



Privacy Guidelines on Disclosure of Information during Industrial Consultations

The Guidelines on Disclosure of Information During Industrial Consultations recognise that industrial relations and work health and safety legislation may require personal information to be disclosed in certain circumstances.

The Guidelines on Disclosure of Information during Industrial Consultations deal with the requirements for disclosure of personal information set by the *NSW Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Act 2002*. The guidelines cover the requirements as detailed in both Acts.

The guidelines recognise that industrial relations and work health and safety legislation may require personal information to be disclosed in certain circumstances. Advice from public sector unions and the Information and Privacy Commission NSW was sought when revising these guidelines in 2007.

Schedule 1 Public Service Departments under the *Government Sector Employment Act 2013* are required to adopt the guidelines. Other public sector agencies and State Owned Corporations are encouraged to adopt the guidelines.

Philip Gaetjens
Secretary

Further Information:

Which agencies does this Circular apply to?

Public Service Agencies (as defined in the Government Sector Employment Act 2013) which on 23 February 2014 corresponded to Divisions listed in Schedule 1, Part 1 of the *Public Sector Employment and Management Act 2002*. This policy is recommended for the government sector, including State Owned Corporations.

Who needs to know about this Circular?

Finance, Payroll, Industrial Relations, Human Resources.

Issued by: Public Sector Industrial Relations, NSW Industrial Relations, NSW Treasury

Contact: Public Sector Industrial Relations, ph 9020 4644, psir@industrialrelations.nsw.gov.au

Web: www.treasury.nsw.gov.au

Date: 16 July 2014

This Circular reissues C2007-27

NSW Treasury website: www.treasury.nsw.gov.au



Privacy Guidelines on Disclosure of Information during Industrial Consultations

Contents:

1.	INTRODUCTION:	2
2.	PRIVACY LEGISLATION IN NSW	3
2.1	WHAT IS "PERSONAL INFORMATION"?.....	4
2.2	WHO MUST COMPLY WITH HPPs, IPPs AND THE PUBLIC REGISTER REVISIONS?.....	4
2.3	WHAT ARE IPPs AND PPs?.....	5
	IPPs.....	5
	HPPs.....	5
2.4	EXEMPTIONS FROM IPPs AND HPPs IN CERTAIN CIRCUMSTANCES	6
	Relevant exemptions:.....	6
	Additional exemptions specific to the HRIP Act:	7
	Exemptions in Privacy Codes of Practice:.....	7
	Exemptions under section 41 of the PPIP Act or section 62 of the HRIP Act	7
3.	DISCLOSURE OF INFORMATION.....	8
3.1	DISCLOSURE DURING INDUSTRIAL CONSULTATIONS.....	8
3.2	DISCLOSURE OF INFORMATION WHERE EMPLOYEES ARE TRANSFERRED TO ANOTHER PUBLIC SECTOR AGENCY.....	10
3.3	DISCLOSURE OF INFORMATION IN DISCIPLINARY AND SELECTION COMMITTEE REPORTS.....	10
4.	SUMMARY AND CHECKLIST.....	11

1. INTRODUCTION:

The *Privacy and Personal Information Protection Act 1998* (PPIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act) are the relevant laws protecting and regulating privacy in NSW.

Both laws define what is classified as personal information and how it should be managed including providing for any exemptions on the provision of personal information. The HRIP Act specifically covers health information.

Regarding industrial matters, under the PPIP Act personal information as protected by the Act may be provided during industrial consultations if required by another law such as the *Industrial Relations Act 1996* or the *Work Health and Safety Act 2011*. The HRIP Act also provides for the provision of health information where required by another law.

Both Acts recognise that information about an individual's suitability for appointment or employment as a public sector officer is excluded from the definition of personal information.

Where there is doubt about compliance with the privacy provisions, advice should be sought from the Agency's privacy contact officer or from the Information and Privacy Commission NSW.

