

**Periodic Update Report  
on  
Developments in Data Protection Law  
in New Zealand**

(July – December 2019)

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**Tenth Report to the European Commission  
By the Competent Supervisory Authority  
For the Application of the Legal Data Protection Standards  
In New Zealand**

19 December 2019

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19 December 2019

Bruno Gencarelli  
Head of Unit - Data Protection European Commission  
Directorate-General for Justice  
Brussels  
**Belgium**

Dear Bruno

**Update report on developments in New Zealand data protection law**

I submit this 10<sup>th</sup> report<sup>1</sup> to update the European Commission in relation to matters bearing upon the legal standards for the protection of personal data in New Zealand for the 6 months since my last report dated 5 July 2019.

I am pleased to report on two developments in this period. Firstly, as signalled in my eighth report, following a major review of the Credit Reporting Privacy Code, a number of changes introduced by Amendment No 14 have now come into effect.

Secondly, an information sharing agreement approved under Part 9A of the Privacy Act has come into force.

Otherwise, nothing has changed in the last 6 months. In essence, the report simply confirms that the level of data protection in New Zealand has not been diminished during this period. I trust that this is reassuring for the purposes of the Commission's monitoring of the level of data protection under New Zealand law.

I am aware that the New Zealand Government has separately responded to specific questions about New Zealand's Privacy Act and the Privacy Bill. I trust that this brief general overview of developments in the last six months will, together with that other detailed response, assist in your monitoring of the level of data protection under New Zealand law.

Yours sincerely



John Edwards  
**New Zealand Privacy Commissioner**

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<sup>1</sup> Earlier reports are available at <https://privacy.org.nz/news-and-publications/reports-to-parliament-and-government/reports-on-new-zealand-adequacy-to-the-european-commission/>

## 1. Background

On 19 December 2012 the European Commission formally decided that for the purposes of Article 25(2) of Directive 95/46/EC, New Zealand is considered as ensuring an adequate level of protection for personal data transferred from the EU.<sup>2</sup> This decision was later amended by a European Commission decision of 16 December 2016 reflecting aspects of the ECJ decision in the *Schrems* judgment.<sup>3</sup>

The EC has a responsibility to monitor the functioning of the decision. To assist the EC to undertake this monitoring, the New Zealand Privacy Commissioner as ‘the competent supervisory authority for the application of the legal data protection standards in New Zealand’ under the EC decision has undertaken periodically to submit update reports on developments in New Zealand data protection law.

On 22 December 2015 the Privacy Commissioner submitted the [first report](#) that surveyed developments since the commencement of the EC decision in 2013. That initial report was updated by other reports dated [2 March](#) (supplement), [30 June](#) and [9 December](#) 2016, [26 June](#) and [22 December](#) 2017, [9 July](#) and [21 December](#) 2018, and [5 July](#) 2019. This report covers the period July to December 2019 (inclusive).

Regulation (EU) 2016/679 of 27 April 2016 (known as the General Data Protection Regulation or GDPR) came into effect on 25 May 2018 and repealed the 1995 Directive. However, GDPR Article 45(9) provides that the decisions adopted by the Commission on the basis of Article 25(6) of Directive 95/46/EC continues in force until amended, replaced or repealed by a Commission decision adopted in accordance with GDPR Article 45(3) or (5). Accordingly, the EC adequacy decision covering New Zealand will continue in the new GDPR regime.

In this report the Privacy Commissioner does not purport to speak for the New Zealand Government.

## 2. Statutory amendments to New Zealand privacy law

The legal standards for the protection of personal data in New Zealand are primarily set out in the Privacy Act 1993. The Act covers the entire public and private sectors, with a few specific public interest exemptions that one might expect in a democratic society.

There were no statutory amendments during the period; however, one new information agreement approved under Part 9A of the Privacy Act came into force, and a number of amendments to the Credit Reporting Information Privacy Code came into force.

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<sup>2</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D0065>

<sup>3</sup> See [C/2016/8353 Commission Implementing Decision \(EU\) 2016/2295 of 16 December 2016 amending Decisions 2000/518/EC, 2002/2/EC, 2003/490/EC, 2003/821/EC, 2004/411/EC, 2008/393/EC, 2010/146/EU, 2010/625/EU, 2011/61/EU and Implementing Decisions 2012/484/EU, 2013/65](#)

## **Part 9A Authorised Information Sharing Agreements**

The first and second reports in this series of periodic updates explained the operation of Part 9A inserted into the Privacy Act in 2013 that provides for 'approved information sharing agreements' (known as AISAs) that can be approved by Order in Council from time to time.

Part 9A includes relevant process safeguards to ensure that any agreement does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy. The development of an AISA requires a Privacy Impact Assessment. The approval process has a number of system checks including consultation with the Privacy Commissioner and relevant groups and stakeholders, ministerial recommendation after taking into account consultation submissions and a set of statutory considerations, authorisation by the Executive, ongoing reporting and Privacy Commissioner review.

Summary details of each AISA are included in Schedule 2A to the Privacy Act.

There was one AISA coming into force in this period:

- [Privacy \(Information Sharing Agreement between Registrar-General and New Zealand Police\) Order 2019](#) commencing 24 October 2019. This is to improve the accuracy of personal information held by NZ Police in its national database (the National Intelligence Application or "NIA") to assist the Police in performing its maintenance of the law functions by supplying registered life event information (birth, death and name change) to the NZ Police, as well as information relating to non-disclosure directions made in relation to an individual for protective purposes.

## **Privacy Act Codes of Practice**

As noted in my eighth report, on 6 November 2018, following a major review of the Credit Reporting Privacy Code 2004 (issued under section 48(1) of the Privacy Act), I issued amendment no. 14 to strengthen regulation of the use of credit information. These amendments have come into force in stages. The final tranche of changes came into force on 1 October 2019 and increase the threshold for listing overdue payments as defaults in credit reports and oblige credit providers to issue quotation enquiries when offering risk-based pricing for credit products.

A summary of the latest amendments is available [here](#). Further information about the amendment to the Credit Reporting Privacy Code is available [here](#).

## **3. Other statutory developments**

There are no significant statutory developments to draw to your attention in this period.

## **4. Significant court cases**

In the New Zealand legislative scheme for privacy and data protection, individuals do not need to use the courts to enforce their rights. Instead, individuals generally bring complaints to the Privacy Commissioner for resolution at no cost. Nonetheless relevant cases can come before the courts. For instance, Privacy Act cases that are not resolved through the

Commissioner's processes can be taken to the Human Rights Review Tribunal which is part of New Zealand's system of specialist statutory tribunals. Cases can be appealed from the Tribunal through the court system.

There were no significant judgments from the higher courts or from the Tribunal affecting the level of data protection during the period under review.

## **5. Other developments**

There are no other developments of significance to report.

## **6. Further information and reports**

Further information may be requested from Joanna Hayward, General Counsel (Acting), Office of the Privacy Commissioner at [joanna.hayward@privacy.org.nz](mailto:joanna.hayward@privacy.org.nz).

In due course, this report will be published on the website of the Office of the Privacy Commissioner.

It is anticipated that the next periodic report will be provided in July 2020 or thereabouts.