Checklist

September 2026

Consent – use or disclosure of personal or health information

Who is this information for?

NSW public sector agencies and their staff.

Why is this information important?

This checklist assists you to assess whether consent is required for the use and disclosure of personal information that the agency has collected and holds in the exercise of its functions.

Relevant legislation

This checklist references the following legislative provisions:

Personal Information Protection Act 1998 (PPIP Act) s 4

Health Records and Information Privacy Act 2002 (HRIP Act) s 6

This checklist is provided as general guidance and is not legal advice. Each agency should take reasonable steps to inform itself of its legal responsibilities under the *Privacy and Personal Information Protection Act 1998* (PPIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act), in relation to the collection, use or disclosure of personal or health information.

Privacy laws in NSW provide that, in certain circumstances, before an agency can use or disclose an individual's personal information, their consent must be obtained.

The five key elements of consent are:

- the individual gives consent voluntarily
- the individual is adequately informed before giving consent
- the consent is specific
- the consent is current
- the individual has the capacity to understand and communicate their consent.

"**Personal information**" is defined at s 4 of the PPIP Act as "*information or an opinion…about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion*".

"**Health information**" is defined at s 6 of the HRIP Act as "*personal information that is information or an opinion about the physical or mental health or a disability of an individual; express wishes about the future provision of health services; a health service provided or to be provided; any other personal information collected to provide or in providing a health service*". The definition also includes information having to do with organ donation and genetic information.

	Assessment questions	Status	Comments
Collection			
1	Is there a lawful purpose for the collection of the information directly related to a function or activity?	☐ YES ☐ NO	If no, stop, **do not collect**. If yes, go to step 2.
2	Is this information necessary for what I am doing?	☐ YES ☐ NO	If no, stop, **do not collect**. If yes, go to step 3.

	Assessment questions	Status	Comments
3	Am I collecting information directly from the person, unless it is unreasonable or impractical?	☐ YES ☐ NO	If no, stop, contact the person directly for the information required. If yes, go to step 4.
4	Have you advised them: • why you are collecting the information, • what you will do with the information and • who else is able to see it? Have you also told them that they can correct it? Have you also told them that if they do not provide it to you, you may not be able to provide them with the services they request?	☐ YES ☐ NO	If no, **stop and contact the person**. If yes, go to step 5.
5	Is the information relevant, accurate, up-to-date and not excessive?	☐ YES ☐ NO	If no, **stop collection of the information**. If yes, go to step 6.
6	Does it unreasonably intrude into the personal affairs of the individual?	☐ YES ☐ NO	If yes, **stop collection and re-assess why you need the information**. If no, proceed to collection.
The above processes are for collection. For use and disclosure please see below:			
Part 1 – Is consent required?			
1	Am I intending to use or disclose personal or health information?	☐ YES ☐ NO	If no, no consent is required. If yes, proceed to step 2.
2	Am I using personal or health information for the primary purpose for which the personal information or health information was collected in the first place?	☐ YES ☐ NO	If yes, no consent is required. If no, proceed to step 2a.
2a	Am I disclosing personal or health information for the primary purpose for which the personal or health information was collected in the first place?	☐ YES ☐ NO	If yes, no consent is required. If no, proceed to step 3.
3	For any personal information at issue, am I using it for a purpose that is directly related to the primary purpose for which the information was collected in the first place? For any health information at issue, am I using it for a purpose that is directly related to the primary purpose for which the information was collected in circumstances where the individual would reasonably expect my organisation to use the information for the secondary purpose?	☐ YES ☐ NO	If yes to both, no consent is required. If no to either, proceed to step 3a.
3a	Is my use of personal or health information necessary to prevent or lessen a serious and imminent threat to the life or health of any person or, in the case of health information, a serious threat to public health or public safety?	☐ YES ☐ NO	If yes, no consent is required. If no, proceed to step 3b.
3b	Am I disclosing personal or health information for a purpose that is directly related to the primary	☐ YES	If yes, no consent is required.

	Assessment questions	Status	Comments
	purpose for which the personal or health information was collected?	☐ NO	If no proceed to step 3c.
3c	Am I disclosing personal or health information for a related secondary purpose (which is within the person's reasonable expectations for personal information, or to which you have no reason to believe they would object for health information)?	☐ YES ☐ NO	If yes, no consent is required. If no proceed to step 4.
4	Am I using or disclosing personal or health information that is authorised or required under another law?	☐ YES ☐ NO	If yes, no consent is required. If no, proceed to step 5.
5	Is the disclosure of personal information reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person or is the disclosure of health information reasonably necessary to assist in a stage of an emergency?	☐ YES ☐ NO	If yes, no consent is required. If no, then consent is required. Proceed to step 6.
Part 2 – When is consent valid? For consent to be valid it must be voluntary, informed, specific, current and given by a person who has capacity to give it.			
6	**In order for consent to be voluntary:** Was the person free to exercise genuine choice about whether to give or withhold consent?	☐ YES ☐ NO	If no, consent is required. If yes, proceed to step 7.
7	Was consent given without coercion or threat?	☐ YES ☐ NO	If no, consent is required. If yes, proceed to step 8.
8	Was sufficient time allowed to understand the request and, if appropriate, take advice?	☐ YES ☐ NO	If no, consent is required. If yes, proceed to step 9.
9	**Is the consent informed:** Does the person have reasonable knowledge of all the relevant facts before they give or refuse consent? The relevant facts will include: • the purpose of collecting the information • who will have access to information • the intended use for the information • the recipients of the information • whether disclosure of information is voluntary or required by law • the consequences of giving or refusing consent.	☐ YES ☐ NO	If no, consent is required. If yes, proceed to step 10.
10	**Is the consent specific:** Is the consent reasonably specific as opposed to general, blanket or bundled? The Privacy Commissioner has advised that reliance on "general, blanket or bundled" consent terms "can be problematic"; instead a form should separate out each request with "separate boxes" to tick to indicate consent Bundled consent refers to the practice of an organisation 'bundling' together multiple requests	☐ YES ☐ NO	If no, Consent is required. If yes, proceed to step 111.

	Assessment questions	Status	Comments
	for an individual's consent to a wide range of collections, uses and disclosures of personal information, without giving the individual the opportunity to choose which collections, uses and disclosures they agree to and which they do not. An example of a bundled consent is seeking consent to 'all legitimate uses or disclosures'.		
11	**Is the consent current:** Was the person advised of a specified period for reliance on their consent?	☐ YES ☐ NO	If no, consent is required. If yes, proceed to step 12.
12	Was the person advised that they are entitled to revoke consent later on?	☐ YES ☐ NO	If no, consent is required. If yes, proceed to step 13.
13	**Is the consent given by a person with capacity?** Is the person giving consent able to understand the general nature and effect of a particular proposed use or disclosure of their personal information and able to communicate their consent?	☐ YES ☐ NO	If no, consent is required from their guardian. If yes, proceed to step 14.
Part 3 – Should consent be written or verbal? Consent and refusal of consent can be indicated in writing, verbally, or through an individual's conduct or action. Wherever practicable, consent should be sought in writing.			
Part 4 – Is consent expressed?			

14	Has the consent been clearly and unmistakably communicated by the person?
	• Express consent is required in the following circumstances:
	  ○ Disclosure of personal information (excluding health information)
	  ○ Transborder disclosure of personal information (excluding health information)
	• Can implied consent be reasonably inferred from a person's actions?
	Consent ***cannot*** be inferred through exercise of ***'opt out'*** mechanisms.
		☐ YES
		☐ NO
			If no, consent is required.
			If yes, you are now able to use and/or disclose their personal or health information.

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: 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.