



## Offences under NSW privacy laws

<b>Who is this information for?</b>	This information is for NSW public sector agency staff.
<b>Why is this information important to them?</b>	This fact sheet provides information on the offences contained in both the PPIP Act and HRIP Act, as well as the offences which are exclusive to the PPIP Act and HRIP Act.

The *Privacy and Personal Information Protection Act 1998* (PPIP Act) and *Health Records and Information Privacy Act 2002* (HRIP Act) prescribe offences for corrupt and improper misuse of personal information or health information. This fact sheet provides information on the offences contained in both the PPIP Act and HRIP Act, as well as the offences which are exclusive to the PPIP Act and HRIP Act.

In addition to setting out obligations to protect personal information agencies collect about individuals and creating responsibilities for the management and handling of personal information, the PPIP Act sets out offences relating to the corrupt and improper misuse of personal information. Similarly, the HRIP Act sets out offences relating to the corrupt and improper misuse of health information, in addition to the obligations to protect health information and responsibilities for the management and handling of health information.

### Offences under the PPIP Act and HRIP Act

#### Corrupt disclosure and use of personal information by public sector officials

There are two offences under both the PPIP Act and HRIP Act relating to the corrupt disclosure and use of personal information by public sector officials:

- The first offence is the disclosure or use of personal information about another person by a public sector official.<sup>1</sup> The disclosure or use must be intentional, and the public sector official must have or have had access to the personal information in the exercise of

their official functions. However, disclosure or use in connection with the lawful exercise of the official functions of the official or in accordance with the *Public Interest Disclosures Act 2022* is permitted.<sup>2</sup>

- The second offence is inducing a public sector official to disclose personal information to which the official has access in the exercise of their official functions.<sup>3</sup> The inducement may be by way of a bribe or other similar corrupt conduct. The offence includes attempts to induce.

A reference to a public sector official here includes a person who was formerly a public sector official.<sup>4</sup>

#### Offering to supply personal information that has been disclosed unlawfully

It is an offence under the PPIP Act and HRIP Act to supply personal information that has been disclosed unlawfully.<sup>5</sup> This offence requires that a person offers to supply or holds themselves out as being able to supply personal information that the person knows, or ought reasonably to know, has been or is proposed to be corruptly disclosed by a public sector official.

Where a person is convicted of this offence or the previous offence, the court may order the confiscation of any money or other benefit alleged to have been obtained by the person in connection with the offence and for that money or other benefit to be forfeited to the Crown.<sup>6</sup>

### Offences under the PPIP Act

#### Disclosure by Privacy Commissioner or staff member

It is an offence under the PPIP Act for the Privacy Commissioner or a member of the staff of the Privacy Commissioner to disclose any information obtained in the course of their office, unless the disclosure is made with the consent of the person the subject of the information or for the purpose of discharging functions of the Privacy Commissioner or member of staff under the PPIP Act or any other Act.

<sup>1</sup> PPIP Act section 62(1); HRIP Act section 68(1)

<sup>2</sup> PPIP Act section 62(3); HRIP Act section 68(3)

<sup>3</sup> PPIP Act section 62(2); HRIP Act section 68(2)

<sup>4</sup> PPIP Act section 62(4); HRIP Act section 68(4)

<sup>5</sup> PPIP Act section 63(1); HRIP Act section 69(1)

<sup>6</sup> PPIP Act section 63(2); HRIP Act section 69(2)

### Offences relating to dealings with Privacy Commissioner

The PPIP Act sets out a number of offences in relation to dealing with the Privacy Commissioner or a member of staff of the Privacy Commissioner. It is an offence for a person to:

