

# New Zealand Law Society

## SUBMISSION ON THE IDENTITY INFORMATION CONFIRMATION BILL

### Introduction

1. The New Zealand Law Society (Society) welcomes the opportunity to comment on the Identity Information Confirmation Bill (Bill).
2. The purpose of the Bill is set out in clause 4. It is to facilitate the use of an electronic service (“the confirmation service”) that allows agencies to confirm identity information about individuals so as to—
  - (a) contribute to the prevention of crime (particularly identity-related crimes); and
  - (b) ensure that agencies can use and, if necessary, record confirmed identity information.
3. The Bill seeks to address identity theft and fraud by allowing approved agencies, pursuant to a confirmation agreement, to apply for a check of the identity of a customer or client against the following government databases: the Births Deaths & Marriages registries, the Citizenship registry and the Passports registry. The application is directed to the confirmation service of the relevant government agency that operates the database to be searched.
4. The Society supports the passage of this Bill. There is a very real need for verification of identity, as a means of preventing and deterring identity theft and other criminal activity, including money laundering. The Bill will also support legitimate commercial activity, by enabling commercial entities to efficiently verify individuals’ identities.
5. The Society also recognises the privacy interests involved, and the concern that government disclosure of personal information to public and private sector agencies may be seen as the ‘thin end of the wedge’. Accordingly, the Society considers the matters addressed in this submission to be significant ones for the Select Committee’s attention.
6. The Society has comments to make with respect to:
  - (a) The scope of the Bill;
  - (b) Privacy issues; and
  - (c) False identification and correction of information.

### **Scope of the Bill**

7. As currently drafted, the Bill allows access to a limited set of government databases. However, the structure of the Bill is such that future legislative amendment could easily expand the sources of publicly held information able to be accessed.
8. The fact that the set of government databases accessible under the Bill is limited is an important feature. If in the future the legislation was to be expanded, it would be necessary to consider the privacy implications of such expansion. Requiring the Privacy Commissioner to report to Parliament – along similar lines as the Attorney General’s section 7 New Zealand Bill of Rights Act 1990 reports – on the privacy implications of any proposed future expansion of the scope of the Bill would provide independent oversight.

### ***Recommendation***

9. The Bill should include a provision requiring the Privacy Commissioner to report to Parliament on the privacy implications of any proposed future expansion of the scope of the Bill.

### **Privacy Issues**

10. The Society considers that the Bill gives rise to two main concerns in relation to privacy:
  - (a) The retention of personal information by the government agencies providing the confirmation service; and
  - (b) The role of the Privacy Commissioner in the process of approving confirmation agreements.

### ***Retention of personal information***

11. Where a public or private sector agency requests an identity information check on an individual, the confirmation service provided by the “responsible officials” (clause 5) will have access to personal information about that individual. For instance, the confirmation service would know the particular agency with which the individual is engaging, the date the individual chose to engage with that agency, and the number of previous identity confirmations. The confirmation service would also know the result of previous identity confirmations.
12. At present, if an individual chooses to open a bank account, the fact that the individual chooses one bank over another is not known to Births, Deaths and Marriages or the Department of Internal Affairs as a matter of course.

13. However, that information will now potentially become official information, in which case it may be accessible under the Official Information Act 1982 and held under the Public Records Act 2005. This should not be allowed to occur.

***Recommendation***

14. The Bill should be amended to prohibit the government agencies operating the confirmation service retaining personal information arising out of an identification check. The confirmation service should be able to collect the number of requests from each agency and the type of response, but there should be no retention of the personal information of the person whose identity is being checked.

***Privacy Commissioner oversight***

15. As presently drafted, the Bill provides that the Privacy Commissioner (the Commissioner) may require a review and report on the terms and conditions of any confirmation agreement (clause 14(1)). However, the Commissioner has no power to direct amendment of the confirmation agreement: amendment requires the agreement of both the responsible officials and the agency that is party to the agreement (clauses 14(2) and (3)). Nor is the Commissioner empowered to review a government agency's decision to enter into a confirmation agreement.
16. The Society recognises it is impractical to require the Commissioner's consent to every confirmation agreement. However, there should be a mechanism to allow the Commissioner, where he or she considers it necessary, to delay a government agency entering into a confirmation agreement pending review.

***Recommendation***

17. The Bill should be amended to require that the Commissioner is notified of all proposed confirmation agreements. The Bill should also provide that where the Commissioner considers it necessary, entry into a confirmation agreement should be delayed, pending a review by the Commissioner.

**False identification and correction of information**

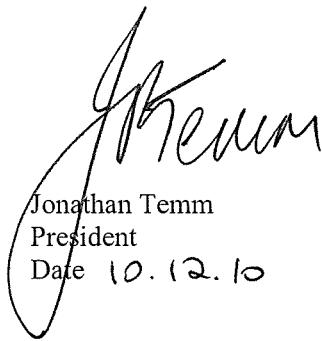
18. The Bill in its current form does not specify a mechanism for correcting cases of false or incorrect identity information. The Privacy Act 1993 provides that where incorrect information has been recorded against an individual's name, the individual can obtain a copy of the information and can request that it be corrected. A similar mechanism should be provided for in the Bill.

***Recommendation***

19. The Bill should provide a mechanism that allows for false or incorrect identity information to be corrected. This would enable a person who believes they have been falsely identified to contact the government confirmation service and request that the correct identity information be recorded against their name.

**Conclusion**

21. The Society wishes to appear in support of this submission.



Jonathan Temm  
President  
Date 10.12.10