



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

25 August 2020

Office of the Privacy Commissioner

By email: privacy.code@privacy.org.nz

Tēnā koe

Enquiry: Submission on the proposed Health Information Privacy Code

Our ref: E20HDC01256/XX

Thank you for inviting submissions as part of the Office of the Privacy Commissioner's review of the Health Information Privacy Code 1994 (HIPC).

As the Health and Disability Commissioner, I am charged with promoting and protecting the rights of health and disability services consumers in New Zealand, as set out in the Code of Health and Disability Services Consumers' Rights (the Code). One of my functions under the Health and Disability Commissioner Act 1994 (the Act) is to make public statements in relation to any matter affecting the rights of health or disability services consumers. Please note the Code refers to the rights of 'consumers' and I have used this term in this submission.

In performing those functions, my Office routinely gathers information that is subject to the Privacy Act (PA) and the HIPC. The Health and Disability Commission has policies and processes in place to detect and react to privacy breaches and privacy is a key consideration for this Office

Submission

The key purpose for the PA 2020, due to come into force in December 2020 is to promote people's confidence that their personal information is secure and will be treated properly. It

is therefore appropriate that the HIPC reflects those changes in relation to health information. The Consultation Document asks submitters to comment on the proposed changes by asking them to respond to specific questions.

Do you agree that the existing rule 2(2)(c)(iii) means that new information privacy principle 2(2)(e)(v) does not need to be added to rule 2?

Agree.

Would you prefer express reference to section 54 (now section 30 of the [PA] 2020 Act) to be retained in rule 2, even though it has been removed from information privacy principle 2?

Would you prefer express reference to section 54 (now section 30 of the [PA] 2020 Act) to be retained in rule 10, even though it has been removed from information privacy principle 10?

Would you prefer express reference to section 54 (now section 30 of the [PA] 2020 Act) to be retained in rule 11, even though it has been removed from information privacy principle 11?

Clarity in the law is important as it allows access to those who may not have a working knowledge of the rules. Therefore it is my view that an express reference to section 54 in all three situations outlined above is preferable.

Do you agree with the way in which we have implemented new information privacy principle 12 into the code?

Yes. It is important to manage the current gaps in the HIPC dealing with cross-border outsourcing for health services. Currently, a health agency is liable for health information outsourced from an overseas service provider, depending on how that service provider uses that health information. This change will ensure that health agencies are responsible for what happens to any health information they give to overseas service providers and that they take reasonable steps to ensure the health information is subject to appropriate privacy standards.

Do you agree that the application of rule 13 to health agencies should reflect section 26 of the Privacy Act 2020?

Yes. A number of health agencies assign unique identifiers to patients. It is important to ensure that one unique identifier does not become a universal identifier for that person. There may be concerns with reliability and privacy in cases where a universal identifier may help the matching of personal and health information across a number of agencies. A universal identifier may also cause concerns around identity theft.

Conclusion

I trust that you find these comments of assistance. Please do not hesitate to contact Senior Legal Advisor, by email at jen.feltham@hdc.org.nz if you have any questions about this submission.

Nāku iti noa, nā

Jane King

Associate Commissioner, Legal