



19 September 2013

The Office of the Australian Information Commissioner
Level 3
175 Pitt Street
SYDNEY NSW 2000

By email consultation@oaic.gov.au

Dear Sir/Madam

Draft APP Guidelines consultation

We welcome the opportunity to provide input into the first tranche of draft Australian Privacy Principles Guidelines.

Background information about Avant

Avant Mutual Group Limited ("Avant") is Australia's leading medical defence organisation and one of Australia's leading mutuals, offering a range of insurance products and expert legal advice and assistance to over 60,000 medical and allied health practitioners and students in Australia. Our insurance products include medical indemnity insurance for individuals and practices, and private health insurance, which is offered through our subsidiary The Doctors' Health Fund Pty Limited.

Our members have access to medico-legal assistance via our Medico Legal Advisory Service (MLAS). We have offices throughout Australia, providing personalised support and rapid response to urgent medico-legal issues. We provide extensive risk advisory and education services, including on privacy issues, to our members with the aim of reducing medico-legal risk. Our MLAS frequently provides advice to members on privacy issues that arise in medical practice.

Comments on Guidelines

The guidelines are comprehensive and will be extremely useful to us in advising our members about their privacy obligations.

However, the comprehensive and detailed nature of the guidelines means that they may be difficult to digest for individual health practitioners or practice managers in their day-to-day practice.

Avant Mutual Group Limited ABN 58 123 154 898
Registered Office
Level 28 HSBC Centre 580 George Street Sydney NSW 2000
PO Box 746 Queen Victoria Building Sydney NSW 1230
DX 11583 Sydney Downtown **Website** www.avant.org.au
Telephone 02 9260 9000 **Facsimile** 02 9261 2921
Freecall 1800 128268 **Freefax** 1800 228268

Avant Insurance Limited ABN 82 003 707 471 AFSL 238765
UNITED Medical Protection Limited ABN 72 077 283 884
The Medical Defence Association of Victoria Limited ABN 59 004 046 379
MDU Australia Insurance Co Pty Ltd ABN 46 070 399 950

Recommendation: It would be of benefit to users of the guidelines to have access to one page “privacy at a glance” documents which summarise a particular topic in lay terms.

The section relating to deceased persons in Chapter B on page 17 notes in essence that the legislation does not cover information relating to deceased persons. However some state and territory privacy legislation does cover information relating to deceased persons. Information about deceased persons is also covered by the equitable duty of confidentiality.

Recommendation: To avoid any confusion about whether information relating to deceased persons can be used or disclosed we recommend that there be a reference to state and territory legislation and the general law in this regard (perhaps in a footnote).

It may be difficult for those with limited experience with privacy law and legislation to understand the implications of “permitted general situations” and “permitted health situations” as outlined in Chapters C and D respectively if those Chapters are read on their own.

The OAIC has the following outline of “permitted general situations” and “permitted health situations” in its document “Australian Privacy Principles and National Privacy Principles – Comparison Guide”:¹

The amendments to the Privacy Act introduce the concept of a ‘permitted general situation’ and a ‘permitted health situation’. The existence of a permitted general situation or permitted health situation is an exception to various obligations in the APPs.

A new s 16A outlines seven permitted general situations, where the collection, use or disclosure by an APP entity of personal information about an individual, or of a government related identifier, will not be a breach of certain APP obligations.

New s 16B outlines five permitted health situations, where the collection, use or disclosure of certain health information or genetic information, will not be a breach of certain APP obligations.

Recommendation: We recommend that a summary similar to this be included in Chapters C and D so that it is clear that if a situation falls within a permitted situation it is permissible under the legislation and will not be a breach of the relevant APP obligation.

¹ see “Australian Privacy Principles and National Privacy Principles – Comparison Guide”, Part 1 Summary of Changes page 4 of the PDF version.



Please contact me on the details below if you require any further information or clarification of the matters raised in this letter.

Yours sincerely

Georgie Haysom
Head of Advocacy

Direct: (02) 9260 9185

Email: georgie.haysom@avant.org.au