This policy applies to Public Service Agencies (as defined in the Government Sector Employment Act 2013) which on 23 February 2014 corresponded to Divisions listed in Schedule 1, Part 1 of the *Public Sector Employment and Management Act 2002*. This policy is recommended for the NSW Government Sector, including State Owned Corporations.

2. PRIVACY LEGISLATION IN NSW

THE PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 (PPIP Act)

HEALTH RECORDS AND INFORMATION PRIVACY ACT 2002 (HRIP Act)

The PPIP Act establishes Information Protection Principles (IPPs), and the HRIP Act establishes Health Privacy Principles (HPPs). Both sets of principles create obligations and restrictions relating to the collection, access, retention, use and disclosure of personal information of both employees and clients of public sector agencies (Part 2 of the PPIP Act and Schedule 1 of the HRIP Act). The HRIP Act specifically regulates the collection and disclosure of health information. The PPIP Act also places conditions on the disclosure of personal information in public registers held by those agencies (Part 6 of the PPIP Act).

Statutory guidelines

The NSW Privacy Commissioner has developed four statutory guidelines under the *Health Records and Information Privacy Act 2002*. The statutory guidelines are not a plain English guide to the HRIP Act. They are legally binding documents that define the scope of particular exemptions in the health privacy principles. They describe how the exemption applies and what you need to do in order to comply with the exemption. They are as important as the exemption itself. They relate to the:

- use or disclosure of health information for the management of health services
- use or disclosure of health information for training purposes
- use or disclosure of health information for research purposes. See appendix C for HREC report form
- use or disclosure of information from a third party

The full text of these Guidelines may be found on the Information and Privacy Commission NSW website: http://www.ipc.nsw.gov.au/privacy/ipc_legislation.html

2.1 WHAT IS "PERSONAL INFORMATION"?

The IPPs and the Public Register provisions apply only to personal information collected or held by a public sector agency. HPPs apply to both public sector and private organisations. Personal information is defined in section 4(1) of the PPIP Act and section 5 (1) of the HRIP Act as "*information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.*" Fingerprints, retina prints, body samples or genetic characteristics are included (section 4(2)).

The PPIP Act definition does not include health information as this is covered by section 6 of the HRIP Act.

Sections 4(3) of the PPIP Act and 5(3) of the HRIP Act list certain information which is excluded from the definition of personal information. This includes:

- information or an opinion about an individual's suitability for appointment or employment as a public sector official; and
- information about an individual that is contained in a publicly available publication

The definition of health information under s6 of the HRIP Act includes information about:

- physical or mental health or a disability;
- the provision of health services; or
- a health service provided to an individual.

With respect to sections 4(3) or 5(3) it should be noted that the Privacy Commissioner has advised that because an individual's name, address and telephone are listed in the White Pages Directory it does not mean that an agency may consider the information they hold about that person to be excluded from the definition of personal information.

Information about an anonymous individual that does not allow identification of the individual involved is not considered personal information. For further advice about the definition of personal information contact the Information and Privacy Commission NSW.

2.2 WHO MUST COMPLY WITH HPPs, IPPs AND THE PUBLIC REGISTER PROVISIONS?

All public sector agencies (except State Owned Corporations), to which the HPPs may apply are obliged to ensure that they deal with personal information in accordance with the HPPs, IPPs and the public register provisions set out in the PPIP/HRIP Acts.

Agencies may be exempted from compliance with the HPPs, IPPs and the Public Register provisions if there is a Privacy Code of Practice which applies to the agency. There are two broad types of Privacy Codes of Practice, those that apply to a specific agency or small group of agencies (such as the Privacy Code of Practice for NSW Health) and those that apply sector-wide but are limited to specific activities or functions.

It is also possible that application of the IPPs and HPPs may be modified by a section 41 Direction under the PPIP Act or a section 62 Direction under the HRIP Act made in the public interest by the Privacy Commissioner.

