limited. 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?
- 5.54 All submitters who responded to our question about protection of personal information in public registers were in favour of a suppression mechanism where there are safety concerns. The Ministry of Economic Development, the Health and Disability Commissioner and the Department of Labour raised the issue of the need for particular information on some public registers. For example, there are strong policy and public interest reasons for having directors’ names available on the companies register and debtors’ names on the personal property securities register, as well as for noting complaints that have been upheld against health practitioners, or cancellations or suspensions of immigration advisers’ licences. So reasons for suppressing such information would need to be very strong. For occupations, the main point of the public registers is to enable public contact, so a name and business address is generally important. However, the agencies agreed that threats to personal safety would justify suppression of names and/or residential addresses or other contact details.
- 5.55 In its submission of September 2006, Veda Advantage stressed the importance of adopting a suitably robust process and criteria for suppression, to avoid criminals seeking suppression in order to evade detection through electronic identity verification or other processes. The same rationale applies to other uses of the registers: if they are to operate properly, suppression of details should be the exception, not the rule.
- 5.56 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.

RECOMMENDATION

- R5 We recommend a mechanism providing for confidential registers to protect personal information on public registers, where there is evidence that the safety of the individual and/or their immediate family members would be put at risk by the disclosure of the information.

A centralised uniform mechanism?

- 5.57 One possibility that we considered would be to amend all the establishing statutes, and insert provisions similar to those in section 115 of the Electoral Act 1993, providing for an “unpublished roll” where access to the personal information on the register could lead to safety concerns. The disadvantages of this approach are that making individual registrars responsible for the decisions may lead to inconsistencies of approach that undermine the effectiveness of the protections, and, secondly, that data subjects concerned about their safety would need to apply to each register for suppression.
- 5.58 Under the New South Wales Privacy and Personal Information Protection Act 1998, an individual concerned about the safety or well being of any person can request that the public sector agency responsible for a public register:¹⁸⁴
- removes or does not place the relevant personal information on the register; or
 - does not disclose the information from the register to the public.
- 5.59 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 it, unless the agency believes that the public interest in maintaining public access to the information outweighs any individual interest in suppressing it.
- 5.60 This provision is wider than Part 6 of the New Zealand Domestic Violence Act 1995, and extends to people with safety concerns who are not “protected persons”. It also avoids the use of a separate layer of legislation. However, it adopts a register by register approach, and means that a number of applications must be made.
- 5.61 Our recommended option is to provide a statutory mechanism that allows for one application to be made (on grounds of safety) to suppress name and/or address information for 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. An applicant may specify name and/or address removal from all registers, from certain registers only – or from all, except a specified few.
- 5.62 The question is then: who should the decision maker be? There are several possibilities, including a judge, the Privacy Commissioner, or an Ombudsman. In our view, the Privacy Commissioner is the most appropriate person, having the role of protector of personal information. The formality and cost of requiring a court order would make suppression mechanisms inaccessible or cumbersome.
- 5.63 However, we do not recommend any alteration to the provisions in section 115 of the Electoral Act 1993. These provisions are the model for our proposed mechanism, except insofar as the decision maker for the electoral roll is the registrar. This appears to work well, and, at least in the medium term, we recommend no change for the electoral roll suppression procedure.

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

RECOMMENDATION

- R6 We recommend a single, uniform protective mechanism for all registers except the electoral roll. In respect of all other registers, applications for suppression should go to the Privacy Commissioner for decision.

Implementation of suppression mechanism

- 5.64 One possibility is to adopt a generic statutory mechanism, by way of amendment to the Privacy Act 1993. In 1998, the Privacy Commissioner recommended the creation of a new PRPP, which 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.¹⁸⁵
- 5.65 Further, the Privacy Commissioner recommended that a mechanism should be established in Part 7 of the Privacy Act 1993, enabling individuals to obtain suppression directions in relation to public registers, which would replace Part 6 of the Domestic Violence Act 1995 but be applicable to a wider range of circumstances concerning personal safety and harassment.¹⁸⁶
- 5.66 We agree that a mechanism providing for applications for suppression (from some or all public registers, except the electoral roll) should be set up in the Privacy Act 1993. We suggest that consideration of, and decision upon, such applications should be added to the functions of the Privacy Commissioner in section 13 of the Privacy Act 1993.

RECOMMENDATION

- R7 We recommend that provision be made in the Privacy Act 1993 for applications for name and/or address suppression to the Privacy Commissioner, and that each public register statute should refer to the availability of such applications. The functions of the Privacy Commissioner in section 13 of the Privacy Act 1993 should include consideration of, and decisions upon, such applications.

