

31 July 2020

Hon Andrew Little
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

FOUR MONTHLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 MARCH 2020 TO 30 JUNE 2020

Highlights

- The Privacy Bill was passed by the House on 24 June under urgency and received the Royal Assent on 30 June 2020. The Privacy Act 2020 comes into force on 1 December 2020.
- Covid-19 related work dominated the reporting period, particularly with policy work associated with the development of tracing apps, media enquiries, and demand for advice and guidance resources.
- The Civil Defence National Emergencies (Information Sharing) Code was activated between 25 March and 11 June 2020 in response to the Covid-19 pandemic.
- Decisions have now been made following our strategic review of the Office's functions and workstreams.

Dispute resolution

The number of open complaint files has remained steady. Incoming complaints dropped slightly. We closed more files than in the previous quarter, while maintaining a 57% settlement rate. Enquiries from the public also remained steady.

We resolved or closed the remaining aged files resulting from the Inquiry into the Ministry of Social Development.

We have put a concerted focus into ensuring team members are confident running settlement conferences and this is having early positive results.

Policy related activities

The Covid-19 pandemic had a large impact on those parts of the Government's work programme related to privacy. We have supported both public and private sector agencies in managing the privacy implications of the pandemic. Our advice has encouraged agencies to take a holistic and privacy approach that will promote buy-in from New Zealanders.

Key activities undertaken include:

- Assisting the Ministry of Health in identifying the privacy risks during the development of the NZ COVID Tracer App.
- Providing the Finance and Expenditure Committee with our recommendations for contact tracing provisions for their Inquiry into the operation of the COVID-19 Public Health Response Act 2020.
- Reviewing privacy aspects of Covid-19 contact tracing apps available in New Zealand and making this information publicly available.
- Monitoring international developments relating to Covid-19 contact tracing apps.
- Reviewing privacy impact assessments relating to the national contact tracing system.
- Reviewing information sharing agreements for the New Zealand Customs Service to share border information for Covid-19 purposes.
- Providing the Ministry of Social Development with advice on the Covid-19 wage subsidy, such as whether sole traders with a single employee should be publicly listed.

We made submissions to select committees on the following Bills:

- Overseas Investment (Urgent Measures) Amendment Bill - we recommended strengthening the privacy safeguards for the new provision providing for information disclosures between agencies.
- Forests (Regulation of Log Buyers and Forestry Advisers) Amendment Bill - we recommended that persons on the forestry register could apply to have their address withheld if it would be prejudicial to the privacy of them or their family.
- Electoral (Registration of Sentenced Prisoners) Amendment Bill - we supported this Bill and proposed no amendments.
- Residential Tenancies Amendment Bill - we supported this Bill and proposed no amendments.
- Organic Products Bill - we supported this Bill and proposed no amendments.
- Child Support Amendment Bill - we supported this Bill and proposed no amendments.

We continue to monitor and assist the development of Approved Information Sharing Agreements. On 22 June, the Privacy (Information Sharing Agreement Facilitating Customer Nominated Services) Order 2020 was passed, with sharing commencing on 25 July. This Agreement assists with the provision of public services that the individual has chosen to apply for, where the delivery of those services is provided by DIA or the Registrar General, or the delivery is supported by identity information held by DIA or the Registrar-General.

Codes of Practice

Civil Defence National Emergencies (Information Sharing) Code activated by pandemic

The Civil Defence National Emergencies (Information Sharing) Code 2013 was activated between 25 March and 11 June 2020 during the Covid-19 pandemic. This provided authority for agencies to collect, use or disclose personal information during the state of national emergency for necessary purposes directly related to this emergency.

Telecommunications Information Privacy Code amendment issued

An amendment to the Telecommunications Information Privacy Code 2003 to extend the Emergency Caller Location Information system (overseen by the Ministry of Business, Innovation and Employment) was issued following public consultation.

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.

Inquiry into compliance with the Credit Reporting Privacy Code

We continued our inquiry under section 13(1)(m) into illion and its related company, Credit Simple. This inquiry is considering whether the companies are complying with the Credit Reporting Privacy Code 2004 – in particular, the prohibitions on related party activities. Our draft findings have been provided to illion and Credit Simple for comment.

International activities

Covid-19 led to many international meetings being cancelled or shifted to online video conferencing.

The Asia Pacific Privacy Authorities forum was held online in June. The Forum discussed Covid-19, data breach notifications, biometrics and artificial intelligence.

We also participated in multiple video conferences on privacy and Covid-19. These were hosted by the United Nations, the OECD and the Global Privacy Assembly. We provided information on how New Zealand has approached Covid-19 and privacy.

We provided ongoing assistance to Ministry of Justice officials in relation to the current review of New Zealand's EU adequacy status, meeting with European Commission officials by video conference and providing advice and responses to questions raised in the review about the operation of New Zealand's privacy laws. We provided our 11th periodic update report to the European Commission covering the period January – June 2020, including passage of the new Privacy Act 2020.

Privacy law reform

The Privacy Bill passed its third reading in Parliament on 24 June 2020 and received the Royal Assent on 30 June 2020.

We continue to work on our programme of implementation projects in advance of the new Act coming into force on 1 December 2020.

Communications

The focus of our communications work shifted rapidly in response to the Covid-19 pandemic. We cancelled planned events and promotions and instead developed new guidance resources and content dealing with recurrent issues such as contact tracing, guest registers, and the sharing of health information with third parties.

We have been working over a number of months to develop a range of new resources and materials to explain the new Privacy Act 2020 requirements. The first tranche of resources released includes a series of podcasts; an animation, two snapshot videos, and an e-learning module.

Our public opinion survey results were released to coincide with the passing of the Privacy Bill.


Media activity was particularly high over the period.

Financial report

The financial year finished with a modest surplus rather than the budgeted deficit. This is principally due to the additional implementation funding received in the year. That funding as provided is being put to implementation projects in support of the new Privacy Act 2020, which now span the previous and future financial years.

There are further accruals to be made to the final accounts prior to the final audit. We do not expect accruals, and we do not expect these to materially change the end of year position as reported.

Yours sincerely



John Edwards
Privacy Commissioner

Encl: Appendix A: Financials for period ending 30 June 2020
 Appendix B: Performance against Statements of Service Performance - Year to Date