

立法會

法案委員會

2011 年個人資料(私隱)(修訂)條例草案

對特定條文的主要關注 (至 2012 年 4 月 18 日)

條例 = 《個人資料(私隱)條例》

公署 = 個人資料私隱專員公署

銀行公會 = 香港銀行公會

保障原則 = 保障資料原則

條文	題目	公署的意見
第 VIA 部第 35D 條	不溯既往安排	<p><u>不溯既往安排的條件</u></p> <ul style="list-style-type: none"> ● 第 35D(1)條所建議不溯既往的安排訂明資料使用者需符合的某些條件，包括：(i) 資料當時人已獲明確告知，其個人資料將在直接促銷中，就該類別的促銷標的而被使用；(ii) 該資料使用者已如此使用該資料；(iii) 該資料當事人沒有要求該資料使用者停止如此使用該資料；及 (iv) 該資料使用者沒有就該項使用而違反於該項使用時有效的本條例的任何條文。 ● 公署認為須把第 35C(4)條下的規定一併納入第 35D(1)條作為符合不溯既往安排的條件。目的是要確保資料使用者已經以易於理解及閱讀的方式向資料當事人呈示使用其個人資料於直接促銷上的資訊。公署於 2010 年發出的收集及使用個人資料作直接促銷指引已經涵蓋有關規定。 <p><u>在生效日前加上截止日期</u></p> <ul style="list-style-type: none"> ● 由於需要讓資料使用者有足夠時間在文件上及程序上作出改變，並進行資訊科技系統的改善，另外，公署亦要就資料使用者的循規而訂立新指引，並進行其他宣傳教育活動去推行修訂法例，因此不預期第 VIA 部的生效日期會快將來臨。就此，銀行公會建議第 VIA 部在通過修訂條例後不少於 10 個月後才施行。 ● 公署關注到部份資料使用者可能在這個過渡時期進行大規模的直接促銷活動，以達到盡量避免遵守生效日期後的新規定的目的。為免此事發生，公署建議於第 35D(1)條

		<p>訂明截止日期[在修訂條例通過後一個儘早的日期]。在該日期後，資料使用者便不能再依靠第 35D(1)條援引不溯既往的安排。</p> <p><u>涵蓋的個人資料</u></p> <ul style="list-style-type: none"> ● 政府當局有意接納一業界團體的要求：如資料使用者在生效日期前曾在關乎某類別的促銷標的之直銷中使用資料當事人的任何個人資料，不溯既往安排應適用於生效日期後繼續在關乎同一類別的促銷標的之直銷中使用資料當事人的任何個人資料。(見政制及內地事務局立法會 CB(2)1701/11-12(03)號文件第 5 段)。 ● 實際的意思是，如資料使用者在生效日期前使用資料當事人的流動電話號碼促銷一項產品，而有關使用是符合第 35D(1)(a), (b), (c) 及(d)條訂明的條件，不溯既往安排不單適用於該電話號碼，亦適用該資料使用者在生效日期前所持有的關乎該當事人的其他個人資料，例如住址、電郵地址、住宅電話號碼等。 ● 公署從該業界團體得悉，不溯既往安排亦會適用於資料使用者在生效日期前所持有的個人資料的日後更新。例如，如資料當事人在生效日期後更新其地址或月薪，資料使用者使用更生的資料是不須依從新的規定。 ● 在此方面，公署就目前第 35D(1)條的內容表達以下關注： <ul style="list-style-type: none"> ➢ 該條文現時的字眼可詮釋為不溯既往安排不會涵蓋資料使用者在生效日期前未曾實際使用過的個人資料。 ➢ 該條文並未有處理生效日期後個人資料的更新。
第 VIA 部 第 35E(1)(b) 條	在直接促銷 中使用個人 資料	<ul style="list-style-type: none"> ● 修訂建議容許以口頭形式取得同意，較以往建議須取得資料當事人書面回應實質上減低了對資料當事人的保障。 ● 為儘量抵消這負面的影響，公署建議在第 35E(1)(b)條加入下述規定： <ul style="list-style-type: none"> ➢ 須在給予口頭同意後不遲於 <u>14 天內</u>發出書面確認； ➢ 書面確認須送往最後知悉的資料當事人的<u>通訊地址</u>，包括住宅地址、電郵地址及短訊；及 ➢ 資料使用者在發出書面確認後 14 日內，<u>沒有收到</u>資料當事人對口頭同意的<u>任何反對</u>。
第 VIA 部第 35K	提供個人資 料以供用於	<ul style="list-style-type: none"> ● 公署重申其一貫立場：在「出售」或轉移個人資料給第三者前，應取得資料當事人的明確及知情同意。<u>口頭同意遠</u>

