

Direction for the exchange of health information to assist in the transition of funded individuals to the National Disability Insurance Scheme

As Privacy Commissioner appointed under Part 4, Division 1 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (the PPIP Act), I Samantha Gavel, hereby direct pursuant to section 62 of the *Health Records and Information Privacy Act 2002* (the HRIP Act) that:

Overview

1. This is a direction made under section 62(1) of the HRIP Act. It should be read in conjunction with that Act.

Interpretation

2. In this Direction, the following words have the respective meanings:

“Allied agency” means an agency (other than a public sector agency) that is wholly or partly funded by FACS or another public sector agency listed in Schedule 1 to provide supports for people with a disability who are or may be eligible to participate in the National Disability Insurance Scheme. Depending on the services it provides an allied agency may or may not be a health service provider as defined in section 4 of the HRIP Act. It is not reasonably practicable to specify a list of current allied agencies for the purpose of this Direction as new organisations can expect to be funded, agencies to cease being funded, to merge and be renamed over the life of the Direction.

“Carer”, means a guardian, attorney or close friend or relative of an individual receiving funded supports and includes, but is not limited to an authorised representative under the *Health Records and Information Privacy Act 2002 (NSW)*.

“Direction” means this direction and any Schedules;

“FACS” means the NSW Department of Family and Community Services.

“Funded Individual” means a natural person who receives disability supports that are provided or funded in whole or part by FACS or another public sector agency listed in Schedule 1 to this Direction, where those supports are in scope to be funded through the NDIS.

“Health Information” has the same meaning as in section 6 of the HRIP Act

“Health Service Provider” has the same meaning as in section 4 of the HRIP Act

“HPP” with a relevant number refers to the relevant Health Privacy Principle in Schedule 1 of the HRIP Act

"HRIP Act" means the Health Records and Information Privacy Act 2002 (NSW)

"Hunter Region" means the local government areas of Newcastle, Lake Macquarie and Maitland

"NDIA" means the National Disability Insurance Agency established under the *National Disability Insurance Scheme Act 2013* (Cth)

"NDIS" means the National Disability Insurance Scheme established under the *National Disability Insurance Scheme Act 2013* (Cth)

"personal information" has the same meaning as in section 5 of the HRIP Act;

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

"Public Health Organisation" has the same meaning as in section 7 of the *Health Services Act 1997* (NSW).

Application

3. This direction is to apply to the NSW public sector agencies that provide disability supports and are listed in Schedule 1 and to their allied agencies subject to the HRIP Act.

Objectives of the Direction relating to transition of funded individuals to the National Disability Insurance Scheme

4. Under the *National Disability Insurance Scheme Act 2013* (Cth) the National Disability Insurance Agency (NDIA) will fund a system of comprehensive supports for eligible participants with disability that will replace current state based funding and provision of disability supports.
5. In December 2012, the Commonwealth and NSW Governments entered into an Agreement that will ensure a full roll out of the NDIS in NSW by July 2018. NSW will cease to be responsible for directly funding disability supports when the NDIS becomes fully operational in July 2018. The Commonwealth and NSW Governments also entered into agreements to launch a Trial of the Scheme in the Hunter Region from July 2013 to June 2016 and in 2015 to extend the Trial to children and young people in the Hawkesbury Nepean District from 1 July 2015.
6. To effect NDIS transition according to the bilaterally agreed timetable, the NDIA needs to be able to identify and contact all people with disability in NSW who are potentially eligible for the scheme and to manage their intake.
7. Of the estimated 140,000 people with disability in NSW expected to benefit from the NDIS, there are in the order of 95,000 people with disability who receive supports either directly, or through funding arrangements, from the NSW Government. Therefore for a significant proportion of the estimated NDIS intake in NSW, the information required by the NDIA is currently held by NSW public sector agencies that provide supports to people with disability and by their allied agencies.
8. FACS has information on clients supported through direct services, but limited information about those clients whose supports are funded through other public sector agencies and allied agencies. FACS collects de-identified information about the

number of people receiving funded disability supports through the Disability National Minimum Data Set, but does not have arrangements in place to authorise collection of identifiable information from all NSW public sector agencies and allied agencies. Similar constraints apply to other NSW Government agencies that fund supports that will in future be funded through the NDIS..

