



Paul Armstrong

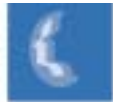
Director, Policy
Office of the Federal Privacy
Commissioner



Privacy – the National Framework

NSW Council of Social Service
Sydney, 22 May 2002

MY PRIVACY MY CHOICE



International Developments in Privacy

- Article 12: *Universal Declaration of Human Rights* - 1948
- Article 17: *International Covenant on Civil & Political Rights* - 1980
- *OECD Guidelines on the Protection of Privacy and Transborder Data Flows of Personal Data* – 1980
- *European Union Directive: protection of individuals with regard to processing of data and on the free movement of data* - 1995

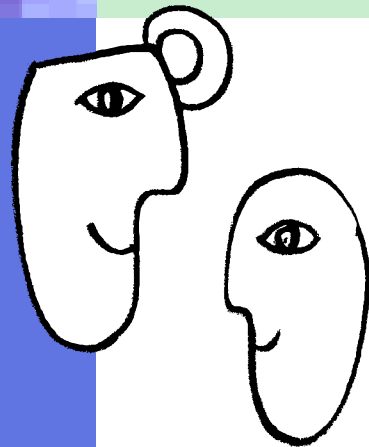
Community views - privacy & health information

- **Flinders University Study** - almost 1 in 10 (9.6%) of South Australians not confident that healthcare providers keep and use their information responsibly
- **California HealthCare Foundation** – 1 in 6 Californians have taken special steps (incl. risking their health) to ensure their privacy
- **OFPC Community Research** - 61% of participants thought their permission should be sought before using *de-identified* health information for research

Privacy and Health Care

Three important aspects of privacy:

1. Consumer control
2. Confidentiality
3. Data protection



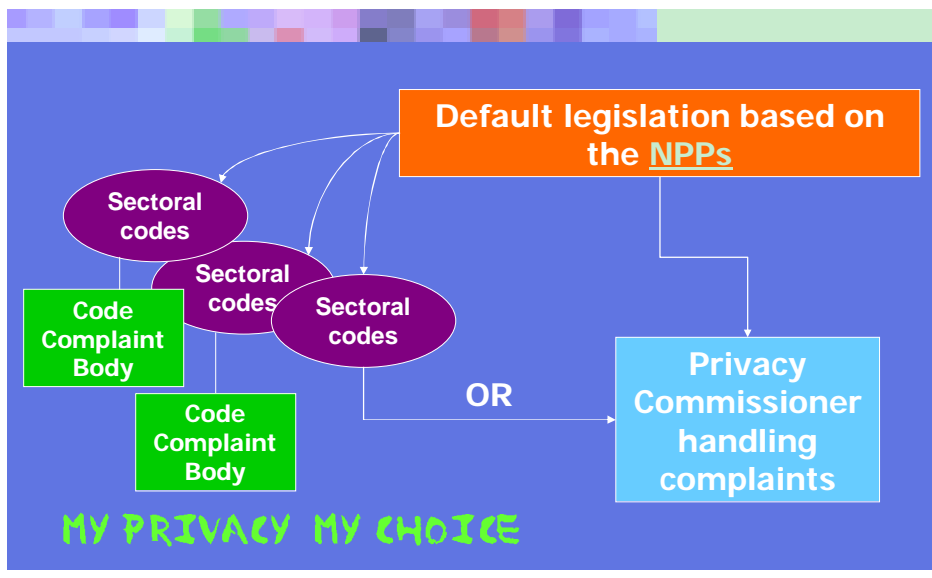
"Good privacy enhances good clinical care"

Privacy Amendment (Private Sector) Act 2000

- Legislated privacy protection for health information
 - All **private sector** health service providers
- High-level principles + decision maker discretion
 - Technology-neutral

21 December 2001

Australia's privacy framework for the private sector





National Privacy Principles

NPP 1 – Collection

NPP 2 – Use & Disclosure

NPP 3 – Data Quality

NPP 4 – Data Security

NPP 5 – Openness

NPP 6 – Access & Correction

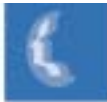
NPP 7 – Identifiers

NPP 8 – Anonymity

NPP 9 – Transborder Data Flows

NPP 10 – Sensitive Information

MY PRIVACY MY CHOICE

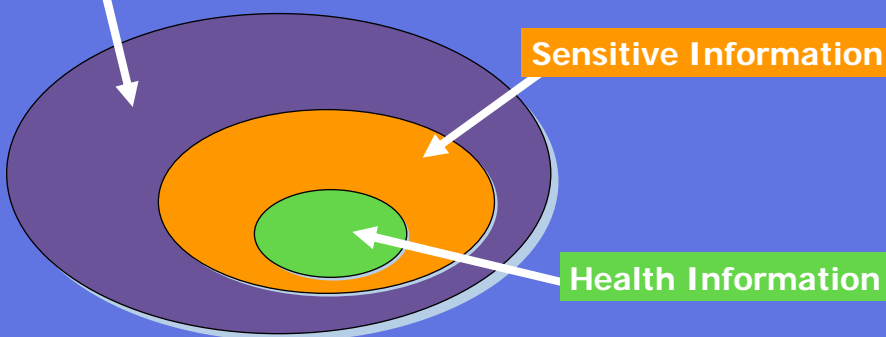


What is protected?

