

Repeal and Replacement of the Superannuation Schemes Unique Identifier Code

Information paper on Changes to Notified Code

On 22 July 2020 the Privacy Commissioner publicly notified his intention to repeal and replace the Superannuation Schemes Unique Identifier Privacy Code 1995 and invited public submissions. The changes in the notified code are part of a wider project to align the six privacy codes of practice with the Privacy Act 2020. The information paper summarising the Privacy Commissioner's approach to the revocation and replacement of the codes can be found here.

The Commissioner received one submission on the notified Superannuation Schemes Unique Identifier Code. Following consideration of the submission and a final review of the code, the Commissioner issued the Superannuation Schemes Unique Identifier Code 2020 on 28 October 2020. The code comes into force on 1 December 2020. This paper explains the key changes made to the notified Superannuation Schemes Unique Identifier Code after receiving the submission.

Changes to the notified Superannuation Schemes Unique Identifier Code

1. New subclause added to the interpretation clause of the code

We asked submitters whether a new subclause should be added to the codes specifying that terms defined in the Privacy Act that are used but not defined in the code have the same meaning as the Act.

The submitter agreed that this was a useful clarification to add to the code. Accordingly, the Commissioner has added the following new clause 3(2) to the code:

- (2) *A term or expression defined in the Act and used, but not defined, in this code has the same meaning as in the Act.*

This follows drafting practices in regulations (see for instance reg 3(2) of the Privacy Regulations 2020) and will assist those using the codes to find defined terms.

2. Implementation of section 26 of the Privacy Act 2020 into the notified code

Submitters on the proposed code were asked whether they agreed that the application of rule 13 to agencies subject to the code should reflect section 26 of the Privacy Act 2020. The submitter agreed in principle that rule 13 of the code should reflect section 26 but queried how this aligned with the equivalent provisions in the 1995 code.

For clarity, rule 13(5)(b) – requiring agencies to take reasonable steps to ensure that the risk of misuse of a unique identifier by any person is minimised – is new. It implements the equivalent new clause in information privacy principle 13(4)(b). Section 26 neither expressly restricts the application of new principle 13(4)(b), nor principle 13(5) that is implemented as rule 13(6) of the code. Accordingly, these subrules have prospective effect only but can apply to a unique identifier assigned at any time.

The submitter also queried why subrules 13(2)(b) – (d) were not limited to applying only after 1 December 1995, when the 1995 code commenced. This is set out in the 1995 code at subclause 4(3). This approach was not followed in the notified code in order to align with section 26 of the Privacy Act. However, after considering the issue further, the Commissioner agrees that retaining these references more accurately carries over the application of modified rule 13. Accordingly, the Commissioner has added the following new subclause 4(3) to the code:

- (3) *Subrules 13(2)(b) – (d) and (3) do not apply to unique identifiers assigned before 1 December 1995*

Additionally, in order for the application of the rule to also reflect section 26 of the Act, notified subclause 4(3) – now renumbered subclause 4(4) – has been amended to read:

- (4) *However, subrule 13(2) applies to the assignment of a unique identifier:*
- (a) on or after 1 July 1993 under subrules 13(2)(a) and (2)(e); and*
 - (b) on or after 1 December 1995 under subrules 13(2)(b) to (d);*
- even if the unique identifier assigned is the same as that assigned by another agency before that date.*

3. Other matters

The language of the code has been amended to ensure it is gender neutral. Additionally, minor typographical errors have been corrected and unnecessary definitions removed.