

## PRIVACY COMMISSIONER BILL

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### EXPLANATORY NOTE

THIS Bill makes provision for the appointment of a Privacy Commissioner, and defines the Commissioner's functions and powers.

*Clause 1* relates to the Short Title to the Bill.

*Clause 2* defines terms used in the Bill.

*Clause 3* provides that the Bill shall bind the Crown.

*Clause 4* makes provision for the appointment from time to time by the Governor-General, on the recommendation of the Minister, of a suitable person to be the Privacy Commissioner. The person appointed must be a barrister or solicitor of not less than 7 years' standing, whether or not he holds or has held any judicial office, and may hold the office with any other office.

*Clause 5* provides that the Commissioner shall normally hold the office for a term of 3 years, but may from time to time be reappointed. Provision is made for the holder of the office to continue in office until his successor comes into office.

*Clause 6* makes the normal provision for removal of the Commissioner from office for disability, bankruptcy, neglect of duty, or misconduct.

*Clause 7* provides for the appointment of officers and employees of the Commissioner. The number that may be appointed is to be determined from time to time by the Minister of Justice.

*Clause 8* sets out the functions and powers of the Commissioner.

*Clause 9* requires the Commissioner and his officers and employees to maintain secrecy.

*Clause 10* provides that the Commissioner shall not, in any report or statement made pursuant to the Bill, make any comment that is adverse to any person, unless the person has been given an opportunity to be heard. The clause also provides that the Commissioner shall not, except in a report made to the Minister pursuant to the Bill, disclose any matter of the kind referred to in *clause 12*.

*Clause 11* enables the Commissioner to require evidence in respect of matters that he investigates, and gives normal protection to witnesses who have obligations to maintain secrecy.

*Clause 12* follows section 20 of the Ombudsmen Act 1975, and defines the extent to which disclosure of matters to the Commissioner may be refused.

*Clause 13* defines the privilege of the Commissioner and his officers and employees in relation to things done or reported or said in the course of their duties under the Bill.

*Clause 14* specifies offences against the Bill.

*Clause 15* provides that no person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Superannuation Act 1956 by reason of his appointment as the Privacy Commissioner or as an officer or employee of the Commissioner.

*Clause 16* provides that the remuneration and allowances payable to persons appointed under the Bill, and the terms and conditions of their appointments, shall be such as are approved by the Minister of Finance. All such remuneration and allowances, and all other expenditure incurred in the administration of the Bill is to be payable out of money appropriated by Parliament for the purpose.

*Clause 17* provides for the Commissioner to make an annual report to the Minister, and for the Minister to lay the report before Parliament.

*Clause 18* makes provision for superannuation for the Commissioner and his officers and employees.

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*Hon. Dr Finlay*

## PRIVACY COMMISSIONER

### ANALYSIS

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### A BILL INTITULED

**An Act to provide for the appointment of a Privacy Commissioner, and to define the Commissioner's functions and powers**

5 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Privacy Commissioner Act 1975.

10 2. **Interpretation**—In this Act, unless the context otherwise requires,—

“Minister” means the Minister of Justice:

“Privacy Commissioner” or “Commissioner” means the Privacy Commissioner appointed under section 4 of

15 this Act.

**3. Act to bind Crown**—This Act shall bind the Crown.

**4. Appointment of Privacy Commissioner**—(1) The Governor-General shall from time to time, on the recommendation of the Minister, appoint a suitable person to be the Privacy Commissioner. 5

(2) The person so appointed shall be a barrister or solicitor of the Supreme Court of New Zealand of not less than 7 years' standing, whether or not he holds or has held any judicial office.

(3) Any person appointed as the Privacy Commissioner 10 may hold that office with any other office.

**5. Term of office of Commissioner**—(1) Unless his office sooner becomes vacant, the Commissioner shall hold that office for a term of 3 years, but may from time to time be reappointed. 15

(2) Notwithstanding subsection (1) of this section, the Commissioner, unless he sooner vacates office under section 6 of this Act, shall continue to hold office until his successor comes into office.

**6. Removal or suspension from office**—The Commissioner 20 may at any time be removed or suspended from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General, or he may at any time resign his office by writing addressed to the Minister. 25

**7. Staff of Commissioner**—(1) Subject to the provisions of this Act, the Commissioner may appoint such officers and employees as may be necessary for the efficient carrying out of his functions.

(2) The number of persons that may be appointed under 30 this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Minister.

**8. Functions and powers of Commissioner**—(1) The functions of the Commissioner shall be to— 35

(a) Inquire into any matter, including any enactment or law, or any practice or procedure whether governmental or non-governmental, or any technical

development, if it appears to him that the privacy of the individual is being, or may be, unduly infringed thereby:

- 5 (b) Report to the Minister from time to time on the need for or the desirability of taking legislative, administrative, or other action to give protection or better protection to the privacy of the individual:
  - 10 (c) Report to the Minister on any other matter relating to privacy that, in the opinion of the Commissioner, should be drawn to the Minister's attention:
  - (d) Report to the Minister on any other matter relating to privacy on which the Minister has requested a report:
  - 15 (e) Carry out any functions conferred on him by any other enactment.
- (2) The Commissioner may—
- (a) Gather such information as in his opinion will assist him in carrying out his functions under this Act:
  - 20 (b) Receive and invite representations from members of the public on any matter affecting the privacy of the individual:
  - (c) Disseminate information in relation to any matter affecting the privacy of the individual generally or the privacy of any class of individuals:
  - 25 (d) Make public statements in relation to any matter affecting the privacy of the individual generally or the privacy of any class of individuals.
- (3) The Commissioner shall have—
- 30 (a) Such powers as are reasonably necessary for the effective performance of his functions; and
  - (b) Such powers and functions as are conferred on him by any other enactment.

