

PRIVACY MANAGEMENT POLICY

PURPOSE

This policy (which includes the Privacy Management Plan) sets out how the NSW Ombudsman complies with the principles and requirements of the *Privacy and Personal Information Protection Act 1998* (PPIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act).

The Privacy Management Plan provides guidance to staff on the application of the PPIP Act and the HRIP Act to the work of this office.

RESPONSIBILITY

This policy applies to the Ombudsman and all staff of the office, whether by way of appointment, secondment, contract, temporary arrangement or on a fee-for-service basis. Any individual having employee functions or acting in an employee capacity, including a volunteer, is a member of staff for the purposes of this policy. The application of this policy to Official Community Visitors is set out in Annexure A of the Privacy Management Plan.

LEGISLATIVE FRAMEWORK

Privacy and Personal Information Protection Act 1998

Health Records and Information Privacy Act 2002.

INFORMATION PROTECTION PRINCIPLES AND HEALTH PRIVACY PRINCIPLES

The protections provided by the PPIP Act are based on 12 information protection principles set out in the Act. Similarly, the protections provided by the HRIP Act are based on 15 health privacy principles set out in that Act. These principles cover collection, storage, use and disclosure of personal information and health information. The Acts also contain a number of exemptions to the operation of the principles. The application of the principles to this office, and the exemptions which apply, are set out in full in the Privacy Management Plan.

A copy of this policy will be accessible to the office network in the I:\policies directory. The Deputy Ombudsman will discuss this policy with all staff, and staff will be reminded of their obligations under it on a regular basis.

OMBUDSMAN APPROVAL



Bruce Barbour
OMBUDSMAN

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Related policies:	Disclosure of Information, Media, Security policy

This plan supersedes the previous Privacy Management Plan.

PRIVACY MANAGEMENT PLAN

PURPOSE

This Plan forms part of the NSW Ombudsman Privacy Management Policy. This Plan sets out the application of the *Privacy and Personal Information Protection Act 1998* (PIIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act) to this office, including the exemptions that apply. To ensure the office is in compliance with these Acts, each member of staff should handle information in accordance with the guidelines outlined in this Plan.

DEFINITIONS

Personal information: ‘Personal information’ is defined in the PIIP Act as ‘information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion’.

It covers information held in paper or electronic records, and may extend to body samples or biometric data. It can also include information relating to an individual’s ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership or sexual activities. Personal information does not include ‘health information’ as defined by the HRIP Act.

Health information: The HRIP Act defines ‘health information’ to include personal information that is information or an opinion about the physical or mental health or a disability (at any time) of an individual, the wishes of an individual about their health services, the health services provided to an individual, personal information collected to provide, or in providing, a health service, and genetic information that could be predictive of the health of the individual or a relative of the individual.

POLICY STATEMENT

1. Information in our office to which the PIIP and HRIP Acts apply

The PIIP Act and HRIP Act **do** apply to information or opinions about individuals provided to or obtained by this office under Part 3A of the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS-CRAMA), other than in the instances referred to below.

The PIIP and HRIP Acts **do not** apply:

- to information about an individual that is contained in a publicly available publication
- to letters of complaint from members of the public under Part 3 of the Ombudsman Act, Part 4 of CS-CRAMA, or Part 5 of the *Freedom of Information Act 1989*
- to notifications received from agencies under Part 3A of the *Ombudsman Act*
- in relation to any complaints made under Part 8A of the *Police Act 1990* being dealt with by the office
- in relation to any protected disclosure being dealt with by the office
- in relation to the work of our secure monitoring unit concerning implementation of our functions under the *Witness Protection Act 1995*, the *Telecommunications (Interception)(New South Wales) Act 1979*, and the *Law Enforcement (Controlled Operations) Act 1997*
- to information about the suitability for appointment or employment of any applicant to a position in the office
- to information about an individual that is obtained under Chapter 8 of the *Adoption Act 2000* (PIIP Act only).

Information contained in complaints and notifications received by our office is not ‘collected’ for the purposes of the PIIP Act and HRIP Act because our receipt of the information is unsolicited. Therefore, the

PPIP Act and HRIP Act do not apply in relation to this information. However secrecy and confidentiality provisions in the Ombudsman Act and our code of conduct still apply.

2. The PPIP Act and the HRIP Act and Official Community Visitors

The PPIP Act and HRIP Act apply to personal information and health information obtained by Official Community Visitors in the course of inspecting visitable services. The application of the provisions of the Acts to Official Community Visitors is covered in Annexure A.

3. Information protection principles and health protection principles that apply to the NSW Ombudsman

Personal information must be dealt with in accordance with the information protection principles set out in sections 8 to 19 of the PPIP Act. Similarly, health information must be dealt with in accordance with the health privacy principles set out in Schedule 1 of the HRIP Act. A number of exemptions to the principles apply to the office. These are set out in Annexure B.

Each member of staff should handle information in accordance with the following guidelines:

(a) *Collection of personal information and health information for lawful purposes (PPIP Act s 8, HRIP Act Sch 1 cl 1)*

You may only collect personal information and health information if the collection is reasonable necessary to exercise a purpose that is directly related to a function or activity of the NSW Ombudsman.

You may not collect personal information and health information by any unlawful means.

(b) *Other requirements relating to collection of personal information and health information (PPIP Act s 11, HRIP Act Sch 1 cl 2)*

Where you collect personal information and health information from an individual, you must take reasonable steps to ensure that:

- i) the information collected:
 - is relevant to that purpose
 - is not excessive
 - is accurate, up-to-date and complete, and
- ii) the collection of the information does not unreasonably intrude on the personal affairs of the individual to whom the information relates.

(c) *Retention and security of personal information and health information (PPIP Act s 12, HRIP Act Sch 1 cl 5)*

You must make sure that personal information and health information held by us:

- i) is disposed of securely and in accordance with the office's records management policy
- ii) is protected against loss, unauthorised access, use, modification or disclosure, and against all other misuse, by taking reasonable security safeguards.

In relation to health information, the office is exempt from this principle where non-compliance is authorised or otherwise permitted, necessarily implied or reasonably contemplated under any other Act, for example the Ombudsman Act or CS-CRAMA (HRIP Act Sch 1 cl 5(2)(a), (b)).

Where it is necessary for personal information or health information held by the office to be given to a person in connection with the provision of a service to the Ombudsman, everything reasonably within your power should be done to prevent any unauthorised use or disclosure of that information.

