



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

(January - June 2022)

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

4 July 2022

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4 July 2022

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Dear Bruno

Update report on developments in New Zealand data protection law

I submit this 15th 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 my last report dated 31 January 2022.¹

I am pleased to report that essentially nothing has changed in the last six months, other than minor technical amendments that I draw to your attention.

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.

I am also pleased to report the appointment of Michael Webster as the incoming Privacy Commissioner from 5 July 2022.

Yours sincerely



Liz MacPherson
Deputy Privacy Commissioner
New Zealand

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>.

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.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
- 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](#) and [31 January 2022](#).
- 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.

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.

- 7 During the period of this report, the Privacy Act was amended in two minor respects. Firstly, the definition of “working day” set out in section 7(1),⁵ now reflects New Zealand’s new public holiday, Te Rā Aro ki a Matariki/Matariki Observance Day.
- 8 Secondly, Schedule 2 has been updated from 17 June 2022 to reflect the information sharing agreements made or amended in 2020.⁶

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 2020.⁷ Information about the revised Codes of Practice is available on our website [here](#).
- 10 The Health Information Privacy Code 2020 was amended on 25 May 2022 as a consequence of structural reforms to New Zealand’s public health and disability support sector.⁸ The amendment came into force on 1 July 2022.⁹
- 11 The amendments are technical in nature and:
 - a remove references to District Health Boards given their disestablishment by the Pae Ora (Healthy Futures) Bill (the Pae Ora (Healthy Futures) Act 2022 after 1 July);
 - b add new public health sector entities (Health New Zealand/Hauora Aotearoa, the Māori Health Authority/Te Mana Hauora Māori and the Ministry for Disabled People) to Schedule 2 of the Code, allowing them to assign an NHI, and updates the contracting provision in Schedule 2; and
 - c update some terms used and fixes minor errors identified following the repeal and replacement of the Code in 2020.
- 12 Information about the Health Information Privacy Code 2020 Amendment No 1 is available on our website.¹⁰

⁵ Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022 / Te Kāhui o Matariki Public Holiday Act 2022, s 4.

⁶ Privacy Act (Schedule 2) Order 2022.

⁷ 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.

⁸ “Health Information Privacy Code 2020—Amendment No 1” (27 May 2022) *New Zealand Gazette* No 2022-go2049.

⁹ Health Information Privacy Code 2020 Amendment No 1, cl 2.

¹⁰ See “[Health Information Privacy Code 2020](#)” Office of the Privacy Commissioner <www.privacy.org.nz>.

Part 7(1): Approved information sharing agreements

- 13 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.
- 14 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](#).
- 15 No AISAs have been approved in this period.

Other statutory developments

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

Significant court cases

- 17 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.
- 18 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.
- 19 There were no judgments from the higher courts or from the Tribunal affecting the level of data protection during this period under review.

Other developments

Appointment of Incoming Privacy Commissioner

- 20 On 8 June 2022, the Minister of Justice announced the appointment of Michael Webster as the incoming Privacy Commissioner.¹¹ Mr Webster will commence in his role as Privacy Commissioner on 5 July 2022.
- 21 Mr Webster has been the Secretary of the Cabinet of New Zealand and Clerk of the Executive Council since March 2014.

Further information and reports

- 22 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.
- 23 In due course, we will publish this report on the website of the Office of the Privacy Commissioner at www.privacy.org.nz.
- 24 It is anticipated that the next periodic report will be provided in December 2022.

¹¹Beehive “[New Privacy Commissioner Appointed](#)” (press release, 8 June 2022); and “Appointment of Privacy Commissioner” (10 June 2022) *New Zealand Gazette* No 2022-go2308.