條	直接促銷 (之前訂為出售或轉移個人資料予第三者)	低於此標準。因此，應該維持政府當局之前的建議，即除非取得資料當事人的書面同意，否則不能「出售」或轉移其個人資料予第三者。
第 VIA 部	個人資料來源	<ul style="list-style-type: none"> ● 公署之前建議賦予個人獲直銷商告知其個人資料來源的權利。政府當局沒有接納建議。 ● 在 2011 年 11 月 26 日舉行的法案委員會會議上，出席會議的團體對公署的建議沒有表示反對。其實，直銷商表示他們的實務守則規定，如客戶查詢資料來源，他們須於 7 日內回覆客戶，披露資料來源。 ● 在 2012 年 4 月 17 日的法案委員會會議上，涂謹申議員表示關注條例下個人並未獲賦權追溯被直銷商所使用的個人資料的來源。 ● 有鑑於此，公署希望政府當局可以重新考慮把這個有意義的建議併入草案中。
第 50(1A)(c) 條	執行通知	<ul style="list-style-type: none"> ● 目前第 50(1)(iii) 條賦權專員發出執行通知，指示資料使用者採取步驟「以糾正導致送達該通知的違反或事宜(視屬何情況而定)」。 ● 在新條文第 50(1A)(c) 條，「導致送達該通知的...事宜」等字被刪去。 ● 正如公署之前提出(立法會 CB(2)596/11-12(01)號文件)，違規情況發生可以是因為間接因素，如資料使用者的政策、措施或程序上的不足夠或是欠缺。公署關注在新條文刪除「導致送達該通知...的事宜」等字，會削去私隱專員在執行通知處理有關間接因素的權力。
第 58(6) 條	罪行的定義	<ul style="list-style-type: none"> ● 為罪行的防止或偵測及犯罪者的拘捕、檢控或拘留等而使用或持有(視情況而定)的個人資料可獲第 58 條豁免而不受保障資料第 3 原則(使用)、第 6 原則及第 18(1)(b) 條(查閱)所管限。 ● 第 58 條沒有為「罪行」及「犯罪者」訂下定義。因此，新條文第 58(6)條把「罪行」界定為 (a) 香港法律所訂的罪行；或(b) (如個人資料是在與香港和香港以外地方的法律合作或執法合作有關連的情況下持有或使用的)該地方的法律所訂的罪行。同樣地，「犯罪者」是指干犯罪行的人。

		<ul style="list-style-type: none"> ● 據知銀行公會建議擴大「罪行」的定義，以包括香港以外地方的法律所訂的罪行，如構成罪行的行為在香港發生會構成爲香港法律所訂的罪行。 ● 銀行公會的用意是便利跨境資料轉移，以偵測清洗黑錢及恐怖分子籌資活動。 ● 公署完全贊同打擊清洗黑錢及恐怖分子籌資活動的需要，但擔心若未能恰當地界定，這建議會容許資料使用者在沒有足夠保障下，向海外要求者披露個人資料，以調查在香港境外干犯的罪行。 ● 第 58(1)(a)條沒有限制獲得此豁免所涵蓋的資料使用者的類型或性質。這因此可能會令資料披露開放予<u>任何資料使用者</u>，以方便調查<u>不同種類的海外罪行</u>，包括相對輕微的罪行。 ● 這建議猶如開啓一道難以控制的後門，尤其是第 33 條尚未生效，被轉移的個人資料是否會獲得與條例大體上相似或相同保障存在疑問。 ● 在現有的相互協助安排下，海外執法機構可透過律政司向香港尋求協助。這或可足夠應付銀行公會的關注。 ● 海外的安排亦支持公署的上述意見。澳洲及新西蘭私隱法令在調查罪行方面有類似豁免，規定資料的披露是爲了<u>由或代當地執法機構或公營部門</u>防止、偵測、調查、檢控或懲處刑事罪行等。此外，上述海外資料保障法例載有關於限制跨境轉移個人資料的條文。請參考下述條文： <ul style="list-style-type: none"> ➢ 澳洲私隱法令(1988) – 附表 3 的第 2.1(h)(i) 國家私隱原則、第 6 條的「執法機構」的定義及第 9 國家私隱原則； ➢ 新西蘭私隱法令 (1993) – 第 10(c)(i) 及 11(e)(i)資料私隱原則、第 1 部第 2 條的「公營機構」的定義及第 11A 部。(附件 A) ● 如政府當局有意採納銀行公會的建議，可直接指明獲得豁免的罪行，例如打擊清洗黑錢活動。並加入額外保障，確保被轉移的個人資料會獲得條例下相同或類似程度的保障。
第 66B 條	專員可就法律程序給予協助	<ul style="list-style-type: none"> ● 關於向受屈的資料當事人提供法律協助，雖然公署可把適合的個案外判予法律專業人士，但預期部份個案由公署內部的法律人員處理會較合乎成本效益。 ● 但是，草案沒有明確條文，賦權公署的內部律師向公眾提供法律服務，包括提供法律意見、出席法庭聆訊及提供法

		<p>律程序所必需及附帶的其他協助。相對下《法律援助條例》(第 91 章)第 3(3)條明確賦予法律援助律師「具有獲根據《法律執業者條例》(第 159 章)妥為認許的大律師及律師的所有權利、權力、特權及責任，包括在任何法院或終審法院出庭發言的權利」。</p> <ul style="list-style-type: none"> ● 再者，公署內部律師及受助人的關係亦沒有清楚界定。尤其是，由「受聘律師/大律師」向受助人提供的法律意見是否享有法律專業特權。相對下《法律援助條例》第 24 條列明法律援助律師享有的特權及權利，「和當事人與以專業身分受聘行事的大律師及律師之間的關係所產生的特權及權利相同」。 ● 公署因此建議在草案中加入類似《法律援助條例》第 3(2)-(3) 及 24 條的新增條文。請進一步參考《律政人員條例》(第 87 章)第 2A, 3(1) 及 (2)條。(附件 B)
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個人資料私隱專員公署
2012 年 4 月 18 日



Privacy Act 1988

Act No. 119 of 1988 as amended

This compilation was prepared on 13 February 2012
taking into account amendments up to Act No. 60 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
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Clause 2