- (a) without lawful excuse, willfully obstruct, hinder, or resist the Privacy Commissioner or a member of staff of the Privacy Commissioner in the exercise of functions under the PPIP Act or any other Act, or
- (b) without lawful excuse, refuse or willfully fail to comply with any lawful requirement of the Privacy Commissioner or a member of the staff of the Privacy Commissioner under the PPIP Act or any other Act, or
- (c) willfully make any false statement to or mislead, or attempt to mislead, the Privacy Commissioner or a member of staff of the Privacy Commissioner in the exercise of functions under the PPIP Act or any other Act.<sup>7</sup>

It is also an offence under the PPIP Act if a person:

- (a) is not the Privacy Commissioner—represents that they are the Privacy Commissioner, or
- (b) has not been appointed under the PPIP Act as acting Privacy Commissioner—represents that they have been so appointed, or
- (c) is not a person to whom a delegation has been made under the PPIP Act or the HRIP Act—represents that they are such a person, or
- (d) is not a member of the staff of the Privacy Commissioner—represents that they are a member of that staff.<sup>8</sup>

### Offences under the HRIP Act

#### Intimidation, threats or misrepresentation

The HRIP Act contains two offences involving intimidation, threats or misrepresentation:

- It is an offence for a person to persuade or attempt to persuade a person by threat, intimidation or misrepresentation, to not make or pursue a request for access to health information, a complaint to the Privacy Commissioner or the Tribunal or an application under the PPIP Act with respect to the alleged contravention of a HPP or a health privacy

code of practice or to withdraw such a request complaint or application.<sup>9</sup>

- It is also an offence for a person by threat, intimidation or false representation, to require another person to give a consent under the HRIP Act or to do an act without consent for which consent is required.<sup>10</sup>

### What powers does the Privacy Commissioner have to investigate alleged offences?

The Privacy Commissioner has the power to investigate suspected privacy offences where the investigation is connected to a complaint and:

1. the Commissioner decides to deal with the complaint;<sup>11</sup> or
2. the Commissioner declines to deal with the complaint;<sup>12</sup> or
3. the Commissioner decides to refer the complaint to a relevant authority.<sup>13</sup>

An investigation or inquiry by the Privacy Commissioner into a complaint cannot be conducted after a successful conciliation of the complaint. The Privacy Commissioner also does not have the power to conduct an inquiry or investigation in respect of a complaint that has been withdrawn prior to the Commissioner declining to deal with the complaint or referring it to a relevant authority.<sup>14</sup>

In conducting an inquiry or investigation into an alleged offence under the PPIP Act or HRIP Act, the Privacy Commissioner can issue to any person a written notice requiring that person to attend before the Commissioner at a specified time and place to give evidence, produce documents or other things in the person's custody or control, and the person cannot refuse to do so.<sup>15</sup>

### Who makes the decision to prosecute an alleged offence?

The PPIP Act, HRIP Act and the regulations made under those Acts do not identify a prosecuting authority. Where an Act does not expressly identify who has the right to commence prosecutions or proceedings, proceedings with respect to offences under that Act may be commenced by any person.<sup>16</sup>

<sup>7</sup> PPIP Act section 68(1)(a)-(c)

<sup>8</sup> PPIP Act section 68(2)(a)-(d)

<sup>9</sup> HRIP Act section 70(1)(a)-(b)

<sup>10</sup> HRIP Act section 70(2)

<sup>11</sup> PPIP Act section 48; HRIP Act section 44(1)

<sup>12</sup> PPIP Act section 51

<sup>13</sup> PPIP Act section 51

<sup>14</sup> PPIP Act sections 45(6) & 51

<sup>15</sup> Refusing to comply with a written notice issued by the Privacy Commissioner under section 38 of the PPIP Act may give rise to an offence under Part 3 of the *Royal Commissions Act 1923* (NSW)

<sup>16</sup> *Criminal Procedural Act 1986* section 14

The Privacy Commissioner can commence proceedings in respect of an alleged offence under the PPIP Act and HRIP Act. The Privacy Commissioner may also decide to refer the complaint or provide other information to a law enforcement agency.<sup>17</sup>

