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# Statement of Intent

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1 July 2014 – 30 June 2018

The Privacy Commissioner  
Te Mana Matapono Matatapu

*Presented to the House of Representatives  
Pursuant to section 139 of the Crown Entities Act 2004*

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## INTRODUCTION FROM THE PRIVACY COMMISSIONER

I have taken up my appointment as Privacy Commissioner at time of unprecedented domestic and international interest in data protection and personal privacy.

In an age where computer processing power doubles every two years, and new ways for people to interact with each other over the internet explode into our consciousness before their implications can be fully realised, it might seem presumptuous for an office like mine to commit to a four year strategic plan. The challenges are manifest and further change is a certainty.

Our legal framework must be fit for those challenges. One of my key priorities is to work with officials on a refresh of the Privacy Act, as recommended by the Law Commission, to better reflect the experience of more than 20 years. The comprehensive proposals, which have been accepted by the Government, include giving the Privacy Commissioner greater powers to enforce the Act. This will be a welcome addition to the tools available to us to maintain public confidence in the oversight of personal data protection.

Our independence as a regulator and watchdog is similarly important to maintaining credibility in the eyes of consumers, citizens and agencies. However independence does not mean that we can be blind to Government priorities, particularly when those programmes have implications for individual privacy.

I am pleased to be able to contribute to the Government's Better Public Services result areas, both in the ways in which we operate, and in assisting the wider public sector to achieve in the key result areas in ways which are cognisant and respectful of privacy values.

My goal is to make privacy easy; for agencies to comply with, for consumers and citizens to choose privacy promoting options, and to enable ready access to remedies when things go wrong.

A very welcome increase in our baseline funding as part of the 2014 budget will help us to achieve these objectives, and I look forward to reporting on our progress over the term of this Statement of Intent.



John Edwards  
Privacy Commissioner

## NATURE AND SCOPE

The function of the Privacy Commissioner is to promote and protect individual privacy.

The Privacy Commissioner administers the Privacy Act 1993 (the Act) and a variety of Codes made under the Act. Within the statutory functions as described in Section 13 of the Act, the Privacy Commissioner undertakes a range of diverse roles across government, business and society at large. The Privacy Commissioner is a corporation sole and an independent Crown entity under the Crown Entities Act 2004, and acts independently in carrying out his functions.

The Privacy Commissioner undertakes six core functions:

Function	Actions
<b>Legislation and policy</b>	Comment and respond on legislative, policy or administrative proposals that impact on the privacy of individuals, including to Cabinet or select committees
<b>Complaints and Investigations</b>	Manage an independent responsive complaints and investigation process
<b>Education and awareness</b>	Activities include: <ul style="list-style-type: none"> <li>• 0800 enquiries helpline with 7,000+ calls per year</li> <li>• Website and publications</li> <li>• Training workshops, seminars and speeches</li> <li>• Responses to media enquiries</li> </ul>
<b>Information matching programmes</b>	Monitor and report on authorised data matching programmes, and information sharing across government
<b>Codes of practice</b>	Through a process of private and public sector consultation develop codes to modify the information privacy principles or prescribe how the information privacy principles are to be applied or complied with in a particular industry or context
<b>International</b>	Active in international forums with our trading partners in the Asia-Pacific region and European Union countries Ensure New Zealand is recognised as having privacy protections suitable for acceptance by the international community Work towards business friendly privacy enforcement internationally through the Global Privacy Enforcement Network (GPEN) while at the same time affording suitable protections for individual privacy

