

# factsheet

Health Records and Information  
Privacy Act (HRIP Act) 2002

Privacy NSW Fact Sheet - No 3 November 2003

## (Draft) Statutory Guidelines on Management, Training, Research, and Third Party Collection

### Key message

The 15 Health Privacy Principles (HPPs) set out general standards for handling health information, and exemptions to those standards. Some of the exemptions in the HPPs are accompanied by statutory guidelines. The statutory guidelines give more detailed information about the exemptions and describe their scope and applicability.

Organisations seeking to rely on an exemption in the HPPs to collect, use, or disclose health information, must also comply with the statutory guidelines (if any) accompanying that exemption. The statutory guidelines are as important as the exemptions. An exemption cannot be relied upon, unless any accompanying statutory guidelines have also been complied with. A failure to comply constitutes a breach of the Act.

### Purpose

This information sheet provides a brief outline of the four statutory guidelines issued (in draft form) to accompany exemptions to date:

#### Statutory guidelines on the management of health services

*Who must comply?* Organisations seeking to use or disclose health information (without the individual's consent) relying on the "management of health services" exemption in HPPs 10(1)(d) and/or 11(1)(d).

#### Statutory guidelines on training

*Who must comply?* Organisations seeking to use or disclose health information (without the individual's consent) relying on the "training" exemption in HPPs 10(1)(e) and/or 11(1)(e).

### IMPORTANT!

The statutory guidelines are NOT a general guide to the Act. A general guide to the Act is currently being developed.

The statutory guidelines do not apply to everyone covered by the Act. Only organisations seeking to rely on the exemptions for management of health services, training, research and/or third party collection need to comply with the accompanying statutory guidelines.

Read HPPs 4, 10 and 11 to see if you will need to rely on any of the above exemptions (and hence to see whether these statutory guidelines will apply to you).

#### Statutory guidelines on research

*Who must comply?* Organisations seeking to use or disclose health information (without the individual's consent) relying on the "research" exemption in HPPs 10(1)(f) and/or 11(1)(f).

#### Statutory guidelines on the collection of information from a third party

*Who must comply?* Organisations seeking to collect health information about an individual from someone else ('a third party'), relying on the exemption in HPP 4(3).

## Why have statutory guidelines?

The HPPs are high-level principles. In some areas, there is room to define the scope of the HPPs and their exemptions in more detail. The Act recognises this by permitting the NSW Privacy Commissioner to issue statutory guidelines setting out the scope and applicability of HPPs and their exemptions.

The Minister for Health has asked the NSW Privacy Commissioner to issue statutory guidelines to accompany the management, training, research and third party collection exemptions. Privacy NSW (the Office of the NSW Privacy Commissioner) is developing the statutory guidelines in consultation with a wide range of stakeholders.

## What do the statutory guidelines say?

### Statutory Guidelines on the Management of Health Services

These statutory guidelines define the type of funding, management, planning or evaluation of health services activities that should be considered under the "management of health services" exemption. The statutory guidelines require proposals for such activities to be reviewed by a Human Research Ethics Committee. The statutory guidelines provide more information on how to prepare a proposal.

Proposals will only be approved where the Human Research Committee determines that the public interest in the management activity substantially outweighs the public interest in maintaining the level of privacy otherwise afforded by the Health Privacy Principles. This is to be determined by reference to the process set out in the statutory guidelines.

### Statutory Guidelines on Training

These statutory guidelines require organisations to prepare a written statement of reasons for the training activity. The statutory guidelines provide more information on how to prepare a statement of reasons. The statement of reasons must be kept for at least 5 years and can be accessed by the NSW Privacy Commissioner (on request) during that time.

In addition, every person working with the organisation who will be trained or able to access the health information during the training activity, is required to sign an agreement stating that they

are aware of the Health Privacy Principles and agree to comply with those principles.

### Statutory Guidelines on Research

These statutory guidelines require research proposals to be reviewed by a Human Research Ethics Committee. The statutory guidelines provide more information on how to prepare a proposal. Research proposals will only be approved where the Human Research Committee determines that the public interest in the research substantially outweighs the public interest in maintaining the level of privacy otherwise afforded by the Health Privacy Principles. This is to be determined by reference to the process set out in the statutory guidelines.

### Statutory Guidelines on the Collection of Health Information from a Third Party

These statutory guidelines set out specific circumstances in which the organisation can be exempt from making the individual aware of certain information at or before the time it collects information about the individual from someone else ('a third party'). These circumstances include where the collection from the third party is necessary, directly relevant, the individual to whom the health information relates is unlikely to suffer burden or harm, or to be prejudiced by the collection, and the health information collected will not be used to make decisions about the individual.

## Are the 4 statutory guidelines in operation yet?

No. The statutory guidelines have been issued in draft form by Privacy NSW. We are seeking public comment on the draft statutory guidelines until 28 November 2003. Once comments have been received and considered, a revised version of the statutory guidelines will go to the Minister for Health for approval. If the statutory guidelines are approved, they will operate from the date that the Act commences (likely mid 2004).

## For more information

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The Act, the HPPs and the draft guidelines are all available on the Privacy NSW website.

*The material in this Fact Sheet is intended only to inform. It has been simplified and should not be relied on as legal advice. If in doubt, please contact Privacy NSW on (02) 9268 5588 or write to [privacy\\_nsw@agd.nsw.gov.au](mailto:privacy_nsw@agd.nsw.gov.au) for more information.*