Administrative costs and consequences of a confidential register

- 5.67 The administrative costs involved in operating a suppression mechanism are important. Is it viable to separate the information held on the register? In its questionnaire to agencies that administer 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 majority of respondents considered that there would not be any significant administrative issues around holding separate registers in this way. Most of the registers are organised and maintained electronically,

¹⁸⁵ Report of the Privacy Commissioner, above n 173, Recommendation 98.

¹⁸⁶ Ibid, Recommendation 99.

some already have separate “unpublished” registers, and several already operate under the Domestic Violence Regulations 1998 regime. For some registers (those not on the internet) it may not even be necessary to have a published and a confidential register but simply to mark those subjects that have confidential status.

- 5.68 There may be other consequences of holding a confidential 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.¹⁸⁷
- 5.69 Where suppression is based on a person’s status as a protected person under the Domestic Violence Act 1995, it should continue for as long as the person is a protected person. In all other cases, we suggest that suppression, once granted, should continue for seven years or until notification that it is no longer required. This is likely to be because the person no longer has safety concerns (for example, a child may now have become adult or a relevant person may have died).
- 5.70 The effect of a suppression direction under section 112(1)(c) of the Domestic Violence Act 1995 is to prevent members of the public from accessing the suppressed information, but the “information is, for all other purposes, deemed to be included on the public register”. This would allow the police to access the information for purposes of law enforcement, for example. We recommend that this should also be the case for our recommended suppression mechanism.

RECOMMENDATION

R8 We recommend that once suppression of name and/or address has been granted, it should continue for as long as a person is a protected person under the Domestic Violence Act 1995, or otherwise for seven years, or until notification. A confidential register should be compiled for most registers. Access to the confidential register should be allowed only for specific purposes: by the police for law enforcement, for example.

REGULATION OF BULK ACCESS TO PUBLIC REGISTER INFORMATION

- 5.71 The issues raised by bulk access to information on public registers were discussed earlier in this report. The discussion of bulk uses of public register information in the issues paper was linked closely to the issue of direct marketing. While direct marketing can be seen as annoying or intrusive, it can also be perceived as beneficial for consumers and for commerce, and can be carried out in a responsible way that avoids or minimises intrusiveness or annoyance.¹⁸⁸ A number of submitters pointed out that there are also other bulk uses of register information, such as identity verification, that are, or may be, in the public interest. In our view, some regulation of bulk access to public registers is required. We have considered several possible approaches to regulating bulk access.

¹⁸⁷ Meeting with M Wicks, National Manager, Electoral Enrolment Centre, 3 May 2007.

¹⁸⁸ A direct marketing company that is a member of the Marketing Association and complies with the Association’s standards (including complying with the Name Removal Service for consumers) should avoid these negative responses.

- 5.72 In 1998, the Privacy Commissioner proposed a new public register privacy principle directed towards solicitation lists created directly from a register.¹⁸⁹ He recommended a new PRPP providing 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.¹⁹⁰ However, this principle may well exclude some uses that, while not necessarily consistent with the purpose of maintaining a register, are nonetheless very useful. As Quotable Value Limited noted in its submission, legislation cannot foresee every possible use of the information.
- 5.73 Another approach would be to prohibit those uses that give rise to concern by legislation, for example, in the Privacy Act 1993, or in other consumer protection legislation such as the Fair Trading Act 1986. This approach was favoured by several submitters. Some Canadian jurisdictions have legislated to specifically prohibit or restrict bulk downloads of personal information.¹⁹¹ The Ministry of Economic Development commented in its submission that the starting point should be a decision by Parliament as to which bulk uses are acceptable, and which require regulation or prohibition (an approach recommended by Veda Advantage).
- 5.74 However, this could prohibit a use that has some benefits and is objectionable only if not carried out responsibly. Unless the prohibited use is clearly harmful, (such as stalking or identity crime, when such use should be proscribed by other legislation), there is a risk that beneficial consequences of a use may be overlooked and lost.
- 5.75 A third approach is to use section 63 of the Privacy Act 1993 to issue codes of practice in relation to use of public register information in bulk for specific purposes. Such codes are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989. This is possible at present but the only code in respect of public registers is the Credit Reporting Code, made under section 46 of the Privacy Act 1993.
- 5.76 Veda Advantage, in its submission to our issues paper, suggested that there should be an initial process, before the statute-by-statute review proposed in option 4 commences, in which (among other things) agreement is reached as to the key legitimate uses of public registers which are specifically to be allowed. This process should include public discussion and submissions. However, in our view, specifying key permitted uses has a similar disadvantage to specifically prohibiting certain uses: it is over-prescriptive and inflexible.
- 5.77 Our preferred approach would be to focus on the user, rather than just the use, of the information. Some Schedule 2 "public registers" are not strictly open to the public at large, but instead may be searched only by specific persons or by the public for limited purposes. Examples (noted in chapter 3) include section

189 Report of the Privacy Commissioner, above n 173, para 7.8.10.

190 Ibid, para 7.8.9. The provision was similar to one adopted in section 52(1)(f) of the Rating Valuations Act 1998. 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.

