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Submission to Internet NZ on .nz Policy Review consultation paper

The Office of the Privacy Commissioner (OPC) welcomes the opportunity to comment on the *.nz Policy Review* consultation paper released by Internet NZ in February 2021.

This submission focuses on the questions in the consultation paper. If it would be helpful, OPC is available to provide further advice on how the draft .nz Rules interact with the Privacy Act 2020.

OPC supports Internet NZ's decision to rewrite the .nz policies to become .nz Rules and welcomes features of the draft Rules that are designed to protect privacy. Our submission does not answer all of the questions in the consultation paper and focuses on those questions that have implications for privacy.

Panel recommendations on new principles (questions 5-7)

OPC supports the draft principles recommended by the .nz Advisory Panel and modified by Internet NZ, as follows:

- **.nz should be secure and trusted:** .nz infrastructure must be dependable and secure, and .nz be trusted
- **.nz should be open and accessible:** everybody should be able to observe, participate, innovate and enjoy the benefits of .nz
- **.nz should serve and benefit New Zealand and reflect and be responsive to our diverse social, cultural and ethnic environment**
- **.nz should support te reo Māori me ōna tikanga and participation in .nz by Māori**

[Note: this draft principle has not yet been discussed with Māori.]

- **.nz should enable New Zealand to grow and develop:** it should help people, businesses and organisations connect, create, innovate and grow.

We are pleased to see recognition in the new draft principles of the need to respond to the diversity of New Zealand society, and to support te reo Māori me ōna tikanga.

The consultation paper asks whether submitters agree that 'safe' should not be included in the first principle. As indicated in our earlier submission to the Advisory Panel, OPC agrees that the .nz domain should be secure and trusted. It is unclear what additional responsibilities would be entailed in ensuring that .nz is 'safe'. We think 'secure and trusted' adequately cover privacy interests and agree that 'safe' should not be included in the first principle.

Panel recommendations on privacy (questions 18-20)

OPC recognises that there is a balance to be struck between transparency and privacy in relation to information about domain name holders. The Advisory Panel made a number of recommendations aimed at protecting privacy while maintaining accountability and transparency. Some of these are addressed in the current stage of the policy review process, while others are to be addressed later.

Panel recommendations addressed in the current consultation paper are:

- protecting domain name holder details, other than name, by default
- making the provision of admin and technical contacts optional
- providing an email communication function to enable domain name holders to be contacted without revealing their email addresses.

Internet NZ proposes to implement the recommendations for nominated secondary contacts to be optional, and for domain name holders to be contactable without revealing their email addresses. We support these proposals, which help to ensure that no more personal information is collected or disclosed than is necessary.

Purpose of collection of domain name holder details

A key point in OPC's submission to the Advisory Panel was that Internet NZ should clarify the purposes for which personal information about domain name holders is collected, held and used. The Panel accepted this advice and recommended that Internet NZ publish updated guidance on the rationale for collection of each field in the registrant, administrative and technical fields (Panel recommendation 28).

Internet NZ has assigned recommendation 28 to Category 2, meaning it requires more work to explore whether it is desirable and feasible to implement due to its complexity, interdependence with other work, or need to prioritise Category 1 work. OPC believes recommendation 28 should be reprioritised to Category 1.

The purpose for the collection of personal information is central to the Privacy Act. An agency must collect no more information than is necessary for a lawful purpose connected with its function, notify the individual concerned of the purpose when

collecting personal information from the individual, and use or disclose the information only for the purpose of collection or a related purpose (unless an exception applies).

Internet NZ and the Domain Name Commission are therefore required to identify the purposes for which personal information is collected in connection with domain name registration, and to assess what personal information is necessary for these purposes. Clarification of purposes of collection does not need to involve detailed guidance. It should be possible to set these purposes out in a couple of paragraphs, as the Panel did with suggested purposes at pp. 23-24 of its report. These purposes should be included in the Rules themselves, rather than in separate guidance.

Withholding personal details of domain name holders

Internet NZ does not propose to apply privacy for domain name holder details, other than name, by default at this stage. The consultation paper proposes to consider whether to provide a default privacy option in the next stage of its response to the Panel recommendations.

In the meantime, Internet NZ proposes to extend the existing privacy option, whereby individuals may request that some of their contact details are not publicly available. Internet NZ proposes withholding more information from the query service in relation to individuals who exercise the privacy option. In Internet NZ's proposal, all details would be withheld other than the name of the domain holder and any nominated secondary contacts' names. There are procedures in the Rules whereby persons can request access to withheld information.

OPC supports Internet NZ's further consideration of a privacy by default approach and would be happy to discuss this issue with Internet NZ. While this consideration takes place, we support the increased privacy protections in the approach to withholding personal details proposed in the consultation paper.

Interaction of the draft Rules with the Privacy Act 2020

OPC notes that the draft Rules include a number of references to the Privacy Act 2020, and recommends that Internet NZ checks that these references are correct. In particular, we draw attention to:

- clause 10.2.5(a), which refers to section 202 of the Privacy Act – it is unclear why that particular section is relevant
- clause 10.2.8(a), which refers to disclosures that are 'not required under the Privacy Act' – the Privacy Act does not require disclosure of personal information, except where an individual requests their own information.

Conclusion

Thank you for the opportunity to submit on these proposals. To follow up on our submission, please contact Ewan Lincoln, Senior Policy Adviser, at ewan.lincoln@privacy.org.nz.