

Amendment No 7 to the Telecommunications Information Privacy Code 2003

Information Paper on Effect of the Amendment

Amendment No 7 to the Telecommunications Information Privacy Code 2003 was issued by the Privacy Commissioner on 8 April 2020 and comes into force on 7 May 2020.

The amendment, which is appended to this paper, 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 still requires the existence of an emergency but is no longer contingent on the making of an emergency call.

What did the Code already permit?

The Code already enabled 111 emergency call takers to quickly receive automated information about the location of the caller using a mobile phone. Only a defined set of agencies could collect, use or disclose this information for a limited set of permitted purposes, related to responding to an emergency call. Amendment No 7 does not materially alter the collection, use and disclosure of emergency caller location information (ECLI), though it has clarified the sorts of devices that are in scope and added two emergency service providers that may use ECLI – Search and Rescue New Zealand and Maritime New Zealand.

What extensions does the amendment enable?

Amendment No 7 facilitates the active collection of device location information (DLI) from cellular devices in the absence of an emergency call. This means that emergency service providers will be able to establish the current location of an individual, if that location is necessary to prevent or lessen a serious threat to an individual's life or health.

Amendment No 7 enables new capability which could be used to:

- Locate individuals who have called 111, but the call is dropped or terminated before emergency service providers have been able to obtain location information.
- Locate individuals who need emergency assistance (such as when a person notifies the Police that an individual is lost in a remote area or is at risk of harming themselves) but who have not made, or cannot make, an emergency call.

What privacy and accountability safeguards are being added?

Access and use limitations

Schedule 4 places significant access and use limitations on emergency location information. Only permitted agencies can access, use and disclose the information and only for limited purposes. The new system cannot be used for any purpose other than locating an emergency caller, responding to an emergency, or maintaining a record of the information relied upon to respond to the emergency. Any use of the system to actively locate individuals for non-emergency purposes must be based on clear and express statutory authority.

Disclosure log – mandatory reporting to the Commissioner

The relevant government agency must maintain a log of all disclosures of DLI and must provide this log to the Commissioner on a quarterly basis. This transparency measure has been added to enable regulator (and public) trust in the extended system. The disclosure log requires the relevant government agency to report on the purpose relied upon to obtain the DLI, the grounds for the belief that it was necessary, the date and duration of disclosure, and whether or not the individual concerned was notified.

Mandatory review by Privacy Commissioner of operation of system

The Commissioner will review the operation of Schedule 4 from time to time and no later than 1 May 2022. This will allow the Commissioner to consider whether the extension has been used for purposes not anticipated by the extended Schedule 4 and confirm that the safeguards are operating as intended.

After-the-fact notification to the individual concerned

Emergency service providers (or the relevant government agency on their behalf) must notify individuals after the fact that their DLI has been collected. The individual will be notified of the fact that location information was collected, the date and time it was collected, the duration of the collection, and the purpose for collection. This requirement provides greater transparency and accountability in respect of the extensions. It will also allow affected individuals to challenge collections of DLI that they believe to be unnecessary or unlawful.

Minimisation of duration and frequency

The extension allows emergency service providers to collect location information on more than one occasion during the emergency response. This is to allow for situations where someone may have moved during the emergency response. The Schedule requires emergency service providers to limit the frequency and duration of location information collection to that which is necessary to respond to the emergency.

Questions and answers

The Emergency Location Information System is managed by MBIE, and so detailed questions about the system, its capability and the ways it will be used by emergency service providers should be directed to MBIE. Here are a few questions and answers about the effect of the amendment.

Do network operators have to share information with the ELIS?

No, schedule 4 of the Code is permissive. It allows location agencies to share location information, but it doesn't require them to.

What kinds of devices can be located in the absence of an emergency call under this system?

In the absence of an emergency call, DLI can be collected from or about a cellular device. This includes mobile phones, or any other devices fitted with a SIM or eSIM, such as tablets or smartwatches that are capable of independently connecting with a cellular network and being used to make voice calls.

What about opt in?

Amendment No 7 permits the collection of DLI from any cellular device provided the serious threat threshold is met. It does not rely on individual authorisation. There are clear public safety benefits from the system extensions, and robust safeguards in place to protect individuals' personal information. Requiring individuals to opt in to the system would likely not result in sufficient uptake to return the public safety benefits that the system could enable.

Will people be able to challenge the collection of their location information?

Yes. Individuals will generally be notified of the collection of DLI by SMS. If individuals want to know if their information has been collected, they can also make a request to an agency under principle 6 of the Privacy Act for information that agency holds about them. If they consider that it was collected unlawfully or inappropriately, they can make [a complaint](#) to the Privacy Commissioner.