(d) *Checking of accuracy of personal information and health information before use (PPIP Act s 16, HRIP Act Sch 1 cl 9)*

You may not use personal information and health information held by the office without taking reasonable steps to ensure that the information is relevant, accurate, up-to-date, complete and not misleading.

(e) ***Limits on use of personal information and health information (PPIP Act s 17, HRIP Act Sch 1 cl 10)***

You may not use personal information or health information for a purpose other than that for which it was collected unless:

- i) such use of the information is reasonably necessary to enable the office to exercise its complaint handling or investigative functions (PPIP Act s 24 (2), HRIP Act Sch 1 cl 10 (1)(j) and (3)), or
- ii) such use of the information is required by, or authorised under, any other law, for example the Ombudsman Act or CS-CRAMA (PPIP Act s 25, HRIP Act Sch 1 cl 10(2)(a), (b)).
- iii) the individual has given their consent for the information to be used for such use (PPIP Act s 17(a), HRIP Act Sch 1 cl 10(1)(a))
- iv) the Ombudsman reasonably believes that the disclosure is necessary to prevent or lessen a serious or imminent threat to the life or health of any person (PPIP Act s 17(c), HRIP Act Sch 1 cl 10(1)(c)).

(f) ***Limits on disclosure of personal information and health information (PPIP Act s 18, HRIP Act Sch 1 cl 11)***

You may not disclose personal information and health information to a person (other than the individual to whom the information relates) or other body unless:

- i) the information is disclosed to the Independent Commission Against Corruption, the Police Integrity Commission, the Health Care Complaints Commission or the Legal Services Commission (PPIP Act s 24(3), HRIP Act Sch 1 cl 11(2)(c))
- ii) non-compliance is authorised or otherwise permitted, necessarily implied or reasonably contemplated under any other Act, for example the Ombudsman Act or CS-CRAMA (PPIP Act s 25, HRIP Act Sch 1 cl 11(2)(a) and (b))
- iii) the individual to whom the information relates has expressly consented to the office not complying with the principle concerned (PPIP Act s 26(2), HRIP Act Sch 1 cl 11 (1)(a))
- iv) the disclosure is directly related to the purpose for which the information was collected and the office has no reason to believe that the individual concerned would object to the disclosure (PPIP Act s 18(1)(a), HRIP Act Sch 1 cl 11(1)(b))
- v) the individual concerned is reasonably likely to have been aware or was made aware at the time the personal information was collected, that information of that kind is usually disclosed to the other person or body (PPIP Act s 18(1)(b))
- vi) the Ombudsman reasonably believes that the disclosure is necessary to prevent or lessen a serious or imminent threat to the life or health of any person (PPIP Act s 18(1)(c), HRIP Act s 11(1)(c))
- vii) non-compliance is reasonably necessary for the proper exercise of any of the office's complaint handling or investigative functions (Privacy Commissioner's direction under s 41 of the PPIP Act, HRIP Act Sch 1 cl 11 (1)(k) and (3)).

4. Disclosure and use of personal information and health information by staff

(a) ***Corrupt disclosure and use***

Ombudsman staff, as public sector officials, are subject to section 62 (1) of the PPIP Act and s 68(1) of the HRIP Act, which both provide that:

'A public sector official must not, otherwise than in connection with the lawful exercise of his or her official functions, intentionally disclose or use any [personal/ health] information about another person to which the official has or had access in the exercise of his or her official functions'

This provision does not prohibit a public sector official from disclosing any personal information or health information about another person if the disclosure is made as a protected disclosure(s 62(3) PPIP Act, s 68(3) HRIP Act).

(b) *Improper disclosure*

The Ombudsman Act imposes stringent limitations on the disclosure of information obtained by the Ombudsman or an officer of the Ombudsman in the course of their office (s 34). The primary exceptions to this limitation are for the purpose of discharging functions under an Act, or with the consent of the source of the information. CS-CRAMA imposes similar restriction on the disclosure of information (s 118). A breach of any of these restrictions is a criminal offence.

5. Practices in relation to staff personal information and health information

The PPIP Act and HRIP Act apply to personal information and health information obtained by this office about employees of this office, except where the information relates to an individual's suitability for employment (i.e. obtained before the individual signed their employment contract) and where non-compliance is authorised or otherwise permitted, necessarily implied or reasonably contemplated under any other Act, for example the Ombudsman Act or CS-CRAMA.

In order to ensure compliance with the PPIP Act and the HRIP Act, Personnel staff must manage the personal information and health information of employees of this office in accordance with the Personnel Handbook at 5 – 3.4.10.

6. Internal review process

(a) *Rights of internal review*

Under Part 5 of the PPIP Act or s 21 of the HRIP Act, a person who is aggrieved by our office's contravention of any information protection principle or health privacy principle is entitled to a review of that conduct. A review under either Act will be dealt with under Part 5 of the PPIP Act.

Information about this review right must be provided to callers requesting advice as to the options available to them in the same way as they are informed of the option they have of asking us to review a decision we have made about their complaint.

(b) *Procedures for review*

If a person applies for a review under Part 5 of the PPIP Act or s 21 of the HRIP Act, the Deputy Ombudsman is to be:

- notified immediately
- provided, as soon as possible, with the application and any relevant files and other documentation.

If the allegation is that the Deputy Ombudsman contravened the information protection principle, the application should be directed to the Ombudsman.

In dealing with the review, the Deputy Ombudsman is to notify the Ombudsman of the application for review, and is to follow the procedures set out in Part 5 of the PPIP Act.

7. Further information

If anyone would like any further information about the PPIP Act generally or how the information protection principles affect our work, please see the Deputy Ombudsman.

INFORMATION PROTECTION PRINCIPLES THAT APPLY TO OFFICIAL COMMUNITY VISITORS

Generally, the effect of the information protection principles on the work of Official Community Visitors (OCVs) is as follows:

(a) *Collection of personal information and health information for lawful purposes (PIIP Act s 8, HRIP Act Sch 1 cl 1)*

OCVs may only collect personal information and health information for a lawful purpose that is directly related to a function or activity of an OCV and the collection of such information is reasonably necessary for that purpose.

OCVs may not collect personal information or health information by any unlawful means.

(b) *Collection of personal information and health information (PIIP Act ss 9 and 10, HRIP Act Sch 1 cl 3 and 4)*

OCVs must, in collecting personal information or health information, collect information directly from the individual to whom the information relates unless:

- i) the individual has authorised collection of the information from someone else, or
- ii) in the case of information relating to a person who is under the age of 16 years, the information is being provided by a parent or guardian of the person.