191 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).

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.

- 5.78 In the issues paper, we raised the possibility of a system of accreditation of users of information. Having read the submissions, several of which support such a system, we still consider it has merit in the context of bulk use. Over recent years, a number of uses have arisen that are not necessarily in accordance with the original purposes of public registers, but that play a beneficial role in the economy and should be allowed to continue. Accreditation of certain users for certain uses in relation to specified registers is a means of enabling this. We note, however, that there may be some registers for which bulk access is not appropriate at all and may not be permitted.

Recommended approach to bulk access: accredited users

- 5.79 This approach recommends that users apply to be authorised, or accredited, to access all or part of the information held on particular public registers. This model has been incorporated into the Land Transport Amendment Bill (No 4) 2007, clause 241, though not specifically for bulk uses. The Minister of Transport, in consultation with the Privacy Commissioner and the Office of the Ombudsmen, can authorise specified persons or classes of persons to have access to names and addresses of registered owners of motor vehicles for specified purposes, on conditions the Minister thinks fit and for a specified period of time, on application.
- 5.80 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” by Paul Chadwick, former Privacy Commissioner for Victoria.¹⁹²
- 5.81 Chadwick’s 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.
- 5.82 The paper suggests that there are three guiding principles that should operate as touchstones for the use of this mechanism, and that 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.

¹⁹² Paul Chadwick “Transparency, Reciprocity, Safeguards: A proposal for reform of the regulation of personal information in public registers in Australia and New Zealand (unpublished draft, 22 November 2006).

- 5.83 The safeguards principle requires provision to 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.¹⁹³ 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.
- 5.84 We are persuaded that the accreditation or authorisation model is a fair solution to the issue of whether or not bulk access to public register personal information should be permitted. But our recommended model differs somewhat from either Paul Chadwick's suggestion or that in the Land Transport Amendment Bill (No 4) 2007.
- 5.85 First, who should be the decision maker regarding accreditation? In our view, the minister for the relevant government agency that administers the Act pursuant to which the public register has been established, is the appropriate person to make the accreditation decision. We recommend that applications go to the relevant ministers and are copied to the Privacy Commissioner so that the Commissioner has the opportunity to provide comments to the minister.
- 5.86 Secondly, the minister would then make the decision guided by specified criteria. Accreditation would be for 5 years and on any conditions the minister thinks fit. The minister's decision would be subject to appeal by way of judicial review. There should also be criteria under which accreditation should be withdrawn, such as a breach of any conditions or improper use of register data.

RECOMMENDATION

R9 We recommend a system of accreditation for bulk access to, and use of, public register information for specific registers. The decision maker should be the minister for a government agency that administers the Act pursuant to which the public register has been established. The decision would be guided by specific statutory criteria and subject to judicial review.

- 5.87 Persons seeking accreditation will need to make a case for access in the public interest. They will need to list the registers to which they want access for their particular purposes. Uses not specified in the legislation are not permitted unless a requester is an accredited user (for the purposes listed, and for five years).
- 5.88 The criteria to be considered by the decision maker (the relevant minister) should be set out in the public register establishing statute.

¹⁹³ Ibid 19–21.

RECOMMENDATION

- R10 We recommend the following criteria be considered by the decision maker:
- the uses for the information proposed by the applicant user, together with their lawful interests;
 - 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 safety and privacy that the user's handling of the public register data presents or is likely to present;
 - 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.¹⁹⁴

- 5.89 The Department of Internal Affairs in its submission to our issues paper, raised some issues and risks concerning accreditation. Some of these should be able to be addressed by general or specific conditions of access. There is the situation where an accredited organisation fundamentally changes its governance, structure or membership; it should be a general condition of accreditation that such a change should lead to a new application. Likewise, another issue is whether an accredited person or organisation should be able to act as an agent for another; we consider this should not be allowed.
- 5.90 There is also the risk mentioned in our issues paper, that the accredited user uses the information for an end that is considered objectionable or is not permitted. Measures should be taken to police actual use of the information from public registers as we recommend in our template. Where information is used for a non-permitted purpose, or conditions of accreditation are otherwise breached, the sanction for an accredited user would be, at the least, loss of accreditation status. A register of accredited users should be kept by each agency, noting for internal purposes any users that had been "struck off". The register should be public, although names of those struck off would not be public.

