



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

(January - June 2023)

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**Seventeenth report to the European Commission  
by the competent supervisory authority  
for the application of the Legal Data Protection Standards  
in New Zealand**

3 July 2023

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3 July 2023

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 17<sup>th</sup> report 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 six months since the last report dated 30 January 2023.<sup>1</sup>

I report on the introduction of a new approved information sharing agreement authorising the disclosure of certain death related information to relevant New Zealand agencies, and the triggering of the Civil Defence National Emergencies (Information Sharing) Code 2020 by the state of national emergency in relation to Cyclone Gabrielle.

This report also notes a privacy decision of the New Zealand Court of Appeal relating to Police photography.

Otherwise, I am pleased to report that nothing has changed in the last 6 months. In essence, this report confirms that the level of data protection in New Zealand has not been diminished during the review 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.

Yours sincerely



Michael Webster  
**Privacy Commissioner**  
**New Zealand**

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<sup>1</sup> Earlier reports are available from the Privacy Commissioner's website – see "[New Zealand-EU data protection adequacy reporting](#)" Office of the Privacy Commissioner <[www.privacy.org.nz](http://www.privacy.org.nz)>.

## Background

- 1 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 European Union.<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 first *Schrems* judgment.<sup>3</sup>
- 2 The European Commission has a responsibility to monitor the functioning of the decision. To assist the European Commission 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 European Commission’s decision, has undertaken periodically to submit update reports on developments in New Zealand data protection law.<sup>4</sup>
- 3 Regulation (EU) 2016/679 of 27 April 2016, or the General Data Protection Regulation (**GDPR**), came into effect on 25 May 2018 and repealed the 1995 Directive. However, Article 45(9) of the GDPR 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 Commission’s adequacy decision covering New Zealand continued under the new GDPR regime.
- 4 On 22 December 2015, the Privacy Commissioner submitted the [first report](#) that surveyed developments since the commencement of the Commission’s decision in 2013. The Privacy Commissioner submitted subsequent reports dated [2 March 2016](#) (supplement), [30 June 2016](#) and [9 December 2016](#), [26 June 2017](#) and [22 December 2017](#), [9 July 2018](#) and [21 December 2018](#), and [5 July 2019](#) and [19 December 2019](#), [8 July 2020](#), [29 January 2021](#), [9 July 2021](#), [31 January 2022](#), [4 July 2022](#) and [January 2023](#).
- 5 The Office of the Privacy Commissioner does not, and does not purport to, speak for the New Zealand Government in this report.

## Statutory amendments to New Zealand privacy law

- 6 The legal standards for the protection of personal data in New Zealand are primarily set out in the Privacy Act 2020 (**Act**) that came into force on 1 December 2020. The Act covers the entire public and private sectors, with a few specific public interest exemptions that one might expect in a democratic society.

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<sup>2</sup> [2013/65/EU](#): Commission Implementing Decision of 19 December 2012 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by New Zealand (notified under document C(2012) 9557).

<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](#).

<sup>4</sup> 2013/65/EU, above n 2.

- 7 During the period of this report, the Privacy Act was amended by [Clause 18 of the Privacy \(Information Sharing Agreement Facilitating Access to Information about Deaths\) Order 2023](#) (20 April 2023). This Order amended Schedule 2 of the Privacy Act 2020 to reflect the approved information sharing agreement (outlined below) being introduced.

### Codes of Practice

- 8 In the twelfth report to the European Commission, the Privacy Commissioner confirmed that the six codes of practice issued under the Privacy Act 1993 were repealed and replaced under the Act to reflect changes in the new Privacy Act 2020 with effect from 1 December 2020.<sup>5</sup> Information about the revised Codes of Practice is available on our website [here](#).
- 9 No amendments have been made to the Codes of Practice during the Review Period.

### **Part 7(1): Approved information sharing agreements**

- 10 The first and second reports in this series of periodic updates explained the operation of that part of the Privacy Act (now Part 7, subpart 1) that provides for 'approved information sharing agreements' (known as **AISAs**) that can be approved by Order in Council from time to time.
- 11 Part 7, subpart 1 of the Act sets out relevant process safeguards to ensure that an AISA does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy. For example, the Act requires agencies to undertake a privacy impact assessment when developing an AISA. 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, and ongoing reporting and Privacy Commissioner review. You can review the summary details of each AISA in [Schedule 2 to the Act](#).
- 12 One further AISA has commenced in this period. The [Privacy \(Information Sharing Agreement Facilitating Access to Information about Deaths\) Order 2023](#) authorises the disclosure of death information from the Registrar-General, Births, Deaths, and Marriages to New Zealand agencies to enable the accurate recording and updating of records in their databases. The AISA enables the sharing of the information about deaths to minimise the administrative burden on relatives of the deceased and improve the quality and consistency of information that agencies hold about an individual. This AISA came into force on 20 April 2023.