OCVs are not required to comply with this information protection principle when exercising functions under s 8(1) of CS-CRAMA (s 25 PPIP Act and Sch 1 cl 4(b), (c) HRIP Act). However, Visitors must comply with s 8(2) and (3) of that Act which state:

- (2) Before inspecting a document as referred to in sub-section (1) [which authorises Official Community Visitors to inspect any document held at a place at which a visitable service is provided which relates to the operation of the visitable service], the Official Community Visitor must take all reasonable steps to ascertain, and must have regard to (but is not bound by), the wishes of any person to whom the document relates and for whom a service is provided at that place.*
- (3) An Official Community Visitor must, in exercising a function under this section, act in such a manner as preserves, as far as possible, the privacy of each person resident at that visitable service.'*

Personal information and health information is not 'collected' by OCVs if receipt of the information is not solicited (s 4(5), PPIP Act).

(c) *Other requirements relating to collection of personal information and health information (PIIP Act s 11, HRIP Act Sch 1 cl 2)*

Where OCVs collect personal information and health information 'from an individual', they must take reasonable steps to ensure that:

- i) the information collected:
 - is relevant to that purpose
 - is not excessive,
 - is accurate, up-to-date and complete
- ii) the collection of the information does not unreasonably intrude on the individual to whom the information relates.

OCVs are also required to comply with s 8(2) & (3) of CS-CRAMA which state:

- (2) Before inspecting a document as referred to in sub-section (1) [which authorises Official*

Community Visitors to inspect any document held at a place at which a visitable service is provided which relates to the operation of the visitable service], the Official Community Visitor must take all reasonable steps to ascertain, and must have regard to (but is not bound by), the wishes of any person to whom the document relates and for whom a service is provided at that place.

(3) An Official Community Visitor must, in exercising a function under this section, act in such a manner as preserves, as far as possible, the privacy of each person resident at that visitable service.'

Personal information and health information is not 'collected' by OCVs if receipt of the information by the Visitor is not solicited (PIIP Act s 4(5), HRIP Act s 10).

(d) *Retention and security of personal information and health information (PIIP Act s 12, HRIP Act Sch 1 cl 5)*

OCVs must ensure that personal information and health information held by them:

- i) is retained and disposed of securely and in accordance with the offices record management policy
- ii) is protected against loss, unauthorised access, use, modification or disclosure, and against all other misuse, by taking reasonable security safeguards.

In relation to health information, OCVs are exempt from this principle where non-compliance is authorised or otherwise permitted, necessarily implied or reasonably contemplated under any other Act (HRIP Act Sch 1 cl 5(a) and (b)).

Where it is necessary for personal information or health information held by an OCV to be given to a person in connection with the provision of a service to the Visitor, anything reasonably within the Visitor's power should be done to prevent any authorised use or disclosure of that information.

(e) *Checking of accuracy of personal information and health information before use (PIIP Act s 16, HRIP Act Sch 1 cl 9)*

OCVs may not use personal information or health information held by them without taking reasonable steps to ensure that the information is relevant, accurate, up-to-date, complete and not misleading.

(f) *Limits on use of personal information and health information (PIIP Act s 17, HRIP Act Sch 1 cl 10)*

OCVs may not use personal information or health information for a purpose other than that for which it was collected unless the use of the information concerned for that purpose is reasonably necessary in order to enable the Visitor to exercise the Visitor's complaint handling or investigative functions (PIIP Act s 24(2) and (4), HRIP Act Sch 1 cl 10(1)(j) and 10(5)).

(g) *Limits on disclosure of personal information and health information (PIIP Act s 18, HRIP Act Sch 1, cl 11)*

An OCV may not disclose personal information or health information to a person (other than the individual to whom the information relates) or other body unless:

- i) the information is disclosed to the NSW Ombudsman (PIIP Act s 24(3), HRIP Act Sch 1 cl 11(2)(c))
- ii) non-compliance is authorised or otherwise permitted, necessarily implied or reasonably contemplated under any other Act (PIIP Act s 25, HRIP Act Sch 1 cl 11(2)(a) and (b))
- iii) the individual to whom the information relates has expressly consented to the disclosure (PIIP Act s 26(2), HRIP Act Sch 1 cl 11 (1)(a))
- iv) the disclosure is directly related to the purpose for which the information was collected and the OCV has no reason to believe that the individual concerned would object to the disclosure (PIIP Act s 18(1)(a), HRIP Act Sch 1 cl 11(1)(b))

- v) in relation to personal information, the individual concerned is reasonably likely to have been made aware or was made aware at the time the information was collected, that information of that kind is usually disclosed to the other person or body (PPIP Act s 18(1)(b))
- vi) the OCV reasonably believes that the disclosure is necessary to prevent or lessen a serious or imminent threat to the life or health of any person (PPIP Act s18(1)(c), HRIP Act s 11(1)(c))
- vii) The disclosure is made in relation to the OCV's complaint handling or investigative, review and reporting functions (Privacy Commissioner's direction under s 41 of the PPIP Act, HRIP Act Sch 1 cl 11(3)).

INFORMATION PROTECTION PRINCIPLES AND THE EXEMPTION CLAUSES RELEVANT TO THE NSW OMBUDSMAN	
INFORMATION PROTECTION PRINCIPLE – PPIP ACT	PPIP ACT EXEMPTIONS
<p>Section 8 - Collection of personal information for lawful purposes</p> <p>(1) A public sector agency must not collect personal information unless:</p> <ul style="list-style-type: none"> (a) the information is collected for a lawful purpose that is directly related to a function or activity of the agency, and (b) the collection of the information is reasonably necessary for that purpose. <p>(2) A public sector agency must not collect personal information by any unlawful means.</p>	<p>Section 20(3) provides that this principle does not apply in respect to personal information collected by a public sector agency before the commencement of Part 2 of the Act.</p>