The decision to commence proceedings is discretionary and will be made in accordance with the Prosecution Guidelines of the Office of the Director of Public Prosecutions of New South Wales.<sup>18</sup>

## Where is an alleged offence prosecuted?

Offences under the PPIP Act and HRIP Act are dealt with summarily by the Local Court.<sup>19</sup> Proceedings are commenced by the issuing of a court attendance notice.<sup>20</sup>

Proceedings for a summary offence must be commenced no later than six months from when the offence was alleged to have been committed.<sup>21</sup>

## For more information

Contact the Information and Privacy Commission NSW (IPC):

**Freecall:** 1800 472 679

**Email:** [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

**Website:** [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

*NOTE: The information in this Fact Sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.*

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<sup>17</sup> PPIP Act section 47; RC Act section 12A

<sup>18</sup> <https://www.odpp.nsw.gov.au/prosecution-guidance/prosecution-guidelines>

<sup>19</sup> PPIP Act section 70; HRIP Act section 74

<sup>20</sup> CP Act sections 173 and 174

<sup>21</sup> CP Act section 179(1)

## Annexure A

### What is required to substantiate each offence?

To substantiate an offence, it is important to examine the elements of the offence and the evidence required. Each element must be satisfied to the requisite standard.

Some of the elements of the offences include terms defined in the PPIP Act and HRIP Act and these terms should be applied to the information, details or facts of the alleged offence.

#### PPIP Act section 62(1) and HRIP Act section 68(1) corrupt disclosure or use of personal information or health information by public sector officials

Elements of the offence	Consideration
A person is or was at the relevant time a public sector official.	<b>Public sector official</b> is defined in the PPIP Act in section 3(1) and the HRIP Act in section 4(1). Is the person covered by the definitions?
The person intentionally discloses or uses personal information or health information about another person.	<b>Personal information</b> is defined in section 4 of the PPIP Act and section 5 of the HRIP Act. <b>Health information</b> is defined in section 6 of the HRIP Act. Is the information covered by the definitions? Need to show that the information is about another person. Need to show that the information was disclosed or used intentionally.
The information disclosed or used was information to which the public sector official has or had access in the exercise of their official functions.	<b>Function</b> is defined in section 3 of the PPIP Act and section 4 of the HRIP Act. <b>Exercise</b> is defined in section 3 of the PPIP Act and section 4 of the HRIP Act. Need to identify the official functions of the public sector official. Need to show that the public sector official has or had access to the information in exercising their official functions.
The disclosure or use was not in connection with the lawful exercise of the official functions of the public sector official.	Need to show that the disclosure or use was not in connection with the lawful exercise of any of official functions of the public sector official. Need to show that the disclosure was not made in accordance with the <i>Public Interest Disclosures Act 2022</i> .

#### PPIP Act section 62(2) and HRIP Act section 68(2) inducing a public sector official to disclose personal information or health information

Elements of the offence	Consideration
A person induces or attempts to induce another person (by way of a bribe or other similar corrupt conduct) to disclose information.	Need to show evidence of a bribe or other similar corrupt conduct. Need to show that the purpose of the bribe or other similar corrupt conduct was to induce or attempt to induce the other person to disclose information.
The other person is or was a public sector official.	<b>Public sector official</b> is defined in the PPIP Act in section 3(1) and the HRIP Act in section 4(1).
The public sector official has or had access to the information in the exercise of their official functions.	<b>Function</b> is defined in section 3 of the PPIP Act and section 4 of the HRIP Act. <b>Exercise</b> is defined in section 3 of the PPIP Act and section 4 of the HRIP Act. Need to identify the official functions of the public sector official. Need to show that the public sector official had access to the information in exercising their official functions.

