

Privacy Commissioner's Update

Presentation to the Practitioners' Network Forum
15 November 2023

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information and
privacy commission
new south wales

MNDB Scheme update

- The MNDB Scheme commences in just under two weeks on **28 November 2023**
- MNDB Webinar was held on 17 August and the recording and respective webinar slides are now available on the IPC Website and YouTube channel.
- The IPC released two bi-monthly MDNB e-Newsletters for June and November, and a dedicated citizen e-newsletter in November. Make sure you are subscribed (via the IPC website) to receive any further updates on the Scheme.
- IPC is currently developing two e-learning modules for practitioners and senior leaders to assist in their understanding of the Scheme
- MNDB Self-assessment Tool has been released to assist with agencies thought process and decision making of assessing a breach as an eligible breach

IPC MNDB Resources

- The IPC released the following new resources:
 - Guide to Regulatory Action under the MNDB Scheme
 - MDNB Self-assessment Tool for Agencies
 - Guidelines on the assessment of data breaches under Part 6A of the PPIP Act
 - Guidelines on the exemption for risk of serious harm to health or safety under section 59W
 - Guidelines on the exemption for compromised cyber security under section 59X
 - Fact Sheet – MNDB Scheme Frequently Asked Questions (for citizens)
 - Animation for citizens to promote the MNDB Scheme via social media

Significant regulatory matters

- IPC reviewed revised delegations from Privacy Commissioner that considered new statutory functions introduced by the MNDB Scheme and the PID Act 2022
- IPC developed guidance on the privacy conventions introduced under the PID Act 2022
- IPC published a joint submission to the AI Inquiry
- Made a submission to the Commonwealth in response to consultation on the Digital Identity Consultation Bill
- Initiated a review of the Privacy Governance Framework

Public Interest Disclosures Act 2022

- As provided for under the PID Act, the NSW Privacy Commissioner is responsible for receiving complaints made as PIDs about privacy contraventions.
- Public sector staff can report a privacy contravention under the *Privacy and Personal Information Protection Act 1998* (PPIP Act), or *Health Records and Information Privacy Act 2002* (HRIP Act) to the Privacy Commissioner.
- Along with the IPC's other PID resources, the Privacy Commissioner has released:
 - **NEW** What is serious wrongdoing? Privacy Contravention

Privacy NCAT matters

FMM v icare

Possible breach of IPP5/HPP5 and IPP 11/HPP 11

- Concerns icare's conduct in inadvertently sending a '*Cost of Claims report*' via email to a person wholly unconnected with FMM workers compensation claim and payments.
- Sent in the form of an excel spreadsheet which contained FMM's personal and health information. The intended recipient of the email and Cost of Claims report was the Respondent's former employer.
- It was submitted by icare that as the recipient of the email had not opened the cost of claims report, there was no disclosure of the information. It was argued that a third party must read or otherwise become cognisant of the personal or health information, to establish a 'disclosure.'
- This argument was rejected and the Tribunal found there had been breaches of IPP5/HPP5 and IPP 11/HPP 11.
- The matter was appealed and the IPC is awaiting a decision of the Appeal Panel on this point.

Speaking Engagements

The Privacy Commissioner presented and attended at the following engagements last quarter:

- Corruption Prevention Network Lunchtime Seminar – 16 August 2023
- IPC MNDB Webinar – 17 August 2023
- NSW Parliament: Member Development Sessions – 13 September 2023
- Attended NRCoP Conference – 21-22 September 2023
- Attended the Privacy Authorities Australia meeting (PAA) – 8 November

Upcoming

- Premier's Department Incident Response Exercise – 13 December
- Attending the 60th Asia Pacific Privacy Authorities (APPA) Forum in Sydney – 30 November to 1 December

Privacy resources

UPDATED

- Fact Sheet – IPC Privacy Statement of Jurisdiction
- IPC Privacy Management Plan
- Privacy Commissioner – Executed Instrument of Delegation
- Fact Sheet – Understanding your privacy obligations for NSW Public Sector Staff
- Fact Sheet – Statutory guidelines under the HRIP Act

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