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Client Briefing

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Cyber Risk in Focus - NZ Privacy Act 2020

New Zealand's Privacy Bill, which has recently passed through Parliament in late-June 2020 after a delay due to Covid-19, is now set to come into effect on 1 December 2020. The updated Privacy Act ushers in a new era for privacy in New Zealand that will promote data transparency and accountability across the whole economy. This is a long-awaited 27 year legislative overhaul to New Zealand's current Privacy Act 1993 - a time before mass digitisation and technological integration.

The new privacy framework intends to set the required standards and expectations on data handling fit for a digital economy, with the long term goal being a positive change in behavioural norms. Knowing that these changes are on the horizon, New Zealand businesses should start preparing now.

Highlighting Key Changes

- **Mandatory Notifications –** Moving away from our current voluntary notification framework, any public or private entity that holds personal information, will be required to notify affected individuals of a data or privacy breach which may likely cause them serious harm – this may be 'harm' beyond just financial loss, such as humiliation or loss of dignity. Entities will also be required to notify the Office of the Privacy Commissioner (OPC) as soon as practicable to engage with any further regulatory conversations.
- **Increased Power for the Privacy Commissioner –** The Bill will grant stronger powers to the OPC which include the ability to issue binding decisions on data access requests, conduct investigations, and to issue compliance notices to agencies who breach the Act (such as non-notification) or interfere with any of the Privacy Principles in the Act. Entities not complying with legislation, such as failing to notify regulators and affected individuals, may face fines up to $10,000.

- **Extra-Territorial Implications –** To fit the global data economy of the 21st century, the Bill carries an extra-territorial effect, which means it will also apply to any action taken by an overseas entity 'in the course of carrying on business in New Zealand.' Additionally, for New Zealand entities, the Bill proposes to apply to data collected and held both inside and outside New Zealand, meaning that storing data offshore will not be a defence for non-compliance.

Developments in Cyber and Privacy Risk

The update to the Privacy Act is only one particular element of wider developments in privacy, cyber and technological risk which New Zealand organisations are continuing to deal with.

Both first party and third party cyber risk exposures are significantly different from where they were 12 months ago.

There has been a notable increase in headline-making cyberattacks in the wake of COVID-19, as hackers seek to exploit the global disruption, along with vulnerabilities created by an increase in remote working and overall internet user traffic.

Additionally, ransomware continues to impact a large number of organisations by both encrypting systems and data; and by threatening to on-sell stolen data on the dark web in exchange for payment.

The probability of a cyber security incident resulting in a privacy breach is therefore higher now than it has ever been before. A data breach would require much more attention, time and resources spent to both investigate and respond to.

How to prepare for the new Privacy Act

- **Engage with the OPC** to find out what may be expected of you and your organisation going forward – they are very willing to assist businesses in preparation for the new standards. The OPC website also contains a wealth of resources to keep you up-to-date on the law reforms.
- **Review and test your incident response plans** so that you have clarity over what to do when a privacy breach is discovered or suspected. This may include having external vendors readily available or knowing how to trigger your cyber insurance policy if you have one in place.
- **Consider transferring some of your risk to a cyber-insurance policy** if you are currently uninsured in this regard. Cyber insurance policies widely respond to the fallout from privacy breaches and are built for the modern digital risk landscape. It can greatly reduce the financial impact on your business to determine the extent of a notifiable breach, and enable quick access to industry professionals that can assist with handling the notification process.

Your Marsh broker can provide more information regarding how Cyber insurance can play a valuable role in offsetting the upcoming shift in NZ's privacy landscape.

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