INFORMATION PROTECTION PRINCIPLES AND THE EXEMPTION CLAUSES RELEVANT TO THE NSW OMBUDSMAN	
INFORMATION PROTECTION PRINCIPLE – PPIP ACT	PPIP ACT EXEMPTIONS
<p>Section 9 - Collection of personal information directly from individual</p> <p>A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:</p> <p>(a) the individual has authorised collection of the information from someone else, or</p> <p>(b) in the case of information relating to a person who is under the age of 16 years - the information has been provided by a parent or guardian of the person.</p>	<p>Blanket exemption</p> <p>Section 4(5) provides that personal information is not “<i>collected</i>” by the agency if the receipt of the information is unsolicited.</p> <p>Note: It has been interpreted that complaints and notifications made to the office are unsolicited. However, some information relating to a complaint may be solicited, eg if it was asked for by our office (<i>KD v Registrar, NSW Medical Board</i> [2004] NSW ADT 5 at 27).</p> <p>Section 24(6) provides that the NSW Ombudsman is fully exempt from this requirement.</p>
<p>Section 10 - Requirements when collecting personal information</p> <p>If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:</p> <p>(a) the fact that the information is being collected,</p> <p>(b) the purposes for which the information is being collected,</p> <p>(c) the intended recipients of the information,</p> <p>(d) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,</p> <p>(e) the existence of any right of access to, and correction of, the information,</p> <p>(f) the name and address of the agency that is collecting the information and the agency that is to hold the information.</p>	<p>Blanket exemption</p> <p>Section 4(5) (see above)</p> <p>Section 20(3) (see above)</p> <p>Section 24(6) provides that the NSW Ombudsman is fully exempt from this requirement.</p>

INFORMATION PROTECTION PRINCIPLES AND THE EXEMPTION CLAUSES RELEVANT TO THE NSW OMBUDSMAN	
INFORMATION PROTECTION PRINCIPLE – PPIP ACT	PPIP ACT EXEMPTIONS
<p>SECTION 11 - OTHER REQUIREMENTS RELATING TO INFORMATION COLLECTION</p> <p>If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:</p> <p>(a) the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and</p> <p>(b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates</p>	<p>Section 4(5) (see above)</p> <p>Section 20(3) (see above)</p>
<p>SECTION 12 - RETENTION AND SECURITY OF PERSONAL INFORMATION</p> <p>A public sector agency that holds personal information must ensure:</p> <p>(a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and</p> <p>(b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and</p> <p>(c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and</p> <p>(d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.</p>	<p>Specific exemption</p> <p>Section 24(7) provides that the NSW Ombudsman is not required to comply with paragraph (a) of this principle.</p>

INFORMATION PROTECTION PRINCIPLES AND THE EXEMPTION CLAUSES RELEVANT TO THE NSW OMBUDSMAN	
INFORMATION PROTECTION PRINCIPLE – PPIP ACT	PPIP ACT EXEMPTIONS
<p>Section 13 - Information about personal information held by agencies A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:</p> <p>(a) whether the agency holds personal information, and</p> <p>(b) whether the agency holds personal information relating to that person, and</p> <p>(c) if the agency holds personal information relating to that person:</p> <p style="padding-left: 20px;">(i) the nature of that information, and</p> <p style="padding-left: 20px;">(ii) the main purposes for which the information is used, and</p> <p style="padding-left: 20px;">(iii) that person’s entitlement to gain access to the information.</p>	<p>Effectively a blanket exemption for operational functions</p> <p>Section 25 provides that a public sector agency is not required to comply with this principle if:</p> <p>“(a) <i>the agency is lawfully authorised or required not to comply with the principle concerned, or</i></p> <p>(b) <i>non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998)</i>” (emphasis added)</p> <p>It can generally be assumed that it will not be necessary or appropriate to comply with this principle given:</p> <ul style="list-style-type: none"> • the secrecy provisions under which we operate (eg. section 34); • our obligation to carry out investigations in the absence of the public (section 17); • our exemption from the operations of the <i>FOI Act</i> in relation to our complaint handling, investigative and reporting functions (section 9 and Schedule 2 to the <i>FOI Act</i>); and • the operational need to maintain confidentiality in relation to certain information available to us until it is appropriate to disclose that information for the purposes of investigation, procedural fairness or reporting.

INFORMATION PROTECTION PRINCIPLES AND THE EXEMPTION CLAUSES RELEVANT TO THE NSW OMBUDSMAN	
INFORMATION PROTECTION PRINCIPLE – PPIP ACT	PPIP ACT EXEMPTIONS
<p>Section 14 - Access to personal information held by agencies</p> <p>A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.</p>	<p>Effectively a blanket exemption for operational functions</p> <p>Section 20(5) provides that:</p> <p><i>“Without limiting the generality of section 5, the provisions of the Freedom of Information Act 1989 that impose conditions or limitations (however expressed) with respect to any matter referred to in section 13, 14 or 15 are not affected by this Act, and those provisions continue to apply in relation to any such matter as if those provisions were part of this Act.”</i></p> <p>In effect this means that the consultation and exemption provisions of the <i>FOI Act</i> apply to any requests for access for information under this Act.</p> <p>Section 25 (see above)</p>
<p>Section 15 - Alteration of personal information</p> <p>(1) A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:</p> <ul style="list-style-type: none"> (a) is accurate, and (b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading. <p>(2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are</p>	<p>Effectively a blanket exemption for operational functions</p> <p>Section 20(5) (see above)</p>

INFORMATION PROTECTION PRINCIPLES AND THE EXEMPTION CLAUSES RELEVANT TO THE NSW OMBUDSMAN	
INFORMATION PROTECTION PRINCIPLE – PPIP ACT	PPIP ACT EXEMPTIONS
<p>reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.</p> <p>(3) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.</p>	
<p>Section 16 - Agency must check accuracy of information before use A public sector agency that holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.</p>	
<p>Section 17 - Limits on use of personal information A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless:</p> <p>(a) the individual to whom the information relates has consented to the use of the information for that other purpose, or</p> <p>(b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or</p> <p>(c) the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.</p>	<p>Discretionary exemption</p> <p>Section 24(2) provides that an investigative agency (including the Ombudsman) is not required to apply with this principle “... <i>if the use of the information concerned for a purpose other than the purpose for which it was collected is reasonably necessary to enable the agency to exercise its complaint handling functions or any of its investigative functions</i> ”</p> <p>Section 25 (see above)</p> <p>Section 28(3) provides that nothing in this principle prevents or restricts the disclosure of information:</p> <p>(a) by one agency to another agency under the administration of same Minister if the disclosures for the purposes of informing that Minister of any matter within that administration or</p> <p>(b) by one agency to another agency under the administration of the Premier, if</p>

INFORMATION PROTECTION PRINCIPLES AND THE EXEMPTION CLAUSES RELEVANT TO THE NSW OMBUDSMAN	
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	the disclosure is for the purpose of informing the Premier about any matter.
<p>Section 18 - Limits on disclosure of personal information</p> <p>(1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:</p> <p>(a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or</p> <p>(b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or</p> <p>(c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.</p> <p>(2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.</p>	<p>specific exemptions and a discretionary exemption</p> <p>Section 24(3) provides that the Ombudsman is not required to comply with this principle if the information concerned is disclosed to another investigative agency (other investigative agencies under the Act include the ICAC, PIC, Community Services Commission, Health Care Complaints Commission and Legal Services Commissioner).</p> <p>Section 25 (see above)</p> <p>Section 26(2) provides that an agency is not required to comply with this principle if the individual to whom the information relates has expressly consented to the agency not complying the principle concerned.</p> <p>Section 28(3) (see above)</p>
<p>Section 19 - Special restrictions on disclosure of personal information</p> <p>(1) A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical</p>	<p>Blanket exemption</p> <p>Section 25 (see above)</p>