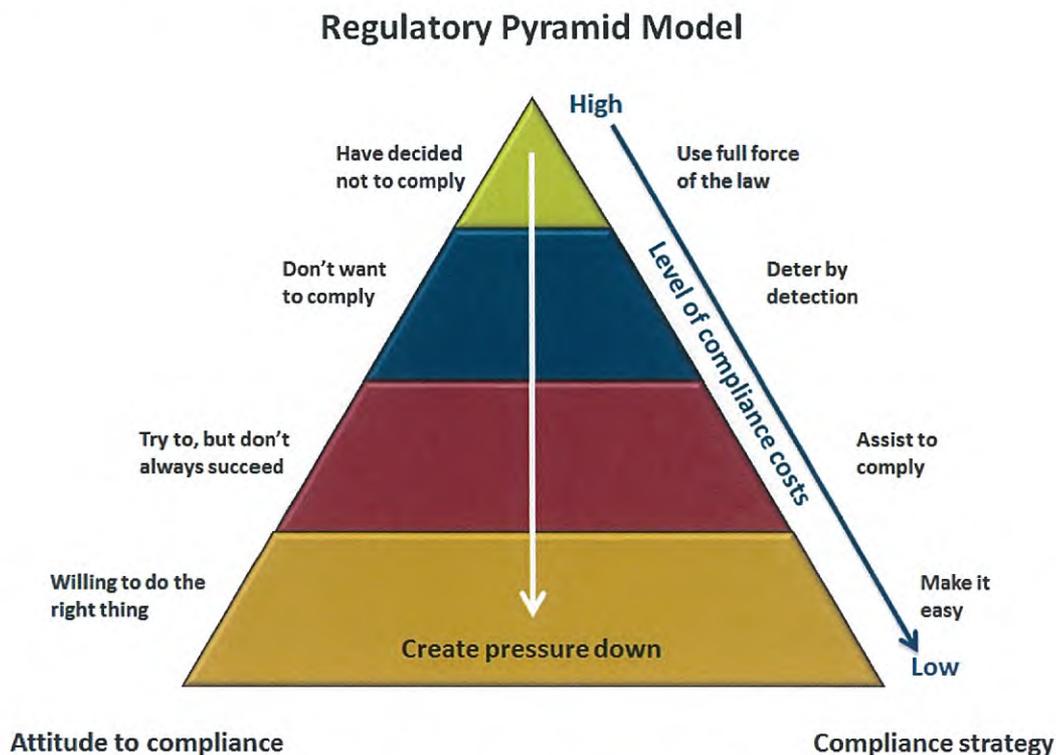
## OPERATING ENVIRONMENT

Personal data is increasingly a core asset for modern business operations and is essential to effective government administration and the delivery of services. The growing value of personal data increases the risk that data will be used in ways that neither the organisation nor the individual anticipated when the data was collected.

Public demand for privacy protection and a more favourable level of resources empowers the Privacy Commissioner to move to a more proactive mode. We consider that more appropriate actions need to be undertaken at the apex of the regulatory pyramid to modify unacceptable behaviour by a few in order to promote and enforce good privacy outcomes for the public as a whole.

An often quoted model of a regulatory organisational framework is Sparrow's Regulatory Pyramid Model<sup>1</sup>. The regulatory pyramid (Figure 1) argues for a hierarchy of sanctions that encourage compliance by placing most emphasis on activities that educate and influence the target group toward voluntarily compliant behaviour (i.e. self-regulation). While harsher penalties for non-compliant behaviour exist as the hierarchy extends, the organisational emphasis devoted to enacting these measures reduces.

Proponents of the pyramid model<sup>2</sup> argue that this approach is effective in promoting voluntary compliance because of its real but judicious use of serious sanctions.



**Figure 1: The Regulatory Pyramid Model**

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<sup>1</sup> Sparrow, Malcolm. 2000. *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance*. Brookings Institution Press

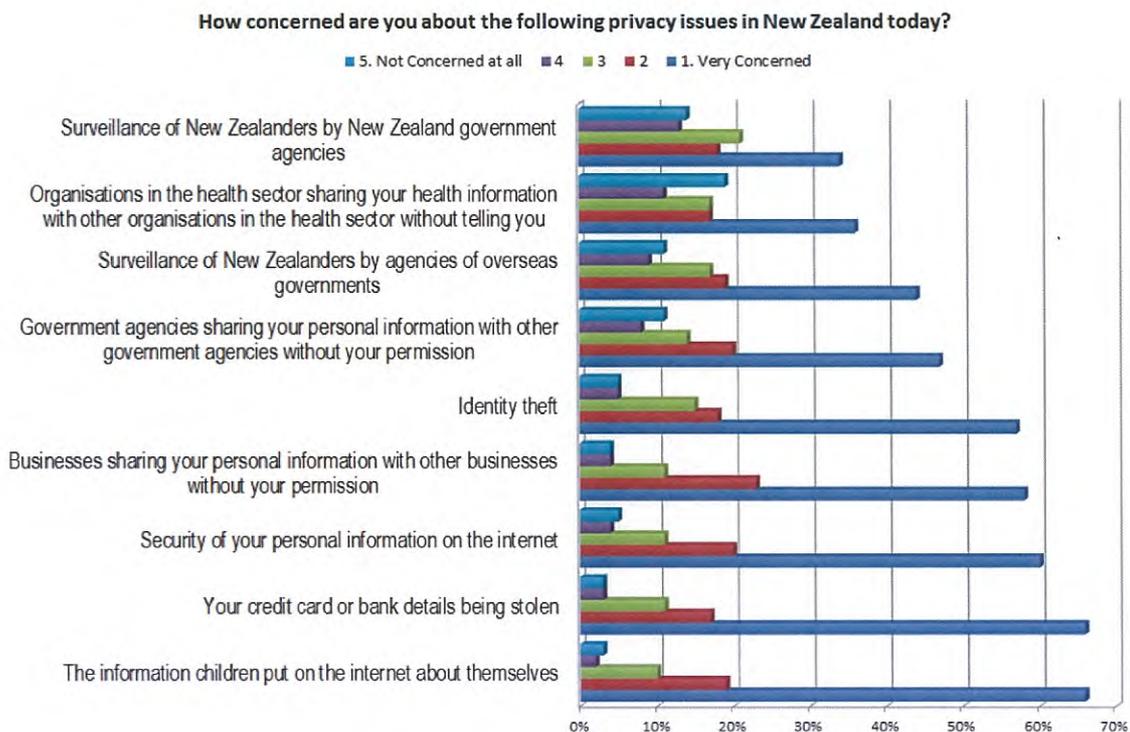
<sup>2</sup> Ayers, Ian and Braithwaite, John. 1992. *Responsive Regulation: Transcending the Deregulation Debate*. New York, NY: Oxford University Press

