

Date: 24 May 2018

To: **Justice Committee**  
**Parliament Buildings**  
**Wellington**

From: Christchurch City Council

## **Privacy Bill**

### **1.0 Introduction**

- 1.1 The Council thanks the Select Committee for the opportunity to make a submission on the Privacy Bill (**Bill**). This submission was adopted by the Council at its meeting on 24 May 2018.
- 1.2 The Council supports this Bill. It wishes to make submissions on three specific aspects of the Bill and alert the Committee to one drafting error in Schedule 2 of the Bill.
- 1.5 The Council does not wish to appear in support of its submission.

### **2.0 Submission on mandatory reporting of privacy breaches**

- 2.1 The Council supports the new provisions relating to the mandatory reporting of privacy breaches to the Privacy Commissioner and affected individuals. In the Bill a notifiable privacy breach means a privacy breach that has caused any of the types of harm listed in section 75(2)(b) to an affected individual or individuals or there is a risk it will do so. The types of harm are that the action
- 2.1.1 has caused, or may cause, loss, detriment, damage, or injury to the individual; or
  - 2.1.2 has adversely affected, or may adversely affect, the rights, benefits, privileges, obligations, or interests of the individual; or
  - 2.1.3 has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of the individual.
- 2.2 Council staff have identified that it will be difficult for the Council to make an assessment as to whether this type of harm has occurred or may occur. At a minimum, the Bill should include a requirement that the Privacy Commissioner issue guidelines as to how this test should be applied. In the alternative, staff recommend that the provision is amended to make the test clearer to apply.

### **3.0 Compliance notices**

- 3.1 The Council supports the Privacy Commissioner having the ability to issue compliance notices to an agency if he or she considers that one or both of the following may have occurred:
- 3.1.1 a breach of the Act, including an action listed in section 75(2)(a) or non-compliance with a public register privacy principle:
  - 3.1.2 an action that is to be treated as a breach of an information privacy principle or an interference with the privacy of an individual under another Act

- 3.2 A compliance notice will require the agency to remedy the breach. Before a compliance notice is issued the Commissioner must consider a number of factors including whether the agency has been co-operative in all dealings with the Commissioner. The Council considers that this is not a relevant consideration. What should be taken into account are any comments or responses of the agency about the breach to the Privacy Commissioner.

#### **4.0 Human Rights Review Tribunal**

- 4.1 The Bill retains the role of the Director of the Human Rights Review Tribunal, and the Tribunal as the body that determines proceedings. The Privacy Commissioner may refer a complaint or matter to the Director in certain circumstances. The Council supports this approach so long as the Director and Tribunal are properly resourced to deal with proceedings. The delays in the Tribunal for hearings of cases of up to two to three years have been well-publicised. For example, see the briefing<sup>1</sup> of the Privacy Commissioner to the incoming Minister of Justice in 2017, where he stated as follows:

*“... there are significant delays in cases being decided and the effectiveness of the Tribunal as a means of dispute resolution is greatly reduced. The impact of this upon parties’ ability to have access to justice is concerning. We understand the Tribunal has, amongst other measures, taken drastic action by suspending the setting down of cases for hearing unless urgent, to address the significant backlog.”*

#### **5.0 Drafting Error – Schedule 2**

- 5.1 Schedule 2 of the Bill lists the Public Registers. It includes reference to the following:

Sale of Liquor Act 1989                      Sections 220 and 221

- 5.2 The Sale of Liquor Act 1989 was repealed in 2013 and the correct reference should be to sections 65 and 66 of the Sale and Supply of Alcohol Act 2012.

#### **6.0 Concluding Remarks**

- 6.1 If you require clarification on the points raised in this submission, or additional information, please contact Vivienne Wilson, Associate General Counsel at Vivienne.Wilson@ccc.govt.nz

Yours faithfully



Lianne Dalziel

**Mayor  
Christchurch City Council**

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<sup>1</sup> <https://www.privacy.org.nz/news-and-publications/reports-to-parliament-and-government/briefing-for-the-incoming-minister-2017/>