**Telecommunications Information Privacy Code 2003
Amendment No 7**

I, **JOHN EDWARDS**, Privacy Commissioner, now issue under section 51 of the Privacy Act 1993, this amendment to the Telecommunications Information Privacy Code 2003.

Issued by me at Wellington on 8 April 2020.

John Edwards
Privacy Commissioner

1. Title

This amendment is the Telecommunications Information Privacy Code 2003 Amendment No 7.

2. Commencement

This amendment will come into force on 7 May 2020.

3. Insertion of new clause 2A (review)

Part 1 is amended as follows:

Insert: 2A. Review

The Commissioner will review the operation of Schedule 4 from time to time, and no later than 1 May 2022.

4. Amendment to clause 4 (application of code)

Clause 4(1) is amended as follows:

Insert: (d) additionally, for the purposes of Schedule 4, location information as defined in clause 1 of Schedule 4.

5. Amendment to clause 5: Rule 3 (collection from individual)

Rule 3 is amended as follows:

Insert: (5) Where a network operator participates in the emergency location information system in accordance with Schedule 4, it must ensure that additional steps required by clause 4 of Schedule 4 are taken to meet specific transparency obligations in relation to the system.

Note: Clause 4 of Schedule 4 requires all location agencies, including network operators, to make general information about the Emergency Location Information System available to the public. Network operators might achieve this by providing a link to general information made available by the relevant government agency.

6. Amendments to clause 5: Rule 5 (storage and security)

Rule 5(1A) is amended as follows:

Delete: the word “caller”

7. Amendment to clause 5: Rule 11 (disclosure)

Rule 11(1)(ha) is amended as follows:

Delete: the words “in accordance with the requirements”
Replace with: to the relevant government agency for the purposes

Note: Rule 11(1)(ha) provides network operators with the lawful basis to disclose location information to the relevant government agency for the purposes of Schedule 4. The network operator is not required to be satisfied that the serious threat threshold is met before disclosing information to the Emergency Location Information System.

8. Amendments to Schedule 4: Title and preamble

(1) The title of Schedule 4 is amended as follows:

Delete: Emergency caller location information (mobile)
Replace with: Emergency location information

(2) The preamble to Schedule 4 is amended as follows:

Delete: all instances of the word “ECLI”
Replace with: ELI

Delete: from the first paragraph, the word “caller”

Insert: at the end of the first paragraph, the words “; or to prevent or lessen a serious threat to an individual’s life or health”

Delete: from the second paragraph, the words “by enabled mobile devices, and by network operators using cell tower locations,”

Insert: at the end of the second paragraph, the sentence “It also regulates the use of technology that enables the collection of location information about cellular devices in the absence of an emergency call from the individual concerned, where this is necessary to prevent or lessen a serious threat to individual life or health.”

Delete: from the end of paragraph 3, the word “call”

9. Amendments to Schedule 4: Clause 1 (interpretation)

(1) Clause 1 of Schedule 4 is amended as follows:

Insert: in the appropriate alphabetical order:

Device Location Information (DLI) means location information that is:

- (a) derived from a DLI source; and
- (b) not generated by an emergency call

DLI source means:

- (a) a cellular device; or
- (b) in relation to a cellular device, a network operator

Emergency Location Information (ELI) means:

- (a) DLI;
- (b) ECLI

location information means personal information indicating the approximate geographical position of a device, which may include the latitude, longitude, altitude and direction of travel of that device

Note: The definition of location information now includes direction of travel, on the basis that the extension will permit the collection of location information from or about a device over a period of time, which will allow location agencies to determine the direction of travel of a device.

serious threat has the same meaning as in section 2(1) of the Act

telecommunication device—

- (a) means any terminal device capable of being used for transmitting or receiving a telecommunication over a network; and
- (b) includes a cellular device

cellular device means a telecommunication device capable of connecting to a cellular network.

Note: The definitions of telecommunication device and cellular device are relevant to the circumstances in which location information may be collected from, or about, a device. Cellular device includes a mobile phone, or any other device fitted with a SIM or eSIM.

- (2) The definition of “ECLI source” in clause 1 of Schedule 4 is amended as follows:

Delete: the word “mobile”
Replace with: telecommunication

Delete: the words “Location Area Service (LAS) system”
Replace with: Emergency Location Information System (ELIS)

Insert: at the beginning of subclause (b), the words “in relation to a telecommunication device,”

Note: ECLI may only be collected from a network operator if it relates to a device from which the information may lawfully be collected directly.