In the context of the Office, the Privacy Commissioner applies the regulatory model in support of the concept of making compliance easy by:

- educating and informing the public, government and business about the Privacy Commissioner's functions and processes, with a view to reducing the likelihood of complaints and/or non-compliance in the long-term, and
- judicious use of Own Motion Inquiries (OMIs) for serious and high public interest areas to influence behaviour, and demonstrate a visible public watchdog
- a focus on non-compliant and unwilling compliers
- development of a community of privacy professionals / experts.

## INDIVIDUAL PRIVACY

In March 2014 the Privacy Commissioner commissioned an independent survey on New Zealanders' views on individual privacy and the handling of personal information<sup>3</sup>. This is the sixth public survey of attitudes to privacy issues since 2001. Privacy concerns change over time and the surveys attempt to identify the issues of the time, rather than continue to report on previous issues. The survey results assist the Privacy Commissioner to better plan and select his priority work areas.



**Figure 2: Privacy concerns in New Zealand<sup>4</sup>**

<sup>3</sup> Individual privacy & personal information. UMR Omnibus Results March 2014, UMR Research.

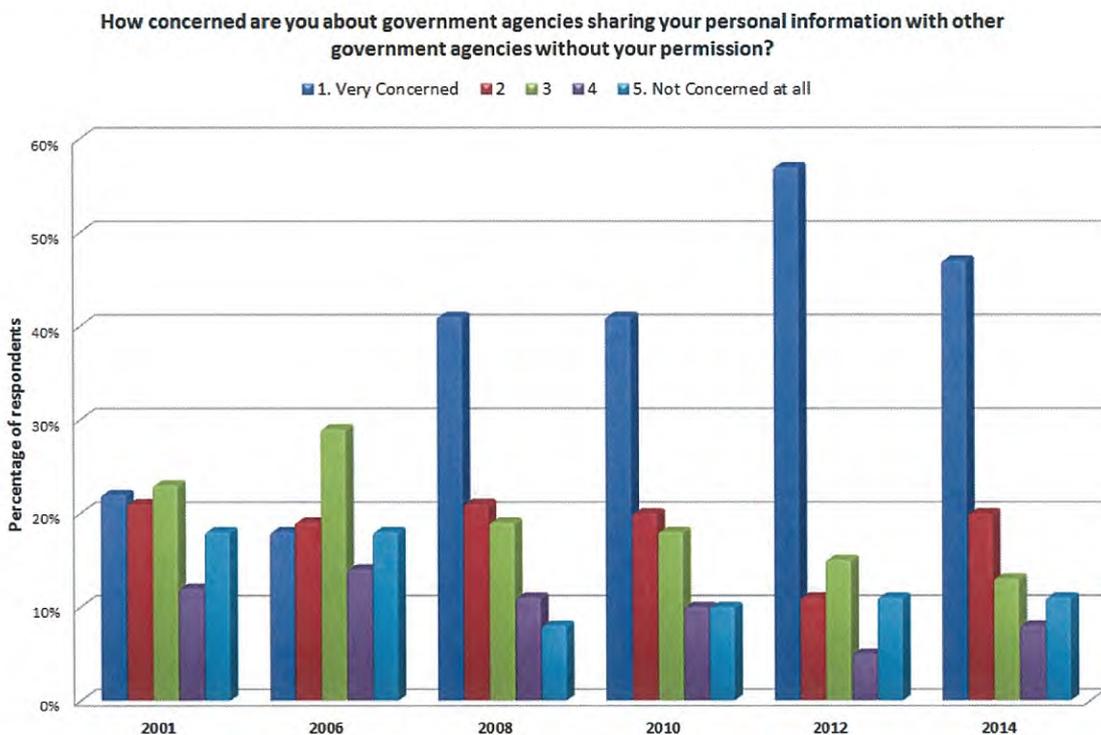
<http://privacy.org.nz/news-and-publications/surveys/privacy-survey-2014>

<sup>4</sup> Source: 'Individual privacy & personal information' UMR Omnibus Report March 2014

## TRUST IN HANDLING PERSONAL INFORMATION

Trust in government is a cornerstone of Better Public Services, and is an asset to business that, once lost, is difficult to regain.

