NEW ZEALAND PRIVATE SURGICAL HOSPITALS ASSOCIATION INC

Issue Paper: Privacy Act Amendment May 2025

The amended act is expected to come into force on 1 May 2026.

Part 1 of the bill amends the Privacy Act 2020 to introduce a new information privacy principle: **IPP 3A**.

IPP 3A requires that agencies take reasonable steps to ensure that an individual is aware of the **indirect** collection of their personal information, as well as the purpose for which that information has been collected, the intended recipients of that information, and their rights under the Privacy Act information privacy principles.

Currently, the collecting agency is not required to tell an individual that they had collected their information from someone else.

In making these changes, the bill updates New Zealand's privacy laws to be in line with international best practice. Many countries, including Australia and the United Kingdom, already require notification where information is collected indirectly.

The new requirement coming next year will mean that **NZPSHA members may need to make additional effort to comply with the Privacy Act**.

The Office of the Privacy Commissioner (OPC) has released draft guidance for agencies on applying the new privacy principle. Information is available on their website and submissions on the guidance are being accepted until 25 June 2025. Office of the Privacy Commissioner | Have your say

IPP 3A will require an agency that collects personal information indirectly to take reasonable steps to notify the individual concerned of certain matters at the time their information is collected, or as soon as practicable after the information has been collected, unless a specified exception applies.

IPP 3A requires that individuals be made aware of:

- **the fact that their information has been collected**
- **the purpose of collection**
- **who will receive the information**
- **the identity and contact details of the collecting agency**
- **whether the collection is authorised or required by law (and which law)**
- **their rights to access and correct the information.**

One of the key challenges in complying with IPP 3A is that an agency collecting personal information indirectly will not necessarily have direct contact with the individuals concerned.

When notifying someone of the fact that their personal information has been collected, the Guidance suggests an agency should specify in plain language exactly what kind of information it is collecting or has already collected. For example, “we have collected your admittance information from x organisation.”

When notifying the purposes of collection, the Guidance recommends that agencies include specific detail so that the individual can understand what their information is being used for. The Guidance provides that agencies should inform individuals of the specific identities of the parties to whom the information will be shared.

The Guidance also clarifies that, where an agency has not taken steps to notify the individual before collecting their information, the agency will need to tell them "as soon as reasonably practicable" after the information is collected. What is "reasonably practical" will depend on the circumstances, taking into consideration the available knowledge, cost and effort involved.

Exceptions

There are multiple exceptions to the IPP 3A notification requirements. An agency is **not** required to notify the relevant individual if:

- The individual has already been made aware.
- The information won't be used in an identifiable form.
- The information will be used for research and statistics and publishing will not identify the individual.
- Non-compliance wouldn't prejudice the interests of the individual.
- The personal information is already publicly available.
- Telling the individual would prejudice the purposes of the collection.
- Telling the individual is not reasonably practical in the circumstances.
- The agency collects personal information to determine whether the information is of enduring value for general public interest and should be archived, and compliance is likely to seriously impair the agency's achievement of this.
- Compliance would prejudice the security or defence of New Zealand.
- Compliance would reveal a trade secret.
- Telling the individual would cause a serious threat to public health or safety, or to the health and safety of another individual.
- Non-compliance is necessary for:
    - maintenance of the law
    - enforcement of the law that imposes a pecuniary penalty
    - protection of public revenue
    - conduct of court/tribunal proceedings.

The Guidance provides commentary on how the IPP 3A exceptions may be applied in practice. Agencies will be expected to document and justify the basis for relying on an exception, to consider whether a partial or delayed notification is possible, and regularly review the appropriateness of relying on the relevant exception.

Even when an exception is available, the OPC encourages agencies to ask: **"Would the individual reasonably expect to be notified?"** If the answer is yes, the OPC's view is that proactive notification will be best practice from both a transparency and trust perspective.

When relying on the most straight forward exception – that the individual has already been made aware – the agency will need to have a sound basis for believing that the disclosing agency has informed the individual. This should be **based on evidence** rather than an assumption.

One way that disclosing and collecting agencies can ensure this is to make the notification requirements part of their contractual arrangement. For example, both agencies may agree that the organisation that originally collects the information from the individual concerned will make them aware of everything required by the Act, so that the collecting agency doesn't need to notify again. The collecting agency should still ensure it has reasonable grounds to believe that the disclosing agency is informing individuals as required. For example, through regular contract reporting requirements.

Flow Chart

The Office of the Privacy Commissioner has provided a useful decision-making flowchart.

Areas for refinement/clarification

The Guidance anticipates the notifications will specify the exact source of the information or the exact parties to whom information will be disclosed. This level of specificity is not something organisations typically include in their privacy notifications and represents a significant shift from current accepted practices. It would also seem to necessitate updating the notifications every time there is a change in a source or party, or whenever new sources or parties are introduced (even if the underlying purposes and scope of collection have not materially changed).

Preparation for law change

There are some clear actions that NZPSHA members should take before the amended law is enacted:

- **Review how your business currently collects personal information, particularly from third parties and other indirect sources**
- **Map out indirect collection scenarios across your operations**
- **Identify where notifications may be required and assess whether current notification practices are sufficient**
- **Identify where exceptions may apply**
- **Prepare updates to privacy statements, forms, and contractual arrangements.**

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