

## HOUSE OF REPRESENTATIVES

## Supplementary Order Paper

Wednesday, 15 June 1988

## HEALTH ACTS AMENDMENT BILL

*Proposed Amendments*

Hon. Mr CAYGILL, in Committee, to move the following amendments:

*Health*

*Proposed clause 5A:* To insert on page 5, after clause 5, the following clause:

**5A. New Part (relating to collection and use of personal information) inserted**—The principal Act is hereby amended by inserting, after Part I (as amended by section 73 (1) of the Factories and Commercial Premises Act 1981), the following Part:

## "Part IA

## COLLECTION AND USE OF PERSONAL INFORMATION

"22B. **Interpretation and application**—(1) In this Part of this Act, unless the context otherwise requires,—

" 'Collection' means any decision, recommendation, act, or omission that would be likely to result in personal information being held by the Department; and 'collect' has a corresponding meaning:

" 'Department' means the Department of Health; and includes any person employed or engaged in the service of the Department of Health:

" 'Matched' means the comparison of different categories or sets of records to determine whether identical, similar, or conflicting information appears in them; and 'matching' has a corresponding meaning:

" 'Official information' has the same meaning as it has in the Official Information Act 1982:

" 'Organisation' has the same meaning as it has in the Official Information Act 1982; and includes any person employed in or engaged by an organisation:

" 'Personal information' has the same meaning as it has in the Official Information Act 1982:

" 'Subject', in relation to official information, means a natural person who has a right of access to that information under section 24 (1) of the Official Information Act 1982:

" 'Use' includes—

"(a) Disclosure of any personal information to any person; and

"(b) Giving or allowing any person to have access to any personal information.

“(2) This Part of this Act shall apply to every person who, being an independent contractor engaged by the Department, holds personal information for the Department in his or her capacity as such contractor as if references to the Department were references to the contractor.

“22c. **Department to collect personal information only where reasonably necessary**—The Department shall not collect personal information unless it is reasonably necessary to do so in connection with the duties or functions of the Department.

“22d. **Department to supply particulars to person from whom personal information collected**—(1) Subject to subsection (3) of this section, where the Department collects any personal information, it shall advise the person from whom it is collected of the following particulars:

“(a) The use that is to be made of the personal information:

“(b) Whether the collection of the personal information is required, or is authorised, by or under any enactment:

“(c) The effect (if any) on that person if he or she fails to provide any required personal information:

“(d) The categories of persons who will have access to the personal information:

“(e) The rights of access to, and correction of, personal information under the Official Information Act 1982.

“(2) The Department shall supply the required particulars before, on, or as soon as practicable after collecting the personal information.

“(3) It shall not be necessary to comply with this section where to do so might prejudice any interest referred to in section 6 of the Official Information Act 1982.

“22e. **Protection of personal information collected**—The Department shall take all reasonable steps to ensure that personal information collected by the Department is protected from—

“(a) Unauthorised access, unauthorised alteration, and unauthorised destruction; and

“(b) Any use that is not authorised by this Act or by the Official Information Act 1982.

“22f. **Uses to which personal information may be put**—

(1) Except as provided in subsection (2) of this section, the Department shall not use any personal information collected by it otherwise than—

“(a) For the purpose notified in accordance with section 22d(1)(a) of this Act; or

“(b) Where, in reliance on section 22d(3) of this Act, no purpose was so notified, for the purpose for which the information was collected.

“(2) The Department may use any such personal information for any other purpose, or may match any personal information, if, but only if,—

“(a) The subject of the personal information consents to the different use or to the matching; or

“(b) The different use is, in the opinion of the Department, sufficiently similar to that for which the personal

information was collected for it to be fair to so use that personal information; or