- (3) The definition of “emergency service provider” in clause 1 of Schedule 4 is amended as follows:

Delete: subclause (b)
Replace with: (b) Fire and Emergency New Zealand;

Insert: new subclause (da):
 (da) New Zealand Search and Rescue;

Insert: new subclause (db):
 (db) Maritime New Zealand;

Delete: from subclause (e), the word “ECLI”
Replace with: ELI

Delete: from subclause (e), the words “LAS system”
Replace with: ELIS

(4) Clause 1 of Schedule 4 is amended as follows:

Delete: The definition of “permitted primary purpose”

Replace with: **permitted primary purpose** means:

- (a) in relation to ECLI, to enable an emergency service provider to facilitate a response to an emergency call; or
- (b) in relation to DLI, to enable an emergency service provider to prevent or lessen a serious threat to the life or health of the individual concerned or another individual

Note: The definition of permitted primary purpose has been expanded, to limit the collection, use and disclosure of DLI to situations where it is necessary to prevent or lessen a serious threat.

(5) Clause 1 of Schedule 4 is amended as follows:

Delete: from subclause (a) of the definition of “permitted secondary purpose”, the word “caller”

Delete: from subclause (b) of the definition of “permitted secondary purpose”, the words “LAS system”

Replace with: ELIS

(6) The definition of “Location Area Service (LAS) System” in clause 1 of Schedule 4 is amended as follows:

Delete: the words “Location Area Service (LAS) system”

Replace with: **Emergency Location Information System (ELIS)**

Delete: all instances of the word “ECLI”

Replace with: ELI

(7) Clause 1 of Schedule 4 is amended as follows:

Delete: from the definition of “emergency call”, the word “mobile”

Replace with: telecommunication

Delete: the definition of “emergency caller”

Delete: from the definition of “Emergency Caller Location Information (ECLI)”, the words “personal information indicating the approximate geographical position of a mobile device, which may include the latitude, longitude and altitude of that device,”

Replace with: location information

Delete: from the definition of “relevant government agency”, the words “LAS system”

Replace with: ELIS

10. Amendments to Schedule 4: Clause 2 (authorisation of additional agencies)

(1) Clause 2 of Schedule 4 is amended as follows:

Delete: all instances of the word “ECLI”

Replace with: ELI

Delete: all instances of the words “LAS system”

Replace with: ELIS

(2) Clause 2 of Schedule 4 is amended as follows:

Insert: in subclause (1), after “may”, the words “, after consulting the Commissioner,”

(3) Clause 2 of Schedule 4 is amended as follows:

Delete: subclause (2)

11. Amendments to Schedule 4: Clause 3 (collection, use, disclosure etc)

(1) Clause 3 of Schedule 4 is amended as follows:

Delete: the heading of clause 3

Replace with: **3. Collection, use, disclosure and accuracy of ELI**

(2) Clause 3 of Schedule 4 is amended as follows:

Delete: all instances of the word “ECLI”

Replace with: ELI

Delete: from subclause (4), the words “LAS system”

Replace with: ELIS

(3) Clause 3 of Schedule 4 is amended as follows:

Insert: in subclause (1)(a), after “is”, the word “necessary”

Delete: subclause (2)(a)

Replace with: (a) directly from the relevant telecommunication device;

(4) Clause 3 of Schedule 4 is amended as follows:

Insert: new subclause 2A:

(2A) New Zealand Search and Rescue, Maritime New Zealand, or any agency authorised under clause 2 to receive ELI, must not collect ELI directly from the relevant government agency.

Note: Clause 3(2A) limits the agencies that may have direct access to the ELIS. Only Police, Fire and Ambulance may initiate location requests via ELIS. This reflects current practice, whereby NZSAR and Maritime NZ will only become involved in an emergency response coordinated by another emergency service provider.

(5) Clause 3 of Schedule 4 is amended as follows:

Insert: new subclause 2B:

(2B) Before collecting, using or disclosing DLI in relation to a cellular device, an emergency service provider must take all reasonable steps to ensure that the device relates to the individual whose location is necessary for the purpose of responding to the serious threat.

Note: Clause 3(2B) is inserted to ensure that reasonable steps are taken to connect a device and an individual. It is not related to the accuracy of the ELI itself. Reasonable steps might include matching known personal identifiers with existing databases of device identifiers.

(6) Clause 3 of Schedule 4 is amended as follows:

Insert: new subclause 2C:

(2C) Where an emergency service provider collects ELI, it must ensure that the frequency and duration of the collection is limited to that which is necessary for the permitted primary purpose.

Note: Clause 3(2C) reflects the requirements of rule 1 of the Code and principle 1 of the Act, to limit the collection of personal information to that which is necessary for a lawful purpose.

12. Amendment to Schedule 4: New clause 3A (Notice of collection)

Schedule 4 is amended as follows:

- Insert:** new clause 3A:
- 3A. Notice of collection**
- (1) An emergency service provider, or the relevant government agency on its behalf, must, as soon as reasonably practicable after collecting DLI pursuant to clause 3(1)(a), notify the individual concerned of:
 - (a) the date and time the information was collected;
 - (b) the type of information collected;
 - (c) the duration of the collection; and
 - (d) the purpose for the collection.
 - (2) An emergency service provider is not required to take the steps referred to in subclause (1) if it believes, on reasonable grounds, that doing so would be likely to prejudice the physical or mental health of the individual concerned or another individual.