The information was personal information or health information about another person.	<p><b>Personal information</b> is defined in section 4 of the PPIP Act and section 5 of the HRIP Act.</p> <p><b>Health information</b> is defined in section 6 of the HRIP Act.</p>
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**PPIP Act section 63(1) offering to supply personal that has been disclosed unlawfully**

Elements of the offence	Consideration
A person: (a) offers to supply; or (b) holds themselves out as being able to supply; (whether to a particular person or otherwise) information.	Need to show that the person offered to supply, or held themselves out as being able to supply, information to another person.
The information was personal information or health information.	<p><b>Personal information</b> is defined in section 4 of the PPIP Act and section 5 of the HRIP Act.</p> <p><b>Health information</b> is defined in section 6 of the HRIP Act.</p>
The person knows, or ought to reasonably know, that the information has been, or is proposed to be disclosed, in contravention of section 62 of PPIP Act or section 68 of the HRIP Act.	Requires evidence of actual knowledge that the information has been, or is proposed to be, disclosed in contravention of section 62 of the PPIP Act or section 68 of the HRIP Act.

**NOTE:** If a person is convicted of an offence under section 62 or 63 (1), the court may order the confiscation of any money or other benefit alleged to have been obtained by the person in connection with the offence and for that money or other benefit to be forfeited to the Crown.

**PPIP Act section 67(1) disclosure by Privacy Commissioner or staff member**

Elements of the offence	Consideration
The Privacy Commissioner or a member of the staff of the Privacy Commissioner discloses any information obtained in the course of their office.	<p><b>Privacy Commissioner</b> is defined in section 3 of the PPIP Act and section 4 of the HRIP Act.</p> <p>Need to show that the Privacy Commissioner or a member of staff obtained the information in the course of their office.</p>
The information was disclosed without the consent of the person the subject of the information or was not for the purpose of discharging functions of the Privacy Commissioner or member of staff	<p><b>Function</b> is defined in section 3 of the PPIP Act.</p> <p>Need to show that the Privacy Commissioner or a member of staff of the Privacy Commissioner disclosed the information.</p> <p>Need to show that the person the subject of the information did not consent to the disclosure.</p> <p>Need to show that the disclosure was not for the purpose of discharging a function of the Privacy Commissioner or member of staff of the Privacy Commissioner.</p>

**PPIP Act section 68(1) offences related to dealing with the Privacy Commissioner**

Elements of the offence	Consideration
(a) Without lawful excuse, a person willfully obstructs, hinders, or resists the Privacy Commissioner or a member of staff of the	<p><b>Privacy Commissioner</b> is defined in section 3 of the PPIP Act.</p> <p><b>Function</b> is defined in section 3 of the PPIP Act.</p> <p>Need to show that a person intentionally:</p>

<p>Privacy Commissioner in the exercise of functions under the PPIP Act or any other Act.</p>	<ul style="list-style-type: none"> <li>• obstructed, or</li> <li>• hindered, or</li> <li>• resisted;</li> </ul> <p>the Privacy Commissioner or a member of staff of the Privacy Commissioner in the exercise of their functions under the PPIP Act or any other Act.</p> <p>Need to show lack of a lawful excuse.</p>
<p>(b) Without lawful excuse, a person refuses or willfully fails to comply with any lawful requirement of the Privacy Commissioner or a member of the staff of the Privacy Commissioner under the PPIP Act or any other Act</p>	<p><b>Privacy Commissioner</b> is defined in section 3 of the PPIP Act.</p> <p>Need to show that a person intentionally:</p> <ul style="list-style-type: none"> <li>• refused, or</li> <li>• failed;</li> </ul> <p>to comply with any requirement of the Privacy Commissioner or a member of the staff of the Privacy Commissioner under the PPIP Act or any other Act.</p> <p>Need to show lack of a lawful excuse.</p> <p>Need to show that the requirement of the Privacy Commissioner or member of staff of the Privacy Commissioner was lawful.</p>
<p>(c) A person willfully makes any false statement to or mislead, or attempt to mislead, the Privacy Commissioner or a member of staff of the Privacy Commissioner in the exercise of functions under the PPIP Act or any other Act.</p>	<p><b>Privacy Commissioner</b> is defined in section 3 of the PPIP Act.</p> <p>Need to show that a person intentionally made a false statement to the Privacy Commissioner or a member of staff of the Privacy Commissioner.</p> <p>Need to show that the purpose of the false statement was to mislead the Privacy Commissioner or member of staff of the Privacy Commissioner.</p>