- “(c) The personal information could not be withheld under any of sections 10, 18, 23, and 27 of the Official Information Act 1982; or
  - “(d) The different use, or the matching, is authorised by any enactment; or
  - “(e) The person who uses the personal information has reasonable cause to believe that the different use is necessary to protect the health or safety of members of the public; or
  - “(f) The different use is at the request, in writing, of a department of State, or of a Minister of the Crown, or of an organisation, for the purpose of—
    - “(i) The security or defence of New Zealand; or
    - “(ii) The maintenance of the law, including the prevention, investigation, and detection of offences,—
 and the request describes the personal information and specifies the different use to which it is to be put; or
  - “(g) The different use is *bona fide* research, and the person undertaking the research (where that person is not employed or engaged in the service of the Department) undertakes in writing addressed to the Department that the personal information will not be disclosed to any other natural or legal person in any way as a result of which the identity of the subject of the personal information could reasonably be expected to be made known; or
  - “(h) The different use is necessary for the purpose of carrying out authorised internal or external audits.
- “(3) The Department shall keep a record of each occasion on which personal information is put to a different use in reliance on subsection (2) of this section, together with a description of that different use.
- “(4) Nothing in this section shall limit or affect any powers of—
- “(a) A Court; or
  - “(b) Any tribunal in the exercise of, its judicial function; or
  - “(c) A Royal Commission; or
  - “(d) A Commission of Inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908; or
  - “(e) A Commission of Inquiry, or Board of Inquiry, or Court of Inquiry, or Committee of Inquiry, appointed pursuant to, and not by, any provision of an Act to inquire into a specified matter; or
  - “(f) An Ombudsman appointed under the Ombudsmen Act 1975; or
  - “(g) The Controller and Auditor-General appointed under the Public Finance Act 1977; or
  - “(h) The Parliamentary Commissioner of the Environment appointed under the Environment Act 1986; or
  - “(i) The Police Complaints Authority appointed under the Police Complaints Authority Act 1988.

**“22G. Offences—**Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who, without reasonable excuse, contravenes or fails to comply with any of the provisions of sections 22c to 22f of this Act.”

*Area Health Boards*

*Proposed clause 17A:* To insert on page 16, after clause 17, the following clause:

**17A. New heading and sections (relating to collection and use of personal information) substituted—**The principal Act is hereby amended by repealing section 50 and section 51 (as substituted by section 5 of the Area Health Boards Amendment Act 1986), and substituting the following heading and sections:

*“Collection and Use of Personal Information*

**“50. Interpretation and application—**(1) For the purposes of sections 51 to 51D of this Act, unless the context otherwise requires,—

“‘Board’ includes any person employed or engaged in the service of a board:

“‘Collection’ means any decision, recommendation, act, or omission that would be likely to result in personal information being held by the board; and ‘collect’ has a corresponding meaning:

“‘Matched’ means the comparison of different categories or sets of records to determine whether identical, similar, or conflicting information appears in them; and ‘matching’ has a corresponding meaning:

“‘Official information’ has the same meaning as it has in the Official Information Act 1982:

“‘Organisation’ has the same meaning as it has in the Official Information Act 1982; and includes any person employed or engaged by an organisation:

“‘Personal information’ has the same meaning as it has in the Official Information Act 1982:

“‘Subject’, in relation to official information, means a natural person who has a right of access to that information under section 24 (1) of the Official Information Act 1982:

“‘Use’ includes—

“(a) Disclosure of any personal information to any person; and

“(b) Giving or allowing any person to have access to any personal information.

**“(2) Sections 51 to 51D** of this Act shall apply to every person who, being an independent contractor engaged by a board, holds personal information for the Board in his or her capacity as such contractor as if references to the board were references to the contractor.

**“51. Board to collect personal information only where reasonably necessary—**A board shall not collect personal information unless it is reasonably necessary to do so in connection with the duties or functions of the board.

**“51A. Board to supply particulars to person from whom personal information collected—**(1) Subject to

subsection (3) of this section, where a board collects any personal information, it shall advise the person from whom it is collected of the following particulars:

“(a) The use that is to be made of the personal information:

“(b) Whether the collection of the personal information is required, or is authorised, by or under any enactment:

“(c) The effect (if any) on that person if he or she fails to provide any required personal information:

“(d) The categories of persons who will have access to the personal information:

“(e) The rights of access to, and correction of, personal information under the Official Information Act 1982.

“(2) The board shall supply the required particulars before, on, or as soon as practicable after collecting the personal information.

“(3) It shall not be necessary to comply with this section where to do so might prejudice any interest referred to in section 6 of the Official Information Act 1982.

“51B. **Protection of personal information collected**—A board shall take all reasonable steps to ensure that personal information collected by the board is protected from—

“(a) Unauthorised access, unauthorised alteration, and unauthorised destruction; and

“(b) Any use that is not authorised by this Act or by the Official Information Act 1982.

“51c. **Uses to which personal information may be put**—(1) Except as provided in subsection (2) of this section, a board shall not use any personal information collected by it otherwise than—

“(a) For the purpose notified in accordance with section 51A(1)(a) of this Act; or

“(b) Where, in reliance on section 51A(3) of this Act, no purpose was so notified, for the purpose for which the information was collected.