2 Use and disclosure

- 2.1 An organisation must not use or disclose personal information about an individual for a purpose (the *secondary purpose*) other than the primary purpose of collection unless:
- (a) both of the following apply:
 - (i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;
 - (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
 - (b) the individual has consented to the use or disclosure; or
 - (c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:
 - (i) it is impracticable for the organisation to seek the individual's consent before that particular use; and
 - (ii) the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications; and
 - (iii) the individual has not made a request to the organisation not to receive direct marketing communications; and
 - (iv) in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a notice, that he or she may express a wish not to receive any further direct marketing communications; and
 - (v) each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organisation's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically; or

- (d) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:
 - (i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and
 - (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph; and
 - (iii) in the case of disclosure—the organisation reasonably believes that the recipient of the health information will not disclose the health information, or personal information derived from the health information; or
 - (e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - (i) a serious and imminent threat to an individual's life, health or safety; or
 - (ii) a serious threat to public health or public safety; or
 - (ea) if the information is genetic information and the organisation has obtained the genetic information in the course of providing a health service to the individual:
 - (i) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety (whether or not the threat is imminent) of an individual who is a genetic relative of the individual to whom the genetic information relates; and
 - (ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95AA for the purposes of this subparagraph; and
 - (iii) in the case of disclosure—the recipient of the genetic information is a genetic relative of the individual; or
 - (f) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or
 - (g) the use or disclosure is required or authorised by or under law; or
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Clause 2

- (h) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter organisations from lawfully co-operating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 2.1 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 2.1 requires an organisation to disclose personal information; an organisation is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.

Note 3: An organisation is also subject to the requirements of National Privacy Principle 9 if it transfers personal information to a person in a foreign country.

2.2 If an organisation uses or discloses personal information under paragraph 2.1(h), it must make a written note of the use or disclosure.

2.3 Subclause 2.1 operates in relation to personal information that an organisation that is a body corporate has collected from a related body corporate as if the organisation's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.

2.4 Despite subclause 2.1, an organisation that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:

- (a) the individual:
 - (i) is physically or legally incapable of giving consent to the disclosure; or

eligible communications service means a postal, telegraphic, telephonic or other like service, within the meaning of paragraph 51(v) of the Constitution.

eligible hearing service provider means an entity (within the meaning of the *Hearing Services Administration Act 1997*):

- (a) that is, or has at any time been, engaged under Part 3 of the *Hearing Services Administration Act 1997* to provide hearing services; and
- (b) that is not covered by paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (j) of the definition of *agency*.

employee record, in relation to an employee, means a record of personal information relating to the employment of the employee. Examples of personal information relating to the employment of the employee are health information about the employee and personal information about all or any of the following:

- (a) the engagement, training, disciplining or resignation of the employee;
- (b) the termination of the employment of the employee;
- (c) the terms and conditions of employment of the employee;
- (d) the employee's personal and emergency contact details;
- (e) the employee's performance or conduct;
- (f) the employee's hours of employment;
- (g) the employee's salary or wages;
- (h) the employee's membership of a professional or trade association;
- (i) the employee's trade union membership;
- (j) the employee's recreation, long service, sick, personal, maternity, paternity or other leave;
- (k) the employee's taxation, banking or superannuation affairs.

enactment includes a Norfolk Island enactment.

enforcement body means:

- (a) the Australian Federal Police; or
- (aa) the Integrity Commissioner; or
- (b) the ACC; or
- (c) Customs; or
- (d) the Australian Prudential Regulation Authority; or

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- (e) the Australian Securities and Investments Commission; or
- (f) another agency, to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law; or
- (g) another agency, to the extent that it is responsible for administering a law relating to the protection of the public revenue; or
- (h) a police force or service of a State or a Territory; or
- (i) the New South Wales Crime Commission; or
- (j) the Independent Commission Against Corruption of New South Wales; or
- (k) the Police Integrity Commission of New South Wales; or
- (ka) the Office of Police Integrity of Victoria; or
- (l) the Crime and Misconduct Commission of Queensland; or
- (m) another prescribed authority or body that is established under a law of a State or Territory to conduct criminal investigations or inquiries; or
- (n) a State or Territory authority, to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law; or
- (o) a State or Territory authority, to the extent that it is responsible for administering a law relating to the protection of the public revenue.

Federal Court means the Federal Court of Australia.

file number complaint means a complaint about an act or practice that, if established, would be an interference with the privacy of the complainant:

- (a) because it breached a guideline issued under section 17; or
- (b) because it involved an unauthorised requirement or request for disclosure of a tax file number.

financial corporation means a financial corporation within the meaning of paragraph 51(xx) of the Constitution.

foreign corporation means a foreign corporation within the meaning of paragraph 51(xx) of the Constitution.

Clause 8

- (b) one or more of paragraphs 2.1(e) to 2.1(h) (inclusive) apply to the use or disclosure; or
- (c) the use or disclosure is by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsections 100(2) and (3).

7.3 In this clause:

identifier includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organisation's operations. However, an individual's name or ABN (as defined in the *A New Tax System (Australian Business Number) Act 1999*) is not an *identifier*.