The PPIP Act also provides for agencies to prepare and implement Privacy Management Plans. It should be noted that such Plans are quite distinct from Codes of Practice. Section 33 of the PPIP Act provides that all public sector agencies must prepare a privacy management plan for the purpose of ensuring compliance with the PPIP and HRIP Acts. The Plan must describe how the agency will comply with the requirements of the PPIP and HRIP Acts, and it must describe how the agency will disseminate information about compliance requirements to staff. The Plan must also describe how Internal Reviews under Part 5 of the PPIP Act will be carried out by the agency. Internal Reviews under Part 5 of the PPIP Act are applicable to the HRIP Act pursuant to section 21.

2.3 WHAT ARE IPPs AND HPPs?

IPPs

There are 12 IPPs set out in sections 8-19 of the PPIP Act. Of particular relevance is IPP 11 (section 18(1)) which prohibits disclosure of personal information by public sector agencies to other bodies or individuals, including unrelated public sector agencies, unless:

- the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or
- the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10 (Section 10 requires that agencies provide extensive information about the circumstances relating to the collection of personal information. In particular, section 10(c) requires that agencies make individuals aware of the intended recipients of the information), that information of that kind is usually disclosed to that other person or body, or
- the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

Section 18(2) provides that where personal information is disclosed in accordance with section 18(1) to a "person or body that is a public sector agency" that agency must not use or disclose the information for a purpose other than that for which it was provided.

IPP 12 (section 19) further restricts disclosure of personal information concerning a person's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities. Information of this kind may only be disclosed if it is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

HPPs

The HRIP Act contains 15 Health Privacy Principles (HPPs) outlining how health information must be collected, stored, used and disclosed. The health privacy principles can be grouped into seven main headings:

- Collection
- Storage
- Access & accuracy
- Use
- Disclosure
- Identifiers & anonymity
- Transferrals & linkage.

The 15 health privacy principles (HPPs) are the key to the HRIP Act. They are legal obligations describing what organisations (NSW public and private sector) must do when they collect, hold, use and disclose health information.

In some cases, organisations do not have to follow one or more of the HPPs. For more detailed information contact the Information and Privacy Commission NSW.

2.4 EXEMPTIONS FROM IPPs AND HPPs IN CERTAIN CIRCUMSTANCES

In addition to the disclosure permitted in the three circumstances described in section 18(1), personal information may be disclosed by public sector agencies where certain exemptions to the prohibition on disclosure apply. Those exemptions are set out:

- in sections 23-28 of Part 2 of the PPIP Act;
- in Privacy Codes of Practice made under Part 3 of the PPIP Act and Part 5 of the HRIP Act;
- in Directions made by the Privacy Commissioner under section 41 and section 62 respectively;
- in sections 13 – 17 of the HRIP Act;
- in some of the HPPs in schedule 1 of the HRIP Act; and
- in the definition of personal information in the PPIP Act (section 4) and the HRIP Act (section 5).

Relevant exemptions:

Part 1 of the PPIP Act

- Section 6 states that nothing in the PPIP Act affects the manner in which a court, tribunal or Royal Commission exercises its judicial functions.
- Section 23(5) describes specific circumstances in which public sector agencies are not required to comply with section 19. Those circumstances include law enforcement and related matters. Caution should be exercised in relying on such an exemption and section 23(6) provides that nothing in subsection (5) "requires a public sector agency to disclose personal information... if the agency is entitled to refuse to disclose the information in the absence of a subpoena, warrant or other lawful requirement".
- Section 24(3) allows for non-compliance with section 18 where the information is disclosed by one investigative agency to another investigative agency.
- Section 25 allows for non-compliance with section 18 (and other IPPs) where the agency is "lawfully authorised or required not to comply" or "non-compliance is otherwise permitted" under an Act or other law.
- Section 26(2) allows for non-compliance with section 18 if the agency has obtained the express consent of the individual to whom the information relates.
- Section 27 allows for non-compliance by ICAC, NSW Police and the Police Integrity Commission in the exercise of their functions, except for their educative and administrative functions.
- Section 28(3)(a) allows for non-compliance with section 18 if the personal information is made by one public sector agency to another public sector agency under the administration of the same Minister as long as the disclosure is made for the purpose of informing that Minister about a matter within that administration.
- Section 28(3)(b) allows for non-compliance with section 18 if the personal information is disclosed by a public sector agency to another public sector agency under the administration of the Premier.

