



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

(January – June 2021)

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

9 July 2021

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9 July 2021

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Dear Bruno

Update report on developments in New Zealand data protection law

I submit this 13th report¹ 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 29 January 2021.

I am pleased to report that essentially nothing has changed in the last 6 months, other than one minor amendment to the Privacy Act that I draw to your attention. In essence, this 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.

Yours sincerely



John Edwards
New Zealand Privacy Commissioner

¹ 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.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

The Commission has a responsibility to monitor the functioning of the decision. To assist the 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 Commission’s 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 Commission’s 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](#), [8 July 2020](#) and [29 January 2021](#). This report covers the period January to June 2021 (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 Commission’s 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 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.

In my previous report I was pleased to confirm that the Privacy Act came into force on 1 December 2020 and is available [here](#). I understand that the Ministry of Justice has briefed you

² See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D0065>

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](#)

on the law reforms introduced by the Privacy Act 2020. My Office has produced a range of resources to explain and support the new Privacy Act that are available [here](#). Overall, the new Privacy Act affirms and enhances the level of data protection in New Zealand.

During the period of this report, the Privacy Act (Schedule 4) was amended in one minor respect. By way of background, Schedule 4 to the Privacy Act lists the government agencies that may have access to certain types of law enforcement information and is enabled by Part 7(3) of the Privacy Act 2020. Schedule 4 was carried over from the Privacy Act 1993 (Schedule 5).

The Land Transport (NZTA) Legislation Amendment Act 2020 established a new position of Director of Land Transport within the New Zealand Transport Agency (Waka Kotahi). Consequential changes were to Schedule 4 of the Privacy Act to add the Director of Land Transport as one of the arms of the New Zealand Transport Authority that may access Police records of persons wanted for arrest, the motor vehicles register and details of licences issues under the Road User Charges Act 2012 and details of corresponding licence holders, with effect from 1 April 2021.

Privacy Act Codes of Practice

In my previous report I confirmed that the 6 Codes of Practice issued under the Privacy Act 1993 were repealed and replaced under the Privacy Act 2020 to reflect changes in the new Privacy Act 2020, with effect from 1 December 2020.

Information about the revised Codes of Practice is available [here](#).

No amendments have been made to the Codes of Practice during this period.

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 1993 in 2013 that provides for 'approved information sharing agreements' (known as AISAs) that can be approved by Order in Council from time to time. This has been carried over into Part 7(1) of the Privacy Act 2020. The mechanism for a representative agency to represent a class of agencies has been modified to allow an information sharing agreement to specify one or more classes of agencies that the agreement may apply to.

Part 7(1) 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 2 to the Privacy Act 2020](#).

No AISAs have been approved in this period.

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.

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 2021 or thereabouts.