“(2) A board may use any such personal information for any other purpose, or may match any personal information, if, but only if,—

“(a) The subject of the personal information consents to the different use or to the matching; or

“(b) The different use is, in the opinion of the board, sufficiently similar to that for which the personal information was collected for it to be fair to so use that personal information; or

“(c) The personal information could not be withheld under any of sections 10, 18, 23, and 27 of the Official Information Act 1982; or

“(d) The different use, or the matching, is authorised by any enactment; or

“(e) The person who uses the personal information has reasonable cause to believe that the different use is necessary to protect the health or safety of members of the public; or

“(f) The different use is at the request, in writing, of a department of State, or of a Minister of the Crown, or of an organisation, for the purpose of—

“(i) The security or defence of New Zealand; or  
 “(ii) The maintenance of the law, including the prevention, investigation, and detection of offences,—

and the request describes the personal information and specifies the different use to which it is to be put; or

“(g) The different use is *bona fide* research, and the person undertaking the research (where that person is not employed or engaged in the service of the board) undertakes in writing addressed to the board that the personal information will not be disclosed to any other natural or legal person in any way as a result of which the identity of the subject of the personal information could reasonably be expected to be made known; or

“(h) The different use is necessary for the purpose of carrying out authorised internal or external audits.

“(3) The board shall keep a record of each occasion on which personal information is put to a different use in reliance on subsection (2) of this section, together with a description of that different use.

“(4) Nothing in this section shall limit or affect any powers of—

“(a) A Court; or

“(b) Any tribunal in the exercise of its judicial function; or

“(c) A Royal Commission; or

“(d) A Commission of Inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908; or

“(e) A Commission of Inquiry, or Board of Inquiry, or Court of Inquiry, or Committee of Inquiry, appointed pursuant to, and not by, any provision of an Act to inquire into a specified matter; or

“(f) An Ombudsman appointed under the Ombudsmen Act 1975; or

“(g) The Controller and Auditor-General appointed under the Public Finance Act 1977; or

“(h) The Parliamentary Commissioner of the Environment appointed under the Environment Act 1986; or

“(i) The Police Complaints Authority appointed under the Police Complaints Authority Act 1988.

“51D. **Offences**—Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who, without reasonable excuse, contravenes or fails to comply with any of the provisions of sections 51 to 51c of this Act.”

*Proposed clause 20A:* To insert on page 18, after clause 20, the following clause:

**20A. Repeals and amendment**—(1) Section 96 (a) of the principal Act is hereby repealed.

(2) Section 5 of the Area Health Boards Amendment Act 1986 is hereby consequentially repealed.

(3) Part II of the First Schedule to the Summary Proceedings Act 1957 (as amended by section 5 (2) of the Area Health Boards Act 1986) is hereby amended by omitting the item that relates to section 51 of the principal Act.

*Hospitals*

*Proposed clause 29A:* To insert on page 24, after clause 29, the following clause:

**29A. New heading and sections (relating to collection and use of personal information) substituted**—The principal Act is hereby amended by repealing section 62 (as substituted by section 3 (1) of the Hospitals Amendment Act 1980) and section 62A (as substituted by section 5 of the Hospitals Amendment Act 1986), and substituting the following heading and sections:

*“Collection and Use of Personal Information*

**“62. Interpretation and application**—(1) For the purposes of sections 62A to 62E of this Act, unless the context otherwise requires,—

“‘Board’ includes any person employed or engaged in the service of the Board:

“‘Collection’ means any decision, recommendation, act, or omission that would be likely to result in personal information being held by the Board; and ‘collect’ has a corresponding meaning:

“‘Matched’ means the comparison of different categories or sets of records to determine whether identical, similar, or conflicting information appears in them; and ‘matching’ has a corresponding meaning:

“‘Official information’ has the same meaning as it has in the Official Information Act 1982:

“‘Organisation’ has the same meaning as it has in the Official Information Act 1982; and includes any person employed in or engaged by an organisation:

“‘Personal information’ has the same meaning as it has in the Official Information Act 1982:

“‘Subject’, in relation to official information, means a natural person who has a right of access to that information under section 24 (1) of the Official Information Act 1982:

“‘Use’ includes—

“(a) Disclosure of any personal information to any person; and

“(b) Giving or allowing any natural or legal person to have access to any personal information.

“(2) Sections 62A to 62E of this Act shall apply to every person who, being an independent contractor engaged by a Board, holds personal information for the Board in his or her capacity as such contractor as if references to the Board were references to the contractor.

**“62A. Board to collect personal information only where reasonably necessary**—A Board shall not collect personal information unless it is reasonably necessary to do so in connection with the duties or functions of the Board.

