

28 February 2020

TICP Amendments  
Office of the Privacy Commissioner  
**Auckland**

By email: [privacy.code@privacy.org.nz](mailto:privacy.code@privacy.org.nz)

**Re: Telecommunications Information Privacy Code consultation**

**Introduction**

1. The New Zealand Law Society (**Law Society**) welcomes the opportunity to comment on “Proposed Amendment No 7 to the Telecommunications Information Privacy Code 2003 (**Code**)”, (**the proposed amendment**) contained in the Privacy Commissioner’s Information Paper (**Information Paper**).
2. The Information Paper states:<sup>1</sup>

“The proposed amendment extends the emergency caller location information system permitted in 2017, by facilitating the active collection of location information from devices where necessary to prevent or lessen a serious threat to the life or health of an individual. The system will still require the existence of an emergency but is no longer contingent on the making of an emergency call.”
3. The objective of the proposed amendment appears a reasonable and proportionate response to the impact it will have on an individual’s right to privacy.
4. The Law Society’s response to the consultation questions are set out below.

**Consultation questions**

- Q1 Do you think the public safety benefits that should result from the amendments warrant the enabling of a more intrusive system?*
5. The Law Society recognises the potential public safety benefits noted in the information paper including the real likelihood the proposed amendment will save lives and prevent serious harm.<sup>2</sup> However, to justify a more intrusive system, any proposed changes to the system should have sufficiently strong oversight mechanisms, to curb any actual or potential abuse.
  6. It is unclear how often emergency service providers expect to have recourse to the new powers. It would be useful if the Information Paper contained further information about the number or percentage of emergency situations in which the amendment is expected to have a real impact. This is particularly pertinent given the breadth of the new powers proposed and the potential (albeit small) risk of abuse (discussed further below).

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<sup>1</sup> Proposed Amendment No 7 to the Telecommunications Information Privacy Code 2003, at p1.

<sup>2</sup> Ibid, at p3.

7. Nonetheless, given the real potential to prevent serious harm, we agree the proposed amendment is likely to yield benefits that justify the intrusion on the right to privacy.
- Q2 Do you agree that location capable devices, other than telephone devices, should be opt in only?*
8. Yes. We consider an opt in system is desirable given the relative novelty of those devices and the potential for information from those devices to be accessed without the owners' knowledge and permission.
9. Further, we suggest the owners' consent should be renewed on a regular basis, for example every three years in order to keep information current. Devices may be sold or handed to family members; in which case any consent would no longer be valid.
- Q3 Do you think the controls and safeguards included in the proposed amendments are sufficient?*
10. The safeguards proposed in the Information Paper appear to be sufficient.
11. It should be emphasised that the new powers are extensive, especially in relation to device location information (**DLI**). It is intended that a wider range of devices would be covered by the Code and that location information could be obtained from devices not directly connected to an incoming call, including where the device owner is not aware of that collection and therefore cannot consent to it at the time.
12. In nearly all emergency situations, we expect that DLI would only be obtained when an emergency call is received. Nonetheless, at least in theory, it appears the proposals would allow DLI to be obtained from many devices in the country even if a call is not made.
13. That increases the risk of potential misuse or abuse:
- (a) A well-intentioned operator could observe a situation unfolding on a news report or social media and decide for themselves that it constitutes a "serious threat", even if that report is inaccurate. That may allow for information-gathering in circumstances where it was not intended.
  - (b) An operator acting unlawfully could gather and monitor information about estranged family members or any other member of the public. That scenario seems to be prevented (or much less likely) under the current Code, given that any location information must be linked to an incoming call.
14. The extent of the powers and the increased potential for misuse require strong oversight mechanisms. Accordingly, and as suggested in the Information Paper, it is appropriate that the Commissioner regularly reviews emergency providers' logs of disclosures and retains the power to amend the Code to prevent potential or actual abuse. It seems likely that the new powers would be used relatively sparingly but, even if they are used in only a small percentage of the two million emergency calls made each year,<sup>3</sup> it may not be possible to review the circumstances of each collection. The Commissioner will need to be assured that the logs can be provided in a form where anomalies or potential misuses can be readily identified.

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<sup>3</sup> <https://www.mbie.govt.nz/science-and-technology/it-communications-and-broadband/our-role-in-the-ict-sector/emergency-call-services/emergency-caller-location-information/>

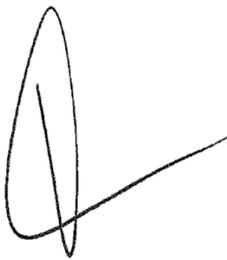
Q4 *Do you have any other comments about the proposed changes?*

15. We have no further comments.

**Conclusion**

16. This submission has been prepared with the assistance of the Law Society's Human Rights and Privacy Committee. If further discussion would be helpful, please contact the convenor, Paul Rishworth QC, through Law Reform Adviser, Amanda Frank ([amanda.frank@lawsociety.org.nz](mailto:amanda.frank@lawsociety.org.nz)).

Yours faithfully,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke extending to the right.

**Andrew Logan**  
**Vice President**