



COST ACTION CA16222

WISE-ACT

Wider Impacts and Scenario Evaluation of
Autonomous and Connected Transport



Funded by the Horizon 2020 Framework Programme
of the European Union

WISE-ACT Report - Series 1

)) Data Governance for Autonomous and Connected Transport in New Zealand

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) WISE-ACT Reports - Series 1

The Series 1 reports on “Data Governance for Autonomous and Connected Transport” was released on behalf of the WISE-ACT COST Action 16222 on “Wider impacts and scenario evaluation of Autonomous and Connected Transport”. Its aim is to provide an overview on the legal framework on personal and non-personal data protection in selected EU and non-EU Countries, focusing on current experimentation of Autonomous and Connected Transport (henceforth, ACTs) and deployment of its key technologies, such as mobility services and mobile communications, and providing a common use-case.

) Report Summary

Use, storage and sharing of personal information is regulated by the Privacy Act (1993) although new provisions will come into place at the end of 2020 (Privacy Act, 2020). There is no legal barrier to AV testing in NZ. Those undertaking testing are responsible for the security of the data used.

This report is a [WISE-ACT](#) output prepared for the book chapter: Costantini F., Thomopoulos N., Steibel F., Curl A., Lugano G., Kováčiková T. (2020) [Data protection in a GDPR era: An international comparison of implications for Autonomous Vehicles](#). In Milakis D., Thomopoulos N., van Wee B. (Eds.) *Policy implications of Autonomous Vehicles*, Elsevier, 191-213. DOI: [10.1016/bs.atpp.2020.02.005](https://doi.org/10.1016/bs.atpp.2020.02.005)

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») 1.- Introduction. Overview on personal data protection in New Zealand

The collection, use, storage and sharing of personal information, the access by each individual to her or his information held by third parties, and the power of the Privacy Commissioner in New Zealand is regulated by the Privacy Act (1993)¹, which has been modified several times since its original enactment on the 1st of July 1993. Under the provisions of the Privacy Act, personal data are defined as “personal information” and its rules are binding for companies or institutions – both defined as “agencies” by the law – and are protected according to twelve principles, which encompass: the purpose of collection (principle 1), the source of personal information (Principle 2), information of the individual (Principle 3), requirements of data processing (Principle 4), conditions of data storage (Principle 5), access to personal information (Principle 6), the right to correct the data held by agencies (Principle 7), the obligation for agencies to check data before using them (Principle 8), necessity and limited time of storage (Principle 9), the obligation to limit the purpose of data processing under reasonable grounds (Principle 10), the obligation of confidentiality by the agencies (Principle 11), the obligation to assign unique identifiers to individuals only if necessary (Principle 12).

The Privacy Commissioner is entitled to enact codes of practice in order to regulate the handling of certain types of information by certain types of organization, such as health information, credit reporting, telecommunications, civil defence, justice sector and superannuation schemes.

The Privacy Act of 1993 will be replaced by a new legal provision, called Privacy Act of 2020 starting from the 1st of December 2020, determining a radical reform on the regulation of such matter².

¹ Public Act 1993 N. 28, Date of assent 17 May 1993. The latest consolidated version dates 23th March 2020.
<http://www.legislation.govt.nz/act/public/1993/0028/latest/DLM296639.html>

² Public Act 2020 No 31, Date of assent 30 June 2020, in force since 1st December 2020.
https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_77618/privacy-bill.



») 2.- Provisions concerning data processing-related liabilities and fines

Part 10 of the Privacy Act provides regulation concerning matching information, regarding “adverse actions”, which are defined as “any action that may adversely affect the rights, benefits, privileges, obligations, or interests of any specific individual” (§. 97). This kind of data processing is generally forbidden but is allowed in special cases defined by other legal provisions.

Paragraph 127 provides the rules in case of violation of the Privacy Act. Currently a person or organisation can be liable for a fine of up to NZD \$2000. The offences include the obstruction to the Commissioner or other public authorities entrusted by it, false or misleading information to the Privacy Commissioner, false allegations of being delegated or incorporated of power according to the Privacy Act.

If a dispute cannot be settled, a case can be brought before the Human Rights Review Tribunal, but an approach based on settling disputes and educating organisations is preferred³.

The Privacy Act of 2020 will align the legal framework to the European standards, requiring agencies to report privacy breaches, allowing the Commissioner to issue compliance notices to agencies and empowering the Commissioner regarding binding decisions that can be appealed to the Tribunal.

The new provisions will also strengthen cross border protection and allow the filing of class actions in front of the Human Rights Review Tribunal.

The Privacy Act of 2020 will also widen the offences and increase the fines, which will be up to NZD\$10,000.

³ <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/privacy/>.



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) **3.- Legal framework concerning the processing of mobility data**

There is no specific framework for mobility data.



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) 4.- Specific legislation concerning ACT in the Country and provisions concerning data processing

There is no specific legislation for ACT.



