
the new privacy act 2020

what will this mean for your business?

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The new Privacy Act 2020 (Act), which replaces the Privacy Act 1993, is the long-awaited reform to New Zealand privacy law. While large parts of the old Act remain, there are significant changes designed to improve New Zealand organisations' privacy compliance. While privacy matters may not be the most pressing matters for the hospitality industry right now, we are increasingly seeing privacy matters raised in all industries. Now is a good time to consider whether changes are required to your privacy policy and employment agreements to ensure you do not incur the wrath of the Office of the Privacy Commissioner.

Key changes

The Act introduces some important changes. These include:

- A mandatory requirement for businesses to report privacy breaches that are likely to cause anyone serious harm to the Privacy Commissioner and any affected persons as soon as possible (the Office of the Privacy Commissioner has a tool called "NotifyUs" for assessing and notifying such breaches);
- Strengthening cross-border data protection by requiring New Zealand agencies to ensure that all personal information shared with an overseas entity is protected;
- An extension of the Act to all agencies carrying out business in New Zealand (whether they have a physical presence in New Zealand or not);
- Introduction of new criminal offences with a fine of up to \$10,000 if a business misleads an agency or attempts to destroy documents with personal information; and
- Strengthening the Privacy



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Commissioner's power to gather information from an agency by reducing timeframes and increasing penalties from \$2,000 to \$10,000.

Stronger enforcement and compliance

The Act will introduce a number of new enforcement and compliance provisions that will give the Privacy Commissioner greater power to ensure that the Act is adhered to.

Importantly, the Privacy Commissioner will have the power to serve businesses with compliance notices in response to a breach of the Act, and to instruct the business to release personal information held by that business to the affected individual. The Privacy Commissioner will be assisted by the Human Rights Review Tribunal to enforce compliance notices. If the business fails to report a privacy breach to the Privacy Commissioner, it could face a fine of up to \$10,000 (being a notable increase from the previous \$2,000 maximum limit). While the Act does raise the penalty amount, the regime is considered to be at a low level compared to other jurisdictions' regimes.

Another important change is the strengthening of the Privacy Commissioner's power to carry out



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investigations into breaches of privacy complaints by having shorter time frames in place within which a business is required to respond and provide the requested information. Where a business fails to provide the requested information, it could be liable to a fine of \$10,000.

Advice for businesses

Overall, the new Act is likely to have an impact on the operation of your business. It is important that your business starts taking preparatory steps to ensure that its privacy policies and employment agreements are up to date. As a preliminary step, we recommend that you:

- Review your privacy policy and employment agreements to see if they comply with the Act (this includes reviewing your business's privacy statement and making changes where necessary); and
- Check your current systems to ensure that all personal information is held safely and securely (this includes employee, employer, and any customer or other third-party information that is held by your organisation). requested information. Where a business fails to provide the requested information, it could be liable to a fine of \$10,000.