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<sup>5</sup> Periodic Update Report on Developments in Data Protection Law in New Zealand (July – December 2020): Twelfth Report to the European Commission by the competent supervisory authority for the application of the Legal Data Protection Standards in New Zealand (Privacy Commissioner of New Zealand, 29 January 2021) at 7.

### Other statutory developments

- 13 There are no other significant statutory developments to draw to your attention in the Review Period.

### Significant court cases

- 14 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 to that individual.
- 15 Nonetheless, some parties may still choose to bring relevant privacy cases to the courts. For instance, 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. Parties may also use the vehicle of judicial review to challenge a public sector agency's decision with respect to personal information.
- 16 There is one proceeding of interest to draw to your attention during this period. In the case [Tamiefuna v R \[2023\] NZCA 163](#), the Court of Appeal found the Police officer had illegally photographed a man during a random vehicle stop which amounted to a breach of the New Zealand Bill of Rights Act 1990. The decision discusses a range of privacy law including the Privacy Act and the New Zealand Bill of Rights Act, which includes the protection of a person's "reasonable expectation of privacy" under the right to be free from unreasonable search and seizure (section 21).
- 17 The Court found that taking and retaining Mr Tamiefuna's photographs for identification purposes without a good law enforcement reason was a "search" by the Police. Because the search was found to be unreasonable, the Police photographs breached his rights under section 21 of the New Zealand Bill of Rights Act.
- 18 The court discusses the relevant privacy principles (IPPs 1, 3 and 9) under the Privacy Act and makes an important connection between the privacy principles and the Bill of Rights Act:  
  
"the principles must be relevant to the judgment of a court considering what reasonable expectations of privacy ought to encompass in accordance with modern societal expectations".
- 19 The Court of Appeal took note of the joint report of the Privacy Commissioner and the Independent Police Conduct Authority released in September 2022 – taking photographs at traffic stops was one of the policing scenarios the joint report assessed.

### Other developments

- 20 There is one other development of note during this period that I draw to your attention.

### *State of national emergency triggers application of Civil Defence Code*

- 21 On 14 February 2023, the Minister for Emergency Management declared a state of national emergency in respect of the regions in the north island of New Zealand affected by Cyclone Gabrielle, a severe tropical cyclone which caused significant damage, and loss of life.
- 22 [Section 3\(1\) of the Civil Defence National Emergencies \(Information Sharing\) Code 2020](#) (“Civil Defence Code”) means that the Code automatically applies when a state of national emergency is declared. The Civil Defence Code was made under section 33 of the Privacy Act 2020. This is the second state of national emergency that has been declared since the Civil Defence Code was put in place in 2020, the previous being in relation to the Covid-19 pandemic.
- 23 The Civil Defence Code allows agencies to collect, use or disclose personal information for purposes directly related to the government and local government’s response to the emergency, if certain criteria are met. In situations where an individual’s authorisation would usually be required before collecting, using or disclosing their information in relation to the emergency, agencies can use the Civil Defence Code as legal authority, subject to a number of limits.
- 24 The Civil Defence Code applies for a further 20 working days after the date on which a state of national emergency expires or is terminated. The state of national emergency ended in relation to the different affected regions on different dates which resulted in multiple end dates depending on the relevant region. The Code ceased to apply in respect of all regions on 13 April 2023<sup>6</sup>.

### **Further information and reports**

- 25 If you have any further questions or would like further information please contact Joanna Hayward, General Counsel, Office of the Privacy Commissioner at [joanna.hayward@privacy.org.nz](mailto:joanna.hayward@privacy.org.nz).
- 30 In due course, we will publish this report on the website of the Office of the Privacy Commissioner at [www.privacy.org.nz](http://www.privacy.org.nz).
- 31 It is anticipated that the next periodic report for the period July to December 2023 will be provided in January 2024.

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<sup>6</sup> <https://www.privacy.org.nz/publications/statements-media-releases/what-the-state-of-national-emergency-means-for-privacy-rules/>