The public attitude survey, undertaken on behalf of the Privacy Commissioner by UMR Research, identified high levels of concern amongst New Zealanders about the sharing of personal information with other government agencies.



**Figure 3: Information Sharing <sup>5</sup>**

Securing personal data has become a greater challenge. Individuals are exposed to increased potential harms including the risk of identity theft. Data breaches are occurring more frequently and data breach notification has become an increasingly important element of privacy oversight by the Privacy Commissioner.

The Privacy Commissioner will be putting significant resource into raising awareness of the need to have effective information risk management strategies in place across organisations that collect, share or use personal information.

Privacy issues and privacy breaches have been topical in the media, and a Colmar Brunton Poll<sup>6</sup>, issued on 31 October 2012, stated that 60% of respondents did not trust government departments to protect their personal details. These results are echoed in our own survey, noted above.

Government and business will be encouraged to focus on building trust, which creates value and revenue. Trust is positive and empowering for individuals. With good levels of trust, individuals are more likely to accept that the agency or business has their best interests at heart, and are less likely to feel defensive, suspicious or wary.

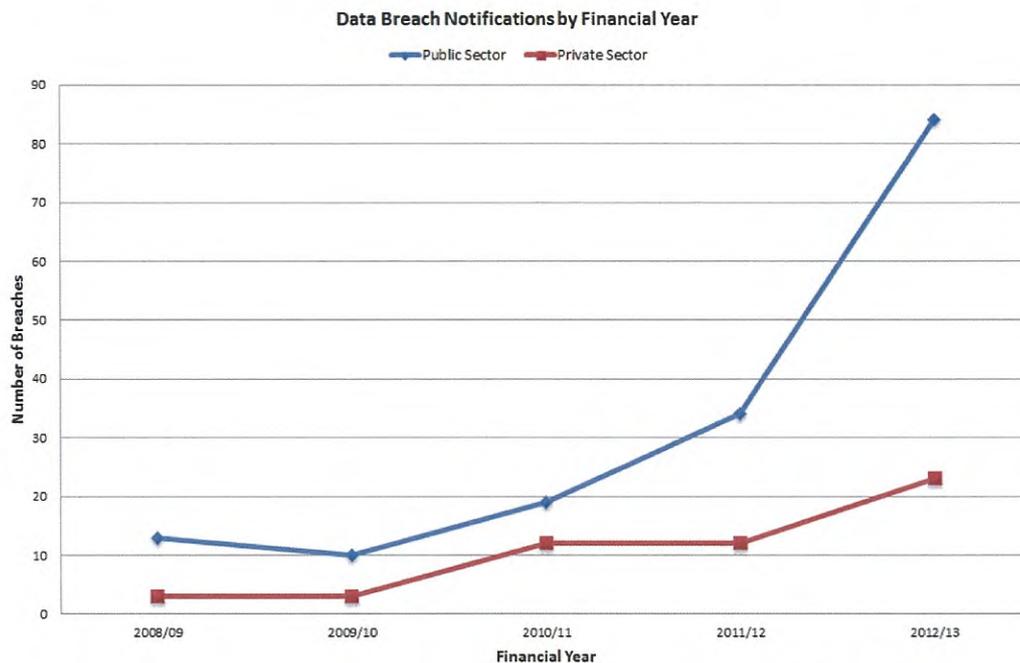
<sup>5</sup> Source: 'Individual privacy & personal information' UMR Omnibus Report March 2014

<sup>6</sup> Source: One News Colmar Brunton Poll 27-31 October 2012:

[http://www.colmarbrunton.co.nz/images/ONE\\_News\\_Colmar\\_Brunton\\_Poll\\_report\\_27-31\\_Oct\\_2012\\_NEW.pdf](http://www.colmarbrunton.co.nz/images/ONE_News_Colmar_Brunton_Poll_report_27-31_Oct_2012_NEW.pdf)

## Privacy breaches

Privacy breaches and the expectation of individuals that their personal information will be protected and used appropriately by those they have entrusted it to, is not solely the preserve of the public sector.



