



New Zealand reviews its Privacy Act

The New Zealand Privacy Commissioner, Bruce Slane, is currently conducting a five yearly review of the Privacy Act.

A public consultation has been undertaken to assist in evaluating which aspects in the Privacy Act of 1993 may need changing. The consultation document, which consists of twelve discussion papers, poses a series of questions on issues that have already been identified. The first eight of the papers discuss some key aspects of the Act:

- structure and scope
- information privacy principles
- access and correction
- codes of practice and exemptions
- public register privacy issues
- complaints and investigation
- information matching
- law enforcement information and related issues.

Other discussion papers look at thematic issues: compliance and administration costs, intelligence organisations and the Privacy Act, interaction with other internal laws, and new privacy protections.

International influence

With regard to new privacy protection law, the focus has been on examining other privacy laws and the EU Data Protection Directive in order to find out which of these provisions should be considered in the revision of the New Zealand law. The question of anonymity was discussed in the light of new data protection problems posed by electronic transactions. Developments in other countries have been taken into account, for example, the Australian Privacy Charter, which states that "people should have the option of not identifying themselves when entering transactions." Other principles selected from the

Australian Charter that have no direct equivalent in the New Zealand law include:

- freedom from surveillance,
- privacy of communications,
- private space, and
- physical privacy.

Also mentioned is the right to subject access without payment. Similar provisions can be found in the proposed Canadian Privacy Charter (see p. 12).

EU Directive sets new questions

The following issues were raised as a direct result of the EU Data Protection Directive:

1. Should the New Zealand law apply controls on *transborder data flows* to countries which do not apply privacy standards comparable to the OECD Guidelines?
2. Should there be special controls on *sensitive categories of data*?

The consultation document lists several negative aspects of having any special controls. They may make the Act slightly more complicated and may over-emphasise sensitive categories compared with other personal data. Also, they may incur extra administration and compliance costs. There is also the question of which categories should be defined as sensitive.

Whether there will be drastic changes to the New Zealand law remains to be seen. Consultation having finished at the beginning of November, the Commissioner is now preparing his report for the Minister of Justice.

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