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Update Summary

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NEW SOUTH WALES ADMINISTRATIVE LAW

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New commentary has been provided by Dr Juliet Lucy

Privacy and Personal Information Protection Act 1998

Updated:

- A university is a “public sector agency”. See *Norkin v University of New England* [2023] NSWCA 194, at [70.11186].
- In the context of the use of the information in 2019, a worker’s certificate of capacity was not an opinion or information about the worker’s suitability for employment. See *FJX v TAFE NSW* [2023] NSWCATAD 215, at [70.11420].
- Where an agency chooses to collect personal information, it should have squarely in mind its purposes for doing so. See *Norkin v University of New England* [2023] NSWCA 194, at [70.12660].
- The “function or activity” is something that the agency does. See *Norkin v University of New England* [2023] NSWCA 194, at [70.12680].
- A generic statement that identifies the entirety of an agency’s functions and activities and says that information is collected for those purposes falls short of achieving the object of s 10. See *Norkin v University of New England* [2023] NSWCA 194, at [70.12860].
- The disclosure of the individual’s personal information was directly related to the purpose for which it was collected. See *FNY v Commissioner of Police (NSW)* [2023] NSWCATAD 211, at [70.13740].
- The discretion granted by s 60(1) of the GIPA Act to refuse to deal with an access application is a discretion directed to the process under the GIPA Act. See *Commissioner of Police (NSW) v Ritson (DVT) (No 2)* [2023] NSWSC 854, at [70.14140].
- Sections 46 to 49 of the *Births, Deaths, and Marriages Registration Act 1995* (NSW), permit the Registrar of Births, Deaths, and Marriages to search and grant persons access to the register. See *Registrar of Births, Deaths, and Marriages v Kelloway* [2023] NSWCATAP 231, at [70.14560].
- Section 54 of the *Government Information (Public Access) Act 2009* requires an agency to consult with affected persons in certain circumstances, before providing access to information relating to a person in response to an access application. See *Webb v iCare NSW* [2023] NSWCATAD 230, at [70.14560].
- The Register of Births, Deaths and Marriages is not a public register, because it is not publicly available or open to public inspection. See *Registrar of Births Deaths and Marriages v Kelloway* [2023] NSWCATAP 231, at [70.18860].
- The Tribunal exercises judicial power when determining applications for damages under s 55(2)(a) of the PPIP Act. See *Wojciechowska v Secretary, Department of Communities and Justice* [2023] NSWCA 191, at [70.19040].

- The words “publicly” and the word “public” ordinarily connote something that relates to people as a whole or at large. See *Registrar of Births, Deaths and Marriages v Kelloway* [2023] NSWCATAP 231, at [70.20200].

Health Records and Information Privacy Act 2002

- Whether the purpose of a collection of health information is “directly related” to a function or activity of an organisation will turn on the size and nature of the organisation, and the purpose of the collection. See *Norkin v University of New England* [2023] NSWCA 194, at [70.50125].
- A generic statement that identifies the entirety of an agency’s functions and activities. See *Norkin v University of New England* [2023] NSWCA 194, at [70.50180].

New:

- **When is information collected?**, has been inserted, at [70.12650]
- **GIPA Act not affected - s 22(1) and (2)**, has been inserted, at [70.42723]
- **GIPA Act and PPIP Act conditions and limitations apply – s 22(3)**, has been inserted, at [70.42726]
- **Collection by unlawful means**, has been inserted, at [70.50135]

Privacy and Personal Information Protection Act 1998

Updated:

- The question of compliance with section 8 is to be resolved by considering collection of information in the document. See *NSW Self Insurance Corporation v EEH* [2023] NSWCATAP 181, at [70.12640].
- The Tribunal considered that encryption and password protection would constitute reasonable security safeguards. See *FMM v Nominal Insurer* [2023] NSWCATAD 114, at [70.13000].
- The Tribunal has held that there may be a disclosure of information where the information is provided to someone who did not read it. See *FMM v Nominal Insurer* [2023] NSWCATAD 114, at [70.13640], [70.19060].

Privacy and Personal Information Protection Regulation 2019

New:

- **Overview**, has been inserted at, [70.20100]
- **Overview**, has been inserted at, [70.20120]
- **Overview**, has been inserted at, [70.20140]
- **Overview**, has been inserted at, [70.20160]
- **Overview**, has been inserted at, [70.20180].

Health Records and Information Privacy Act 2002

Updated:

- Where health information in a document is collected, it may not be appropriate to approach compliance with HPP 1 by having regard to the collection of information in parts of that document. See *NSW Self Insurance Corporation v EEH* [2023] NSWCATAP 181, at [70.50125].