**Figure 4: Data breach notifications received by the Privacy Commissioner**

The competitive driver in the private sector gives businesses a reality check. Breaches of privacy lead to loss of customers, so there are some immediate financial incentives to get things right. In the public sector, the damage to public trust from privacy breaches is becoming self-evident.

Engagement with the private sector will assist to understand the issues and challenges that sector faces in managing personal information.

We receive a significant number of privacy breach notifications voluntarily from private sector and public sector agencies. Trust will be enhanced by the Privacy Commissioner undertaking effective follow-up with agencies after the data breach. We will analyse and report on these so the wider community can be informed by them and practical steps can be taken to avoid future breaches.

## Information sharing

The Privacy Commissioner can provide support to government agencies in the practical implementation of Approved Information Sharing Agreements (AISAs).

The Privacy Commissioner will identify and provide input into key information sharing criteria including:

- the extent of potential privacy impact
- precedent-setting potential
- the extent to which the proposal enables Better Public Services
- support for agencies to adopt a 'privacy by design' approach in their proposals.

## EDUCATION

Outreach is a major focus for the Privacy Commissioner and includes a programme of publicly available workshops, tailored workshops, public seminars, presentations and an active communications programme.

The website will be further developed as the primary point of accessing the Privacy Commissioner's services. This will include complaint lodgement, general enquiries, guidance across a range of privacy areas and a facility for 'whistle-blowing.'

The regulatory model is supported by the effective education of individuals and organisations. A revamp of the education programme is a major priority in the first year. This is likely to include a 'train the trainer' approach and the development of online training tools.

## REFORM OF THE PRIVACY ACT

The upcoming reform of the Privacy Act 1993 follows the Law Commission's recommendations for privacy law change detailed in its Review of Privacy.<sup>7</sup> Government has indicated a willingness to progress the review of the Privacy Act 1993.

The law changes require significant planning and resources, both in providing input into the Bill and supporting the implementation of the law reform.

## INTERNATIONAL CONNECTIONS

The Privacy Commissioner maintains strong international engagement activities through a network of jurisdictions including Asia Pacific Economic Cooperation (APEC), the European Union (EU), the Organisation for Economic Co-operation and Development (OECD) and the Asia Pacific Privacy Authorities (APPA).

International engagement provides OPC with the ability to identify and respond to emerging privacy issues. One of the key areas of future international engagement is in effective cross-border enforcement activities through relationships established under the Global Privacy Enforcement Network (GPEN).

International connections are a key element in meeting future challenges, establishing the strategic direction of the Privacy Commissioner, maintaining internationally acceptable privacy standards and facilitating business opportunities.

The work of the Privacy Commissioner is supported by experience obtained through international connections and closer working relations across jurisdictions. Policy development, compliance and education are all supported by our engagement in the international arena.

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<sup>7</sup> <http://www.lawcom.govt.nz/project/review-privacy>

## FUNCTIONS AND OPERATIONS

The operating environment places significant fiscal and capability pressures on the Privacy Commissioner for the delivery of outputs and impacts. In an environment of growing demands, our ability to meet our delivery measures requires robust prioritisation. To assist in determining priorities the Privacy Commissioner has established criteria by which current and future activities are assessed.

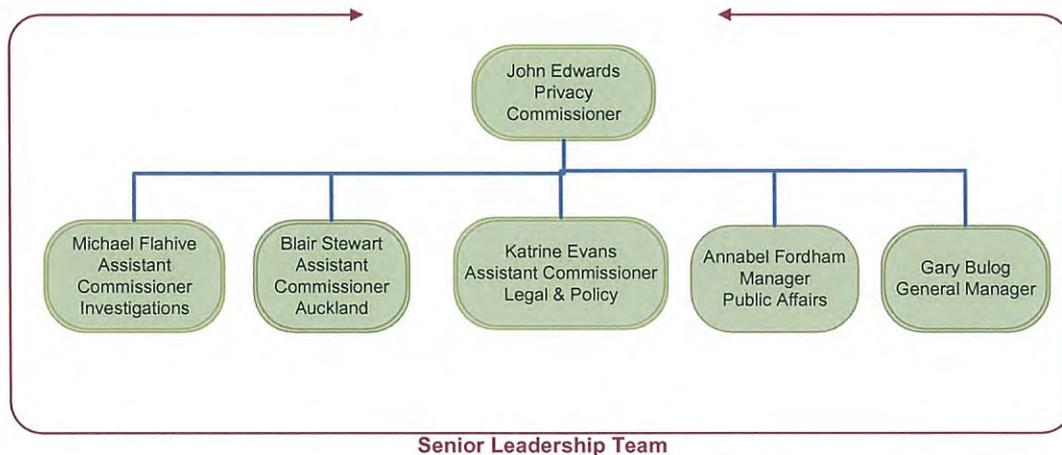
Criteria for determining operational priorities include:

- relevance to our functions and responsibilities
- importance or value of the issue
- degree of external interest or demand
- ability to make a difference
- cost effectiveness (both short term and long term) in taking action.