Note: Clause 3A(2) recognises that there will be circumstances in which notifying an individual that location information has been requested could in itself increase the likelihood of harm to that individual or another individual. Where practicable, it is expected that such an assessment would be made in consultation with an individual's primary healthcare provider.

- (3) Within 7 days of making a decision under subclause (2), an emergency service provider must:
 - (a) review that decision to determine whether subclause (2) still applies; and
 - (c) if subclause (2) no longer applies, take the steps referred to in subclause (1).
- (4) Subject to the general transparency requirements set out at clause 4, a location agency is not required to notify an individual of the collection of ECLI.

Note: Clause 3A(4) reflects that the collection of ECLI is less intrusive than the collection of DLI, and the existing system is better known to the public. However, the general transparency requirements in respect of ECLI at clause 4 still apply.

13. Amendments to Schedule 4: Clause 4 (transparency)

(1) Clause 4 of Schedule 4 is amended as follows:

Delete: from subclause (1), the words “ECLI system”

Replace with: ELIS

Delete: from subclause 2(a), the words “ECLI system”

Replace with: ELIS

Delete: all remaining instances of the word “ECLI”

Replace with: ELI

(2) Clause 4 of Schedule 4 is amended as follows:

Insert: in subclause (2)(a)(i), after “generated”, the words “or collected,”

(3) Clause 4 of Schedule 4 is amended as follows:

Delete: subclause (3)

14. Amendments to Schedule 4: Clause 5 (retention)

(1) Clause 5 of Schedule 4 is amended as follows:

Delete: all instances of the word “ECLI”

Replace with: ELI

(2) Clause 5(1) of Schedule 4 is amended as follows:

Insert: after “ELI”, the words “sourced from the ELIS”

(3) Clause 5(2) of Schedule 4 is amended as follows:

Delete: the words “an individual who made an emergency call”

Replace with: “the individual to whom the information relates”

Note: The retention limitation in clause 5(2) applies only to information retained by the relevant government agency for auditing purposes; it does not prevent an emergency service provider from retaining an identifiable record of the collection of ELI.

Delete: the words “LAS system”
Replace with: ELIS

15. Amendments to Schedule 4: Clause 6 (safeguards)

(1) Clause 6 of Schedule 4 is amended as follows:

Delete: all instances of the word “ECLI”
Replace with: ELI

(2) Clause 6 of Schedule 4 is amended as follows:

Insert: in subclause (2)(a), after the words “collection, retention”, the word “accuracy,”

(3) Clause 6 of Schedule 4 is amended as follows:

Insert: new subclause (3):

- (3) The relevant government agency must maintain a log of all disclosures of DLI (**disclosure log**), which includes:
- (a) whether the disclosure was in reliance on the permitted primary purpose, permitted secondary purpose, or another purpose;
 - (b) where the disclosure was in reliance on the permitted primary purpose, the grounds for believing that it was necessary;
 - (c) where the disclosure was in reliance on another purpose, a description of this other purpose and the statutory authority on which it was based;
 - (d) the date of the disclosure and the duration for which ELI was collected; and
 - (e) whether or not the individual concerned was notified in accordance with clause 3A(1).

Note: The disclosure log required by clause 6(3) must be reported to the Commissioner every 3 months (see new clause 7(3) below).

16. Amendments to Schedule 4: Clause 7 (assurance of compliance)

(1) Clause 7 of Schedule 4 is amended as follows:

Delete: from subclause (1), the word “ECLI”
Replace with: ELI

Delete: from subclause (1), the words “LAS system”
Replace with: ELIS

(2) Clause 7 of Schedule 4 is amended as follows:

Insert: new subclause (3):
(3) The relevant government agency must provide to the Commissioner, every three months, the disclosure log for the preceding three month period.

Explanatory note:

This note is not part of the amendment but is intended to indicate its general effect.

This amendment, which comes into effect on 7 May 2020, amends the Telecommunications Information Privacy Code 2003 to extend a system permitted by Amendment No 5 for the automated gathering and sharing of mobile emergency caller location information. The extensions facilitate the active collection of location information by emergency service providers in order to locate an individual at risk of harm.

The amendment is deemed to be a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012.

Legislative history:

29 January 2020 – Public notice of intention to issue Amendment No 7 (Privacy Act, s48)
8 April 2020 – Amendment issued (Privacy Act, s51)
9 April 2020 – Amendment notified in the Gazette (Privacy Act, s49)
7 May 2020 – Amendment commences