9. The NDIA will use the information collected by FACS under this direction to:
 - a. determine the timing of transition for each funded individual and their intake pathway
 - b. approach potentially eligible funded individuals to seek their consent to participate in the scheme and to obtain further information about their circumstances if needed for an eligibility determination
 - c. undertake an eligibility assessment, supplemented by additional information if required, and advise the funded individual and FACS of the eligibility decision
 - d. approach funded individuals who are eligible for the NDIS to make arrangements for the development of the individual's NDIS plan.

Information to be collected and processed

10. The agreed data set of information about funded individuals will comprise:
 - a. relevant health information that identifies, and contact information for, the funded individual which may include name, date of birth, gender, address, telephone number, language spoken, country of birth and Aboriginal status
 - b. relevant health information about a funded individual's health and disability, which may include disability assessments and information about special needs
 - c. information about a funded individual's current supports and the organisation(s) providing those supports, which may include service plans and individual support plans
 - d. information regarding the support structures in place for a funded individual.
11. The flow of information is as follows:
 - a. each public sector agency listed in Schedule 1 and the allied agency providing disability supports that are in scope to be funded through the NDIS will collect the agreed data set of information about their funded individuals and will disclose that data set to FACS
 - b. FACS will collect and combine the agreed data set of information from each public sector agency and allied agency, will validate the information (where possible) and will create a consolidated record of information for each funded individual
 - c. FACS will disclose the consolidated information to the NDIA as requested by the NDIA and in accordance with bilaterally agreed arrangements for the transition of funded individuals in to the NDIS

Public Interest

12. This Direction has been made to permit the collection, use and disclosure of relevant health information by FACS and other NSW public sector agencies listed in Schedule 1 and allied agencies subject to the HRIP Act that provide disability supports that are in scope to be funded through the NDIS

13. Where individuals are not receiving services directly from FACS it is not reasonably practicable for FACS to seek their consent or the consent of their carer(s) to collection or disclosure.
14. This Direction will enable FACS to collect an agreed data set of information about funded individuals from other public sector agencies and allied agencies, to validate and consolidate that information and use it to refer individuals to the NDIA without breaching Health Privacy Principles 1, 3, 4, 10 and 11 relating to collection, use and disclosure of health information.
15. The purpose of the collection of this data by FACS is to ensure:
 - a. forward planning of the intake of funded individuals into the NDIS
 - b. the flow of information about funded individuals to the NDIA is coordinated and timely so that there is an orderly transition of people into the NDIS across NSW to ensure that people's expectations and experience with the scheme is positively met
 - c. information about each funded individual from all their service providers is consolidated to enable the person with disability and the NDIA to have information about their supports to assist the intake and planning process and in particular to facilitate streamlined eligibility for and intake into the scheme
 - d. the accuracy of the information, as far as possible, through cross-checking and validation of information prior to contact by the NDIA, and
 - e. that funded individuals who are likely to be eligible for the NDIS are identified and referred to the NDIA to enable them to be supported actively to access the scheme.
16. A Direction will also enable other public sector agencies listed in Schedule 1 to collect relevant health information about funded individuals from their allied agencies, and disclose information to FACS where this would otherwise breach Health Privacy Principles 1, 3, 4, 10 and 11.
17. This Direction will also enable allied agencies subject to the HRIP Act to collect relevant health information about funded individuals, and disclose this information to FACS or other public sector agencies listed in Schedule 1 where this would otherwise breach Health Privacy Principles 1, 3, 4, 10 and 11.
18. The provisions in Part 2 of the *Health Records and Information Privacy Code of Practice (General) 2003* that permit FACS to depart from the Health Privacy Principles in prescribed circumstances do not readily cover the circumstances to which this Direction applies.
19. I am satisfied that the public interest in making this Direction is greater than the public interest in requiring the public sector agencies listed in Schedule 1 and their allied agencies to comply with Health Privacy Principles 1, 3, 4, 10 and 11 in Schedule 1 of the HRIP Act.
20. A corresponding direction applies in respect of personal information held under the *Privacy and Personal Information Protection Act 1998 (NSW)*.