**PPIP Act section 68(2) further offences related to dealing with the Privacy Commissioner**

Elements of the offence	Consideration
<p>(a) A person who is not the Privacy Commissioner—represents that they are the Privacy Commissioner.</p>	<p><b>Privacy Commissioner</b> is defined in section 3 of the PPIP Act.</p> <p>Need to show that the person is not the Privacy Commissioner.</p> <p>Need to show that the person represented that they are the Privacy Commissioner.</p>
<p>(b) A person that has not been appointed under the PPIP Act as acting Privacy Commissioner—represents that they have been so appointed.</p>	<p><b>Privacy Commissioner</b> is defined in section 3 of the PPIP Act.</p> <p>Need to show that the person has not been appointed as acting Privacy Commissioner.</p> <p>Need to show that the person represented that they have been appointed as acting Privacy Commissioner.</p>
<p>(c) A person who is not a person to whom a delegation has been made under the PPIP Act or the HRIP Act—represents that they are such a person.</p>	<p>Need to show that the person is not a person to whom a delegation has been made under the PPIP Act or HRIP Act.</p> <p>Need to show that the person represented that they are a person to whom a delegation has been made under the PPIP Act or the HRIP Act.</p>
<p>(d) A person who is not a member of the staff of the Privacy Commissioner—represents that they are a member of that staff.</p>	<p><b>Privacy Commissioner</b> is defined in section 3 of the PPIP Act.</p> <p>Need to show that the person is not a member of staff of the Privacy Commissioner.</p> <p>Need to show that the person represented that they are a member of staff of the Privacy Commissioner.</p>

**HRIP Act section 70(1) offence of intimidation, threats or misrepresentation**

Elements of the offence	Consideration
A person must not, by threat, intimidation or misrepresentation.	Need to show that a person made a threat, intimidation or misrepresentation.
<p>The purpose of the threat, intimidation or misrepresentation was to persuade or attempt to persuade an individual from refrain from making or pursuing:</p> <ul style="list-style-type: none"> <li>(i) a request for access to health information, or</li> <li>(ii) a complaint to the Privacy Commissioner or the Tribunal, or</li> <li>(iii) an application under the PPIP Act with respect to the alleged contravention of a Health Privacy Principle or a health privacy code of practice, or</li> </ul> <p>to withdraw such a request, complaint or application.</p>	<p>Need to show that the purpose of the threat, intimidation or misrepresentation was to persuade or attempt to persuade an individual to refrain from making or pursuing, or withdrawing, any of the following:</p> <ul style="list-style-type: none"> <li>(i) a request for access to health information, or</li> <li>(ii) a complaint to the Privacy Commissioner or the Tribunal, or</li> <li>(iii) an application under the PPIP Act with respect to the alleged contravention of a Health Privacy Principle or a health privacy code of practice.</li> </ul>

**HRIP Act section 70(2) further offence of intimidation, threats or misrepresentation**

Elements of the offence	Consideration
A person must not, by threat, intimidation or false representation.	Need to show that a person made a threat, intimidation or false representation.
<p>The purpose of the threat, intimidation or false representation was to require another person:</p> <ul style="list-style-type: none"> <li>(i) to give a consent under the HRIP Act, or</li> <li>(ii) to do, without consent, an act for which consent is required.</li> </ul>	<p>Need to show that the purpose of the threat, intimidation or false representation was to require another person:</p> <ul style="list-style-type: none"> <li>(i) to give a consent under the HRIP Act, or</li> <li>(ii) to do, without consent, an act for which consent is required.</li> </ul>