8 Anonymity

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

9 Transborder data flows

An organisation in Australia or an external Territory may transfer personal information about an individual to someone (other than the organisation or the individual) who is in a foreign country only if:

- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or

- (e) all of the following apply:
 - (i) the transfer is for the benefit of the individual;
 - (ii) it is impracticable to obtain the consent of the individual to that transfer;
 - (iii) if it were practicable to obtain such consent, the individual would be likely to give it; or
- (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

10 Sensitive information

10.1 An organisation must not collect sensitive information about an individual unless:

- (a) the individual has consented; or
- (b) the collection is required by law; or
- (c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:
 - (i) is physically or legally incapable of giving consent to the collection; or
 - (ii) physically cannot communicate consent to the collection; or
- (d) if the information is collected in the course of the activities of a non-profit organisation—the following conditions are satisfied:
 - (i) the information relates solely to the members of the organisation or to individuals who have regular contact with it in connection with its activities;
 - (ii) at or before the time of collecting the information, the organisation undertakes to the individual whom the information concerns that the organisation will not disclose the information without the individual's consent; or
- (e) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

**Reprint
as at 1 April 2012**



New Zealand

Privacy Act 1993

Public Act 1993 No 28
Date of assent 17 May 1993
Commencement see section 1(2)

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Justice.

- (5) Where an agency receives a request made pursuant to subclause (1), the agency shall inform the individual concerned of the action taken as a result of the request.

Principle 8

Accuracy, etc, of personal information to be checked before use

An agency that holds personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading.

Principle 9

Agency not to keep personal information for longer than necessary

An agency that holds personal information shall not keep that information for longer than is required for the purposes for which the information may lawfully be used.

Principle 10

Limits on use of personal information

An agency that holds personal information that was obtained in connection with one purpose shall not use the information for any other purpose unless the agency believes, on reasonable grounds,—

- (a) that the source of the information is a publicly available publication; or
- (b) that the use of the information for that other purpose is authorised by the individual concerned; or
- (c) that non-compliance is necessary—
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or

- (ii) for the enforcement of a law imposing a pecuniary penalty; or
 - (iii) for the protection of the public revenue; or
 - (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
- (d) that the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to—
- (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual; or
- (e) that the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained; or
- (f) that the information—
- (i) is used in a form in which the individual concerned is not identified; or
 - (ii) is used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (g) that the use of the information is in accordance with an authority granted under section 54.

Principle 11

Limits on disclosure of personal information

An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds,—

- (a) that the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or
- (b) that the source of the information is a publicly available publication; or

- (c) that the disclosure is to the individual concerned; or
- (d) that the disclosure is authorised by the individual concerned; or
- (e) that non-compliance is necessary—
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) for the enforcement of a law imposing a pecuniary penalty; or
 - (iii) for the protection of the public revenue; or
 - (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
- (f) that the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to—
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual; or
- (g) that the disclosure of the information is necessary to facilitate the sale or other disposition of a business as a going concern; or
- (h) that the information—
 - (i) is to be used in a form in which the individual concerned is not identified; or
 - (ii) is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (i) that the disclosure of the information is in accordance with an authority granted under section 54.

- (i) a person to whom section 15 or 16 of the Immigration Act 2009 applies (except if the person has been granted a visa or entry permission in accordance with section 17 of that Act); or
- (ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or
- (iii) treated for the purposes of that Act as being unlawfully in New Zealand

personal information means information about an identifiable individual; and includes information relating to a death that is maintained by the Registrar-General pursuant to the Births, Deaths, Marriages, and Relationships Registration Act 1995, or any former Act

public register has the meaning given to it in section 58

public register privacy principle has the meaning given to it in section 58

public sector agency—

- (a) means an agency that is a Minister, a department, an organisation, or a local authority; and
- (b) includes any agency that is an unincorporated body (being a board, council, committee, or other body)—
 - (i) which is established for the purpose of assisting or advising, or performing functions connected with, any public sector agency within the meaning of paragraph (a); and
 - (ii) which is so established in accordance with the provisions of any enactment or by any such public sector agency

publicly available information means personal information that is contained in a publicly available publication

publicly available publication means a magazine, book, newspaper, or other publication that is or will be generally available to members of the public; and includes a public register

responsible Minister means the Minister of Justice

- 114 Expiry of power to amend Schedule 5 by Order in Council**
Section 113 shall expire on 1 July 1997, but the expiration of that section shall not affect the validity of any Order in Council that has been made under that section and that is in force immediately before that date.

Section 114: amended, on 3 September 1996, by section 6(2) of the Privacy Amendment Act 1996 (1996 No 142).

Part 11A

Transfer of personal information outside New Zealand

Part 11A: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

114A Interpretation

In this Part, unless the context otherwise requires,—

OECD Guidelines means the Organisation for Economic Co-operation and Development Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data
State includes any State, territory, province, or other part of a country

transfer prohibition notice means a notice given under section 114B prohibiting the transfer of personal information from New Zealand to another State.

Section 114A: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

114B Prohibition on transfer of personal information outside New Zealand

- (1) The Commissioner may prohibit a transfer of personal information from New Zealand to another State if the Commissioner is satisfied, on reasonable grounds, that—
- (a) 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 comparable safeguards to this Act; and
 - (b) the transfer would be likely to lead to a contravention of the basic principles of national application set out in

Part Two of the OECD Guidelines and set out in Schedule 5A.

- (2) In determining whether to prohibit a transfer of personal information, the Commissioner must also consider, in addition to the matters set out in subsection (1) and section 14, the following:
- (a) whether the transfer affects, or would be likely to affect, any individual; and
 - (b) the general desirability of facilitating the free flow of information between New Zealand and other States; and
 - (c) any existing or developing international guidelines relevant to transborder data flows, including (but not limited to)—
 - (i) the OECD Guidelines;
 - (ii) the European Union Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data.
- (3) Subsection (1) does not apply if the transfer of the information, or the information itself, is—
- (a) required or authorised by or under any enactment; or
 - (b) required by any convention or other instrument imposing international obligations on New Zealand.