## ORGANISATIONAL HEALTH AND CAPABILITY

The Office of the Privacy Commissioner consists of a staff of 32, and has offices in Wellington and Auckland.

The Commissioner has the legal status of a corporation sole and an independent Crown entity under the Crown Entities Act 2004. The Privacy Commissioner's office is led by the Senior Leadership Team comprising the Privacy Commissioner as Chief Executive, three Assistant Commissioners, the General Manager and the Public Affairs Manager.



The current structure of the Office delivers the bulk of services through functional work areas. As we move forward there is a need to have wider expertise, agility and cross function support to programmes and initiatives. Delivery of services with the most effective and efficient use of resources is key to ensuring the Office can meet ever changing demands.

We have identified the need to increase capacity and capabilities in a number of areas. We will do this through a mixture of initiatives including recruitment for new roles, secondments, use of specialists and working with external partners. Identified requirements through to 2018 include;

- Analysts (Senior)
- Information Research Officers
- Technology Adviser (Senior)
- Legal Adviser (Senior)

- Enquiries Officer
- Resources necessary to deliver on Own Motion Inquiries (e.g. individually or a mixture of; Investigation Officers, Analysts, Researchers or contractors).

### Contractors and Secondments

In a small office there is an increased dependence on specialist skills for information gathering, reporting and the delivery of service. Skills which are not readily available internally can be utilised on a project by project basis.

### Organisational competencies and people

We will remain a relatively small office. We must draw on and build on overseas research, projects and experiences. OPC has significant data it captures over time through normal activities. There is a need to analyse existing data and monitor new data and incorporate that information in our operational work programme.

### Making best use of available competencies and capabilities

Making better decisions about priorities requires the right mix of interventions. We will achieve this by leveraging the collective knowledge, skills and functions of the Privacy Commissioner through a specific focus to:

- **Extract more value from the Privacy Commissioner's intelligence sources by:**
  - Sharing information - developing better internal information flows to support identification of cross-cutting issues – e.g. intranet tools, emails
  - Analytics – systematically analyse complaints and enquiries as input into identification of systemic and cross-cutting issues, and to guide focus of other interventions (e.g. information, guidance, education)
- **Develop/refine clear criteria** for prioritising Privacy Commissioner involvement in reactive privacy issues (including analysis of technology impacts, and effort applied to reactive comment on agency proposals)
- **Develop an effective cross-function triage process** as part of the Privacy Commissioner's workflow system, to support optimal decisions about focus, priorities, and the right mix of tools and interventions to apply to issues
- **Support cross-team working and cross-function knowledge sharing**, by:
  - deploying staff from across the Office onto specific projects, as identified by planning and triage processes
  - internal secondments across functional groups.

## RISK MANAGEMENT

The Privacy Commissioner has identified major risks and implemented responses to address those risks:

RISK TYPE	RESPONSES
<p><b>Credibility:</b></p> <p>The risk that the Privacy Commissioner loses influence with the public, government, business and the media. The Privacy Commissioner loses relevance.</p>	<p>Ensure statutory obligations and advisory responsibilities are met.</p> <p>Maintain the independence of the Privacy Commissioner in the delivery of functions as a regulatory agency.</p> <p>Establish effective working relations with the Government Chief Privacy Officer.</p> <p>A robust communications programme across all sectors.</p> <p>Demonstrate Better Public Services in the delivery of our functions.</p>
<p><b>Demand and expectations:</b></p> <p>The risk that the Privacy Commissioner cannot meet the level of complaints, public enquiries, media enquiries and demand for information arising from increased awareness.</p>	<p>Self-resolution tools are in place.</p> <p>Manage work in line with the assessment process for operational priorities.</p> <p>Incorporate international best practice and experience in our range of functions.</p>
<p><b>International standards:</b></p> <p>The risk that New Zealand fails to meet international privacy standards.</p>	<p>Participate in international privacy networks, remain abreast of international privacy developments and promote legislative change to reflect these standards.</p>
<p><b>Staff skills:</b></p> <p>The risk that key skill capabilities are not available for the Commissioner's work. Staff knowledge is lost.</p>	<p>Ensure that the required skills are developed and maintained.</p> <p>Leveraging the collective knowledge, skills and functions across the Office.</p> <p>Develop effective cross-function triage processes.</p> <p>Staffs at all levels are supported with professional and personal development opportunities and provided opportunities for gaining wider experience and career development.</p>

