

26 August 2020

Codes Reissue Submissions
Office of the Privacy Commissioner
Auckland

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

Tēnā koe

Re: Revocation and Replacement of the Codes of Practice under the Privacy Act 2020

The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the revocation and replacement of the six existing codes of practice issued under the Privacy Act 1993, to ensure they reflect the new Privacy Act 2020 (**Act**) when it comes into force on 1 December 2020.¹

As noted in the Information Paper, the changes to the codes “are limited to those necessary to align with the new Privacy Act including minor drafting modernisation”² and no substantive new policies have been implemented.

The Law Society provides brief comments below in relation to the proposed new Health Information Privacy Code (**draft code**). We also note that the comments will equally apply where other codes propose similar changes.³

Health Information Privacy Code

Q1: Do you agree that 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.

Rule 2 sets out rules around the source of health information. The Act includes a new exception in Information Privacy Principle 2(2)(e)(v), to allow collection from a source other than the individual where necessary “to prevent or lessen a *serious threat to the life or health* of the individual concerned or any other individual” (emphasis added).

Rule 2(2)(c)(iii) currently provides an exception where necessary to avoid “prejudice [to] the safety of any individual”. As noted in the draft code,⁴ the Commissioner does not consider it necessary to amend rule 2 as “rule 2(2)(c)(iii) covers similar ground but is framed in a manner that better fits the health context”.⁵

¹ Revocation and Replacement of the Codes of Practice under the Privacy Act 2020, Information Paper, at p 1.

² Ibid.

³ In particular the Credit Reporting Privacy Code and the Telecommunications Information Privacy Code.

⁴ Draft Consultation Health Information Privacy Code, at p 6.

⁵ Rule 2(2)(c)(iii) states: “It is not necessary for a health agency to comply with subrule (1) if the agency believes, on reasonable grounds, - ... (c) that compliance would— ... (iii) prejudice the safety of any individual...”

Quite often an individual's safety will encompass their health, but that might not always be the case. The Law Society considers it would be preferable to amend the exception in rule 2(2)(c)(iii) so that it specifically refers to the health of the individual. This could be done by including the words 'health or', so that the wording is: "prejudice the health or safety of any individual". This would more closely align the wording of the Code with new Information Privacy Principle 2(2)(e)(v).

Qs2-4: Would you prefer express reference to section 54 (now section 30 of the 2020 Act) to be retained in rule 2, even though it has been removed from information privacy principle 2, 10 and 11?

References to existing exceptions to the collection of information in accordance with an authority granted under section 54 (now section 30 of the 2020 Act), have been removed from rules 2, 10 and 11 (as the exception has been removed from the corresponding information privacy principles). The draft code⁶ acknowledges that if authorisation is granted by the Commissioner, this will continue to provide an additional exception for collecting, using or disclosing personal information that would otherwise breach rules 2 and 9 – 12 of the Code.

The Law Society considers it is appropriate to retain express reference to section 54 (now section 30) in rules 2, 10 and 11 of the Code. This is largely because the exception sits in the Act, not in this Code, and for those who are coming to the Code for the first time or are reading the Code without reference to the Act, it would be preferable if the full range of exceptions to the relevant rules are clearly set out in one place.

We hope these brief comments, prepared with assistance from the Law Society's Human Rights and Privacy Committee, are helpful. If further discussion would assist, please contact the Law Reform Adviser to the committee, Amanda Frank (amanda.frank@lawsociety.org.nz).

Nāku noa nā,



Herman Visagie
Vice President

⁶ Above n 3.