RECOMMENDATION

- R11 Accredited users should be listed publicly on the websites of the relevant register holders, as well as by notice in the New Zealand Gazette. Accredited users misusing register information should be removed from the register.

¹⁹⁴ Ibid. The list of criteria were adapted from the *Report of the Committee on Data Protection* (Lindop Committee, London, HMSO, 1978) Cmnd 7342, para 21.12.

- 5.91 If a name and/or address of a person on a register has been granted confidential status (that is, is on an unpublished register because of safety concerns) we recommend this be withheld from an accredited user.

PENALTIES FOR ABUSE OF THE INFORMATION OBTAINED FROM A PUBLIC REGISTER

- 5.92 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.¹⁹⁵ 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 117.¹⁹⁶
- 5.93 It may be appropriate to include a similar offence provision in some other public register statutes and we suggest that the review team consider this.

RECOMMENDATIONS

- R12 We recommend that a complaint may be laid to the Privacy Commissioner (under Part 8 of the Privacy Act 1993) that an action is, or appears to be, an interference with privacy, if there is a breach of the access provisions in public register establishing statutes. A provision so stating should be in all public register statutes.
- R13 We further recommend that it could be a condition attached to accreditation that personal information from any public register is not manipulated, changed by scanning, re-sorted or combined with personal information from another public register. On breach of such a condition, a complaint may be laid to the Privacy Commissioner.

AMENDMENTS TO THE PRIVACY ACT 1993 IF OPTION 4 IS ADOPTED

Part 7 of the Privacy Act 1993

- 5.94 We recommend that Part 7 and Schedule 2 of the Privacy Act 1993 be repealed, together with the definition of public register set out in section 2. There will be other consequential amendments required to the Privacy Act 1993 if our recommendations are adopted, where there are references to public registers, Schedule 2, or the public register privacy principles.
- 5.95 Insofar as it relates to complaints, complaints about breaches of the IPPs or Part 10 of the Privacy Act 1993 in relation to public registers, could still be dealt under Part 8 of the Act. Section 66 would need to be amended as section 66(1)(ii) allows a complaint where the interference with privacy breaches a code of practice issued under section 63 (which relates specifically to public registers). Section 63 is part of Part 7 at present and would be repealed. However there are no codes of practice issued under section 63. The Credit Reporting Privacy Code 2004, which covers the use of public registers, is issued under section 46 of the

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

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

Act. Section 46 allows modification of the IPPs. A need for codes of practice under section 63 is probably redundant under our proposals in option 4 because of the accreditation system. In any event, the IPPs can be modified in respect of some registers by their own statutes.

AMENDMENTS TO OTHER ACTS

- 5.96 In 1998, the Privacy Commissioner recommended that the official information statutes should be excluded from questions of release of personal information from public registers.¹⁹⁷ We agree with this recommendation, and suggest that it should be implemented as part of the legislative changes to be proposed by the review team.
- 5.97 While a protected person in terms of the Domestic Violence Act 1995 should always be able to take advantage of name and/or contact details suppression in all public registers on application, it will not be necessary to retain Part 6 of that Act and the Domestic Violence (Public Registers) Regulations 1998 when the new protective mechanism is in place.

GOVERNMENT RESPONSE TO RECOMMENDATIONS

- 5.98 When the Law Commission makes recommendations on a government reference, it then prepares a Cabinet paper, reflecting interagency consultation, for submission to Cabinet by the relevant portfolio minister. If Cabinet decides to accept the Law Commission's recommendations, any Bill that is required will be prepared with no further need for the government to present a response to the House of Representatives.¹⁹⁸
- 5.99 In the case of this report, we recommend that the process of preparing and submitting a Cabinet paper should take place once stage 4 of the Law Commission's privacy review is completed, to allow proper consideration of all the privacy issues in a coordinated manner. Cabinet will then be able to make decisions about the public register regime at the same time as it makes decisions on other amendments to the Privacy Act 1993, with the full legislative picture before it.

RECOMMENDATION

R14 We recommend that the preparation and submission of a Cabinet paper in relation to this report should take place once stage 4 of the Law Commission's privacy review is completed, to allow proper consideration of all the privacy issues in a coordinated manner.

197 Report of the Privacy Commissioner above n 173, Recommendation 100.

198 Cabinet Office Circular "Law Commission: Processes for Project Selection and Government Response to Reports" (2 August 2007) CO (07) 4.