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<p>beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.</p> <p>(2) A public sector agency that holds personal information must not disclose the information to any person or body who is in a jurisdiction outside New South Wales unless:</p> <p style="padding-left: 20px;">(a) a relevant privacy law that applies to the personal information concerned is in force in that jurisdiction, or</p> <p style="padding-left: 20px;">(b) the disclosure is permitted under a privacy code of practice.</p> <p>(3) For the purposes of subsection (2), a <i>relevant privacy law</i> means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned.</p> <p>(4) The Privacy Commissioner is, within the year following the commencement of this section, to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales</p> <p>(5) Subsection (2) does not apply:</p> <p style="padding-left: 20px;">(a) until after the first anniversary of the commencement of this section, or</p> <p style="padding-left: 20px;">(b) until a code referred to in subsection (4) is made, whichever is the later.</p>	<p>Section 28(1) provides that the Ombudsman’s Office is not required to comply with this principle.</p>

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PIIP ACT EQUIVALENT	HEALTH PRIVACY PRINCIPLE – SCHEDULE 1, HRIP ACT	HRIP ACT EXEMPTIONS
<p>IPP 1 (s 8) Exemption: s 20(3)</p>	<p>1 Purposes of collection of health information</p> <p>(1) An organisation must not collect health information unless:</p> <p style="padding-left: 40px;">(a) the information is collected for a lawful purpose that is directly related to a function or activity of the organisation, and</p> <p style="padding-left: 40px;">(b) the collection of the information is reasonably necessary for that purpose.</p> <p>(2) An organisation must not collect health information by any unlawful means</p>	<p>Does not apply to information collected before the commencement of Schedule 1 (1/09/04) (s 19(2))</p>
<p>IPP 4 (s 11) Exemptions: ss 4(5) and 20(3)</p>	<p>2 Information must be relevant, not excessive, accurate and not intrusive</p> <p>An organisation that collects health information from an individual must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:</p> <p>(a) the information collected is relevant to that purpose, is not excessive and is accurate, up to date and complete, and</p> <p>(b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.</p>	<p>Blanket exemption for unsolicited information (s 10)</p> <p>Note: It has been interpreted that complaints and notifications made to the office are unsolicited. However, information obtained from a complainant may be solicited, eg if it was asked for by our office (<i>KD v Registrar, NSW Medical Board</i> [2004] NSW ADT 5 at 27)</p> <p>Does not apply to information collected before the commencement of Schedule 1 (1/09/04) (s 19(2))</p>
<p>IPP 2 (s 9) Exemptions: ss 4(5) and 24(6), 25</p>	<p>3 Collection to be from individual concerned</p> <p>(1) An organisation must collect health information about an individual only from that individual, unless it is unreasonable or impracticable to do so.</p> <p>(2) Health information is to be collected in accordance with any guidelines issued by the Privacy Commissioner for the purposes of this clause.</p>	<p>Blanket exemption for unsolicited information (s 10)</p> <p>[See note above]</p> <p>Exemption if it is unreasonable or impractical to obtain information</p>

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		<p>from the individual concerned (cl 3(1))</p> <p>Does not apply to information collected before the commencement of Schedule 1 (1/09/04) (s 19(2))</p>
<p>IPP 3 (s 10)</p> <p>Exemptions: ss 4(5), 20(3) and 24(6)</p>	<p>4 Individual to be made aware of certain matters</p> <p>(1) An organisation that collects health information about an individual from the individual must, at or before the time that it collects the information (or if that is not practicable, as soon as practicable after that time), take steps that are reasonable in the circumstances to ensure that the individual is aware of the following:</p> <p>(a) the identity of the organisation and how to contact it,</p> <p>(b) the fact that the individual is able to request access to the information,</p> <p>(c) the purposes for which the information is collected,</p> <p>(d) the persons to whom (or the types of persons to whom) the organisation usually discloses information of that kind,</p> <p>(e) any law that requires the particular information to be collected,</p> <p>(f) the main consequences (if any) for the individual if all or part of the information is not provided.</p> <p>(2) If an organisation collects health information about an individual from someone else, it must take any steps that are reasonable in the circumstances to ensure that the individual is generally aware of the matters listed in subclause (1) except to the extent that:</p> <p>(a) making the individual aware of the matters would pose a serious threat to the life or health of any individual, or</p> <p>(b) the collection is made in accordance with guidelines issued under subclause (3).</p> <p>(3) The Privacy Commissioner may issue guidelines setting out circumstances in which an organisation is not required to comply with subclause (2).</p>	<p>Blanket exemption for an investigative agency and compliance might detrimentally affect (or prevent the proper exercise of) its complaint handling functions or any of its investigative functions (cl 4(4)(f)).</p> <p>Exemption if the organisation is lawfully authorised or required not to comply with the clause (cl 4(4)(b))</p> <p>Exemption if non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (cl 4(4)(c))</p> <p>Note specific exemption if complying with the clause would pose a serious threat to the life or health of any individual (cl 4(2)(a))</p> <p>Does not apply to information</p>

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	<p>(4) An organisation is not required to comply with a requirement of this clause if:</p> <p>(a) the individual to whom the information relates has expressly consented to the organisation not complying with it, or</p> <p>(b) the organisation is lawfully authorised or required not to comply with it, or</p> <p>(c) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or</p> <p>(d) compliance by the organisation would, in the circumstances, prejudice the interests of the individual to whom the information relates, or</p> <p>(e) the information concerned is collected for law enforcement purposes, or</p> <p>(f) the organisation is an investigative agency and compliance might detrimentally affect (or prevent the proper exercise of) its complaint handling functions or any of its investigative functions</p> <p>(5) If the organisation reasonably believes that the individual is incapable of understanding the general nature of the matters listed in subclause (1), the organisation must take steps that are reasonable in the circumstances to ensure that any authorised representative of the individual is aware of those matters</p> <p>(6) Subclause (4) (e) does not remove any protection provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence.</p> <p>(7) The exemption provided by subclause (4) (f) extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.</p>	collected before the commencement of Schedule 1 (1/09/04) (s 19(2))
<p>IPP 5 (s 12)</p> <p>Exemption: s 24(7)</p>	<p>5 Retention and security</p> <p>(1) An organisation that holds health information must ensure that:</p> <p>(a) the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and</p>	<p>Exemption if the organisation is lawfully authorised or required not to comply with the clause (cl 5(2)(a))</p> <p>Exemption if non-compliance is</p>