Sections 25, 26, 27 and 28(3) of the PPIP Act also apply to the special categories of information described in section 19. In addition section 28(1) allows non-compliance with section 19 by the Ombudsman's Office, the Health Care Complaints Commission, the Anti-Discrimination Board and the Guardianship Board. Section 28(2) allows non-compliance in circumstances where the consent of the individual cannot reasonably be obtained and the disclosure is made by an authorised person (An authorised person is a medical practitioner, health worker, or other official or employee providing health or community services, who is employed or engaged by a public sector agency) to another authorised person involved in the care or treatment of the individual.

Additional exemptions specific to the HRIP Act:

- Section 13 states that nothing in the HRIP Act affects the manner in which a court, tribunal or Royal Commission exercises its judicial functions.
- Section 14 provides exemptions for purposes in connection with personal family or household affairs.
- Section 15 provides exemptions for certain HPPs in the case of news media and information held in connection with its news activities.
- Section 16 allows exemptions in the case of group practices in the private sector.
- Section 17 provides similar exemptions to s.27 of the PPIP Act.
- Various HPPs grant similar exemptions as provided for in the PPIP Act.
- For further information – see http://www.ipc.nsw.gov.au/privacy/ipc_legislation.html

Exemptions in Privacy Codes of Practice:

These vary depending on the particular requirements of the agency to which a Privacy Code applies. Although generally a Privacy Code cannot affect the operation of any specific Part 2 exemption, it can regulate the collection, use and disclosure of, and the procedures for dealing with, personal information held by an agency (section 29(2) of the PPIP Act and section 38(2) of the HRIP Act). A Code may:

- specify requirements that are different from those set out in the IPPs/HPPs or exempt an activity/conduct of or by an agency from compliance with an IPP/HPP (section 30(2)(a) of the PPIP or section 39(2) (a) of the HRIP);
- specify the manner in which any one or more of the IPPs/HPPs are to be applied to, or are to be followed by, an agency (section 30(2)(b) of the PPIP Act and section 39(2)(b) of the HRIP Act); and
- exempt an agency, or a class of agency, from the requirement to comply with any IPP/HPP (section 30(2)(c) and the PPIP Act and section 39(2)(c) of the HRIP Act).

An agency must comply with an applicable Privacy Code. More detailed information about Privacy Codes may be found at:

http://www.ipc.nsw.gov.au/privacy/ipc_legislation.html

Exemptions under section 41 of the PPIP Act or section 62 of the HRIP Act:

If the Privacy Commissioner is satisfied that the public interest is best served by non-compliance with an IPP/HPP or a provision in a Code, s/he may make a Direction that a public sector agency is not required to comply with the IPP/HPP or Code provision, or that the application of the IPP/HPP or Code provision to the agency may be modified. The Privacy Commissioner takes the view that section 41 or section 62 Directions are only made when the public interest identified in the direction outweighs the public interest in the protection of privacy. These are considered as temporary measures pending compliance by the agency or, where compliance is impossible, the making of a Code of Practice.

Information about Directions may be found at:

http://www.ipc.nsw.gov.au/privacy/ipc_legislation.html

3. DISCLOSURE OF INFORMATION

3.1 DISCLOSURE DURING INDUSTRIAL CONSULTATIONS

Agencies' industrial relations practices often involve substantial consultation with unions. This may result in unions requesting access to personal information about employees or agency clients. When determining whether to disclose such information to unions, agencies should ensure that they consider the definition of personal information in the PPIP Act and HRIP Act, the associated IPPs/HPPs and relevant exemptions under the Act.

