

**Periodic Update Report  
On  
Developments in Data Protection Law  
In New Zealand**

(January 2018 – June 2018)

---

**Seventh Report to the European Commission**

**By the Competent Supervisory Authority**

**For the Application of the Legal Data Protection Standards**

**In New Zealand**

9 July 2018

---



**Privacy Commissioner**  
Te Mana Matapono Matatapu  
New Zealand

## **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

9 July 2018

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 7th report<sup>1</sup> 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 22 December 2017.

As can be seen, 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.

Yours sincerely



John Edwards  
**New Zealand Privacy Commissioner**

---

<sup>1</sup> 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.<sup>2</sup> This decision was later amended by a European Commission decision of 16 December 2016 reflecting aspects of the ECJ decision in the *Schrems* judgment.<sup>3</sup>

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 and [26 June](#) and [22 December](#) 2017. This report covers the period January to June 2018 (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.

## 3. Other statutory developments

There are no other 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.

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

<sup>3</sup> 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](#)

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 in New Zealand during the period under review. However, one recent case at first instance before the Human Rights Review Tribunal may be of interest as the judgment expressly referenced international standards, including the EU General Data Protection Regulation, in arriving at its decision. The case of *Naidu v Royal Australasian College of Surgeons* [2018] NZHRRT 23<sup>4</sup> concerned an interference with privacy caused by subject access being unduly delayed and with key documentation comprising a score sheet where codings summarising referees' scoring of the individual were not in a form meaningful to the requester. The tribunal was supported in its conclusion that the agency was obliged to make the summary coding information 'meaningful' and, in particular, 'in a manner that is transparent, intelligible and easily accessible' by reference to objectives of relevant international standards including Article 12(1) of the GDPR.<sup>5</sup>

## **5. Other developments**

There are no other developments of significance to report.

## **6. Further information and reports**

Further information may be requested from Blair Stewart, Assistant Commissioner (Auckland), Office of the Privacy Commissioner at [blair.stewart@privacy.org.nz](mailto:blair.stewart@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 2018 or thereabouts.

---

<sup>4</sup> *Naidu v Royal Australasian College of Surgeons* [2018] NZHRRT 23: <http://www.nzlii.org/nz/cases/NZHRRT/2018/23.html>

<sup>5</sup> See, in particular, paragraphs 40-45 of the judgment.