## EQUAL EMPLOYMENT OPPORTUNITIES AND GOOD EMPLOYER STATEMENT

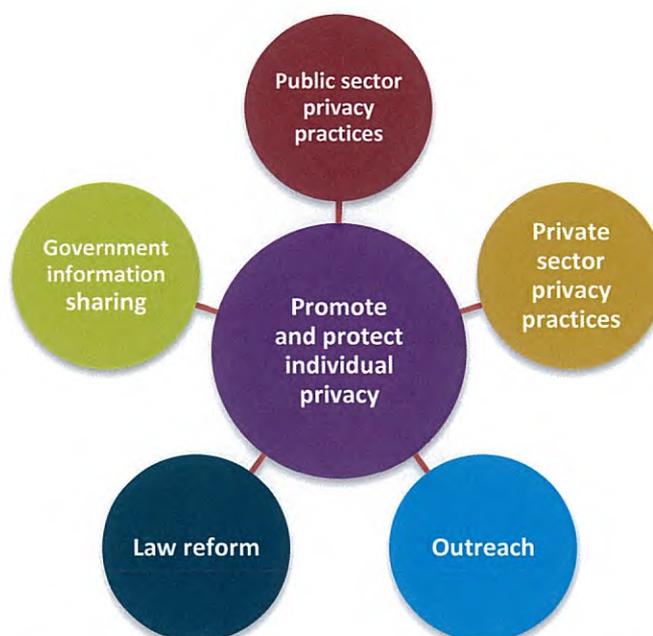
The Privacy Commissioner has an EEO policy and is an equal opportunities employer in its recruitment, human resources and staff development practices. The Privacy Commissioner has documented human resource policies and regularly reviews staff morale as part of management reporting.

We aim to provide equal employment opportunities to make the most of the talents of all our people. We assess our status as a good employer against the elements and criteria set out by the Human Rights Commission. Over the next three years we will continue to ensure that all elements are in place and working well.

The Privacy Commissioner reports on the Key Employment Elements in the Office through the Annual Report.

## STRATEGIC OBJECTIVE 2014 - 2018

The strategic objective of the Privacy Commissioner is to support the purpose of the Privacy Act 1993, to promote and protect individual privacy. That objective is supported by five strategic initiatives through 2014 to 2018.



**Figure 5: Strategic Initiatives of the Privacy Commissioner**

The strategic initiatives contribute to the government priorities of Better Public Services (BPS), in particular result areas 4, 9 and 10. Justice sector outcomes of “safer communities” and “New Zealanders civil and democratic rights maintained” are also supported through the initiatives.

Better Public Services	How we contribute
<b>Result 4</b> Reduce the number of assaults on children	Incorporate effective privacy practices in the handling of information by agencies supporting vulnerable children.  Work to reduce perceived obstacles to responsible information sharing by child welfare professionals.
<b>Result 9</b> New Zealand businesses have a one-stop online shop for all government advice and support they need to run and grow their business	Improving trust in government information sharing practices.  Deliver services which support and reflect Better Public Services.  Collaborate with other complaint agencies.  Facilitate people getting to the right place; for example, add a button to the website to direct people to appropriate complaint agencies.

Better Public Services	How we contribute
<p><b>Result 10</b> New Zealanders can complete their transactions with the government easily in a digital environment</p>	<p>Improving trust in government information sharing practices.</p> <p>Incorporate effective privacy practices in the handling of information by agencies involved in online transactional activities.</p> <p>Supporting the activities of the Government Chief Privacy Officer.</p> <p>Provide better complaint administration by use of an online service that enables complainants and respondents to check progress.</p>

## INCREASED FUNDING

Budget 2014 included an increase in baseline funding for the work of the Privacy Commissioner through the period covered by this Statement of Intent. The additional funding reflected the costs of providing existing services and the increased demands for the Privacy Commissioner to be an active participant in the provision of Better Public Services and information sharing across government.