However, agencies cannot rely on the PPIP Act or HRIP Act to avoid disclosing information that must be provided under other laws. Some examples of the impact of other legislation are given below.

Example 1: Personal information about employees that must be provided under *Industrial Relations Act 1996* (IR Act)

Part 7 of the IR Act confers certain powers of entry and inspection on officers of industrial organisations, eg unions. Under section 298 of the IR Act authorised industrial officers (authorised industrial officer is defined in section 296(1) of the IR Act and means an officer or employee of an industrial organisation of employees who holds an instrument of authority for the purposes of Part 7 of the IR Act issued by the Industrial Registrar under section 299 of that Act) may enter, during working hours, any premises where relevant employees (relevant employees are defined in the IR Act as employees who are members of an industrial organisation, or who are eligible to become members of that industrial organisation) are engaged, for the purpose of investigating any suspected breach of the industrial relations legislation or of any industrial instrument that applies to those employees.

For the purpose of investigating a suspected breach, the authorised industrial officer may view any employee records and other documents kept by the employer that relate to the suspected breach. The authorised industrial officer may also make copies of the entries in any such records or other documents related to such a suspected breach. Before exercising their power of inspection, authorised industrial officers are required to give the agency at least 24 hours' notice or, if records or documents are to be viewed, at least 48 hours' notice.

The PPIP Act does not preclude obligations on agencies to provide access to employees' time and wages records where an authorised industrial officer gives the appropriate notice. As disclosure of this information to the authorised industrial officer is required under the IR Act, section 25 of the PPIP Act permits non-compliance with section 18 of the PPIP Act. A number of the HPPs in the HRIP Act provide similar exemptions. Fines may be imposed under the IR Act if the information is not provided.

Example 2: Personal information about clients that must be provided under the *Work Health and Safety Act 2011* (WHS Act)

Section 19 of the WHS Act requires that employers must ensure the health, safety and welfare at work of all employees of the employer and also that people (other than the employees of the employer) are not exposed to risks to their health or safety while they are at the employer's place of work. Section 47 of the WHS Act requires that an employer must consult with the employees of the employer to enable the employees to contribute to the making of decisions affecting their health, safety and welfare at work. As part of those consultations, agencies must share relevant information with their employees or persons acting on the employees' behalf, eg union representatives.

Where there is a suspected breach of the WHS Act, the authorised representative (under the WHS Act, the authorised representative of an industrial organisation is the same as an authorised industrial officer as defined in the IR Act) "A person must not use or disclose information or a document obtained under Division 2 of this Part in an inquiry into a suspected contravention for a purpose that is not related to the inquiry or rectifying the suspected contravention, unless:

- (a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent:
- (i) a serious risk to a person's health or safety, or

(ii) a serious threat to public health or safety..." (see section 148 of the WHS Act) . Such documents may include personal information about clients. By operation of section 25 of the PPIP Act and HPPs 4,5,6,7,8, 10,11,12, and 15, the requirements in section 148 and s 117 of the WHS Act lawfully authorise disclosure where it would otherwise be in breach of the legislation.

Entry of an authorised representative must be in accordance with Part 7 Divisions 1 to 8 of the WHS Act. Although this allows entry to the premises without notice, the agency should be notified of the authorised representative's presence on the premises as soon as reasonably practicable unless

- to do so would defeat the purpose for which the premises were entered or would unreasonably delay the authorised representative in a case of urgency, or
- the agency is already aware that the authorised representative has entered the premises or was notified in advance (see section 119 of the WHS Act).

It is an offence under section 45 of the WHS Act to refuse or fail to comply, without a reasonable excuse, with a requirement made by an authorised representative.

