

New Privacy Bill will boost consumer privacy

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The Privacy Foundation New Zealand is welcoming the introduction of the Privacy Bill to Parliament, particularly its new protections for consumer information.

“New Zealand is well known for having strong, practical privacy laws, but over the last few years it has become increasingly urgent to make sure they are updated for our modern technological environment” says Marie Shroff, the Chair of the Privacy Foundation. “So it’s excellent to see a new version of the legislation introduced to Parliament, that includes some internationally accepted features to enhance consumer protection.”

The new provisions in the Bill include:

- Mandatory notification of privacy breaches that could cause serious harm to people, so they can take steps to protect themselves. Notification obligations also encourage agencies to adopt strong security practices, backed up by fines for failure to inform people about notifiable breaches.
- Enabling the Privacy Commissioner to make binding determinations that agencies should provide people with access to their information.
- Enabling the Privacy Commissioner to issue enforceable orders requiring agencies to fix their processes to comply with the privacy principles.
- New protections to govern personal information that is being sent offshore, or stored or processed overseas, which require agencies to check that the information will be properly protected.

“The update to the law should also be useful for businesses that trade internationally or that hold information about people from other countries” says Ms Shroff. “The changes bring us closer into line with many of our trading partners, particularly Australia (which has introduced mandatory breach notification a few weeks ago) and Europe, with its new privacy laws coming into force in late May. This allows us to demonstrate that New Zealand businesses can be trusted to handle personal information appropriately.”

Privacy Foundation Deputy Chair Associate Professor Gehan Gunasekara says, however, that the maximum fines of \$10,000 for those who unreasonably fail to comply with rulings under the Privacy Commissioner's new powers are "too low especially where corporate defendants are concerned." He also says that the Bill's provisions protecting personal information sent overseas need to be further strengthened. "There is, for example, new provision for better co-operation between the Privacy Commissioner and overseas privacy authorities."

"More is needed though to allow a level playing field for New Zealand's consumers and businesses. The Bill as currently worded is not clear whether it applies in relation to the collection, storage and disclosure of the personal information of those in New Zealand by overseas entities. It is therefore out of alignment with the Fair Trading Act, the Australian Privacy Act and the European General Data Protection Regulation all of which regulate those who carry on business or have some other link with their own jurisdictions. Further clarification through a new clause to this effect is needed", says Associate Professor Gunasekara.

The Privacy Foundation looks forward to providing submissions to the Select Committee in due course. "Inevitably, as with any new law, it is likely that there will be aspects of the Privacy Bill that need to be clearer or more practicable," Ms Shroff adds. "The Bill also does not include all the features that might increase privacy protection for people. For instance, the Bill does not reflect the Law Commission recommendation that agencies should allow people to be anonymous or to use a pseudonym if it's not necessary to identify them.

"We hope that the Bill will progress quickly through Parliament" concludes Ms Shroff. "Given the strong background work undertaken by the previous Government on the Bill, as well as the new Government's determination to see it introduced quickly, we are hopeful that it will receive the same unanimous support as the current Privacy Act did 25 years ago."

The Privacy Bill is available at:

http://www.legislation.govt.nz/bill/government/2018/0034/latest/LMS23223.html?search=ta_bill_P_bc%40bcur_an%40bn%40rn_25_a&p=1

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