

INFORMATION PAPER

PROPOSED AMENDMENTS

- Amendment No. 9 to the Health Information Privacy Code 1994
- Amendment No. 6 to the Telecommunications Information Privacy Code 2003
- Amendment No. 11 to the Credit Reporting Privacy Code 2004

SUBMISSIONS

Submissions may be emailed to submissions@privacy.org.nz or posted to:

Submissions on Amendments to the HIPC, CRPC and the TIPC

Office of the Privacy Commissioner

PO Box 10094

Wellington

The closing date for submissions is **14 July 2017**. Any queries may be directed to Sophie Richardson on (04) 474 7612.

Proposed Amendments to the Health Information Privacy Code 1994, Telecommunications Information Privacy Code 2003, and the Credit Reporting Privacy Code 2004

Information Paper

Introduction

This paper provides background to proposed amendments to the Health Information Privacy Code (HIPC), Telecommunications Information Privacy Code (TIPC), and Credit Reporting Privacy Code (CRPC) (Amendments No. 9, 6 and 11 respectively).

Under principle 11 of the Privacy Act 1993, agencies may not disclose information to any other individual or agency unless a relevant exception (contained in principle 11) applies. Principle 11 is mirrored in rule 11 of the HIPC, TIPC and CRPC.

The intelligence and security agencies are currently exempt from complying with principle 11 (disclosure) because of section 57 of the Privacy Act.

Section 315 of the Intelligence and Security Act amends section 57 of the Privacy Act so that the exemption from principle 11 will no longer apply.

Section 314 of the Intelligence and Security Act amends principle 11 of the Privacy Act, adding a specific exception for disclosures to the intelligence and security agencies (namely the New Zealand Security Intelligence Service and the Government Communications Security Bureau). These amendments to the Privacy Act will come into force on 28 September 2017.

The proposed amendments to the HIPC, TIPC and CRPC seek to align the three codes with principle 11, as amended by the Intelligence and Security Act.

Amending Rule 11 of each Code

The amendment to principle 11 calls for a revision of rule 11 of the HIPC, TIPC and CRPC.

The proposed amendments to these Codes will provide that a health, telecommunications or credit reporting agency may disclose personal; health; credit; or telecommunications information if the agency is satisfied that the disclosure is necessary to enable an intelligence and security agency to perform any of its functions.¹

¹ Intelligence and Security Act 2017, s10-14.
<http://www.legislation.govt.nz/act/public/2017/0010/latest/DLM6920928.html>

These proposed changes are being notified ahead of section 314 of the Intelligence and Security Act coming into force to enable the Commissioner to receive public submissions and issue the Code amendments without undue delay. The public submissions process allows for comment on how the codes should be aligned with the Privacy Act and whether the amendments require any revision before they are formally made under Part 6 of the Privacy Act. This process does not seek comment on changes made to the Privacy Act as a result of the Intelligence and Security Act's enactment.

Submissions are also sought on the placement of the amendments in the HIPC and the CRPC.

Health Information Privacy Code (HIPC)

The amendment proposed to rule 11 includes the new exception as subclause (2)(da) of the HIPC.

This amendment will mean that a health agency deciding whether to disclose information to an intelligence and security agency must first consider whether it is appropriate for the individual concerned to authorise the disclosure (subclause (1)(b) - seeking consent) unless the health agency believes on reasonable grounds that obtaining authorisation is not desirable or practicable and that the exception under new subclause (2)(da) applies.

The placement of the amendment takes account of disclosures for the purposes of security clearance assessments that generally occur with an individual's authorisation.

As well as seeking submissions on aligning the HIPC with the amendment to the Privacy Act, we also seek submissions on the placement of the amendment; specifically, whether the amendment should fall under subclause (2) (as drafted), or alternatively under subclause (1).

Telecommunications Information Privacy Code (TIPC)

The amendment proposed to rule 11 aligns with the amendment to principle 11 in the Privacy Act by placing the amendment to consecutively follow the 'serious threat' exception.

We are not seeking submissions on the placement of this amendment.

Credit Reporting Privacy Code (CRPC)

The proposed amendment to the CRPC is to include the new exception as subclause (1)(ca) of the CRPC.

This exception will permit a credit reporter to disclose credit information to an intelligence and security agency where it has reasonable grounds to believe the disclosure is necessary to enable the agency to perform any of its functions.

In addition, new subrule 11(1)(cb) will permit a credit reporter to disclose credit information in accordance with an access agreement, where the information is required to perform security clearance assessments. The new Schedule 3A sets out certain compliance and review requirements for an access agreement.

Consequential amendments are proposed that will apply the maximum reporting periods in Schedule 1 to disclosures to an intelligence and security agency (rule 11(2A)), limit the disclosure of supplementary identification information (rule 11(3)), and include compliance with an access agreement as a matter to be included in an assurance report under Schedule 6.

We seek submissions on each of the amendments in rule 11, as well as the consequential amendments to other aspects of the CRPC.

6 June 2017