

Revocation and Replacement of the Codes of Practice under the Privacy Act 2020

Information Paper

The new Privacy Act 2020 comes into force on 1 December 2020. The Act makes a number of key reforms to New Zealand's privacy law, including amendments to the information privacy principles. Consequently, the six codes of practice made under the Privacy Act 1993 require updating to ensure they reflect these new developments.

This information paper assists those wishing to make a submission on the revocation of the six existing codes of practice and their replacement under the Privacy Act 2020.

The submissions process will be staggered to ensure that all submitters have time to comment on all proposals should they wish. Information papers setting out specific changes made to each code will be provided as they open for submissions. This paper summarises the Office of the Privacy Commissioner's approach to revocation and replacement of the codes.

Submissions

Address submissions to Office of the Privacy Commissioner at privacy.code@privacy.org.nz. (If you do not have access to email, submissions may be posted to Codes Reissue Submissions, Office of the Privacy Commissioner, PO Box 466, Auckland 1140.)

Health Information Privacy Code and Justice Sector Unique Identifier Code

Open: **15 July 2020**

Deadline: **12 August 2020**

Credit Reporting Privacy Code and Superannuation Schemes Unique Identifier Code

Open: **22 July 2020**

Deadline: **19 August 2020**

Telecommunications Information Privacy Code and Civil Defence National Emergencies (Information Sharing) Code

Open: **29 July 2020**

Deadline: **26 August 2020**

Submissions may be made public by the Privacy Commissioner or released under the Official Information Act.

Enquiries: telephone Linda Williams on 09 302 8658.

15 July 2020

Revoking and Replacing the Codes of Practice under the Privacy Act 2020

Background

The Privacy Act 2020 received Royal Assent on 30 June 2020. The key reforms in the Act will come into force on 1 December 2020. Some of these changes, particularly those relating to the information privacy principles, have flow-on effects for the codes of practice.

Scope of changes

The aim of this project is to revoke and replace the current codes of practice under the new Privacy Act. The changes are limited to those necessary to align with the new Privacy Act including minor drafting modernisation. No substantive new policies are implemented (other than those required by the Act).

Accordingly, the changes have generally been carried over unless this is unnecessary in light of the existing rules in the particular code. Further detail will be provided in the individual information papers for each code.

Cross-border disclosures

The key changes reflect amendments to the information privacy principles in the new Privacy Act. The most significant of these is new information privacy principle 12 relating to cross-border disclosures. Most of the proposed replacement codes now include a rule providing the same protections for cross-border disclosures as new principle 12.

Changes to collection rules

The collection rules in most of the replacement codes have been updated to reflect changes to information privacy principles 1 – 4 in the Act. These updates include changes (where relevant) to:

- rule 1 to make explicit that identifying information should not be collected if not required for the lawful purpose of collection;
- rule 2 to allow agencies to go to third parties directly, rather than the individual themselves, where that would prevent or lessen a serious threat to the life or health of the individual concerned or any other individual; and
- rule 4 to make explicit the circumstances of collection, and whether this is fair and not unreasonably intrusive, including circumstances where personal information is being collected from children and young people.

Unique identifiers

The information privacy principle relating to unique identifiers in the Act has been updated and renumbered principle 13. Codes that include rules for unique identifiers have been consequentially changed so that they now include:

- an exception for statistical or research purposes;
- a clarification that agencies do not assign unique identifiers for the purposes of the code when they simply record a unique identifier used by another agency for the sole purpose of communicating with that other agency; and

- new requirements to take any steps that are, in the circumstances, reasonable to ensure that the risk of misuse of a unique identifier by any person is minimised.

Minor drafting changes

The codes have also been modernised so they reflect drafting in the Privacy Act (as appropriate). For instance, the new codes have moved to using em-dashes rather than colons and “or” at the end of sub-rules, similar to the Privacy Act. They also have been migrated to a new template that aligns the format of the codes with other secondary legislation.

Where the rules used the wording and structure of the 1993 information privacy principles (IPPs), any amendments and modernisation of the IPPs in the new Act have been carried over into the replacement codes. However, where the rules modified the 1993 IPPs in wording or structure/order, those differences are retained.

Submissions

Submissions may be published on the website of the Office of the Privacy Commissioner or be released on request. If you would like the Commissioner to keep your submission or part of your submission, confidential, please indicate the reasons with your submission and the Commissioner will consider your request in accordance with the Official Information Act 1982.

If you would like to present your submissions in person, please let us know when you send your written submissions to the Commissioner. Oral submissions can be arranged in Auckland, Wellington or via video link during the week beginning 31 August 2020.