) 5. Legal provisions allowing AV tests

There is no legal barrier to AV testing in New Zealand. New Zealand law does not have any explicit requirements for a driver to be present meaning that fully driverless vehicles can be tested on public roads provided that they meet with safety requirements.

The operator (even if they are not in the vehicle) must have a full NZ drivers license. Liability in the event of a crash is unclear but New Zealand's social insurance scheme (ACC) covers personal injury.

Those undertaking testing must have appropriate public liability and professional indemnity insurance.

Testing can happen on private land without any consent. There are no specific requirements for testing of AV beyond those that would apply to testing any other vehicle.

The New Zealand Transport Agency has outlined a process for applying for testing on public roads – which includes ensuring that vehicles are compliant (or exempted from) with the Land Transport Act, for example if they have been modified^{4,5}.

Testing of an autonomous 'air taxi' CORA is happening in New Zealand⁶.-

The Intelligent Transport Systems Action Plan (2014) states: "It is not proposed that the New Zealand government will explicitly look at these legal issues at this time. Rather, the government will continue to monitor international developments and draw on this knowledge once international thinking has developed further and it is clearer if or when these vehicles will be commercially available."⁷

Regarding responsibility for data security, "Anyone undertaking testing is responsible for ensuring the security of the data used by automated systems. This means preventing unauthorised access, whether intentional or inadvertent, which could compromise the intended operation of control systems."⁸

⁴<https://www.nzta.govt.nz/vehicles/vehicle-types/automated-and-autonomous-vehicles/testing-autonomous-vehicles-in-new-zealand/>

⁵<https://www.transport.govt.nz/multi-modal/technology/specific-transport-technologies/road-vehicle/autonomous-vehicles/testing-autonomous-vehicles-in-nz/>

⁶ <https://cora.aero/>

⁷ <https://www.transport.govt.nz/assets/Uploads/Our-Work/Documents/a609016d29/ITS-technology-action-plan-2014.pdf>

⁸<https://www.transport.govt.nz/multi-modal/technology/specific-transport-technologies/road-vehicle/autonomous-vehicles/testing-autonomous-vehicles-in-nz/>.



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) 6.- Assigned Authority or Department at National, regional or local level competent for AV legislation and policy?

Ministry of Transport⁹.

Waka Kotahi - New Zealand Transport Agency¹⁰.

Ministry for Business, Innovation and Employment¹¹.

⁹ <https://www.transport.govt.nz/>

¹⁰ <https://www.nzta.govt.nz/>.

¹¹ <https://www.mbie.govt.nz/>



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) 7.- Vehicle manufacturers established in the Country and their commercial use of personal data

There is no traditional vehicle manufacturer located in New Zealand.

There is an autonomous vehicle manufacturer, Ohmio (HMI).



) 8.- The “Uber case”

Uber operates in New Zealand under the Land Transport Amendment Bill 2017.

There are tensions between ride sourcing companies and the taxi industry, which although de-regulated must have fares approved by the New Zealand Transport Agency¹³ and fares must be displayed inside and outside of the vehicle. Taxi drivers must have a passenger service licence, a ‘P’ endorsement and have held a full NZ driving licence for 2 years, and background checks are undertaken. There are also rules on hours worked. All of these were barriers to uber operating. However, uber operated as private hire, which is different from a taxi in that it is pre-booked on an agreed fare basis¹⁴.

There has been a case against Uber brought by a driver before the Human Rights Review Tribunal¹⁵. The claim concerned the violation of the Privacy Act provisions, and specifically Principles 1, 6, 8 and 11. The sentence, dated 22 March 2019, decided against the actor for failure to comply with procedural requirements.

¹³ Land Transport Rule: Operator Licensing 2007, cl 4.9(1).

¹⁴ Loke. HM (2015) Rationales for Regulating Uber: Driving Regulators to Seek New Solutions. Thesis Submitted for the LLB(Honours) Degree. Faculty of Law, Victoria University of Wellington.
<https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/5094/paper.pdf?sequence=1>

¹⁵ <https://www.justice.govt.nz/assets/Documents/Decisions/2019nzhrtr-18-badillo-lopez-v-uber-new-zealand-strike-out-application.pdf>



) 9.- Others new mobility providers operating in the market

There are many mobility operators active in New Zealand.

Car sharing operators:

- Cityhop
- Yourdrive
- Zilch

Scooter sharing operators

- Lime
- Bird
- Flamingo
- Beam
- Blip

Bike sharing

- Onzo
- Nextbike

Ride-sourcing

- uber
- Zoomy
- Ola



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) 10.- Legal framework on mobile communications

Telecommunications (New Regulatory Framework) Amendment Act 2018¹⁷

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For further information visit the WISE-ACT COST Action website at www.wise-act.eu or contact Dr Angela Curl angela.curl@otago.ac.nz.

¹⁷ <http://www.legislation.govt.nz/act/public/2018/0048/latest/LMS111301.html>