

## Privacy Foundation NZ Newsletter

No 2 April 2020

### Message from the Chair

<https://www.youtube.com/watch?v=065r0FePLaA>

### A word from the Newsletter Editor

Welcome to the second issue of the Foundation's newsletter. The plan is to release several issues each year to keep members better informed as to the Foundation's work. In each issue we hope to introduce Committee members and are pleased to include a contribution from Kathryn Dalziel this time.

### Committee meetings in March and April 2020

Through a mix up over dates the 12 March meeting did not have a quorum and a replacement meeting was scheduled for early April. Dates were set for future Committee meetings of 3 April, 5 June, 7 August, 2 October and 4 December.



The 3 April meeting was the first under the Level 4 lockdown and discussion naturally focused mainly upon the pandemic and its implications. The meeting achieved social distancing with up to 1000 km between some participants as the Committee was spread between 4 cities and towns and connected by web conferencing.

### Foundation media statement on State of National Emergency

Following discussion at the Committee meeting a public statement was released on 5 April which is reprinted here in full:

#### **New Zealand's privacy law flexible to meet the challenges of the pandemic**

The Privacy Foundation New Zealand highlights the flexibility during this national emergency to be found in our privacy laws that can facilitate the disclosure of personal information to public sector agencies to assist in the government response to a national emergency.

In 2013 the Privacy Commissioner proactively issued the Civil Defence National Emergencies (Information Sharing) Code under the Privacy Act 1993. The code comes into effect immediately with the declaration of a state of national emergency. On 24 March 2020 a state of national emergency was declared under the Civil Defence Emergency Management Act 2002.

The code seeks to assist with the effective management of the response to a national emergency and with the recovery from a national emergency. It does this by deeming as a permitted purpose "a purpose that directly relates to the government or local government management of response to, and recovery from, an emergency in relation to which a state of national emergency exists" and allows certain additional collection, use and disclosure of personal information to further that purpose.

The code can be of assistance in providing additional legal authority for information sharing in the novel situations arising in emergencies where it can be in the public interest to use information that is held in ways that were not originally intended. It is sufficiently wide to allow Police, for example, to require installation of an app to collect location and proximity data from the smart phone of a New Zealander arriving from overseas.

Privacy Foundation Chair, Gehan Gunasekara, commented:

*“Privacy law is there to enhance and protect the vital interests of individuals. Sometimes in extraordinary circumstances this may involve using information in ways that would not be permissible in normal times. A pandemic is a classic case where our individual interests are closely tied with the interests of the community at large. We are genuinely in this together.”*

*“The Privacy Foundation has issued this statement to highlight the privacy law’s flexibility and encourages public bodies and agencies that hold information that might be needed by public authorities to be aware of the flexibility that exists in the code and the general privacy law. The discretions are there to be used in appropriate circumstances. Be willing to use them for the public good.”*

*“This is not of course an information free-for-all. Organisations holding or seeking information about identifiable individuals must, of course, take care to seek only what they need, to protect what they hold and to act with due respect for individuals. Agencies remain accountable under law for their actions and should be willing to explain and justify their approaches publicly.”*

*“The Foundation acknowledges with gratitude the hard work, in trying circumstances, of everyone in the public health system and other essential services.”*

All media releases are available at: <https://www.privacyfoundation.nz/media-releases/>

## **Introducing Kathryn Dalziel**

Introducing myself by Kathryn Dalziel, Committee member PFNZ and co- secretary to Committee

I am honoured to be a member of the PFNZ and to work with the committee. Our membership includes many privacy experts in New Zealand and I value the discussion and thinking. PFNZ has done some fabulous work and I see it is now the “go to” for media as well as governmental consultations on privacy issues such as information sharing agreements and legislative change. I am looking forward to the discussion the new Privacy Act will generate. Hopefully this will be enacted as soon as possible after the COVID- 19 lockdown.

I am a lawyer and barrister at Walker Street Chambers, having started in practice back in the 80s where privacy was still a twinkle in the Official Information Act’s eye with passing reference to use of personal information in other enactments. Then came the Privacy Act 1993. I was working in employment law and civil litigation at Duncan Cotterill at the time and in their weekly newsletter was a notice that informed everyone that I was the firm’s new privacy officer. It was such a secret even I did not know about it. When I have shared that story at conferences and seminars, many people have told me they started their journey into privacy in a similar way.

I am so grateful to Duncan Cotterill for the opportunity. I studied the Privacy Act and read Elizabeth Longworth and Tim McBride’s publication on the Privacy Act as well as publications and articles from the new Office of the Privacy Commissioner led by the late Sir Bruce Slane. At a New Zealand Law Society conference in Dunedin, I met Sir Bruce who invited me to assist with education work for the office in the South Island. That put me in contact with many different types of agencies, charities,

and businesses. I also presented through the Christchurch Community Law Centre and Volunteering Canterbury. I learned how important and practical privacy was for anyone managing personal information - not just businesses.