**9. Commissioner and staff to maintain secrecy—**(1) The Commissioner and every officer and employee of the Commissioner shall be deemed for the purposes of the Official Secrets Act 1951 to be persons holding office under Her Majesty.

(2) The Commissioner and every such officer and employee shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions, except so far as is required for the purpose of giving effect to this Act and any other enactment that confers powers and functions on the Commissioner.

**10. Reports, etc.**—(1) The Commissioner shall not, in any report or statement made pursuant to this Act, make any comment that is adverse to any person, unless the person has been given an opportunity to be heard.

(2) The Commissioner shall not, except in a report made to the Minister pursuant to this Act, disclose any matter of the kind referred to in section 12 (1) of this Act. 5

**11. Evidence**—(1) The Commissioner may from time to time require any person who in his opinion is able to give any information relating to a matter which is being investigated by the Commissioner to furnish to him any such information, and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. 10 15

(2) The Commissioner may summon before him and examine on oath any person who in the Commissioner's opinion is able to give any such information as aforesaid and for that purpose may administer an oath. Every such investigation by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury). 20

(3) Subject to the provisions of this section, every such person shall be obliged to answer any questions put to him by the Commissioner but shall have the same privilege in relation to the production of documents and papers and things as witnesses have in any Court. 25

(4) No person shall be required to supply any information to or to answer any question put by the Commissioner in relation to any matter, or to produce to the Commissioner any document or paper or thing relating to any matter, in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act, other than the Official Secrets Act 1951 or the State Services Act 1962. 30 35

(5) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of an investigation by the Commissioner shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of an investigation by the Commissioner shall be given against any person. 40

(6) No person shall be liable to prosecution for an offence against any enactment by reason of his compliance with any requirement of the Commissioner under this section.

(7) Where any person is required by the Commissioner to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in a Court, and the provisions of any regulations in that behalf under the Summary Proceedings Act 1957 and for the time being in force shall apply accordingly. For the purposes of this subsection the Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

Cf. 1971, No. 150, s. 16

15 **12. Disclosure of certain matters not to be required—**

(1) Where the Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing—

20 (a) Might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation), or the investigation or detection of offences; or

25 (b) Might involve the disclosure of the deliberations of Cabinet; or

(c) Might involve the disclosure of proceedings of Cabinet, or of any committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest—

30 the Commissioner shall not require the information or answer to be given or, as the case may be, the document or paper or thing to be produced.

35 (2) Subject to the provisions of subsection (1) of this section, the rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by the Commissioner.

**13. Privilege**—(1) Except in the case of proceedings for an offence against the Official Secrets Act 1951,—

(a) No proceedings, civil or criminal, shall lie against the Commissioner or any officer or employee of the Commissioner for anything he may do or report or say in the course of the exercise or intended exercise of his duties under this Act, unless it is shown that he acted in bad faith: 5

(b) The Commissioner and any such officer or employee as aforesaid, shall, subject to subsection (5) of section 11 of this Act, not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions. 10

(2) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any investigation by the Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court. 15

(3) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand. 20

Cf. 1971, No. 150, s. 20 25

**14. Offences**—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$200 who—

(a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commissioner in the exercise of his powers under this Act: 30

(b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner under this Act:

(c) Wilfully makes any false statement to or misleads or attempts to mislead the Commissioner in the exercise of his powers under this Act. 35

Cf. 1971, No. 150, s. 29

**15. Exclusion from State Services Act 1962 and Superannuation Act 1956**—No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State 40



Services Act 1962 or the Superannuation Act 1956 by reason of his appointment as the Privacy Commissioner or as an officer or employee of the Commissioner.

**16. Remuneration and administrative expenses**—(1) The  
5 remuneration and allowances payable to persons appointed under this Act, and the terms and conditions of their appointments, shall be such as are approved by the Minister of Finance.

(2) All such remuneration and allowances, and all other  
10 expenditure incurred in the administration of this Act, shall be payable out of money to be appropriated by Parliament for the purpose.

**17. Annual report**—(1) The Commissioner shall, as soon as practicable after the 1st day of April in each year, report  
15 to the Minister on the exercise of his functions and powers under this Act during the 12 months preceding that date.

(2) Each such report shall be laid by the Minister before Parliament as soon as practicable after he receives it.

**18. Provision for superannuation for Commissioner and  
20 staff**—For the purposes of providing employer-subsidised superannuation for the Commissioner and his officers and employees, and for dependants of the Commissioner and his officers and employees, the Commissioner may, out of money appropriated by Parliament for the purpose, subsidise or  
25 contribute to—

- (a) The New Zealand Superannuation Fund; or
- (b) Any superannuation fund or scheme that has been established under the National Provident Fund Act 1950 and approved as an alternative scheme under  
30 Part III of the New Zealand Superannuation Act 1974; or
- (c) With the approval of the Minister of Finance, any other superannuation fund or scheme that has been approved as an alternative scheme under Part III  
35 of the New Zealand Superannuation Act 1974.