Section 114B: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

114C Commissioner's power to obtain information

- (1) To enable the Commissioner to determine whether to prohibit a transfer of personal information, the Commissioner may hear or obtain information from such persons as the Commissioner considers necessary, and for this purpose Part 9 applies as if the Commissioner were carrying out an inquiry under section 13(1)(m).
- (2) In exercising his or her powers under subsection (1), the Commissioner may regulate his or her procedure in such manner as the Commissioner thinks fit.

Section 114C: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

114D Transfer prohibition notice

- (1) A prohibition under section 114B(1) is to be effected by the service of a transfer prohibition notice on the agency proposing to transfer the personal information concerned.
- (2) A transfer prohibition notice must—
 - (a) state the name of the agency to whom it relates; and
 - (b) describe the personal information concerned; and
 - (c) state that the transfer of the personal information concerned from New Zealand to a specified State is prohibited either—
 - (i) absolutely; or
 - (ii) until the agency has taken the steps stated in the notice to protect the interests of any individual or individuals affected by the transfer; and
 - (d) state the time when the notice takes effect; and
 - (e) state the ground for the prohibition; and
 - (f) state that the agency on whom the notice is served may lodge an appeal against the notice to the Human Rights Review Tribunal, and the time within which the appeal must be lodged.
- (3) The time when the notice takes effect under subsection (2)(d) must not be before the end of the period within which an appeal against the notice can be lodged.
- (4) If an appeal is brought, the notice does not take effect pending the determination or withdrawal of the appeal.
- (5) If the Commissioner, by reason of special circumstances, considers that the prohibition should take effect as a matter of urgency in relation to all or any part of the notice,—
 - (a) subsections (3) and (4) do not apply; and
 - (b) the notice takes effect on the sixth working day after the date on which the notice is served; and
 - (c) the notice must include—
 - (i) a statement that the Commissioner considers that the prohibition must take effect as a matter of urgency; and
 - (ii) a statement of the reasons why the Commissioner has reached that conclusion.

Compare: Data Protection Act 1988 s 11 (Ire)

Section 114D: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

114E Commissioner may vary or cancel notice

- (1) If, at any time, the Commissioner considers that all or any of the provisions of a transfer prohibition notice served on an agency need not be complied with in order to avoid a contravention of basic principles of privacy or data protection, the Commissioner may vary or cancel the transfer prohibition notice by serving notice to that effect on the agency concerned.
- (2) An agency on whom a transfer prohibition notice has been served may, at any time after the end of the period during which an appeal under section 114G(1)(a) can be lodged, apply in writing to the Commissioner for the notice to be varied or cancelled under subsection (1).
- (3) The Commissioner must, within 20 working days after the date on which an application under subsection (2) is received, notify the agency of—
 - (a) his or her decision; and
 - (b) his or her reasons, if the application is refused.
- (4) If the Commissioner exercises his or her discretion under subsection (1), the variation or cancellation of the transfer prohibition notice takes effect on the day after the date on which notice of the Commissioner's decision to vary or cancel the transfer prohibition notice is served.

Compare: Data Protection Act 1998 s 41 (UK)

Section 114E: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

114F Offence in relation to transfer prohibition notice

Every person who, without reasonable excuse, fails or refuses to comply with a transfer prohibition notice commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Section 114F: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

114G Appeals against transfer prohibition notice

- (1) An agency on whom a transfer prohibition notice is served may appeal to the Human Rights Review Tribunal—
 - (a) against the whole or any part of the notice; or
 - (b) if the notice contains a statement by the Commissioner in accordance with section 114D(5)(c), against the decision to include that statement in respect of all or any part of the notice; or
 - (c) against the decision of the Commissioner to vary the notice in accordance with section 114E(1); or
 - (d) against the refusal of an application under section 114E(2) to vary or cancel the notice.
- (2) An appeal under subsection (1) must be lodged,—
 - (a) in the case of an appeal under subsection (1)(a) or (b), within 15 working days from the date on which the transfer prohibition notice was served on the agency concerned;
 - (b) in the case of an appeal under subsection (1)(c) or (d), within 15 working days from the date on which notice of the decision or refusal was served on the agency concerned.
- (3) The Tribunal must allow an appeal or substitute any other decision or notice that could have been made or served by the Commissioner if it considers that—
 - (a) the decision or notice against which the appeal is brought is not in accordance with the law; or
 - (b) to the extent that the decision or notice involved an exercise of discretion by the Commissioner, the Commissioner ought to have exercised his or her discretion differently.
- (4) The Tribunal may review any determination of fact on which the decision or notice in question was based.
- (5) On any appeal under subsection (1)(b), the Tribunal may—
 - (a) direct—
 - (i) that the notice in question must have effect as if it did not contain the statement that is mentioned in the notice; or
 - (ii) that the inclusion of the statement must not have effect in relation to any part of the notice; and

- (b) make any modifications required to give effect to that direction.

Compare: Data Protection Act 1998 ss 48, 49 (UK)

Section 114G: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

114H Application of Human Rights Act 1993

Section 87 and Part 4 of the Human Rights Act 1993 apply, with all necessary modifications (if any), in relation to proceedings under section 114G as if they were proceedings under that Act.

