



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

(January – June 2024)

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

15 July 2024

Table of contents

Letter of introduction

1. Background
2. Statutory amendments to New Zealand privacy law
3. Other statutory developments
4. Significant court cases
5. Other developments
6. Further information

15 July 2024

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 19th 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 2 February 2024.¹

I report on one amendment to the Privacy Act 2020 which relates to the disestablishment of the Māori Health Authority and removes reference to this authority in two parts of the Act which relate to information sharing.

I also report on the introduction of a new approved information sharing agreement authorising twelve public sector agencies to collect, use and share personal information about veterans and other claimants to facilitate public services.

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.

In my last report to you, I acknowledged the 15 January 2024 completion of the European Commission's review of its adequacy decision in respect of New Zealand and welcomed the conclusion that personal data transferred from the European Union to New Zealand continues to benefit from adequate data protection safeguards. I wish to draw your attention to one matter in the associated Commission Staff Working Document. At page 251 of this document, mention is made of my office's "Privacy Trust Mark", which launched in 2018.

I previously awarded Privacy Trust Marks to products or services identified as warranting recognition for excellence in privacy. My Office has since completed an evaluation of the Privacy Trust Mark scheme that tested whether the programme was meeting its objectives of improving public awareness of privacy positive behaviour. Upon completion of this review I closed the Privacy Trust Mark scheme for all recipients due to low uptake and public awareness. The decision was made so that my Office can focus on a different approach to incentivising good privacy practice.

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

I trust that this update report is reassuring for the purposes of the Commission's ongoing monitoring of the level of data protection under New Zealand law.

Yours sincerely



Michael Webster
Privacy Commissioner
New Zealand

Background

- 1 On 19 December 2012, the European Commission formally decided that for the purposes of Article 25(6) of Directive 95/46/EC, New Zealand is considered as ensuring an adequate level of protection for personal data transferred from the European Union.² 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.³ On 15 January 2024, following the first review of this adequacy decision, the Commission determined that New Zealand continues to ensure an adequate level of protection for personal data transferred from the European Union.
- 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.⁴
- 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](#), [January 2023](#), [3 July 2023](#) and [2 February 2024](#).
- 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

² [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).

³ 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](#).

⁴ 2013/65/EU, above n 2.

Act covers the entire public and private sectors, with a few specific public interest exemptions that one might expect in a democratic society.

- 7 During the period of this report, one amendment was made to the Privacy Act.
- 8 Section 138 and Schedule 3 were amended by [Part 1 of Schedule 2 of the Pae Ora \(Disestablishment of Māori Health Authority\) Amendment Act 2024](#). This Act came into force on 30 June 2024 and disestablished the Māori Health Authority. The amendment to section 138 removes the Māori Health Authority as a specified organisation for the purposes of information sharing agreements, and the amendment to Schedule 3 removes the Māori Health Authority as an approved accessing or holder agency for the purposes of sharing identity information.

Codes of Practice

- 9 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 2020.⁵ Information about the revised Codes of Practice is available on our website [here](#).
- 10 No amendments have been made to the Codes of Practice during the Review Period.

Part 7(1): Approved information sharing agreements

- 11 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.
- 12 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](#).
- 13 One further AISA has commenced in this period. The [Privacy \(Information Sharing Agreement Facilitating Services for Veterans and Other Claimants\) Order 2024](#)

⁵ 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.

authorises twelve public sector agencies to collect, use and share certain personal information about veterans and other claimants to facilitate public services. The public services that the AISA intends to facilitate are accurate and efficient assessment of eligibility for, and entitlement to receive, services that a veteran or other claimant applies for or elects to utilise, and accurate and efficient delivery of services that a veteran or other claimant applies for or elects to utilise. This AISA came into force on 6 June 2024.

Other statutory developments

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

Significant court cases

- 15 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.
- 16 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.
- 17 There are no proceedings of interest to draw your attention to between January and June 2024.

Other developments

- 18 There are no other developments of note during this period that I draw to your attention.

Further information and reports

- 19 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.
- 30 In due course, we will publish this report on the website of the Office of the Privacy Commissioner at www.privacy.org.nz.
- 31 It is anticipated that the next periodic report for the period July to December 2024 will be provided in January 2025.