Public sector agencies that are satisfied that documents may be disclosed to authorised industrial officers under the IR Act or authorised representatives under the WHS Act must make it clear to those representatives that the documents provided must not be used for a purpose other than that for which they were required. In some cases the industrial organisations involved (such as unions) will be bound to do so by application of the *Privacy Act 1998* (Cth).

The Commonwealth Privacy Act is administered by the Office of the Federal Privacy Commissioner and among other things it regulates the use of personal information by

- federal government agencies;
- private sector organisations with a turnover greater than \$3million;
- organisations which deal with health-related information; or
- organisations which trade in personal information.

Where industrial organisations and their authorised representatives fall under the jurisdiction of the Commonwealth Privacy Act, they will be required to comply with the National Privacy Principles (NPPs).

A copy of the NPPs can be found at

<http://www.oaic.gov.au/images/documents/privacy/privacy-resources/privacy-fact-sheets/privacy-fact-sheet-02-npps-online.pdf>

Even though an authorised representative may not be subject to the NPPs, individuals may still lodge a privacy-related complaint to the Information and Privacy Commission NSW if they believe the information about them has been dealt with in a manner which is not provided for under relevant legislation, or provision of the information was not consistent with IPC's Data Protection Principles (DPPs). The DPPs are guidelines for organisations not bound by either NSW or Commonwealth privacy legislation. They serve as the basis for determinations by the NSW Privacy Commissioner of privacy matters not regulated by the PPIP Act, HRIP Act or the Privacy Act (Cth).

A copy of the DPPs may be viewed at:

http://www.ipc.nsw.gov.au/privacy/ipc_complaints/privacy_dpps.html

3.2 DISCLOSURE OF INFORMATION WHERE EMPLOYEES ARE TRANSFERRED TO ANOTHER PUBLIC SECTOR AGENCY

Where an agency's employees are transferred to another public sector agency, transfer of the personal information concerning those employees should meet the requirements in sections 10 and 18 of the PPIP Act. It should be noted that sections 4(3)(j) of the PPIP Act and (5)(m) of the HRIP Act exclude from the definition of personal information, any "*information or opinion about an individual's suitability for appointment or employment as a public sector official.*"

Although generally disclosure of personal information about an employee to another public sector agency is not permitted, section 18 of the PPIP Act does allow disclosure where it is directly related to the purpose for which the information was collected, provided the transferring agency has no reason to believe that the individual concerned would object to the disclosure. This would be the case where names, tax file numbers and other details need to be transferred in order to facilitate salary/wage payments to the transferred employee by the other agency. In addition, the employees concerned are reasonably likely to have been aware when they provided the information that it would be used for such purposes.

The situation regarding early transfer of personal information (ie before the employee is actually transferred to the new agency) is different. Section 10 of the PPIP Act requires that at the time of collection, or as soon as possible after collection, the agency collecting personal information should advise the individual of certain matters relating to the collection, such as the fact that it has been collected and the purpose of the collection. Agencies should therefore ensure that when employees first provide personal information to an agency, they are made aware that the information may be supplied to another agency prior to transfer, to ensure continuity of salary/wage payments. Employees must be made aware that in the event of transferring to another agency their personal information will be supplied to the receiving agency and that they have the right of access and correction prior to transfer. It is suggested that written approval be obtained from existing employees prior to transfer of the information to prevent allegations that the information was transferred against the employee's wishes.

3.3 DISCLOSURE OF INFORMATION IN DISCIPLINARY AND SELECTION COMMITTEE REPORTS

Information about the findings of a disciplinary inquiry under the PSE&M Act or the *Government Sector Employment Act 2013* and information contained in selection committee reports will include information or opinions about a person's suitability for public sector appointment or employment. Under section 4(3)(j) of the PPIP Act and s5(3)(m) of the HRIP Act, such information or opinions are excluded from the definition of personal information for the purposes of the PPIP Act or HRIP Act and may be disclosed in certain circumstances eg where another agency or employer makes a reference check.