Section 114H: inserted, on 8 September 2010, by section 8 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

Part 12

Miscellaneous provisions

General

115 Protection against certain actions

- (1) Where any personal information is made available in good faith pursuant to principle 6,—
- (a) no proceedings, civil or criminal, shall lie against the Crown or any other person in respect of the making available of that information, or for any consequences that follow from the making available of that information; and
- (b) no proceedings, civil or criminal, in respect of any publication involved in, or resulting from, the making available of that information shall lie against the author of the information or any other person by reason of that author or other person having supplied the information to an agency.
- (2) The making available of, or the giving of access to, any personal information in consequence of a request made under principle 6 shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorisation or approval of the publication of the document or of its contents by the individual

章：	91	法律援助條例	憲報編號	版本日期
		詳題		30/06/1997

本條例旨在就向經濟能力有限的人給予法律援助以進行民事訴訟事宜，以及為由該事宜附帶引起的或與該事宜相關的目的，訂定條文。

[1967年1月12日] 1967年第1號法律公告

(本為1966年第36號)

部：	I	導言		30/06/1997
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條：	1	簡稱		30/06/1997
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本條例可引稱為《法律援助條例》。

條：	2	釋義	14 of 2003	09/05/2003
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(1) 在本條例中，除文意另有所指外—

- “人”、“人士”(person) 就授權給予任何人法律援助而言，不包括屬法團或並非法團的團體；
- “大律師”(counsel) 指已在按照《法律執業者條例》(第159章)的條文備存的大律師登記冊上登記為大律師，而在關鍵時間並無被暫時吊銷執業資格的人；(由1982年第14號第2條修訂；由1995年第79號第50條修訂；由2003年第14號第24條修訂)
- “分擔費用”(contribution) 指受助人或前受助人根據本條例就法律援助的訟費及開支所須繳付的分擔費用；(由1984年第54號第2條增補)
- “幼年人”(infant) 指年齡未滿18歲的未婚人士；(由1991年第27號第2條增補)
- “司法常務官”(Registrar) 指高等法院司法常務官，就在終審法院進行的任何法律程序而言，包括終審法院司法常務官；(由1982年第14號第2條增補。由1995年第79號第50條修訂；由1998年第25號第2條修訂)
- “收入”(income)、“可動用收入”(disposable income) 及“可動用資產”(disposable capital) 指以訂明方式釐定的收入、可動用收入及可動用資產；(由1984年第54號第2條增補)
- “名冊”(panel) 指按照第4條備存的適當名冊；
- “受助人”(aided person) 指已獲發給法律援助證書的人，而該證書仍然有效；(由1984年第54號第2條修訂)
- “法官”(judge) 指高等法院法官或區域法院法官(視屬何情況而定)；(由1998年第25號第2條修訂)
- “法律援助”(legal aid) 指根據本條例的條文給予的法律援助；
- “法律程序”(proceedings) 包括—
- (a) 法院法律程序；
 - (b) 在提出法院法律程序之前進行的商討(包括調解)，以及為沒有就其提出法院法律程序的由汽車保險局支付的補償而進行的商討；
 - (c) 向精神健康覆核審裁處提出的申請；(由1995年第43號第2條增補)
- “法律援助主任”(Legal Aid Officer) 指獲委出任附表1指定的人員的職位並正在任職的人員，或合法執行該等人員的職能的人員；(由1983年第24號第2條增補)

“法律援助輔助計劃” (Supplementary Legal Aid Scheme) 指本條例內有關給予第5A條適用的法律援助的條文； (由1984年第54號第2條增補)

“法律援助證書” (legal aid certificate) 指根據第10條發給的法律援助證書；

“法院” (court) 指在其處進行的法律程序而可給予法律援助的法院、審裁處或人士，但不包括終審法院； (由1982年第14號第2條修訂；由1995年第79號第50條修訂)

“訂明” (prescribed) 指由根據第28條所訂立的規例訂明； (由1984年第54號第2條增補)

“指派” (assignment, assigned) 包括署長指派律師或大律師、受助人自行挑選律師或大律師，以及律師延聘大律師；

“律師” (solicitor) 指已在按照《法律執業者條例》(第159章)的條文備存的律師登記冊上登記，而在關鍵時間並無被暫時吊銷執業資格的人； (由1982年第14號第2條修訂；由1984年第54號第2條修訂；由1995年第79號第50條修訂；由2003年第14號第24條修訂)

“計劃基金” (Fund) 指根據第29條設立的法律援助輔助計劃基金； (由1984年第54號第2條增補)

“家事法律程序” (domestic proceedings) 指在《婚姻法律程序與財產條例》(第192章)、《婚姻訴訟條例》(第179章)、《未成年人監護條例》(第13章)、《分居令及贍養令條例》(第16章)或《父母與子女條例》(第429章)下的法律程序； (由2000年第26號第2條代替)

“財務資源” (financial resources) 指以訂明方式釐定的財務資源； (由1991年第27號第2條增補)

“署長” (Director) 指根據第3條的條文獲委任的法律援助署署長、法律援助署副署長、法律援助署助理署長及法律援助主任； (由1983年第24號第2條修訂；由1984年第54號第2條修訂)

“監護人” (guardian) 就幼年人而言，在不損害該詞的概括性的原則下，包括署長認為法院可妥善地委任為該幼年人的起訴監護人或辯護監護人的人；

“謄本” (transcript) 包括正式速記紀錄的謄本及法官手書紀錄的任何正式打字本； (由1984年第54號第2條增補)