Recommendations



Recommendations

RECOMMENDATION

- R1 We recommend that public registers be regulated primarily through their establishing statutes. We further recommend that this option should be implemented by way of a review, led by a dedicated team and resulting in recommendations to Cabinet for such legislative changes as are required. Such changes would be introduced by way of a single omnibus Bill making all such amendments as are necessary to existing legislation.

RECOMMENDATION

- R2 We recommend that the following principles are taken into account in the review of public registers, and in drafting or amending the legislation that establishes public registers:
- free flow of information;
 - transparency;
 - privacy interests (including the protection of personal information);
 - accountability for fair handling of personal information;
 - public safety and security.

RECOMMENDATION

- R3 We recommend that the review team first identifies all public registers that fit within the working definition of a public register as adopted in this report.

RECOMMENDATION

- R4 We recommend that the review team applies the template set out below in reviewing each public register, and ensures that, with the exception of (a), the relevant considerations are specified in the legislation establishing the public register.
- (a) The purposes for which a register was set up. We do not recommend that this purpose be set out in the legislation itself: it is intended to inform the decisions of the review team as to what information should be collected for each register, who should be entitled to access, or whether bulk access is appropriate. In our view such purpose statements when set out in legislation are often redundant.
 - (b) What personal information is required to be held on the register, and what personal information should be accessible.
 - (c) The purposes for which people should be able to access the register;
 - (d) Whether the register should be completely open or whether there should be restrictions relating to users and/or purposes of access.
 - (e) Of the information privacy principles in section 6 of the Privacy Act 1993, which ones should apply to the information held on the register, and which should not.
 - (f) How access will take place – for example, via the internet or over the counter.
 - (g) Whether the search references by which information should be made available need to be specified.
 - (h) Any need for access conditions, such as “sign in”, a subscription or a password, together with an audit trail of access to data.
 - (i) Reference to a suppression mechanism to protect personal information in some circumstances.
 - (j) Whether bulk access should be permitted for the particular register.
 - (k) Where bulk access is permitted, an accreditation mechanism for some users, (in particular public register statutes).
 - (l) Reference to a complaints procedure (Part 8 of the Privacy Act 1993).
 - (m) Penalties for improper use.

RECOMMENDATION

- R5 We recommend a mechanism providing for confidential registers to protect personal information on public registers, where there is evidence that the safety of the individual and/or their immediate family members would be put at risk by the disclosure of the information.

RECOMMENDATION

- R6 We recommend a single, uniform protective mechanism for all registers, except the electoral roll. In respect of all other registers, applications for suppression should go to the Privacy Commissioner for decision.

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RECOMMENDATION

- R9 We recommend a system of accreditation for bulk access to, and use of, public register information for specific registers. The decision maker should be the minister for a government agency that administers the Act pursuant to which the public register has been established. The decision would be guided by specific statutory criteria and subject to judicial review.

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- R10 We recommend the following criteria be considered by the decision maker:
- the uses for the information proposed by the applicant user, together with their lawful interests;
 - 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 safety and privacy that the user's handling of the public register data presents or is likely to present;
 - 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.

RECOMMENDATION

- R11 Accredited users should be listed publicly on the websites of the relevant register holders, as well as by notice in the New Zealand Gazette. Accredited users misusing register information should be removed from the register.

RECOMMENDATION

- R12 We recommend that a complaint may be laid to the Privacy Commissioner (under Part 8 of the Privacy Act 1993) that an action is, or appears to be, an interference with privacy, if there is a breach of the access provisions in public register establishing statutes. A provision so stating should be in all public register statutes.

RECOMMENDATION

- R13 We further recommend that it could be a condition attached to accreditation that personal information from any public register is not manipulated, changed by scanning, re-sorted or combined with personal information from another public register. On breach of such a condition, a complaint may be laid to the Privacy Commissioner.

RECOMMENDATION

- R14 We recommend that the preparation and submission of a Cabinet paper in relation to this report should take place once stage 4 of the Law Commission's privacy review is completed, to allow proper consideration of all the privacy issues in a coordinated manner.