From there, I developed a practice in privacy law which I find is very useful for other areas of law such as employment and civil disputes. I have had many wonderful privacy projects. One stand-out was working with Marie Shroff (a former Privacy Commissioner) and Blair Stewart (a former deputy Privacy Commissioner) on the privacy issues arising during a state of emergency after the Canterbury earthquakes in 2010/2011. The information that came out of that project is part of the foundation to privacy regulation in our current state of emergency (COVID-19). Apart from the lockdown, I continue to present at conferences and present seminars and have written many papers on privacy as well as *Privacy in Schools* through the Office of the Privacy Commissioner and the Health Information chapter in the nurses' legal textbook *Health care and the Law*.

Here's some other personal information about me:

- I am married to Andrew Gunn, we have two children, and a cat called Marvel.
- I am a member of Christchurch South Rotary and a Member of the Isaac Theatre Royal Board (I love the performing arts).
- The COVID-19 Lockdown has given me a chance to advise on privacy issues and employment issues in an emergency and to tidy up my house and garden!!

If interested, you can find out more about me at: [www.kathryndalzielbarrister.co.nz](http://www.kathryndalzielbarrister.co.nz).

### **Recent commentaries added to Foundation's website**

The Foundation from time to time publishes commentaries on its website to promote discussion and understanding in relation to privacy. These are typically written by members, including Committee members, and do not necessarily represent the views of the Committee or the Foundation.

In March and April, the Foundation published a record 6 commentaries. Naturally, these featured COVID-19 issues including:

- Gehan Gunasekara (27 March): [Does COVID-19 justify the suspension of privacy?](#)
- Blair Stewart (29 March): [Drawing lessons from disasters](#)
- Blair Stewart (4 April): [What's up with this pandemic and privacy?](#)
- Kathryn Dalziel (6 April): [Videoconferencing: Skyping And Zoombombing](#)
- Health Care and Policy Working Group (9 April): [COVID-19 Pandemic Contact Tracing](#)
- Blair Stewart (13 April): [Bearing it all in a pandemic](#)

Earlier commentaries available at: <https://www.privacyfoundation.nz/commentary/>

### **Submissions**

In February the Foundation made a submission on proposed Amendment No 7 to the Telecommunications Information Privacy Code. The amendment would allow non-consensual location tracking in relation to 111 calls in additional circumstances. Key points in the 5-page submission were:

- Particularly high risk for individuals due to very high sensitivity of location data.
- Implemented controls and safeguards may be inadequate for active collection of location data in the absence of an emergency call.
- The documentation should clearly present reasons and scenarios to be covered by Amendment.
- The design of the Emergency Location Information system should minimise the collection of location data and make sure that they are securely stored.
- It is unclear how the system could possibly cover 'location capable devices' other than telephones.

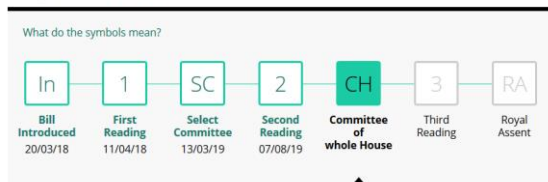
On the final point, it was the Foundation's view that the inclusion in Amendment a 'broader range of devices' has not been sufficiently justified. We were successful on that point with the Commissioner advising, when issuing the Amendment on 8 April, that:

*The amendment will no longer permit the collection of DLI [device location information] from a broad range of location capable devices. Relevant definitions have been changed, with the result that emergency caller location information (ECLI) may be collected from telecommunication devices but DLI may be collected only from cellular devices. In recognition of this reduction in scope, Internet service providers are no longer included in Schedule 4.*

The full submission is available at: <https://www.privacyfoundation.nz/wp-content/uploads/2020/02/Submission-Amendment-No-7-of-the-Telecommunications-Information-Privacy-Code.pdf>

## Privacy Bill update

### Progress of the bill



It is now two years since the Privacy Bill was introduced to Parliament and one year since the select committee, after hearing public submissions, reported the bill back with amendments.

On 17 March the Minister of Justice released [Supplementary Order Paper 482](#) outlining the Government's intended amendments. A commencement date of 1 November 2020 was signalled which implied completion of parliamentary stages during April. The finishing line appeared close. However, COVID-19 intervened with the Prime Minister's Statement to the Nation on 21 March and the country moving to level 3 on 21 March and level 4 on 25 March. A State of National Emergency was declared on 25 March. Parliament had its last sitting on 25 March and adjourned until 28 April.

It is unclear how this will finally impact progress on the bill. Under the most optimistic scenario the bill will be delayed by a month or two. With a delayed restart to Parliament a possibility, and a General Election scheduled for September this year (although delay until November remains an option), other scenarios might see the bill carried over until next year.



The Committee sends its best wishes to members in this difficult time. Keep safe. Stay in your bubble. The bears (and worm) are watching out for us!