“繳付訟費命令” (order for costs) 包括法院或終審法院頒令法律程序一方向另一方繳付訟費的判決、命令、判令、判給或指示，不論是否在該等法律程序中發出或作出的。 (由1982年第14號第2條修訂；由1995年第79號第50條修訂)

(由1995年第79號第50條修訂)

(2) 凡本條例內提述關乎或涉及向終審法院提出上訴或申請向終審法院提出上訴的許可的法律程序、申請、命令或決定，即包括提述關乎或涉及反對該上訴或申請上訴的許可的法律程序、申請、命令及決定。 (由1982年第14號第2條增補。由1995年第79號第50條修訂)

(3) 行政長官可藉命令修訂附表1。 (由1983年第24號第2條增補。由1999年第26號第3條修訂)

條：	3	委任	14 of 2003	09/05/2003
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(1) 行政長官可委任一人為法律援助署署長，並可委任其認為適當人數的法律援助署副署長、法律援助署助理署長及法律援助主任。 (由1983年第24號第3條修訂；由1999年第26號第3條修訂)

(2) 任何人除非已具有資格在香港、聯合王國或《律政人員條例》(第87章)附表2列出的地區以法律執業者身分執業，否則不得獲委任為法律援助署署長、法律援助署副署長、法律援助署助理署長或法律援助主任，亦不得暫時署理該等職位。 (由1983年第24號第3條修訂；由1991年第27號第3條修訂；由2000年第42號第28條修訂)

(3) 根據第(1)款獲委任的人，在根據本條例或依據《刑事訴訟程序條例》(第221章)第9A條訂立的規則履行職責或行使權力時，須具有獲根據《法律執業者條例》(第159章)妥為認許的大律師及律師的所有權利、權力、特權及責任，包括在任何法院或終審法院出庭發言的權利； (由1995年第79號第50條修訂；由2003年第14號第24條修訂)

但上述人士不得在任何刑事訟案或事宜的審訊中，以大律師身分為被告人承辦及處理其案件，亦不得以該身分在任何刑事訟案或事宜中代表該被告人處理上訴事宜。 (由1972年第58號第2條代

替。由1983年第48號第2條修訂)

(4) 憲報上所刊登有關某人已獲委出任第(1)款所指任何職位或已停任該等職位的公告，即為證明其內所述事實的充分證據。(由1972年第58號第2條增補)

條：	4	大律師及律師名冊	14 of 2003	09/05/2003
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(1) 署長須分別編製及備存大律師及律師的名冊，記錄所有已在按照《法律執業者條例》(第159章)的條文備存的大律師或律師登記冊上登記，而又願意在有人申請給予法律援助時進行調查、作出報告及提供意見，並代受助人行事的大律師及律師。(由1982年第14號第3條修訂；由2003年第14號第24條修訂)

(2) 署長須在名冊內註明大律師或律師準備代受助人行事的每年次數或法律程序類別的限制，並按照該等限制行事。(由1984年第54號第3條代替)

(3) 任何大律師或律師均有權名列名冊內，除非署長因該人代表或獲指派代表接受法律援助人士行事時所作的行為，或因該人的一般專業操守，而信納有充分理由不將其姓名列入名冊內，則屬例外。

(4) 署長須信納大律師或律師已持有有效執業證書，方可將其姓名列入名冊內，如有任何大律師或律師並未持有有效執業證書，署長須在名冊內將其姓名註銷。

(5) 除第25(2)條另有規定外，任何大律師或律師均可隨時要求署長在名冊內將其姓名註銷，而署長須順應其要求。

(由1984年第54號第3條修訂)

部：	II	法律援助的範圍	L.N. 116 of 2009	29/05/2009
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條：	5	有資格獲得法律援助的人	L.N. 83 of 2011	18/05/2011
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(1) 除本條例另有規定外，財務資源不超過\$260000的人，均可按照本條例規定獲得本條所適用的法律援助，以進行附表2第I部所述的民事法律程序，但該附表第II部所述的法律程序則不包括在內。(由1984年第54號第4條代替。由1986年第5號法律公告修訂；由1991年第27號第4條修訂；由1995年第43號第3條修訂；由1997年第8號第2條修訂；由2004年第45號法律公告修訂；由2006年第97號法律公告修訂；由2007年第77號法律公告修訂；由2007年第236號法律公告修訂；由2009年第116號法律公告修訂；由2011年第51號法律公告修訂)

(2) 凡據法權產由屬法團或並非法團的團體，為任何與該據法權產相關的目的而轉讓予任何人，該人不得根據本條例獲給予法律援助。(由1989年第40號第2條增補)

條：	5AA	署長可免除財務資源審查的上限		30/06/1997
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如署長在顧及第10(3)條列明的事宜後，信納某人在一項違反《香港人權法案條例》(第383章)或抵觸《公民權利和政治權利國際公約》中適用於香港的規定是其中爭論點的法律程序中，會獲發給法律援助證書，署長可免除根據第5(1)條施加的財務資源限制。

(由1995年第43號第4條增補)

條：	5A	法律援助輔助計劃	L.N. 83 of 2011	18/05/2011
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除本條例另有規定外，凡符合以下說明的人，均可按照本條例規定獲得本條所適用的法律援助

