



Public
Service
Commission

Health Privacy Code of Practice for the Public Service Commission

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1 Overview

- 1.1 This Health Code is made under Part 5 of the *Health Records and Information Privacy Act 2002* (“the *HRIP Act*”). It modifies the application to the Public Service Commission (“the PSC”) of certain health privacy principles.
- 1.2 The PSC is a NSW government sector agency as scheduled in the *Government Sector Employment Act 2013* (“the *GSE Act*”) that exists to support the Public Service Commissioner in the execution of his or her functions. The PSC has the lead role in designing and implementing workforce management strategies and reform to ensure the capability of the NSW government sector workforce to deliver high quality public services to the people of NSW. The PSC’s functions are set out in the *GSE Act* and include, for example, identifying reform opportunities for the government sector workforce, advising the Government on policy innovations and strategy, leading workforce planning, reporting on workforce diversity and reporting annually on the state of the government sector. In performing these functions, the PSC collects and analyses data which includes health information.
- 1.3 A corresponding privacy code applies to the PSC in respect of the *Privacy and Personal Information Protection Act 1998*.

2 Other exemptions not affected

- 2.1 This Health Code does not affect the operation of any exemption provided under the *HRIP Act*. This is consistent with s. 38(5) of the *HRIP Act*.

3 Interpretation

- 3.1 In this Code:
“contingent labour” means a person, or group of persons, who is or are engaged by a recruitment or contract supplier to provide labour or services to a NSW public sector agency. Contingent labour does not

include companies engaged under a contract or statement of work to provide services directly to a NSW public sector agency.

“data collection” means a particular collection of PSC workforce data, or some subset of it, held by the PSC.

“data specifications” means a document setting out the specific data fields relevant to a particular data collection as amended from time to time.

“employer agency” means the NSW public sector agency that employs a person.

“external to NSW government sector agency” means an agency that employs an external to NSW government sector agency employee.

“external to NSW government sector agency employee” means a person referred to in s. 5 of the *GSE Act*, as in force from time to time.

NOTE: As at the date of the making of this Code, it means:

- (a) a judicial officer within the meaning of the *Judicial Officers Act 1986*,
- (b) an officer or employee of either House of Parliament or any officer or employee under the separate control of the President or Speaker, or under their joint control,
- (c) persons employed under the *Members of Parliament Staff Act 2013*,
- (d) staff of the Independent Commission Against Corruption employed under the *Independent Commission Against Corruption Act 1988*,
- (e) staff of the Audit Office employed under the *Public Finance and Audit Act 1983*, and
- (f) staff of the Judicial Commission of New South Wales employed under the *Judicial Officers Act 1986*.

“GSE Act” means the *Government Sector Employment Act 2013*.

“health information” has the same meaning as in s. 6 of the *HRIP Act*.

“HRIP Act” means the *Health Records and Information Privacy Act 2002*.

“NSW government sector agency” has the same meaning as government sector agency as defined in s. 3 of the *GSE Act*.

“NSW government sector employee” means any person employed in the government sector as defined in s. 3 of the *GSE Act* and includes persons employed on a temporary, casual or fixed term basis.

“NSW public sector agency” includes a NSW government sector agency, a State owned corporation and an external to NSW government sector agency.

“NSW public sector workforce” includes employees of a NSW public sector agency and contingent labour.

“prospective NSW government sector employee” means a person who applies for employment with a NSW government sector agency whether the person is successful in obtaining employment or not.

“prospective NSW public sector employee” means a person who applies for employment with a NSW public sector agency whether the person is successful in obtaining employment or not.

“PSC workforce data” means the data collected by the PSC about the NSW public sector workforce and prospective NSW public sector employees for the purpose of exercising functions under the *GSE Act* or any other Act or law.

“State owned corporation” means a State owned corporation within the meaning of the *State Owned Corporations Act 1989*.

4 Information covered by the Code

- 4.1 In performing its functions the PSC deals with information about the NSW public sector workforce and prospective NSW public sector employees. This information is known as the PSC workforce data.
- 4.2 The types of information that the PSC deals with are set out in data specifications for each of the PSC’s data collections. The types of information that the PSC collect as part of its data collections are in the following broad categories: employment, demographics, recruitment, and attitudinal (or opinion).

