

Note regarding changes made to three proposed amendments to codes of practice following public submission process (31 August 2017)

On 6 June 2017 the Privacy Commissioner publicly notified his intention to amend the Health Information Privacy Code, Telecommunications Information Privacy Code and the Credit Reporting Privacy Code and invited public submissions. The amendments were in response to changes made to the Privacy Act by the Intelligence and Security Act 2017. Following consideration of submissions received the Commissioner issued the amendments on 25 August. This note explains two substantive changes resulting from submissions.

The [submissions](#) and the [amendments](#) are available on the Commissioner's website.

Health Information Privacy Code 1994 Amendment No 9

No changes resulted from the submission process.

Telecommunications Information Privacy Code Amendment No 6

The Telecommunications Carriers Forum and Spark submissions noted that the Intelligence and Security Act 2017 had introduced powers for the intelligence and security agencies to compel the release of personal information by certain telecommunications agencies. Their submissions were to the effect that the intelligence and security agencies should obtain information by the exercise of those powers of compulsion rather than leaving such disclosures to be governed in the code solely in the discretion of telecommunications agencies. The submitters considered that this would be more consistent with the new regime in the Intelligence and Security Act 2017 recently adopted by Parliament.

The Commissioner considered that a change to the proposed amendment was warranted and that the submitter's objectives could be met by a small wording change to the proposed exception (ga) to rule 11(1). As issued, the new exception to rule 11(1) (with the additional words highlighted in italics) would now provide that:

A telecommunications agency that holds telecommunications information must not disclose the information unless the agency believes on reasonable grounds:

(ga) except where the disclosure of the information may be sought in accordance with a business records direction under Part 5(4) of the Intelligence and Security Act 2017, that the disclosure of the information is necessary to enable an intelligence and security agency to perform any of its functions;

Accordingly, the broad exception for disclosure does not apply in the circumstances where a 'business records direction' – which is a power of compulsion – may be sought. However, the exception does allow disclosures within the discretion of the telecommunications agency for other disclosures necessary to enable an intelligence and security agency to perform its functions.

Credit Reporting Privacy Code Amendment No 11

A submission from a credit reporter, Centrix, observed that the amendment allows disclosure under exception (cb) to rule 11(1) to intelligence and security agencies under an access agreement to allow security clearance assessments is to be processed. However, Centrix noted the risk that the access agreement process could be bypassed by simply making disclosure to intelligence and security agencies under the broader exception (ca) even for standard security clearance assessment. The access agreement process contains certain express accountabilities and processes.

The Commissioner considered that a change to the proposed amendment was warranted and that the submitter's objectives could be met by a small wording change to the proposed exception (ca) to rule 11(1). As issued, the new exception to rule 11(1) (with the additional words highlighted in italics) would now provide that:

A credit reporter that holds credit information must not disclose the information unless the credit reporter believes on reasonable grounds:

(ca) that the disclosure of the information is necessary to enable an intelligence and security agency to perform any of its functions *other than the performance of security clearance assessments*;