Modification of Health Privacy Principles

21. The application of the Health Privacy Principles under Schedule 1 of the HRIP Act to the public sector agencies listed in Schedule 1 and their allied agencies subject to the HRIP Act are modified to the extent described below.

Collection from the individual

22. Notwithstanding HPP 1, the collection of relevant health information by:
 - (1) FACS, or another public sector agency listed in Schedule 1 about a funded individual receiving support from an allied agency, carer or other public sector agency listed in Schedule 1, or
 - (2) an allied agency subject to the HRIP Act about a funded individual receiving support from that allied agency,is collection for a lawful purpose that is related to a function or activity of FACS if:
 - a. the collection is for the purposes of planning; assisting and accounting for individuals transferring to the NDIS
 - b. the collection is reasonably necessary for those purposes
 - c. the information collected is reasonably necessary to allow FACS and the NDIA to make an initial assessment of the funded individual's eligibility for the NDIS and identify the appropriate pathway for their intake to the NDIS, to identify and contact the funded individual or their carer(s) and for the NDIA to determine the funded individual's eligibility for the NDIS and the reasonable and necessary supports that will be funded under the NDIS, and
 - d. the collection is in accordance with this Direction.
23. Notwithstanding HPP 3, FACS or another public sector agency listed in Schedule 1, or an allied agency subject to the HRIP Act may collect health information about a funded individual from an allied agency, carer, or other public sector agency identified in Schedule 1 where reasonably necessary for the purposes of planning, assisting and accounting for the individual's transfer to the NDIS.
24. Notwithstanding HPP 4, FACS or another public sector agency listed in Schedule 1, or an allied agency subject to the HRIP Act need not comply with the HPP 4 notification requirement when collecting information from an allied agency, carer or other public sector agency listed in Schedule 1 about funded individuals who have transitioned to the NDIS, are yet to transition or have been held not to be eligible NDIS participants.

Use of health information about funded individuals

25. Notwithstanding HPP 10, FACS may use relevant information about a funded individual that it collects and holds under this Direction without obtaining the consent of that person for a purpose or purposes outlined in paragraph 9 of this Direction.

Disclosure of health information about funded individuals

26. Notwithstanding HPP 11, FACS, another public sector agency listed in Schedule 1 or an allied agency that is a health service provider subject to the HRIP Act may disclose relevant health information about a funded individual that it collects and holds for the

purposes of this Direction, even if the agency or allied agency has reason to believe that the individual concerned was not made aware of the disclosure or would object to the disclosure, for any of the following purposes:

- a. to the NDIA in order to facilitate the processing of an application
- b. in the case of another public sector agency or health service provider covered by this direction to FACS for purposes covered by paragraph 25 or subclause "a" of this paragraph
- c. to an allied agency providing supports to the individual or to the individual's carer for the purpose of assisting the individual's transition to the NDIS, or
- d. for the purpose (directly or indirectly) of managing the transition of funded individuals to the NDIS.

Transparency

27. FACS will publish details of the provisions of this Direction and a link to the Direction on the section of its website that describe its arrangements with funded service providers and the process of transitioning funded individuals into the NDIS. FACS will also include details of the information collection and exchange process in community information sessions regarding the process of NDIS transition.

Duration

28. This Direction has effect until 27 October 2017.

Signed by me on **30 October 2017**.



Samantha Gavel
NSW Privacy Commissioner

SCHEDULE 1

NSW public sector agencies

Department of Education

Department of Family and Community Services

Ministry of Health and public health organisations as defined in section 7 of the Health Services Act that provide or fund disability services

Local councils that are funded by one of the above public sector agencies to provide disability services