條：	23	就失實陳述等提起的法律程序	L.N. 230 of 2000	03/07/2000
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- (1) 任何尋求或接受法律援助的人—
- 故意不遵守有關由其提供資料的規例；或
 - 在提供該等規例所規定的資料時，明知而作出任何虛假陳述或虛假申述，
- 即屬犯罪，循簡易程序定罪後，可處第3級罰款及監禁6個月。(由2000年第26號第7條修訂)
- (2) 即使有任何法例訂明提出第(1)款所訂罪行的法律程序的時限，該等法律程序可在犯罪後2年內提出，或檢控人初次揭發有關罪行後的1年內提出，兩個限期中以較早屆滿者為準。(由2000年第32號第48條修訂)
- (由1984年第54號第22條修訂)

條：	24	附於某些關係上的特權	L.N. 312 of 1998	11/09/1998
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- (1) 以下各種關係所產生的特權及權利，和當事人與以專業身分受聘行事的大律師及律師之間的關係所產生的特權及權利相同—
- 法律援助申請人與署長及(如其申請轉介予大律師及律師)受轉介的大律師及律師之間的關係；
 - 受助人與署長及被指派在法律援助證書所關乎的法律程序中代受助人行事的大律師及律師之間的關係。
- (2) (由1991年第27號第15條廢除)
- (3) 除按本條例規定外，本條例賦予受助人的權利，並不影響有關法律程序其他各方的權利或法律責任，亦不影響任何法院或審裁處通常行使酌情權時所根據的原則。
- (4) 任何人不得披露為本條例的施行而給予的資料，而該等資料與尋求或接受意見、援助或代表的人是有關的，但在以下情況披露則除外—
- 為使某人能夠妥善履行在本條例下的職能而披露；
 - 為就因本條例實施而產生的罪行提起及進行刑事法律程序而披露，及為就該等法律程序提供意見或作出報告或報導而披露；或
 - 在有關人士的同意下及(如資料不是他給予的)給予資料的人的同意下披露。(由1995年第43號第9條增補)
- (5) 如撮要或結集形式的資料的羅列方式，令人不能從中確定關於某一特定人士的資料，則第(4)款不適用於該等資料。(由1995年第43號第9條增補)
- (6) 如有任何資料給予以其專業身分行事的大律師或律師，而該等資料是由尋求或接受在本條例下的意見、援助或代表的人或其代表給予的，則該資料不是為本條例的施行而給予的資料。(由1995年第43號第9條增補)
- (7) 在本條中，“法院”(court)包括終審法院。(由1995年第79號第50條增補。由1998年第312號法律公告修訂)

條：	25	未經許可不得中止法律援助		30/06/1997
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- 受助人未經署長許可，不得停止聘用根據本條例被指派代其行事的大律師或律師。
- 除第(3)款另有規定外，被指派代受助人行事的大律師或律師未經署長許可，不得中止其援助。
- 本條的規定並不損害大律師或律師以合理理由而拒絕或放棄處理任何案件的權利。

章：	87	律政人員條例	憲報編號	版本日期
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		詳題		30/06/1997
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本條例旨在綜合與修訂關於政府法律部門的人員為某些目的而執業為大律師及律師的權利的法律，和綜合與修訂關於該等人員就所辦理的工作收取費用及訟費的權利的法律，並概括而言，規管該等人員的地位、權利、特權及職責。

[1950年3月10日]

(本為1950年第3號(第87章，1950年版))

條：	1	簡稱		30/06/1997
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本條例可引稱為《律政人員條例》。

條：	2	釋義	L.N. 7 of 2007	19/03/2007
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在本條例中，除文意另有所指外—

“公共機構”(public body) 包括任何行政、立法、城市或市區議局，政府的任何部門或政府承擔的任何事業，任何地方或公共主管當局或任何地方或公共事業，由行政長官或政府委任而不論有酬或無酬的各類委員會或其他團體，或根據或為施行任何成文法則而有權力以執行公務身分行事各類委員會或其他團體；(由1999年第11號第3條修訂)

“公務員”(public servant) 除指《釋義及通則條例》(第1章)給予該詞的涵義外，亦指本條例所界定的公共機構的任何僱員或成員，不論其職位屬臨時或永久、有酬或無酬；

“妥為認許”(duly admitted) 指根據《法律執業者條例》(第159章)獲妥為批准、認許和登記為大律師或律師；(由2007年第7號法律公告修訂)

“律政人員”(legal officer) 指獲委任並在香港出任律政人員的人員，或合法執行附表1內所指定任何人員的職能的人員；(由2000年第42號第22條修訂)

“審裁處”(tribunal) 包括大律師或律師可合法在其席前出席的任何議局、委員會、仲裁員、團體或人士；

“權利”(rights) 包括權力、特權及酌情決定權。

條：	2A	委任資格	L.N. 87 of 2003	28/03/2003
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任何人不得獲委任為律政人員，除非他已在香港、聯合王國或附表2內所列的司法管轄區獲認許為法律執業者。

(由1989年第47號第2條增補。由2000年第42號第23條修訂)

條：	3	律政人員的權利及特權	L.N. 7 of 2007	19/03/2007
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(1) 就第4(1)條所述的任何事宜而言，任何律政人員均具有根據《法律執業者條例》(第159章)條文而獲妥為認許的大律師及律師的一切權利。(由2007年第7號法律公告修訂)

(2) 為免生疑問及在不損害第(1)款的概括性的原則下，就第4(1)條所述的任何事宜而言，任何律政人員在任何法庭或審裁處均具有出庭發言權。