Appendix



Appendix

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 business 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 S 112(4): as above On internet	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 homekil/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 – responsible for administration of the Act (Dept Internal Affairs has overall responsibility for the policy administration)</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>Not available on internet</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: Territorial authorities 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 obligations & 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 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 of 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>

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
Building Societies Act 1965 MED <i>Not in schedule 2</i>	S 8: register of building societies to be kept	S 8: any person entitled on application and payment of a fee to names & addresses of any building society		Any person can also inspect other company documents on which there may be personal information
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 person 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 under 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 & Authority 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 Authority	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 under ss 35 & 38 or has unsuccessfully appealed; any other info Reg Authority thinks nec or desirable for purposes of register

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Citizenship Regulations 2002 Secretary of Internal Affairs (DIA has overall responsibility for policy administration of the Citizenship Act 1977 and the regulations) <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 persons 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 grandparent or person with genuine and proper interest	R 11: purpose – to record people 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 person not identified	
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 (Ministry of Justice has overall responsibility for the policy admin of the Act)	S 29: Registrar General 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 account holder, type of account, identifier, full name, mail address, phone, fax email of representative of a/c holder; holding and transactional info by serial number 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

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
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 documents 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
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 regarding 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

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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 & supplementary rolls S 210: Candidate returns
Electricity Act 1992 Registrar of Electrical Workers Registration Board (maintained on behalf of the Board by Dept of Building & Housing) <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 On MED operated website		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 of 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

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
<p>Fisheries Act 1996 (Min of Fisheries Devolved to Fishserve See also Fisheries (Registers) Regulations 2001 for particulars to be shown)</p>	<p>S 98: fishing permit register; fishing vessel register & high seas permit register to be kept</p> <p>S 124: quota & annual catch entitlement registers to be kept</p> <p>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>)</p>	<p>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</p> <p>S 129: quota & annual catch entitlement registers are public registers open to inspection</p> <p>Some limited information on internet</p>	<p>S 102(3): if CE satisfied that disclosure of person's address would be prejudicial to personal safety it may not be disclosed</p> <p>S 129(3): similarly for quota and annual entitlement registers And for</p> <p>S 186M(5): fish farmer registers</p>	<p>S 100: particulars required by regulations under s 297</p> <p>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</p> <p>S 128: similarly for annual catch entitlement register</p> <p>S 186L: fish farmer reg to contain info per regs</p>
<p>Foreshore & Seabed Act 2004 MoJ <i>Not in schedule 2</i></p>	<p>S 92 CE: to keep public foreshore & seabed register – in process of development</p>	<p>S 94: all docs in the register open for public inspection & copying on payment of fee if any</p>	<p>S 95: register is a public register within meaning of s 58 PA (<i>but not in schedule 2</i>)</p>	<p>S 92: Maori Land Court & HC orders, agreements, mgt plans, Conservation restrictions. (matters of public record)</p>
<p>Forest and Rural Fire Act 1977 <i>Not in schedule 2</i></p>	<p>S 17(2): Fire Authority to keep a forest area register (applications by registered landholders)</p>	<p>S 17(6): copies of application, plan and notice to be made available for public inspection</p>		
<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>

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Gambling Act 2003 DIA	S 204(1): Secretary to keep a register of licensed promoters	S 204(3): register to be available for inspection to members of the police and public		S 204(1): record name and contact details of licensed promoters
Hazardous Substances & New Organisms Act 1996 (ERMA) <i>not in Schedule 2</i>	S 20: obligation to maintain register of all applications to Authority S 82A: register of test certificates issued by test certifiers S 85: register of test certifiers (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 – little, if any information in them)	S 20(5): Everyone has right to inspect the register during office hours 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 authorised under s 54(1) Privacy Act. On internet for approved people S 85: Everyone has right to inspect the register of test certifiers during office hours	S 82(2): purpose to facilitate compliance with & enforcement of HSNO, Agricultural Compounds, health and Safety in Employment and Resource Management Acts	S 20(2): To include name & address of applicant, description of substance, purpose of application, approval or not 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 S 85: HSNO register – name and address of person approved as test certifier
Health Practitioners Competence Assurance Act 2003 (Regional boards secretariat & about 10 other boards eg Dieticians Board, Chiropractic 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 appropriate are not part of the register open to public inspection S 140: health practitioner 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 authority thinks appropriate