Notwithstanding the exclusion of the disciplinary findings or the opinions about a person's suitability for employment, the fact that the individual is subject to a disciplinary inquiry or has applied for appointment or employment as a public sector official **is considered personal information** for the purposes of the PPIP Act or HRIP Act and as such cannot generally be disclosed, unless such disclosure is required under other legislation. For example, where a serious offence (a serious offence is an offence referred to in clause 69 of the GSE Act, ie an offence punishable in NSW by imprisonment for 12 months or more) is involved, Part 2 Division 1 clause 6 of the *Government Sector Employment Regulation 2014* under the *Government Sector Employment Act 2013* obliges an employee who is charged with having committed, or is convicted of, a serious offence, to immediately report that fact in writing to the appropriate Department Head. If the employee does not do so, and his/her senior officer becomes aware of these facts, the senior officer must inform the appropriate Department Head in writing.

Apart from the protection of personal information provided by the PPIP Act and the HRIP Act, agencies also need to consider the Government's policy of confidentiality in relation to disciplinary enquiries and selection committee reports. It should be remembered that confidentiality is designed to protect the integrity of the processes involved and is therefore different to privacy.

The policy of confidentiality is modified where employees are the subject of allegations, as they have a right under procedural fairness to access information to assist them in answering the allegations. Obligations on agencies to provide such information are outlined in the *Commentary and Guidelines on the Management of Conduct and Performance*.

Again, in regard to the information in selection committee reports, employees who are appealing to the Government and Related Employees Appeal Tribunal need to ascertain the reasons for their non-selection, so as to include these on their Notice of Appeal. Whilst agencies are obliged to provide this information, information about other candidates or other details is not to be divulged in this situation (see NSW Personnel Handbook, section 2-13.15.1).

SUMMARY AND CHECKLIST

These guidelines are aimed at ensuring that public sector agencies comply with their obligations to keep personal information private while meeting their obligations as employers under the IR Act and the WHS Act to provide a safe workplace. Below is a checklist for public sector agencies to review their current practices in this regard and to provide guidance where they are aware that an authorised representative is on the premises.

PPIP and HRIP Act

1. **Before disclosure of personal information:** Has the individual to whom the information relates been made aware in accordance with section 10 of the PPIP Act or HPP 4 that his or her personal information may be provided to authorised industrial officers or authorised representatives? For example, where employees are transferred to another public sector agency.
2. **If the individual has not been made aware of the possible disclosure** of his or her personal information, does section 25 of the PPIP Act or the exemption in HPP 4 permit non-compliance with section 18 or HPP 11 because the disclosure is a requirement under section 298 of the IR Act or section 148 of the WHS Act?
3. Is non-compliance with sections 18 or 19 of the PPIP Act permitted because section 298 of the IR Act or section 148 of the WHS Act, and therefore section 25 of the PPIP Act, permits non-compliance by the agency?
4. Is non-compliance with HPPs 10 or 11 permitted because of section 298 of the IR Act or section 148 of the OH&S Act and the subsequent exemptions provided for in those HPPs?
5. Regardless of an agency's obligations under other legislation, is it possible to provide the information to the authorised industrial officer or authorised representative in a way that is consistent with the PPIP and HRIP Acts, e.g. in a way that does not identify the individual concerned?
6. If the individual has not been made aware of the disclosure of the information after it has occurred because non-compliance was authorised by section 25 of the PPIP Act or a relevant HPP, has the agency subsequently advised the individual that the information has been disclosed in accordance with the IR Act or the WHS Act?

NPPs and DPPs

1. If personal information has been disclosed to an authorised industrial officer or authorised representative in accordance with section 25 of the PPIP Act or a relevant HPP, has the authorised industrial officer or authorised representative been made aware of the possible application of the NPPs or the DPPs to that information following disclosure?
2. Has the authorised industrial officer or authorised representative been provided with information about the NPPs, the DPPs, and the Information and Privacy Commission NSW?