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# BILLS DIGEST

Digest No. 1731

## Privacy (Cross-border Information) Amendment Bill 2008 (2009 No 221-2)

<b>Date of Introduction:</b>	02 July 2008
<b>Portfolio:</b>	Justice
<b>Select Committee:</b>	Justice and Electoral
<b>Date report presented:</b>	30 September 2009
<b>Published: 14 December 2009</b>  Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The aim of the Bill as introduced is to amend the Privacy Act 1993 (the Act) to reduce the likelihood of New Zealand being used as an intermediary for the avoidance of other State's privacy laws by:

- removing the current restrictions on who may make an information privacy request;
- enabling public sector agencies to charge for making personal information available to overseas foreign nationals;
- providing for the referral of cross-border complaints to the appropriate privacy enforcement authority; and
- establishing a mechanism for controlling the transfer of information outside of New Zealand where the information has been routed through New Zealand to circumvent the privacy laws of the country from where the information originated (*Clause 3, the "purpose clause"*).

The Bill as introduced is described in [Bills Digest No 1630](#).

## Main changes to the Bill

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### Transfer of personal information outside New Zealand

The Bill authorises the Privacy Commissioner to prohibit the transfer of personal information from New Zealand to another State if the Commissioner is satisfied on reasonable grounds that:

- the information has been, or will be, received in New Zealand from another State and is likely to be transferred to a third State where it will not be subject to a law providing privacy protection comparable to that established by the Act;
- the transfer may circumvent the laws of the State where the information originated;
- the transfer would be likely to contravene the basic principles of national application set out in Part 2 of the OECD Guidelines (*Clause 8, inserting New Part 11A into the Act, New Section 114B(1)*).

The OECD Guidelines are defined in the Bill as " ... the Organisation for Economic Co-operation and Development Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data" (*Clause 8, inserting New Part 11A into the Act, New Section 114A, definition of "OECD Guidelines"*).

The Select Committee heard concerns " ... that the way the basic principles of national application in the OECD Guidelines have been incorporated in the bill might result in future changes in the Guidelines being incorporated into the statutory framework of the Privacy Act without examination by Parliament.

The Select Committee has therefore recommended that the basic principles of national application be set out in the Bill in a schedule and that the Governor-General be given power in the Bill to make regulations to amend the new schedule to reflect any changes made by the OECD in the Guidelines. The Select Committee noted that amendments to the new schedule would be subject to the Regulations (Disallowance) Act 1989 and so would be scrutinised by Parliament (*Clause 8, inserting New Part 11A into the Act, amending New Section 114B(1); inserting New Clause 8A into the Bill, inserting New Section 128A into the Act; inserting New Clause 8B into the Bill, inserting New Schedule 5A into the Act*).

### Commissioner's power to obtain information

The Select Committee has recommended that it be made explicit in the Bill that when determining whether to prohibit a transfer of personal information, the Privacy Commissioner may use the investigative powers in the Act, in the same way as if the Commissioner were conducting an inquiry under the Act. This would ensure that the Commissioner could hear or obtain information from any person he or she considered necessary (*Clause 8, inserting New Part 11A into the Act, inserting New Section 114BA; cf. Part 9 of the Act (Powers of investigation) and Section 13(1(m) of the Act (Inquiries)*).

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