	\$m				
	2013/14	2014/15	2015/16	2016/17	2017/18 & out years
Existing work	0.121	1.027	0.826	0.826	0.826
Better Public Services	0.121	0.644	0.644	0.644	0.644
Information sharing agreements - Privacy Amendment Act 2013	0.095	0.252	0.252	0.252	0.252
Total Increase	0.336	1.923	1.722	1.722	1.722
<b>Current Baseline</b>	<b>3.248</b>	<b>3.248</b>	<b>3.248</b>	<b>3.248</b>	<b>3.248</b>
<b>New Baseline</b>	<b>3.584</b>	<b>5.171</b>	<b>4.970</b>	<b>4.970</b>	<b>4.970</b>

The increased baseline will ensure the Privacy Commissioner will meet statutory obligations and, in addition, enable the strategic initiatives (page 16). These provide a roadmap of the transitional work programme over the next 3 years and set a sound platform for continued new work in the out years. Much of that work will be subject to the passage of the law reform outcomes.

## ASSESSING PERFORMANCE

The Justice Sector has an aspirational outcome that all New Zealanders should expect to live in a safe and just society. The Justice Sector outcome is supported by the Privacy Commissioner as a Justice Sector Crown Entity.

The Privacy Commissioner will assess performance through the service outputs. Measures of quantity, quality and timeliness will demonstrate achievement against targets within the Statement of Performance Expectations.

## STRATEGIC INITIATIVES

Initiatives	Public sector privacy practices	Private sector privacy practices	Government information sharing	Outreach	Law reform
<b>Impacts</b>	<p><b>Minimising the risk of public sector privacy breaches</b>  <u>by</u> actively influencing and working with public sector agencies to improve capability and information handling practices                      Reporting on breaches</p>	<p><b>Improving private sector privacy practices</b>  <u>by</u> supporting the private sector to adopt strong privacy practices through 'making privacy easy'</p>	<p><b>Protecting individual privacy while supporting Better Public Services</b>  <u>by</u> ensuring that arrangements to enable sharing of personal information across government agencies have effective privacy protection built in by design</p>	<p><b>Improving the Privacy Commissioner's impact from outreach activities, within its limited resources</b>  <u>by</u> increasing the Privacy Commissioner's reach and influence through using its outreach tools, channels and networks smarter</p>	<p><b>Improving the privacy legal framework in New Zealand</b>  <u>by</u> ensuring that new legislation is effective and workable, and supporting the transition to a new legislative environment</p>
<b>Actions</b>	<p>Working with the Government Chief Privacy Officer (GCPO)                      Privacy practice reporting                      Building capability / improving practice                      Use regulatory compliance tools to improve incentives to adopt good practices</p>	<p>Needs analysis                      Develop targeted education                      Communication about the impact of new legislation                      Develop toolkits, 'Hall of Fame', template statements for the collection of information from individuals and extensive FAQs</p>	<p>Identify and provide input into key information sharing proposals                      Finalise broad-application guidance for information sharing proposals</p>	<p>Develop our website as our front window                      Develop systematic approach to working more through others                      Review of education programme, to improve value from investment in education                      Develop deliberate approach to use of Own Motion Inquiries                      Support agencies to adopt a 'privacy by design' approach</p>	<p>Supporting the development and passage of legislation                      Planning the activities, resources and timelines required to support the implementation of law reform</p>

## SUMMARY OF INITIATIVES THROUGH TO 2017/18

Strategic Initiatives	December 2014	June 2015	June 2016	June 2017 through June 2018
<b>Public sector privacy practices</b>	Establish an active programme of engagement with the Government Chief Privacy Officer (GCIO) Identify capacity and capabilities needs of the Privacy Commissioner	Coordinated programme of activities established with GCIO Revise Privacy Impact Assessment handbook and guidance Data breach toolkits produced	Comprehensive privacy breach protections incorporated in public sector handling of personal information	Trust in government handling of personal information improves
<b>Private sector privacy practices</b>	Identify international initiatives which can be adapted to the New Zealand situation	Programme of support to business Review of Credit Reporting Privacy Code	Active consultation programme with private sector organisations	Privacy by Design incorporated in the handling of personal information by private sector organisations
<b>Government information sharing</b>	Process applications for information sharing in a timely manner	Publish guidance for information sharing	Reduced times to process information sharing proposals	Privacy breaches not a result of information sharing programmes
<b>Outreach</b>	Website upgrade scoped Review of naming policies and practices Create Privacy Commissioner's blog	Website provides improved access to information and guidance Education review completed and comprehensive new programme launched	Whistleblower capability on website Provide complaint administration by use of an online service that complainants and respondents can check progress	Guidance and education materials available from the Privacy Commissioner and through third party providers
<b>Law reform</b>	Review and advise on policy associated with law reform	Progress the law reforms through active contribution to the consultative and legislative process	Privacy Act Amendment before Parliament Capacity and capability issues to support law reform are in place	Privacy Act incorporating changes passed into law Office incorporates law changes in its role as an effective regulator

Note: The timing for introduction and passage of the law reform will impact on timelines