

**Periodic Update Report  
On  
Developments in Data Protection Law  
In New Zealand**

(July 2018 – December 2018)

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**Eighth Report to the European Commission**

**By the Competent Supervisory Authority**

**For the Application of the Legal Data Protection Standards**

**In New Zealand**

21 December 2018

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**Privacy Commissioner**  
Te Mana Matapono Matatapu  
New Zealand

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21 December 2018

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 8<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 12 July 2018.

I am pleased to report on two developments in this period. Firstly, there was an amendment to the law concerning the search powers of NZ Customs that may be characterised as strengthening the legal standards for the protection of personal data in New Zealand.

Secondly, I issued amendment no 14 to the Credit Reporting Privacy Code 2004 to strengthen regulation of the use of credit information by credit reporters and related companies.

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 the conditions under which New Zealand public sector agencies are able to access personal information. 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 and [9 July](#) 2018. This report covers the period July to December 2018 (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 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 would might expect in a democratic society.

There were no statutory amendments during the period.

## 3. Other statutory developments

On 1 October 2018 a new Customs and Excise Act came into force, repealing and replacing the 1996 Act of the same name. The commencement of this statute attracted substantial international media attention due to it containing powers to search electronic devices.

The new Customs and Excise Act sets thresholds before electronic devices can be searched. An ‘initial search’ requires that a Customs Officer holds a reasonable cause to suspect that the person in possession of the device has or is about to be involved in Customs-related offences. NZ Customs

<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](#)

(similar to other border forces in the world) had previously been examining electronic devices without an express provision, instead relying on general powers to search all goods.

The new Customs and Excise Act has increased the privacy protections through the new thresholds that must be satisfied before a search is undertaken. The Act also requires NZ Customs to complete and consult with the Privacy Commissioner on a privacy impact assessment for any technological aids used to search electronic devices.

There are no other 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 a number of Tribunal decisions during the period and one High Court judgment resulting from an appeal from a Tribunal decision. These are not significant for the purposes of this report.

#### **5. Other developments**

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. In particular, credit reporters are prohibited from using arrangements with related companies for the purposes of direct marketing, the amendment to the Code will strengthen the rights of individuals to access their credit reports and credit scores quickly and for free, and allow the credit reporting system to be used, in a safe and controlled way, to help trace former customers to enable the return of money owed to them.

Further information about the amendment to the Credit Reporting Privacy Code is available [here](#).

There are no other developments of significance to report.

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

Further information may be requested from Jane Foster, General Counsel, Office of the Privacy Commissioner at [jane.foster@privacy.org.nz](mailto:jane.foster@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 2019 or thereabouts.