

Medical
Protection



PMAANZ 2021

PRIVACY ACT 2020: PROTECT, PREPARE & PENALTIES

Jude Pickthorne, Medical Protection Case Manager

These slides are for reference purposes only. If you require advice on a specific issue please contact your medicolegal indemnifier directly.



Key Changes : Health Information Privacy Code 2020

- Notifiable privacy breaches
- Disclosing information overseas
- New refusal grounds
- New criminal offences

Notifiable privacy breaches

- A recent MPS webinar poll indicated that 30% of doctors had emailed sensitive information incorrectly
- Privacy breach notification regime – ‘has caused or (likely to cause) serious harm’
- Serious harm assessed by, the sensitivity of the information, actions taken to reduce the risk of harm, nature of the harm that *could* arise
- Use the Notify App to self assess on www.privacy.org.nz CERT NZ (cyber security problems)
- Notify as soon as reasonably able to after becoming aware
- Failure to notify could incur a fine of up to \$10,000.

Tips for sending emails

- Consider disabling Outlook's 'automatic name checking'
- Delay send
- Use mail tips – pop up messages
- Using 'blind copied' BCC
- Gmail & Hotmail do currently run Transport Layer Security (TLS) version 1.2 or later meeting Ministry of Health standards
- Password protection.



New refusal grounds – IPP 11

Organisations can now refuse to disclose personal information if releasing it would create:

- A serious threat to the health, safety or life of an individual, or to public health and safety
- A significant risk of serious harassment, or would cause significant distress to the victim of an offence.



Principle 12 : Cross border disclosure

- Aims to ensure personal information sent overseas is subject to privacy safeguards that are similar to those in New Zealand
- Business & organisations will now be responsible for ensuring adequate protection
- If privacy controls are lacking with the receiver organisation – explicit consent required from that person
- IPP12 does allow provision in certain urgent circumstances, maintaining public health, safety, prevent a serious threat to someone's life or health, or for maintenance of the law.

Enforcement Powers

- Access Directions and Compliance Notices (to do something or stop doing something) – This is in addition to the existing process of referring to the Director of Human Rights Proceedings
- Failure to change a behavior can lead to up to \$10,000 fine
- Offence to impersonate someone else in order to access their personal information – up to \$10,000 fine
- Destroying personal information to avoid handing it over - up to \$10,000 fine
- Failure to notify serious privacy breach – up to \$10,000 fine.



Key points

- MUST notify serious privacy breaches
- Review & rethink sending emails
- New refusal grounds
- Consent when sending information abroad
- OPC enforcement powers
- **MPS available to assist you with your privacy concerns.**



... The issue of privacy is not for us simply as a matter of business practice . It's just fundamental to human dignity.

Gerald Levin : CEO HBO



Vicarious liability

- Where the employer (practice) can be held liable for the actions of someone else/the employee (e.g. doctor)
- Number of cases where regulators have breached a practice and held them vicariously liable
- Medical Protection will soon offer a practice membership covering this and other professional indemnity needs for the entity itself.

Medical
Protection



Further support and information is offered on our website, in addition to our publications, booklets, factsheets and case studies.

medicalprotection.org

The Medical Protection Society Limited (MPS) is a company limited by guarantee registered in England with company number 36142 at Level 19, The Shard, 32 London Bridge Street, London, SE1 9SG. MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association. MPS® and Medical Protection® are registered trademarks.