



Briefing for the Incoming Minister of Justice: Hon Andrew Little

Privacy Foundation New Zealand

February 2018

During the election campaign last year Labour, New Zealand First and the Greens gave a strong general commitment to protecting personal information and respecting privacy. The Privacy Foundation is pleased that the proposal for mandatory collection of individuals' information from NGO agencies has been dropped in line with the three parties' policies.

Labour, in its response to our questions during the campaign, stated that New Zealand is now lagging behind the rest of the world because of stalled Privacy Act reforms, and committed to implementing most of the Law Commission proposals to strengthen consumer protections. In light of these matters we draw your attention to the following urgent imperatives for reform:

1. **New Zealand's reputation and branding.** The Privacy Act 1993 (the Act) was seen as a world leader and enabled New Zealand to cement its reputation as a champion of human rights and an innovator in creating technologically neutral law with application across all sectors. The Act was largely responsible for New Zealand being granted "adequacy" status by the European Union enabling personal information transfers to this country without hindrance. The Act was enacted before the Internet was in general use and is in urgent need of reform. Online commerce and its associated by-products are one of the challenges that need to be addressed. Another area in which New Zealand can demonstrate leadership is in the proposal for clearer rules on re-identification. Analysis of large sets of data about groups of individuals can yield useful outcomes but safeguards are needed to prevent identification of individuals except for narrow exceptions.
2. **The Potential for Abuse of Corporate Power.** Personal information is the new oil and control over it gives corporations and governments power over individuals. Laws such as the Act help redress the information asymmetry between corporations, government and individuals. The Government has made significant progress in recent years in improving its management of personal information, but, the same cannot be said of corporate compliance. Australia has already moved to strengthen the regulator's powers and to require mandatory reporting of privacy breaches. The Law Commission's proposals for empowering the Privacy Commissioner to issue compliance notices for breaches and determinations on requests for access to information would go some way towards remedying this deficit. Private entities are extracting considerable value from using individuals' personal information and

greater transparency is required as to how this occurs. The fairness of the exchanges that occur in the digital space also needs scrutiny. Concepts such as data portability and privacy by design ought to be adopted and limits placed on the ability to profile individuals where they are likely to experience serious discriminatory effects.

3. **Preserving New Zealand's Data Sovereignty.** A level playing field is vital for New Zealand's consumers and businesses. Whilst individuals may find the services provided by Google, Amazon and Facebook to be indispensable, these corporations must play by the same rules as online New Zealand businesses. Although there is a risk that smaller players operating from off-shore may flout domestic laws, the experience globally has been that the larger companies such as Facebook and Google comply with the requirements of the jurisdictions they operate in. The Act as currently worded is not clear whether the Act applies in relation to the collection, storage and disclosure of the personal information of those in New Zealand by overseas entities. The Act is therefore out of alignment with the Fair Trading Act (see s 3 application to conduct outside New Zealand), the Australian Privacy Act (s5B) and the European General Data Protection Regulation all of which regulate those who carry on business or have some other link with their domestic jurisdictions.

Summary: expeditious implementation of long overdue reform of New Zealand's Privacy Act would reassure individuals that the Government values their human right to control how their personal information is used. Protection of personal information is ultimately about augmenting the power of individuals against global corporations and is consistent with the Government's stated intention to address inequality. Moreover, New Zealand businesses also stand to gain, representing a win-win outcome.

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