Personal Information

Sensitive Information

Health Information

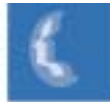
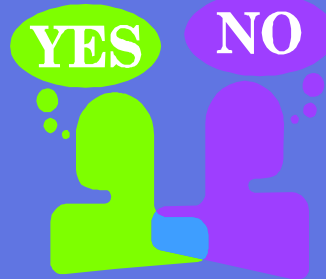




Sensitive Information

Information or an opinion about an individual's:

- racial or ethnic origin
- political opinion
- membership of a political association, or a professional association, or trade union
- religious beliefs, affiliations or philosophical beliefs
- sexual preferences or practices
- criminal record
- **Health**



Health Information includes ...

Personal information, or an opinion, about:

- health or disability
- expressed wishes about future health services
- use of health services, or
- **any other** personal information collected while providing a health service



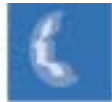


COLLECTION - NPPs 1 & 10

- Consent to collect sensitive information (incl. health info.)
- Collect only what is necessary
- Take reasonable steps to advise consumer of:
 - Organisation's identity & how to contact it
 - Their right of access
 - Why their information is collected & usual disclosures
 - Laws requiring collection
 - Main consequences of not providing full information



Discussing expectations early



USE and DISCLOSURE – NPP2

Use or disclose for the main reason collected

Ensure shared expectations with consumer

Service management & billing, quality assurance, clinical audit activities, okay if ...

...within the individual's reasonable expectations



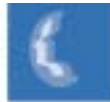
✓ **If you're unsure – seek consent**



DATA SECURITY – NPP4

Take reasonable steps to protect personal information from:

- Misuse and loss
- Unauthorised access
- Unauthorised modification or disclosure
 - Levels of computer access – “the need to know”
 - Who can read paper files? - where are they stored?
 - How is data transferred?



OPENNESS – NPP5

- ✓ Develop a privacy policy document – clearly expressed
- ✓ On request, tell people, generally, about your information handling practices



“No surprises”

ACCESS – NPP6

- ✓ Consumer has a general right of access
 - Commissioner recommends 30 day limit for processing
- ✓ Charges must not be excessive
 - Not prohibit access
 - Consider ability to pay
 - Consider schedules of fees (eg. FOI law, State/Territory privacy law)
- ✓ Take reasonable steps to correct inaccurate, incomplete and out-of-date information



IDENTIFIERS – NPP7



Regulates the adoption, use & disclosure of Commonwealth (agency) identifiers:

(Eg. Medicare number, DVA number)

- o Do not adopt for own purposes
- o Do not use or disclose, except to fulfil your obligations to the issuing agency

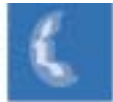


Health Guidelines

Guidelines on Privacy in the Private Health Sector

- Application of the NPPs in the **private health sector**
- Outline health service providers' privacy obligations
- Advisory

Complement existing ethical standards & codes of practice in the health sector



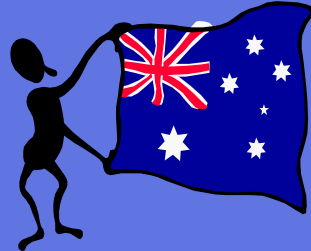
Outsourcing

- acts & practices of employees (and others) 'in the service of' an organisation
 - = acts & practices of the organisation
- Contractors not usually 'in the service of' an organisation
 - separate legal entities
 - separate obligations



Contracted service providers (or CSPs)

- Commonwealth contractors & subcontractors (not ACT)
 - provide services to others on behalf of an agency
- Small businesses & overseas contractors can be CSPs
- State or Territory authorities (incl. ACT and NT) are not CSPs
 - not organisations
 - C'wlth agency retains IPP4(b) obligation



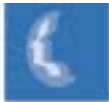
Contractors to the Commonwealth

- ✓ Contractors - usually covered by the IPPs (according to s.95B) via 'contractual measures'
- ✓ Subject to NPPs if there is no corresponding contractual obligation
- ✓ Applies to contracts from 21 Dec 2001
 - Don't have to revise existing contracts
 - **But if you review the contract ...**



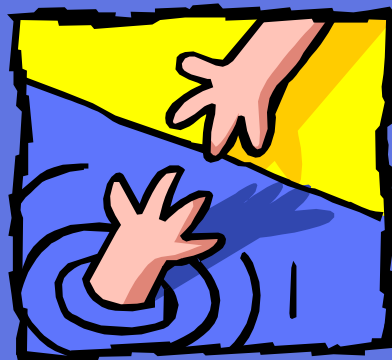
Obligations on CSPs

- ❑ On request - CSP and/or agency must provide copy of contract clauses that are inconsistent with the NPPs (or applicable code) - s.95C
- ❑ Breach of contract clauses = interference with privacy
- ❑ Privacy Commissioner may investigate the contractor, not just the agency
 - Clauses in an existing contract = breach of clauses would still be an interference



Compliance Approach

- ✓ Dispute resolution scheme
- ✓ Working with providers and consumers
- ✓ Seeking solutions





What could you do? Information Sheet 2 – 2001

Developing a Privacy Plan

1. Become familiar with the NPPs
2. Conduct a privacy audit
3. Compare practices with NPP
4. Consult relevant people
5. Establish complaints handling process
6. Train staff

Meeting privacy obligations from 21 December 2001

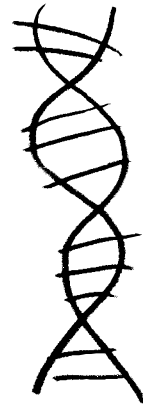
- Ensure alignment of expectations between your organisation and the individual
- Be open about what you do with people's information



The purpose of the Office
of the Federal Privacy
Commissioner ...

To promote an
Australian culture that
respects privacy

RESPECTING PRIVACY



... and join our
Privacy
Connections
Network



<http://www.>

www.privacy.gov.au

GOOD PRIVACY GOOD BUSINESS