



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

(January – June 2020)

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

8 July 2020

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8 July 2020

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 11<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 19 December 2019.

I am pleased to report on four developments in this period. Firstly, the Privacy Bill passing its third reading in Parliament on 24 June 2020 and received the Royal Assent on 30 June 2020. The new law will come into force on 1 December 2020. In the meantime, the Privacy Act 1993 remains in force.

Secondly, the Civil Defence National Emergencies (Information Sharing) Code 2013 was activated between 25 March and 11 June 2020 during the Covid-19 pandemic.

Thirdly, an amendment to the Telecommunications Information Privacy Code came into force to extend the emergency caller location information system.

Fourthly, an Order in Council has been made under Part 9A of the Privacy Act 1993 approving an information sharing agreement that will come into force on 25 July 2020.

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.

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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/>

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

Yours sincerely



John Edwards  
**New Zealand Privacy Commissioner**

## 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](#) and [19 December 2019](#). This report covers the period January to June 2020 (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.

I am pleased to report that the Privacy Bill passing its third reading in Parliament on 24 June 2020 and received the Royal Assent on 30 June 2020. The new law will come into force on 1 December 2020 and is available [here](#). In the meantime, the Privacy Act 1993 remains in 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](#)

Other relevant developments include the temporary activation of the Civil Defence National Emergencies (Information Sharing) Code 2013 during the Covid-19 pandemic, and an amendment to the Telecommunications Information Privacy Code came into force.

### ***Privacy Act Codes of Practice***

#### *Activation of the Civil Defence National Emergencies (Information Sharing) Code 2013*

This Code of Practice was activated on 25 March 2020 with the declaration of national emergency by the Minister of Civil Defence in relation to the Covid-19 pandemic.

This Code provides authority for agencies to collect, use or disclose personal information during a state of national emergency for purposes directly related to this emergency.

The declaration of national emergency expired on 13 May 2020 and the Code of Practice was de-activated from 11 June 2020.

More information is available [here](#) and [here](#).

#### *Amendment to the Telecommunications Information Privacy Code*

I issued amendment no. 7 on 8 April 2020 to enable emergency services to more quickly locate people at risk of harm who have not made a call to 111 (the emergency services line). The amendment extends the number of agencies who can use the emergency location information system to include New Zealand Search and Rescue and Maritime New Zealand. The amendment came into force on 7 May 2020.

This amendment extends the mobile emergency caller location system to allow the active collection and sharing of the location of any cellular device where the emergency service provider believes there is a serious risk to the life or health of a person. Examples include locating people who are lost in remote areas, or who are believed to be at risk of harming themselves but who have not made or cannot make an emergency call.

The previous system was passive, relying on a 111 call, and so did not assist emergency services to actively search for a person who had not made an emergency call.

Information about the amendment is available [here](#).

### ***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 approved in this period:

- [Privacy \(Information Sharing Agreement Facilitating Customer Nominated Services\) Order 2020](#) commencing 25 July 2020. This is to facilitate the accurate and efficient assessment of eligibility for, entitlement to and delivery of public services that an individual applies for, and legal processes to uphold the law. The lead agency is the Department of Internal Affairs, and other parties are the Accident Compensation Commission, the Ministry of Business, Innovation and Employment, the Ministry of Education, the Ministry of Social Development, the New Zealand Transport Authority, the Registrar-General (who administers the Births, Deaths, Marriages, and Relationships Registration Act 1995), the Registrar of Motor Vehicles and the RUC (Road User Charges) Collector. Schedules to the Order set out the personal information that each party may share with other parties and the uses for the information that is shared.

### **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, 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 December 2020 or thereabouts.