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	<p>(b) the information is disposed of securely and in accordance with any requirements for the retention and disposal of health information, and</p> <p>(c) the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and</p> <p>(d) if it is necessary for the information to be given to a person in connection with the provision of a service to the organisation, everything reasonably within the power of the organisation is done to prevent unauthorised use or disclosure of the information.</p> <p>Note. Division 2 (Retention of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.</p> <p>(2) An organisation is not required to comply with a requirement of this clause if:</p> <p>(a) the organisation is lawfully authorised or required not to comply with it, or</p> <p>(b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).</p> <p>(2) An investigative agency is not required to comply with subclause (1) (a).</p>	<p>otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (cl 5(2)(b))</p> <p>Exemption from 5(1)(a) for an investigative agency (cl 5(3))</p>
<p>IPP 6 (s 13)</p> <p>Exemptions: ss 20(5) and 25(b)</p>	<p>6 Information about health information held by organisations</p> <p>(1) An organisation that holds health information must take such steps as are, in the circumstances, reasonable to enable any individual to ascertain:</p> <p>(a) whether the organisation holds health information, and</p> <p>(b) whether the organisation holds health information relating to that individual, and</p> <p>(c) if the organisation holds health information relating to that individual:</p> <p>(i) the nature of that information, and</p>	<p>Exemption if the organisation is lawfully authorised or required not to comply with the clause (cl 6(2)(a))</p> <p>Exemption if non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (cl 6(2)(b))</p> <p>The consultation and exemption</p>

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	<p>(ii) the main purposes for which the information is used, and</p> <p>(iii) that person’s entitlement to request access to the information.</p> <p>(2) An organisation is not required to comply with a provision of this clause if:</p> <p>(a) the organisation is lawfully authorised or required not to comply with the provision concerned, or</p> <p>(b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).</p>	<p>provisions of the FOI Act apply to any requests for access to information under this Act (s 22(3))</p>
<p>IPP 7 (s 14)</p> <p>Exemptions: ss 20(5) and 25</p>	<p>7 Access to health information</p> <p>(1) An organisation that holds health information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.</p> <p>Note. Division 3 (Access to health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.</p> <p>Access to health information held by public sector agencies may also be available under the Freedom of Information Act 1989 or the State Records Act 1998.</p> <p>(2) An organisation is not required to comply with a provision of this clause if:</p> <p>(a) the organisation is lawfully authorised or required not to comply with the provision concerned, or</p> <p>(b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).</p>	<p>Exemption if the organisation is lawfully authorised or required not to comply with the clause (cl 7(2)(a))</p> <p>Exemption if non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (cl 7(2)(b))</p> <p>The consultation and exemption provisions of the FOI Act apply to any requests for access to information under this Act (s 22(3))</p> <p>Applies to information collected after the commencement of Schedule 1(1/09/04), and in other limited circumstances (s 19(3))</p>
<p>IPP 8 (s 15)</p> <p>Exemption: ss</p>	<p>8 Amendment of health information</p> <p>(1) An organisation that holds health information must, at the request of the individual to whom the</p>	<p>Exemption if the organisation is lawfully authorised or required</p>

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20(5) and 25	<p>information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the health information:</p> <p>(a) is accurate, and</p> <p>(b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.</p> <p>(2) If an organisation is not prepared to amend health information under subclause (1) in accordance with a request by the individual to whom the information relates, the organisation must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.</p> <p>(3) If health information is amended in accordance with this clause, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the organisation.</p> <p style="padding-left: 40px;">Note. Division 4 (Amendment of health information) of Part 4 contains provisions applicable to private sector persons in connection with the matters dealt with in this clause.</p> <p style="padding-left: 40px;">Amendment of health information held by public sector agencies may also be able to be sought under the Freedom of Information Act 1989.</p> <p>(4) An organisation is not required to comply with a provision of this clause if:</p> <p>(a) the organisation is lawfully authorised or required not to comply with the provision concerned, or</p> <p>(b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).</p>	<p>not to comply with the clause (cl 8(4)(a))</p> <p>Exemption if non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (cl 8(4)(b))</p> <p>The consultation and exemption provisions of the FOI Act apply to any requests for access to information under this Act (s 22(3))</p> <p>Applies to information collected after the commencement of Schedule 1(1/09/04), and in other limited circumstances (s 19(3))</p>
<p>IPP 9 (s 16)</p> <p>No exemption</p>	<p>9 Accuracy</p> <p>An organisation that holds health information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.</p>	None

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<p>IPP 10 (s 17)</p> <p>Exemptions: ss 24(2), 25 and 28(3)</p>	<p>10 Limits on use of health information</p> <p>(1) An organisation that holds health information must not use the information for a purpose (a <i>secondary purpose</i>) other than the purpose (the <i>primary purpose</i>) for which it was collected unless:</p> <p>(a) Consent the individual to whom the information relates has consented to the use of the information for that secondary purpose, or</p> <p>(b) Direct relation the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to use the information for the secondary purpose, or</p> <p>Note. For example, if information is collected in order to provide a health service to the individual, the use of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.</p> <p>(c) Serious threat to health or welfare the use of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:</p> <p>(i) a serious and imminent threat to the life, health or safety of the individual or another person, or</p> <p>(ii) a serious threat to public health or public safety, or</p> <p>(d) Management of health services the use of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:</p> <p>(i) either:</p> <p>(A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or</p> <p>(B) reasonable steps are taken to de-identify the information, and</p> <p>(ii) if the information is in a form that could reasonably be expected to identify individuals, the</p>	<p>Exemption in relation to complaint handling functions and investigative, reporting and review functions (cl 10(3))</p> <p>Exemption if the organisation is lawfully authorised or required not to comply with the clause (cl 10(2)(a))</p> <p>Exemption if non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (cl 10(2)(b))</p> <p>Exemption for investigative agencies if the use of information for secondary purposes is reasonably necessary for the exercise of complaint handling functions or investigative functions (cl 10(1)(j))</p>

