



**1<sup>st</sup> PHAEDRA Workshop: Warsaw, 24 September 2013**

## **Topic: Cooperation *beyond* DPAs**

Blair Stewart

Assistant Privacy Commissioner

New Zealand



Privacy Commissioner  
Te Mana Matapono Matatapu



# Outline

*Premise: Cooperation amongst DPAs is essential but effective global cooperation must also encompass a wider range of entities*

- What is a DPA?
- What is a PEA?
- Other relevant enforcement authorities?
- Anyone else to consider?

# What is a DPA?

(DPA = Data Protection Authority)

- No set definition: Generally a **multifaceted regulator with statutory independence and a range of functions including enforcement**
- Proposed EU regulation defines ‘supervisory authority’ in an expansive way that reflects typical national law and which includes, in addition to core enforcement roles, functions to monitor developments, be consulted by state institutions on legislative developments, promote public awareness, provide free public advisory service.
- General characterisation in Bennett and Raab *The Governance of Privacy: 7 roles as*

Ombudsmen	Auditors
Consultants	Educators
Negotiators	Policy advisers
Enforcers	



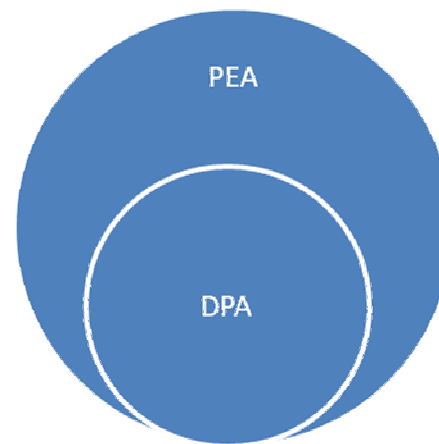
# What is a PEA

(PEA = Privacy Enforcement Authority)

- PEAs is a term first coined in the OECD *Recommendation on Cross-border Cooperation in the Enforcement of Laws Protecting Privacy*, carried over in its essentials to APEC's CPEA, then GPEN, and most recently the revised OECD Guidelines
- A PEA is:
  - A public body
  - Responsible for enforcing a privacy law (essentially a law the enforcement of which has the effect of protecting personal data)
  - Having powers to conduct investigations or pursue enforcement proceedings.
- Similar to the narrower enforcement oriented definition of supervisory authority in ETS 181 and 95/46/EC
- In addition to specialist privacy authorities, a PEA may include a general enforcer of, say, consumer or broadcasting laws which includes a privacy law

# DPAs vs. PEAs

- All DPAs are PEAs but not all PEAs are DPAs
- A PEA may perform just one of the '7 roles' of a DPA', that of enforcer
- Some countries will have enforceable privacy laws and PEA(s) but no DPA: if cooperative action with that country is needed it will need to be with the authority that country has designated to enforce the law, i.e. the PEA



# Others involved in privacy enforcement

- Enforcement of privacy arrangements by bodies other than DPAs and PEAS:
  - E.g. industry codes enforced under contract law (often characterised as trust marks or seal programmes) by public or private sector accountability agents (such as industry ombudsmen)
- General law enforcement, where the where a breach of privacy law or its consequences , also raise issues under other laws which are enforceable
  - E.g. laws covering consumer protection, fraud, harassment, surveillance, occupational regulation, banking or medical confidentiality

# The conclusion

- Effective privacy enforcement cooperation may start with cooperation amongst DPAs but won't end there
- Thought needs to be given to cooperation between DPAs and any others with the power to enforce relevant laws and enforceable schemes