**“62B. Board to supply particulars to person from whom personal information collected**—(1) Subject to subsection (3) of this section, where a Board collects any personal information, it shall advise the person from whom it is collected of the following particulars:

“(a) The use that is to be made of the personal information:

“(b) Whether the collection of the personal information is required, or is authorised, by or under any enactment:

“(c) The effects (if any) on that person if he or she fails to provide any required personal information:

“(d) The categories of persons who will have access to the personal information:

“(e) The rights of access to, and correction of, personal information under the Official Information Act 1982.

“(2) The Board shall supply the required particulars before, on, or as soon as practicable after collecting the personal information.

“(3) It shall not be necessary to comply with this section where to do so might prejudice any interest referred to in section 6 of the Official Information Act 1982.

**“62c. Protection of personal information collected—**A Board shall take all reasonable steps to ensure that personal information collected by the Board is protected from—

“(a) Unauthorised access, unauthorised alteration, and unauthorised destruction; and

“(b) Any use that is not authorised by this Act or by the Official Information Act 1982.

**“62d. Uses to which personal information may be put—**(1) Except as provided in subsection (2) of this section, a Board shall not use any personal information collected by it otherwise than—

“(a) For the purpose notified in accordance with section 62b (1) (a) of this Act; or

“(b) Where, in reliance on section 62b (3) of this Act, no purpose was so notified, for the purpose for which the information was collected.

“(2) A Board may use any such personal information for any other purpose, or may match any personal information, if, but only if,—

“(a) The subject of the personal information consents to the different use or to the matching; or

“(b) The different use is, in the opinion of the Board, sufficiently similar to that for which the personal information was collected for it to be fair to so use that personal information; or

“(c) The personal information could not be withheld under any of sections 10, 18, 23, and 27 of the Official Information Act 1982; or

“(d) The different use, or the matching, is authorised by any enactment; or

“(e) The person who uses the personal information has reasonable cause to believe that the different use is necessary to protect the health or safety of members of the public; or

“(f) The different use is at the request, in writing, of a department of State, or of a Minister of the Crown, or of an organisation, for the purpose of—

“(i) The security or defence of New Zealand; or

“(ii) The maintenance of the law, including the prevention, investigation, and detection of offences,—



and the request describes the personal information and specifies the different use to which it is to be put; or

“(g) The different use is *bona fide* research, and the person undertaking the research (where that person is not employed or engaged in the service of the Board) undertakes in writing addressed to the Board that the personal information will not be disclosed to any other natural or legal person in any way as a result of which the identity of the subject of the personal information could reasonably be expected to be made known; or

“(h) The different use is necessary for the purpose of carrying out authorised internal or external audits.

“(3) The Board shall keep a record of each occasion on which personal information is put to a different use in reliance on subsection (2) of this section, together with a description of that different use.

“(4) Nothing in this section shall limit or affect any powers of—

“(a) A Court; or

“(b) Any tribunal in the exercise of its judicial function; or

“(c) A Royal Commission; or

“(d) A Commission of Inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908; or

“(e) A Commission of Inquiry, or Board of Inquiry, or Court of Inquiry, or Committee of Inquiry, appointed pursuant to, and not by, any provision of an Act to inquire into a specified matter; or

“(f) An Ombudsman appointed under the Ombudsmen Act 1975; or

“(g) The Controller and Auditor-General appointed under the Public Finance Act 1977; or

“(h) The Parliamentary Commissioner of the Environment appointed under the Environment Act 1986; or

“(i) The Police Complaints Authority appointed under the Police Complaints Authority Act 1988.

“62E. **Offences**—Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who, without reasonable excuse, contravenes or fails to comply with any of the provisions of sections 62A to 62D of this Act.”

*Proposed clause 32A:* To insert on page 25, after clause 32, the following clause:

**32A. Repeals and amendment**—(1) The following enactments are hereby consequentially repealed:

(a) Sections 3 and 4 (3) of the Hospitals Amendment Act 1980;

(b) Section 10 of the Hospitals Amendment Act 1981;

(c) Sections 2 (3) and 5 of the Hospitals Amendment Act 1986.

(2) Part II of the First Schedule to the Summary Proceedings Act 1957 (as amended by section 4 (3) of the Hospitals Amendment Act 1980) is hereby amended by omitting the item relating to section 62A of the principal Act.

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**EXPLANATORY NOTE**

The amendments insert in the Health Act 1956, the Area Health Boards Act 1983, and the Hospitals Act 1957 new provisions relating to the collection and use of personal information. The provisions are based broadly on the recommendations of the Information Authority on the subject of the Collection and Use of Personal Information: *see* Parliamentary paper E. 27B.