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	<p>information is not published in a generally available publication, and</p> <p>(iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or</p> <p>(e) Training the use of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:</p> <p>(i) either:</p> <p>(A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or</p> <p>(B) reasonable steps are taken to de-identify the information, and</p> <p>(ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and</p> <p>(iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or</p> <p>(f) Research the use of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:</p> <p>(i) either:</p> <p>(A) that purpose cannot be served by the use of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the use, or</p> <p>(B) reasonable steps are taken to de-identify the information, and</p> <p>(ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and</p> <p>(iii) the use of the information is in accordance with guidelines, if any, issued by the Privacy</p>	

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	<p>Commissioner for the purposes of this paragraph, or</p> <p>(g) Find missing person the use of the information for the secondary purpose is by a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or</p> <p>(h) Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline the organisation:</p> <p>(i) has reasonable grounds to suspect that:</p> <p>(A) unlawful activity has been or may be engaged in, or</p> <p>(B) a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a health registration Act, or</p> <p>(C) an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and</p> <p>(ii) uses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or</p> <p>(i) Law enforcement the use of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or</p> <p>(j) Investigative agencies the use of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or</p> <p>(k) Prescribed circumstances the use of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.</p> <p>(2) An organisation is not required to comply with a provision of this clause if:</p>	

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	<p>(a) the organisation is lawfully authorised or required not to comply with the provision concerned, or</p> <p>(b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998).</p> <p>(3) The Ombudsman’s Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions</p> <p>(4) Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:</p> <p>(a) to another public sector agency under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or</p> <p>(b) to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.</p> <p>(5) The exemption provided by subclause (1) (j) extends to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.</p>	
<p>IPP 11 (s 18)</p> <p>Exemptions: ss 24(3), 25, 26(2) and 28(3)</p>	<p>11 Limits on disclosure of health information</p> <p>(1) An organisation that holds health information must not disclose the information for a purpose (a <i>secondary purpose</i>) other than the purpose (the <i>primary purpose</i>) for which it was collected unless:</p> <p>(a) Consent the individual to whom the information relates has consented to the disclosure of the information for that secondary purpose, or</p> <p>(b) Direct relation the secondary purpose is directly related to the primary purpose and the individual would reasonably expect the organisation to disclose the information for the secondary purpose, or</p> <p>Note. For example, if information is collected in order to provide a health service to the individual, the disclosure of the information to provide a further health service to the individual is a secondary purpose directly related to the primary purpose.</p>	<p>Exemption in relation to complaint handling functions and investigative, reporting and review functions (cl 11(3))</p> <p>Exemption for investigative agencies if the use [‘use’ may soon be amended to ‘disclosure’] of information for secondary purposes is reasonably necessary for the exercise of complaint handling functions or investigative functions (cl 11(1)(k))</p> <p>Exemption if the organisation is</p>

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	<p>(c) Serious threat to health or welfare the disclosure of the information for the secondary purpose is reasonably believed by the organisation to be necessary to lessen or prevent:</p> <p>(i) a serious and imminent threat to the life, health or safety of the individual or another person, or</p> <p>(ii) a serious threat to public health or public safety, or</p> <p>(d) Management of health services the disclosure of the information for the secondary purpose is reasonably necessary for the funding, management, planning or evaluation of health services and:</p> <p>(i) either:</p> <p>(A) that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or</p> <p>(B) reasonable steps are taken to de-identify the information, and</p> <p>(ii) if the information could reasonably be expected to identify individuals, the information is not published in a generally available publication, and</p> <p>(iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or</p> <p>(e) Training the disclosure of the information for the secondary purpose is reasonably necessary for the training of employees of the organisation or persons working with the organisation and:</p> <p>(i) either:</p> <p>(A) that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or</p> <p>(B) reasonable steps are taken to de-identify the information, and</p> <p>(ii) if the information could reasonably be expected to identify the individual, the information is not</p>	<p>lawfully authorised or required not to comply with the clause (cl 11(2)(a))</p> <p>Exemption if non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (cl 11(2)(b))</p> <p>Exemption for investigative agencies disclosing information to other investigative agencies (cl 11(2)(c))</p>

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	<p>made publicly available, and</p> <p>(iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or</p> <p>(f) Research the disclosure of the information for the secondary purpose is reasonably necessary for research, or the compilation or analysis of statistics, in the public interest and:</p> <p>(i) either:</p> <p>(A) that purpose cannot be served by the disclosure of information that does not identify the individual or from which the individual’s identity cannot reasonably be ascertained and it is impracticable for the organisation to seek the consent of the individual for the disclosure, or</p> <p>(B) reasonable steps are taken to de-identify the information, and</p> <p>(ii) the disclosure will not be published in a form that identifies particular individuals or from which an individual’s identity can reasonably be ascertained, and</p> <p>(iii) the disclosure of the information is in accordance with guidelines, if any, issued by the Privacy Commissioner for the purposes of this paragraph, or</p> <p>(g) Compassionate reasons the disclosure of the information for the secondary purpose is to provide the information to an immediate family member of the individual for compassionate reasons and:</p> <p>(i) the disclosure is limited to the extent reasonable for those compassionate reasons, and</p> <p>(ii) the individual is incapable of giving consent to the disclosure of the information, and</p> <p>(iii) the disclosure is not contrary to any wish expressed by the individual (and not withdrawn) of which the organisation was aware or could make itself aware by taking reasonable steps, and</p> <p>(iv) if the immediate family member is under the age of 18 years, the organisation reasonably believes that the family member has sufficient maturity in the circumstances to receive the information, or</p> <p>(h) Find missing person the disclosure of the information for the secondary purpose is to a law enforcement agency (or such</p>	

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	<p>other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or</p> <p>(i) Suspected unlawful activity, unsatisfactory professional conduct or breach of discipline the organisation:</p> <p>(i) has reasonable grounds to suspect that:</p> <p>(A) unlawful activity has been or may be engaged in, or</p> <p>(B) a person has or may have engaged in conduct that may be unsatisfactory professional conduct or professional misconduct under a health registration Act, or</p> <p>(C) an employee of the organisation has or may have engaged in conduct that may be grounds for disciplinary action, and</p> <p>(ii) discloses the health information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities, or</p> <p>(j) Law enforcement the disclosure of the information for the secondary purpose is reasonably necessary for the exercise of law enforcement functions by law enforcement agencies in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed, or</p> <p>(k) Investigative agencies the use [an obvious typographical error that should soon be corrected to 'disclosure'] of the information for the secondary purpose is reasonably necessary for the exercise of complaint handling functions or investigative functions by investigative agencies, or</p> <p>(l) Prescribed circumstances the disclosure of the information for the secondary purpose is in the circumstances prescribed by the regulations for the purposes of this paragraph.</p> <p>(2) An organisation is not required to comply with a provision of this clause if:</p> <p>(a) the organisation is lawfully authorised or required not to comply with the provision concerned, or</p> <p>(b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an</p>	

