Fact Sheet

JACKSON RUSSELL LAWYERS ESTD 1844

Introduction to Privacy

November 2020

The Privacy Act 1993 has governed information privacy in New Zealand for 27 years. On 1 December, it will be replaced with the Privacy Act 2020 (**Act**).

The Act uses the same principle based approach as its predecessor but includes new obligations for agencies and enforcement powers for the Privacy Commissioner, to provide greater protection for personal information in the digital age.

The Act controls how "agencies" collect, use, disclose, store and give access to "personal information". "Personal information" is information about identifiable, living people.

WHO DOES THE ACT APPLY TO?

Almost every business or organisation (such as companies, government departments, religious groups, schools and clubs) that holds personal information is an "agency" under the Act. From 1 December, the Act will be extended to cover overseas agencies that are carrying on business in New Zealand.

OVERVIEW OF THE PRIVACY PRINCIPLES

The Act has 13 principles that set out how personal information can be collected and used, and how individuals can gain access to that information and ask for it to be corrected. The principles are:

No	Description	Principle
1	Purpose of collection of personal information.	An agency may only collect personal information where it is needed to perform a function or activity of the agency.
2	Source of personal information.	The agency must collect the information directly from the person concerned. There are exceptions: for example, where the person agrees otherwise, or where the information is publicly available.
3	Collection of information from subject.	The agency must take all reasonable efforts to ensure the person is aware that the information is being collected, what it will be used for, the recipients of the information, whether the supply of the information is voluntary or mandatory, the consequences of not providing the information and the person's rights of access to and correction of the information.
4	Manner of collection of personal information.	Personal information must not be collected in an unlawful, unfair or intrusive fashion.
5	Storage and security of personal information.	The agency must ensure the information is protected against loss, misuse, or unauthorised disclosure.
6	Access to personal information.	Where the information can be readily retrieved, the individual is entitled to confirmation of whether the information is held, and to have access to it. There are exceptions, for example, where disclosure would prevent detection of a criminal offence, or would involve a breach of someone else's privacy.
7	Correction of personal information.	Individuals may request correction of information held.
8	Accuracy of personal information to be checked before use.	The agency must not use the information without taking reasonable steps to ensure it is accurate, up-to-date, complete, relevant and not misleading.
9	Agency not to keep personal information for longer than necessary.	The agency must not keep the information for any longer than it is needed for the purposes for which it was collected.
10	Limits on use of personal information.	Information collected for one purpose must not be used for any other purpose. There are exceptions: for example, where the agency reasonably believes the individual has authorised the further use, or that the information was from a publicly available publication.
11	Limits on disclosure of personal information.	The information must not be disclosed except in certain situations. These include where the disclosure is directly related to the purpose for which the information was collected, where the source of the information is a publicly available publication, and where the disclosure is authorised by the individual concerned.

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12	Disclosing information overseas *(This is a new principle under the Act)*	An agency may only disclose personal information to an overseas agency if that overseas agency has comparable protections for personal information to New Zealand, or the individual has consented to the disclosure (knowing there may not be comparable protections).
13	Unique identifiers.	An agency must not assign a unique identifier to an individual unless doing so is necessary for the agency to carry out its functions efficiently. Where doing so is necessary, agencies must not use a unique identifier that has been assigned to that individual by another agency (the only exception is for certain taxation purposes). Agencies must also take reasonable steps to minimise the misuse of unique identifiers.

ROLE OF THE PRIVACY COMMISSIONER

The Privacy Commissioner provides advice and education on privacy, investigates complaints, evaluates new legislation that may affect an individual's rights and issues codes of practice covering specific industries, agencies, activities, or types of personal information.

The changes introduced by the Act also give the Privacy Commissioner greater enforcement powers. From 1 December, the Privacy Commissioner will be able to issue compliance notices to agencies – which can require an agency to do (or stop doing) something, if that agency is not complying with the Act. The Privacy Commissioner will also be able to issue binding decisions in relation to the complaints it receives about access to information.

MANDATORY BREACH NOTIFICATION

A key new change to the Act is the requirement for agencies to notify the Privacy Commissioner and affected individuals if they suffer a privacy breach that has caused someone serious harm (or is likely to do so).

To comply with this change, agencies will need to have internal policies and processes in place to enable them to identify, manage, assess and report (if necessary) data breaches. The Office of the Privacy Commissioner has released a tool "**NotifyMe**", to assist agencies to assess any breaches they suffer. The NotifyMe tool and related information is available here.

NEW CRIMINAL OFFENCES UNDER THE ACT

From 1 December it will be a criminal offence to:

- mislead an agency by impersonating someone, or pretending to act with that person's authority in order to gain access to that person's personal information; or
- destroy any document that contains personal information, knowing that a request has been made for that information.

The maximum fine for these offences is $10,000.

FURTHER INFORMATION

For more information about privacy, the website of The Office of the Privacy Commissioner at (https://www.privacy.org.nz) contains a lot of information on privacy, including the changes under the Act.

We are also happy to help you to comply with the Act, or with any privacy related issues or questions you have.

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