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
<p>Human Assisted Reproductive Technology Act 2004 Registrar General of BDM & fertility service providers hold the info. Ministry of Justice has overall responsibility for policy admin. <i>Not in schedule 2</i></p>	<p>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</p>		<p>Access is restricted to people entitled under the HART Act (named on the register) & agents, guardians, medical practitioners etc</p>	<p>Info re donors & their offspring and parents</p>
<p>Immigration Advisers Licensing Act 2007 Department of Labour Public register provisions into force from 4 May 2008 <i>Not in schedule 2</i></p>	<p>S 77(1): register of licensed immigration advisers to be kept Can be in electronic format</p>	<p>S 80(2): register to be available for public inspection without fee, and copy or extract to be supplied at reasonable charge for s 77 (2) purposes</p>	<p>S 77(2): purpose of the register – to enable public to know how to contact an immigration adviser & whether licensed, what type of licence & whether cancelled, suspended, or ever refused</p>	<p>S 78: includes full name & business address, licence number or other identifier, address for service, employer, date of registration, terms and type of licence, any cancellation, suspension, surrender, refusals</p>
<p>Impounding Act 1955 <i>Not in schedule 2</i></p>	<p>S 13: Local authority to keep records of all stock impounded in a Pound Book and an impounding register</p>	<p>S 13 (4): Pound book and impounding register to be open to public at all reasonable times free of charge</p>		<p>Impounding register – record of all stock impounded and fees and charges Pound book – initial record of stock impounded made ASAP</p>
<p>Incorporated Societies Act 1908 MED</p>	<p>33: registers to be kept of societies On internet</p>	<p>S 34: inspection of documents by any person (copies on payment of fee)</p>		<p>Name, registered office, address + for communication, date of incorporation; number, rules, financial statements AGM month</p>
<p>Industrial and Provident Societies Act 1908 MED</p>	<p>S 3D: registers to be kept in each district registry On internet</p>	<p><i>access by public?</i></p>		
<p>Insolvency Act 1967</p>	<p>S 118: in a case where the Court refuses to grant a discharge of a bankrupt the fact may be published</p>			

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
Insolvency Act 2006 MED (not yet in force)	<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 register 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>
Kiwisaver Act 2006 MED <i>Not in schedule 2</i>	<p>S 156: a kiwisaver scheme register to be established</p>	<p>S 158: purposes;</p> <p>S 162: Govt Actuary may refuse access to register or suspend operation if not practical to provide access</p>	<p>S 158: purposes include to enable the public to determine kiwsaver schemes, how to contact trustees, whether default scheme etc</p>	<p>S 160: contents of register include name of scheme, trustees' names & addresses for service, exempt employers etc</p>
Land Transfer Act 1952 Admin by Registrar at LINZ	<p>S 33: register to be kept of every grant of land and certificate of title; 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-on-line 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>

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<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 reference to name of registered prop or description of land;</p> <p>Record of applications to bring land under the LTA</p>			<p>Record to specify reference number, date & time rec'd, ref no. of provisional registration, certificate of title or computer registra- tion to be effected</p>
<p>Land Transport Act 1998 (maintained by Land Transport NZ)</p>	<p>S 199: national register of all drivers' licences to be maintained</p>	<p>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) doctor entitled to organ donor information</p> <p>On internet – limited access</p>	<p>Personal details such as address, DOB etc, endorsements are not available to the public</p> <p>S 200: no-one other than person acting in official LTA duties or police with consent or warrant, may access photo images</p>	<p>S 199(2): Register to show: holder's full name, address, DOB, place of birth, license number, date of issue and expiry; endorsements, conditions, court orders, suspensions, revocations etc</p>
<p>Law Practitioners Act 1982 <i>Not in schedule 2</i></p>	<p>S 49: every registrar to keep a roll of barristers and solicitors of the Court</p>	<p>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 hours without fee</p>		<p>Includes the names of those struck off the roll – purpose of having a public 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</p>
<p>Life Insurance Act 1908 <i>Not in schedule 2</i></p>	<p>S 24: every company not registered under the Companies Act shall keep a register of shareholders</p> <p>S 79: every co. to deposit statements with MED of all life insurance business transacted in NZ and entire assets in NZ</p>	<p>S 24: list available to every shareholder and policy holder – on payment of not more than 10c for 100 words copied</p> <p>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</p>		
<p>Local Electoral Act 2001 (local authorities)</p>	<p>S 38: Territorial Authority electoral roll</p> <p>S 45-47: Completion & amendments</p>	<p>S 42: roll available for public inspection</p>		<p>Names & details from Chief Registrar of electors: S 113 Electoral Act 1993</p>