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	<p>Act or any other law (including the State Records Act 1998), or</p> <p>(c) the organisation is an investigative agency disclosing information to another investigative agency.</p> <p>(3) The Ombudsman’s Office, Health Care Complaints Commission, Anti-Discrimination Board and Community Services Commission are not required to comply with a provision of this clause in relation to their complaint handling functions and their investigative, review and reporting functions</p> <p>(4) Nothing in this clause prevents or restricts the disclosure of health information by a public sector agency:</p> <p>(a) to another public sector agency under the administration of the same Minister if the disclosure is for the purposes of informing that Minister about any matter within that administration, or</p> <p>(b) to any public sector agency under the administration of the Premier, if the disclosure is for the purposes of informing the Premier about any matter.</p> <p>(5) If health information is disclosed in accordance with subclause (1), the person, body or organisation to whom it was disclosed must not use or disclose the information for a purpose other than the purpose for which the information was given to it.</p> <p>(6) The exemptions provided by subclauses (1) (k) and (2) extend to any public sector agency, or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency.</p>	
None	<p>12 Identifiers</p> <p>(1) An organisation may only assign identifiers to individuals if the assignment of identifiers is reasonably necessary to enable the organisation to carry out any of its functions efficiently.</p> <p>(2) Subject to subclause (4), a private sector person may only adopt as its own identifier of an individual an identifier of an individual that has been assigned by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its capacity as agent or contractor) if:</p> <p>(a) the individual has consented to the adoption of the same identifier, or</p> <p>(b) the use or disclosure of the identifier is required or authorised by or under law.</p> <p>(3) Subject to subclause (4), a private sector person may only use or disclose an identifier assigned to an individual by a public sector agency (or by an agent of, or contractor to, a public sector agency acting in its</p>	<p>Exemption if assigning identifiers is reasonably necessary to enable the organisation to carry out any of its functions efficiently (cl 12(1))</p>

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	<p>capacity as agent or contractor) if:</p> <p>(a) the use or disclosure is required for the purpose for which it was assigned or for a secondary purpose referred to in one or more paragraphs of HPP 10 (1) (c)–(k) or 11 (1) (c)–(l), or</p> <p>(b) the individual has consented to the use or disclosure, or</p> <p>(c) the disclosure is to the public sector agency that assigned the identifier to enable the public sector agency to identify the individual for its own purposes</p> <p>(4) If the use or disclosure of an identifier assigned to an individual by a public sector agency is necessary for a private sector person to fulfil its obligations to, or the requirements of, the public sector agency, a private sector person may either:</p> <p>(a) adopt as its own identifier of an individual an identifier of the individual that has been assigned by the public sector agency, or</p> <p>(b) use or disclose an identifier of the individual that has been assigned by the public sector agency.</p>	
None	<p>13 Anonymity</p> <p>Wherever it is lawful and practicable, individuals must be given the opportunity to not identify themselves when entering into transactions with or receiving health services from an organisation.</p>	Does not apply to information collected before the commencement of Schedule 1 (1/09/04) (s 19(4))
<p>IPP 12 (s 19)</p> <p>Exemption: ss 25, and 28(1)</p>	<p>14 Transborder data flows and data flow to Commonwealth agencies</p> <p>An organisation must not transfer health information about an individual to any person or body who is in a jurisdiction outside New South Wales or to a Commonwealth agency unless:</p> <p>(a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract that effectively upholds principles for fair handling of the information that are substantially similar to the Health Privacy Principles, or</p> <p>(b) the individual consents to the transfer, or</p> <p>(c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual’s request, or</p>	<p>Exemption if the transfer is reasonably believed by the organisation to be necessary to lessen or prevent:</p> <p>(i) a serious and imminent threat to the life, health or safety of the individual or another person, or</p> <p>(ii) a serious threat to public health or public safety</p>

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	<p>(d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party, or</p> <p>(e) all of the following apply:</p> <ul style="list-style-type: none"> (i) the transfer is for the benefit of the individual, (ii) it is impracticable to obtain the consent of the individual to that transfer, (iii) if it were practicable to obtain such consent, the individual would be likely to give it, or <p>(f) the transfer is reasonably believed by the organisation to be necessary to lessen or prevent:</p> <ul style="list-style-type: none"> (i) a serious and imminent threat to the life, health or safety of the individual or another person, or (ii) a serious threat to public health or public safety, or <p>(g) the organisation has taken reasonable steps to ensure that the information that it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Health Privacy Principles, or</p> <p>(h) the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law.</p>	<p>(cl 14(f))</p> <p>Exemption if the transfer is permitted or required by an Act (including an Act of the Commonwealth) or any other law (cl 14(h))</p>
None	<p>15 Linkage of health records</p> <p>(1) An organisation must not:</p> <ul style="list-style-type: none"> (a) include health information about an individual in a health records linkage system unless the individual has expressly consented to the information being so included, or (b) disclose an identifier of an individual to any person if the purpose of the disclosure is to include health information about the individual in a health records linkage system, unless the individual has expressly consented to the identifier being disclosed for that purpose. <p>(2) An organisation is not required to comply with a provision of this clause if:</p> <ul style="list-style-type: none"> (a) the organisation is lawfully authorised or required not to comply with the provision concerned, or 	<p>Does not apply to information collected before the commencement of Schedule 1 (1/09/04) (s 19(5))</p> <p>Exemption if the organisation is lawfully authorised or required not to comply with the clause (cl 15(2)(a))</p> <p>Exemption if non-compliance is otherwise permitted (or is necessarily implied or reasonably</p>

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	<p>(b) non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998), or</p> <p>(c) the inclusion of the health information about the individual in the health records information system (including an inclusion for which an identifier of the individual is to be disclosed) is a use of the information that complies with HPP 10 (1) (f) or a disclosure of the information that complies with HPP 11 (1) (f).</p> <p>(3) In this clause:</p> <p>health record means an ongoing record of health care for an individual.</p> <p>health records linkage system means a computerised system that is designed to link health records for an individual held by different organisations for the purpose of facilitating access to health records, and includes a system or class of systems prescribed by the regulations as being a health records linkage system, but does not include a system or class of systems prescribed by the regulations as not being a health records linkage system.</p>	<p>contemplated) under an Act or any other law (cl 15(2)(b))</p>