- 4.3 Some of the information that the PSC collects as part of its data collections constitutes “health information” for the purposes of the *HRIP Act*. For example, where the PSC collects statistical information as to sick leave usage or disability status, this may constitute “health information”. Any such information is collected, used and disclosed by the PSC only where directly relevant to the performance of the PSC’s functions under the *GSE Act* or to undertake activities ancillary to those functions. Data which constitutes health information when it is collected is not disclosed other than in an aggregated form.
- 4.4 This Code applies to all PSC workforce data held by the PSC.

5 Provisions

- 5.1 The application of the Health Privacy Principles under Schedule 1 of the *HRIP Act* is modified to the extent described below.

HPP 1 – Purposes of collection of health information

- 5.2 There is no intention to depart from this principle in relation to the collection of health information about NSW government sector employees, employees of State owned corporations, or prospective NSW government sector employees.
- 5.3 To the extent that the collection of health information about contingent labour and external to NSW government sector agency employees, and prospective NSW public sector employees, other than prospective NSW government sector employees, may not be directly related to a function or activity of the PSC, the PSC is permitted to depart from this principle.
- 5.4 Collection of health information about contingent labour, external to NSW government sector agency employees and prospective NSW public sector employees, other than prospective NSW government sector employees will not be broader in type or scope than the PSC’s collection of health information about NSW government sector employees, prospective NSW government sector employees and employees of State owned corporations and relates to the same types of information.

HPP 2 – Information must be relevant, not excessive, accurate and not intrusive

5.5 There is no intention to depart from this principle.

HPP 3 – Collection to be from individual concerned

5.6 There is no intention to depart from this principle in relation to the collection of health information about the NSW public sector workforce or prospective NSW public sector employees. However, for the avoidance of doubt, the PSC is not required to collect health information for a data collection directly from individuals when it is impracticable and unreasonable for it to do so, given the size of the NSW public sector workforce.

HPP 4 – Individual to be made aware of certain matters

5.7 There is no intention to depart from this principle.

HPP 5 – Retention and security

5.8 There is no intention to depart from this principle.

HPP 6 – Information about health information held by organisations

5.9 There is no intention to depart from this principle.

HPP 7 – Access to health information

5.10 The PSC is not required to comply with this principle in relation to health information which forms part of a data collection if:

- (a) in the case of health information obtained from a source other than the individual, the PSC refers the individual to its source, which may include the individual's employer agency (or, in the case of contingent labour, the NSW public sector agency engaging the individual), or
- (b) in the case of health information obtained from the individual, the PSC refers the individual to an information portal or similar system

which enables the individual to check what health information the PSC holds in relation to the individual.

HPP 8 – Amendment of health information

- 5.11 The PSC is not required to comply with this principle in relation to health information which forms part of a data collection if:
- (a) in the case of health information obtained from a source other than the individual, the PSC refers the individual to its source, which may include the individual's employer agency (or, in the case of contingent labour, the NSW public sector agency engaging the individual), or
 - (b) in the case of health information obtained from the individual, the PSC refers the individual to an information portal or similar system which enables the individual to amend the health information that the PSC holds in relation to the individual.

HPP 9 – Accuracy

- 5.12 There is no intention to depart from this principle.

HPP 10 – Limits on use of health information

- 5.13 There is no intention to depart from this principle.

HPP 11 – Limits on disclosure of health information

- 5.14 There is no intention to depart from this principle.

HPP 12 – Identifiers

- 5.15 There is no intention to depart from this principle.

HPP 13 – Anonymity

- 5.16 There is no intention to depart from this principle.

HPP 14 – Transborder data flows and data flow to Commonwealth agencies

5.17 There is no intention to depart from this principle.

6 Compliance and further information

6.1 Once an Order making this Health Code is published in the NSW Government Gazette (or on such later date as may be specified in the order), an agency, person, or body, to whom this Health Code applies must comply with its provisions.

6.2 Further information regarding privacy laws and the operation of health privacy codes of practice can be found on the NSW Information and Privacy Commission website at <http://www.ipc.nsw.gov.au>.

6.3 This Health Code will be reviewed in consultation with the NSW Privacy Commissioner on or before 30 June 2021 and every three years thereafter.