

The Legal and Clinical Aspects of Privacy Laws – Amendments to the Privacy Act

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Australian Privacy

Why is privacy important?

- Information collected in providing community, health and aged care services is more than just data and statistics.
- It often reflects a person's:
 - Medical condition (including HIV status)
 - Mental health
 - Lifestyle
 - Sexual preference
 - Personal history (in terms of sexual or other abuse)
 - Family history
 - Beliefs

You are a custodian of a person's secrets

Misuse of health information has led to patient suicide...

We need to be culturally sensitive to personal information, for example, in relation to the indigenous population



Australian privacy key concepts

What's new for 2014?

- Increased penalties
- Increased powers of the Australian Information Commissioner
- More uniformity across States regarding health information – some provisions previously contained in individual State health privacy legislation will now operate in the private sector nationally and for Commonwealth agencies such as DOH and Medicare



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Australian Privacy



Australian privacy laws include:

- *Privacy Act 1988 (Commonwealth)* – Commonwealth agencies and private sector
- *Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)*
 - increases penalties to AUD\$340K for individuals and AUD\$1.7 million for some offences for body corporates from **12 March 2014**
 - *Useful resources: fact sheets and guidelines on <http://www.oaic.gov.au>*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Health Records and Information Privacy Act 2002 (NSW)*
- *Health Records Act 2001 (Vic)*
- *Health Records (Privacy and Access) Act 1997 (ACT)*

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Australian Privacy



To whom does the Commonwealth legislation apply?

- Commonwealth government agencies and private sector
- Whilst there are a small business operator exemption (annual turnover of \$3 million or less for a financial year) – this does *not* apply to health information except in an employee record
- The APPs extend to an act done or practice engaged in and outside Australia by an organisation that has an “Australian link”
 - Australian company
 - Someone who carries on business in Australia
 - Information is collected or held in Australia
 - Websites which offers goods and services in Australia
 - Australia is a country in a drop down menu on the entity’s website
- State laws apply to State government agencies
- The Cth Privacy Act applies to medical practitioners in their right of private practice

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Australian privacy key concepts

“personal information” means

“information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.”

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Australian privacy key concepts

“health information” means:

- (a) *information or an opinion about:*
 - (i) *the health or disability (at any time) of an individual; or*
 - (ii) *an individual’s expressed wishes about the future provision of health services to him or her; or*
 - (iii) *a health service provided, or to be provided, to an individual; that is also personal information; or*
- (b) *other personal information collected to provide, or in providing a health service; or*
- (c) *other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body part, organs or body substances; or*
- (d) *genetic information about an individual in a form that is, or could be, predictive of the health of the individual or a genetic relative of the individual*

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Australian privacy key concepts

“health service” means:

- (a) *an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it:*
 - (i) *to access, record, maintain or improve the individual’s health; or*
 - (ii) *to diagnose the individual’s illness or disability; or*
 - (iii) *to treat the individual’s illness or disability or suspected illness or disability; or*
- (b) *the dispensing on prescription of a drug or medical preparation by a pharmacist*



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Australian Privacy



Special rules for health records

- Health information is “sensitive information”
- Use and disclosure is permitted if there is a serious and imminent threat to the health and safety of an individual or the public
- Use and disclosure for health and medical research if certain conditions are met eg NHMRC guidelines
- Disclosures to carers for compassionate reasons
- Restrictions on access if providing direct access would pose a serious threat to the life or health of any individual
- Use and disclosure of genetic information to lessen or prevent a serious threat to a genetic relative
- The collection of family, social and medical histories is permitted in some circumstances – Public Interest Determination No 12A

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Australian Privacy

Australian Privacy Principles

1. Open and transparent management of personal information
2. Anonymity and pseudonymity
3. Collection of solicited personal information
4. Dealing with unsolicited personal information
5. Notification of the collection of personal information
6. Use or disclosure of personal information
7. Direct marketing
8. Cross-border disclosure of personal information
9. Adoption, use or disclosure of government related identifiers
10. Quality of personal information
11. Security of personal information
12. Access to personal information
13. Correction of personal information

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Australian privacy key concepts

“Permitted health situations” includes:

- If the information is necessary for the provision of a health service to the individual; and
 - required or authorized by Australian law; or
 - collected in accordance with the rules established by a competent health or medical body that deals with professional confidentiality that binds the organisation



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Australian privacy key concepts

“Permitted health situations” includes:

- Use or disclosure – necessary to prevent a serious threat to the life, health or safety of a genetic relative
 - the organisation has obtained the information in the course of providing health services to the individual
 - the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of another individual who is a genetic relative of the individual
 - the use of disclosure is conducted in accordance with the guidelines under s95AA; and
 - in the case of disclosure, the recipient of the information is a genetic relative of the individual.

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More info?

More information?

Australian Privacy Principles Guidelines

<http://www.oaic.gov.au/privacy/privacy-act/privacy-law-reform>

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