

Australian Privacy Principles - Collection, Use and Disclosure of Personal Information



Australian Privacy Principle (APP) 5 - notification of the collection of personal information sets out the requirement for a health service provider to take steps reasonable in the circumstances, at or before (or if that is not practicable, as soon as practicable after) the collection of personal information about an individual, to notify the individual or to otherwise ensure that the individual is aware of:

- the identity and contact details of the health service provider;
- if the health service provider collects the personal information from someone other than the individual, or the individual may not be aware that the health service provider has collected the personal information, the fact that the health service provider collects, or has collected, the information and the circumstances of that collection;
- if the collection of the personal information is required, or authorised by or under an Australian law or a court/tribunal order, the fact that the collection is required or authorised (including the name of the Australian law, or details of the court/tribunal order, that requires or authorises the collection);
- the purposes for which the health service provider collects the personal information;
- the main consequences (if any) for the individual if all or some of the personal information is not collected by the health service provider;
- any other health service provider, body or person, or the types of any other entities, bodies or persons, to which the health service provider usually discloses personal information of the kind collected by the health service provider;
- that the APP Privacy Policy of the health service provider contains information about how the individual may access the personal information about the individual that is held by the health service provider and seek the correction of such information;
- that the APP Privacy Policy of the health service provider contains information about how the individual may complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the health service provider, and how the health service provider will deal with such a complaint; and
- whether the health service provider is likely to disclose the personal information to overseas recipients and if likely, the countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them.

Australian Privacy Principle (APP) 6 —use or disclosure of personal information sets out a health service provider's obligations when using and disclosing personal information. These include the requirement that where personal information about a patient was collected for a particular purpose (*the primary purpose*), it must not be used or disclose for another purpose (*the secondary purpose*) unless the patient has consented to the use or disclosure of the information or the patient would reasonably expect the health service provider to use or disclose the information for the secondary purpose. Exceptions to this include if the use or disclosure is required or authorised by law or a court order, if a permitted general situation (*see Section 16A of the Privacy Act 1988*) or permitted health situation (*see Section 16B of the Privacy Act 1988*) exists, or where the health service provider reasonably believes that the use or disclosure of the information is reasonably necessary for one or more enforcement related activities conducted by, or on behalf of, an enforcement body. A written note must be made of any use or disclosure with regard to an enforcement body.

Consent by a patient to the collection of personal information by a health service provider is generally implied by the patient's request for the medical service. However, consent to the use and disclosure of that information is required if it is to be used and disclosed for any purpose other than the main purpose for which it was collected.

Key elements to consent are that:

- it must be provided voluntarily;
- the individual must be adequately informed; and
- the individual must have the capacity to understand, provide and communicate their consent.

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Consent must be voluntary - the individual must have a genuine opportunity to provide or withhold consent; that is, they must be able to say 'yes' or 'no' without extreme pressure which would equate to an overpowering of will.

Consent must be informed - the individual must know what it is they are agreeing to. In other words, the individual needs to be aware of the implications of providing or withholding consent, having received the information in a way meaningful to them and appropriate in the circumstances.

The individual must have the capacity to provide consent - the individual must be capable of understanding the issues relating to the decision, forming a view based on reasoned judgment and communicating their decision.

MDrive:ClinicalForms/Privacy/PrivacyPrinciplesCollection&UseOfData

AGPAL Resource