ENACTMENT; BY WHOM REGISTER HELD/ ADMINISTERED	TYPE OF REGISTER	PUBLIC ACCESS PROVISIONS	SPECIAL PROVISIONS – PURPOSE OF ACCESS/ RESTRICTIONS	TYPE OF INFORMATION RECORDED
<p>Local Government (Rating) Act 2002 (admin by Dept Internal Affairs)</p>	<p>S 27: Rating information database (and complete database)</p> <p>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 ratepayer or person authorised, person liable to pay rates under ss 61 or 62, solicitor or estate agent acting for transaction re the unit & reasonably requiring 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 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 circumstances</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 Authority 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 documents & 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 Registrar of BDM Ministry of Justice has overall responsibility for the policy admin</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 hours & 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 registration 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 registers 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 punishable by prison that Board believes renders person 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 registered, 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 accordance with Privacy Act; by debtor or secured party in re security interest; by person to establish whether property subject to a security interest, whether to provide credit, obtain guarantee, invest; by liquidator, receiver, Official Assignee, 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 specified in regulations S 86: searches only for s 72 purposes Limited internet access	S 72: purpose of the register: to enable public to determine whether person is registered or hold licence, and their status & history & any disciplining, choose suitable person 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 registration also)
Postal Services Act 1998 <i>Not in schedule 2</i>	S 32: Secretary to maintain a register of registered postal operators	S 34: inspection by public during office hours – copies on request at payment of reas charge		S 32: partics to include person's name, place of business, date of reg. person's postal identifier, any other partics Sec considers appropriate

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Private Investigators and Security Guards Act 1974 <i>Not in schedule 2</i>	S 13: Registrar to compile register 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 hours 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
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: registration of licences & modifications where management 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 management rights, a spectrum licence or a radio licence and determining the identity of the owner of a management right, rightholder 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: Registrar to keep copies of permits to carry on specified business	S 36(2): register open to public inspection during office hours on payment of fee (if any) – Registrar 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

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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
Sale of Liquor Act 1989 Liquor Licensing Authority	S 220: Secretary of Licensing Authority 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 payment 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 licensees to record all particulars 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 register	S 81: public access – Lic Auth must take all reasonable steps to ensure the info in the registers is available to the public at all reasonable times & copies at a reasonable cost [S 82: Police access re any info in a licence or certificate] On internet		S 79: licence holders register 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 register to include full name of holder, date & number of certificate
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 superannuation schemes, life insurance 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 considers necessary	S 51(2): Every register to have name & address of holder, date of allotment, 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 inspection by any person between 9 am and 5 pm each working day of inspection period; copies or extracts on reasonable fee		

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Ship Registration Act 1992 <i>Not in schedule 2</i>	<p>S 20: Registrar to reg a ship in Part A of Register</p> <p>S 21: registrar to register partics in part B of the register</p> <p>S 24: partics of master to be endorsed on certificate of registration in ship leaving NZ</p> <p>S 22: register of property in a ship (64 shares)</p>	Register is available on website if name of ship is known		<p>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 declaration, name & address of any representative party, date of entry</p> <p>Part B of register: details re the ship: s 21</p>
Social Workers Registration Act 2003 Board	<p>Ss 121-2: Board to keep register of social workers in 3 parts</p> <p>Register to be kept up to date and revised (ss 125-129)</p>	<p>S 124: On payment of a fee if any person who asks can obtain certificate of all current info entered in the register re a particular person other than his or her home address</p> <p>S 135: Board must publish the register in any form it thinks fit (not home addresses)</p> <p>S 136: register open for public inspection in office hours – copies</p>	S 124, s 135: home address exception to disclosure	S 123: Information to be registered – name, home or work address, partics of qualifications, type of registration, date should be registered and date of reg; any other matters prescribed by regs or thought appropriate; also conditions of registration, any suspension or restrictions, partics of practicing certs
Status of Children Act 1969 Admin by Ministry of Justice <i>Not in schedule 2</i>	S 9: High or Family Court declarations or orders of paternity to be filed in the office of the Reg General of BDM who must maintain an index of same. Other acknowledgements of paternity may be lodged with RG: s 8(2)	On request and payment of fee by requester, RG shall cause a search to be made, permit any person to inspect a copy, issue with certified copy of instrument or certificate of search results		
Te Ture Whenua Maori Act 1993 Held at Maori land Court	S 263: Maori incorporation to have share register	S 263(6): Share register open to public inspection on payment of fee		Index of names of shareholders & information re their share – s 263(3) (Court records)
Trade Marks Act 2002 Commissioner of Trade Marks (MED)	S 181: register of trade marks to be kept by Commissioner	<p>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</p> <p>On internet</p>		S 182: contents to include all reg trade marks with names & addresses of owners, assignments, transmissions, names & addresses of licensees, conditions

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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 is entitled to certificate of particulars of all persons 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 payment of a fee (if any) On internet	S 19(4)-(5) Registrar can decline to issue cert. in some cases: for security 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 [not all on certificate given to public]
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 reasonable time on payment of fee, if 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; S 22(5) on payment of prescribed fee must issue certified 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 registration 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

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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 under 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 partics as prescribed S 47(3): include name and address of exporter and agent, date of registration etc S 73(3): register to include name & address of person or body, description of recognised function

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