



information  
and privacy  
commission  
new south wales

Enquiries: Sarah Wyatt  
Telephone: 1800 472 679

Amy Wyndham  
A/Executive Director, Mental Health  
NSW Ministry of Health  
Locked Mail Bag 961  
NORTH SYDNEY NSW 2059

By email: [REDACTED]

Dear Ms Wyndham,

**Draft Discussion Paper - Improving Information Sharing Arrangements Across NSW Government Agencies Relating to High-Risk and/or Complex Needs Patients**

The purpose of this correspondence is to provide feedback in respect of the draft discussion paper, 'Improving Information Sharing Arrangements Across NSW Government Agencies Relating to High-Risk and/or Complex Needs Patients'.

Our comments consider the impact of the *Privacy and Personal Information Protection Act 1998 (NSW) (PPIP Act)* and the *Health Records and Information Privacy Act 2002 (NSW) (HRIP Act)* on information sharing proposed in the discussion paper. We do not provide comment on the contextual matters or case studies that give rise to the apparent need for information sharing.

**The impact of the PPIP Act and the HRIP on information sharing by NSW agencies**

Under the PPIP Act and the HRIP Act, agencies are required to comply with information protection principles (IPPs) and health privacy principles (HPPs), unless they are exempted from compliance under legislation or under privacy codes or directions.

In order to identify the applicable provisions of the PPIP Act and HRIP Act, we suggest you identify:

- Which agencies will be sharing information about high-risk or complex needs patients – this is important in order to understand if information will also be shared with non-government entities. As you may be aware, the PPIP Act does not apply to private sector entities so there is no legal requirement for them to comply with the IPPs. The HPPs can still apply to them. In addition, certain exemptions apply under the legislation to particular agencies, such as the NSW Police Force: section 27, PPIP Act,
- The particular information to be shared between agencies – the information may include a mix of personal information, health information and other information,
- The life cycle of the information from collection → retention and security → use and disclosure → access and alteration.

Level 17, 201 Elizabeth Street, Sydney NSW 2000 | GPO Box 7011, Sydney NSW 2001  
t 1800 ipc nsw (1800 472 679) | f 02 8114 3756 | e ipcinfo@ipc.nsw.gov.au

www.ipc.nsw.gov.au

Subject to identifying the above, the following exemptions may be applicable

- Use and disclosure is permitted to prevent a serious or imminent threat to life or health of the patient: sections 17, 18 and 19 PPIP Act; clause 10, 11 of Sch 1, HRIP Act,
- An exemption for law enforcement and investigative agencies: sections 23 and 34, PPIP Act; clause 10, 11 of Sch 1, HRIP Act,
- An exemption where compliance is lawfully authorised or required, or otherwise permitted under an Act or any other law: section 25, PPIP Act; Sch 1, HRIP Act,
- An exemption where non-compliance would benefit the patient concerned: section 26, PPIP Act,
- An exemption relating to information exchanges between public sector agencies to enable inquiries to be referred between agencies: section 27A, PPIP Act.

#### **Options to facilitate the information sharing proposed in the discussion paper**

The discussion paper includes excerpts from the 2013 Law Reform Commission Report 138. That report referred to options to facilitate information sharing, including:

- By memorandum of understanding or protocol,
- By regulation, privacy code, or public interest direction, or
- By creating a specific exemption in the *Mental Health (Forensic Provisions) Act 1990 (NSW)*.

As you may be aware, under section 30 of the PPIP Act and section 39 of the HRIP Act, a privacy code of practice may modify the application of the IPPs or HPPs to an agency. Further under section 41 of the PPIP Act and section 62 of the HRIP Act, the Privacy Commissioner may issue a written direction (with the approval of the Minister) exempting agencies from complying with IPPs, HPPs and codes.

Before consideration can be given to developing a privacy code or direction we suggest that you:

- Map the flow of information to be shared, as this will assist you to determine whether an exemption is required to enable the disclosure,
- Prepare a Privacy Impact Assessment of the options under consideration in the discussion paper to ensure that any privacy impacts or risks are identified, addressed or mitigated prior to information sharing arrangements being commenced. This process will also assist in the development of a business case to support a proposed privacy code of practice or direction.

Please see the following links to relevant information on the Information and Privacy Commission's website:

- Privacy Codes of Practice: <https://www.ipc.nsw.gov.au/privacy-codes-practice>
- Public Interest Directions: <https://www.ipc.nsw.gov.au/public-interest-directions>
- Privacy Impact Assessments: <https://www.ipc.nsw.gov.au/privacy-impact-assessments-overview>; <https://www.ipc.nsw.gov.au/assessing-privacy-impacts>; [https://www.ipc.nsw.gov.au/sites/default/files/file\\_manager/2016.12.13\\_Privacy\\_Impact\\_Assessment\\_Guide.pdf](https://www.ipc.nsw.gov.au/sites/default/files/file_manager/2016.12.13_Privacy_Impact_Assessment_Guide.pdf)

We hope these comments will be of assistance. Please do not hesitate to contact us if you have any queries. Alternatively, your officers may contact Sarah Wyatt, Assistant Director, Legal Counsel and Regulatory Advice on 1800 472 679 or by email at

[Redacted]

Yours sincerely

[Redacted]

**Samantha Gavel**  
**Privacy Commissioner**

26/10/18