

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

(January – June 2019)

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

5 July 2019

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

5 July 2019

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 9th 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 21 December 2018.

I am pleased to report on three developments in this period. Firstly, as signalled in my last report, following a major review of the Credit Reporting Privacy Code, a number of changes introduced by Amendment No 14 have now come into effect.

Secondly, three information sharing agreements approved under Part 9A of the Privacy Act have come into force.

Thirdly, a decision of the Human Rights Review Tribunal has affirmed the limits on the scope of the Privacy Act's news media exemption.

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 New Zealand's Privacy Act and the Privacy Bill. 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

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 *Schrems* judgment.³

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, [9 July](#) and [21 December](#) 2018. This report covers the period January to June 2019 (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; however, three new information agreements approved under Part 9A of the Privacy Act came into force, and a number of amendments to the Credit Reporting Information Privacy Code came into force.

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 in 2013 that provides for ‘approved information sharing agreements’ (known as AISAs) that can be approved by Order in Council from time to time.

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](#)

Part 9A 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 2A to the Privacy Act.

AISAs coming into force in this period are:

- [Privacy \(Information Sharing Agreement between New Zealand Gang Intelligence Centre Agencies\) Order 2018](#) – commencing 4 January 2019. This is to enable a group of designated agencies, under the lead of NZ Police, to share information in order to develop intelligence for the purpose of reducing harm from criminal gangs and to produce data on crime trends.
- [Privacy \(Information Sharing Agreement between Department of Internal Affairs and Registrar-General\) Order 2018](#) – commencing 17 January 2019. This is to enable the sharing of information within different business units of the Department of Internal Affairs to facilitate the provision of and assess eligibility for identity services, registration of life events and enforcing the law in relation to official documents and travel documents (under six different enactments).
- [Privacy \(Information Sharing Agreement between Ministry of Social Development and New Zealand Customs Service\) Order 2019](#) – commencing 20 May 2019. This enables Customs to provide MSD with information about arrivals and departures from New Zealand, in order to verify eligibility and entitlements to state assistance (replacing an existing information matching agreement).

Privacy Act Codes of Practice

As noted in my previous report, 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. These amendments are coming into force in stages. From 1 April 2019, changes included easier credit freezing, stricter controls around marketing and direct marketing, and restrictions on cross-selling. Provision is also made to use the credit reporting system under strict controls 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](#).

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 affecting the level of data protection during the period under review. One recent case at first instance before the Human Rights Review Tribunal, *Director of Human Rights Proceedings v Slater* [2019] NZHRRT 19, is notable as it affirms the limits on the scope of a key exemption from the Privacy Act. The Tribunal assessed the limits on Privacy Act's news media exemption when awarding remedies against a blogger, who published at least 46 documents containing personal information about an Auckland business consultant. The Tribunal affirmed the application of the Privacy Act to personal information published by the blogger who failed to meet the standards of responsible news activity and held that the statutory phrase "news activity" is to be understood as "news activity which is conducted responsibly". This clarifies that a news medium must act ethically and consistently with the basic elements of responsible journalism, which include accuracy, fairness, balance, error correction and right of reply. The Tribunal also held that the publication of personal information must itself also be a news activity in order to qualify for the exemption.

5. Other developments

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.

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 2019 or thereabouts.