

PRIVACY CODE OF PRACTICE FOR LOCAL GOVERNMENT

1. Overview

- 1.1 This Privacy Code of Practice (the “Code”) is made under Part 3 Division 1 of the *Privacy and Personal Information Protection Act 1998* (the “PIIP Act”).
- 1.2 The effect of this Code is to modify:
- (1) the information Protection Principles contained in Part 2, Division 1 of the PIIP Act, and
 - (2) the provisions of Part 6 of the PIIP Act.
- as they relate to Local Government.
- 1.3 This Code replaces the Privacy Code of Practice for Local Government (gazetted on 1 July 2000).
- 1.4 This Code does not affect the operation of any exemption provided under Part 2, Division 3 of the PIIP Act. This is consistent with section 29(6) of the PIIP Act.

2. Interpretation

- 2.1 For the purpose of this Code:

Code means the Privacy Code of Practice for Local Government

Council refers to “councils”, “county councils” and “joint organisations” as defined under the *Local Government Act 1993*

Information Protection Principles (“IPPs”) means those principles contained in Part 2 Division 1 of the PIIP Act

Personal Information has the same meaning as in section 4 of the PIIP Act

PIIP Act means the *Privacy and Personal Information Protection Act 1998* (NSW)

Privacy Management Plan means the Council’s Privacy Management Plan

Public Sector Agency has the same meaning as in section 3 of the PIIP Act

Public Sector Official has the same meaning as in section 3 of the PIIP Act and includes an officer of a Council

Section refers to a section of the PIIP Act unless otherwise indicated

Utility Provider refers to a private sector organisation, state owned corporation or public sector agency that provides utility services to the public, including but not limited to gas, electricity, telecommunications or water.

3. Application

- 3.1 This Code applies to all Councils, County Councils and Joint Organisations.
- 3.2 This Code applies to that part of the information collected or held by Council that is personal information.

4. Modification of the Information Privacy Principles

- 4.1 The application of the Information Protection Principles (IPPs) under Part 2, Division 1 of the PPIP Act is modified to the extent described below.

(IPP 1) Section 8: Collection of personal information for lawful purposes

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

(IPP 2) Section 9: Collection of personal information directly from individual

- 4.3 Council is not required to comply with this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be, or may be, conferred upon the person to whom the information relates.

(IPP 3) Section 10: Requirements when collecting personal information

- 4.4 Council may depart from this principle where indirect collection of personal information is reasonably necessary when an award, prize, benefit or similar form of personal recognition is intended to be, or may be, conferred upon the person to whom the information relates.

(IPP 4) Section 11: Other requirements relating to collection of personal information

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

(IPP 5) Section 12: Retention and security of personal information

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

(IPP 6) Section 13: Information about personal information held by agencies

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

(IPP 7) Section 14: Access to personal information held by agencies

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

(IPP 8) Section 15: Alteration of personal information

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

(IPP 9) Section 16: Agency must check accuracy of personal information before use

4.10 There is no intention to depart from this principle.

(IPP 10) Section 17: Limits on use of personal information

4.11 Council may use personal information for a purpose other than the purpose for which it was collected in the following circumstances:

- (1) where the use is for the purpose of undertaking Council's lawful and proper function/s and Council is satisfied that the personal information is reasonably necessary for the exercise of such function/s, or
- (2) where personal information is to be used for the purpose of conferring upon a particular person, an award, prize, benefit or similar form of personal recognition.

(IPP 11) Section 18: Limits on disclosure of personal information

4.12 There is no intention to depart from this principle except in the circumstances described below:

- (1) Council may disclose personal information to public sector agencies or utility providers on condition that:
 - (i) the agency or utility provider has approached Council in writing
 - (ii) Council is satisfied that the information is to be used by that agency or utility provider for the proper and lawful function/s of that agency or utility provider, and
 - (iii) Council is satisfied that the personal information is reasonably necessary for the exercise of that agency or utility provider's function/s.
- (2) Where personal information about an individual collected or held by Council is to be disclosed for the purpose of conferring upon that person, an award, prize, benefit or similar form of personal recognition.
- (3) Where Council is requested by a potential employer, it may verify:
 - (i) that a current or former employee works or has worked for Council
 - (ii) the duration of their employment, and
 - (iii) the position occupied during their employment.

This exception shall not permit Council to give an opinion as to that person's suitability to a particular position with any potential employer

unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

(IPP 12) Section 19: Special restrictions on disclosure of personal information

4.12 There is no intention to depart from this principle except in the circumstances described below:

- (1) For the purposes of section 19(2), where Council is requested by a potential employer outside New South Wales, it may verify that:
 - (i) a current or former employee works or has worked for Council
 - (ii) the duration of their employment, and
 - (iii) the position occupied during their employment.

This exception shall not permit Council to give an opinion as to that person's suitability for a particular position with any potential employer unless Council is satisfied that the person has provided their consent for Council to provide a reference, which may include an opinion as to that person's suitability for the position for which he/she has applied.

5. Modifications to Part 6 (Public Registers)

5.1 The application of section 57 is modified to the extent that Council may allow any person to:

- (1) inspect a publicly available copy of a public register in council premises, and
- (2) copy a single entry or a page of the register

without requiring the person to provide a reason for accessing the register and without determining that the proposed use of the register is consistent with the purpose of the register or the Act under which the register is kept.

5.2 The application of section 57 is modified to the extent that:

- (1) Council should not require any person to provide a reason for inspecting the council's pecuniary interest register or any register on which the council records returns of interests made by councillors or designated persons under Part 4 of the *Model Code of Conduct for Local Councils in NSW*.
- (2) Council should not require the making of a statutory declaration as to the intended use of any information obtained from an inspection the council's pecuniary interest register or any register on which the council records returns of interests made by councillors or designated persons under Part 4 of the *Model Code of Conduct for Local Councils in NSW*.

- 5.3 Council must ensure that the provisions of section 6 of the *Government Information (Public Access) Act 2009* and sections 4.58 and 6.26 of the *Environmental Planning and Assessment Act 1979* are complied with, where applicable.

6. Compliance

- 6.1 This Code will be made by an order published in the Government Gazette. This Code takes effect once the order making this Code is published (or such later date as may be specified in the order).
- 6.2 Any Council to which this Code applies must comply with its provisions.
- 6.3 The Council's Privacy Management Plan should include provisions to comply with the obligations imposed by the PPIP Act and the provisions of this Code.

7. Review

- 7.1 This Code will be reviewed within three years from the date of its gazettal.