



New South Wales

Privacy and Personal Information Protection Regulation 2019

under the

Privacy and Personal Information Protection Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Privacy and Personal Information Protection Act 1998*.

MARK SPEAKMAN, MP
Attorney General, and Minister for the Prevention of Domestic Violence

Explanatory note

The object of this Regulation is to repeal and remake, with minor amendments, the *Privacy and Personal Information Protection Regulation 2014*, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation provides for the following:

- (a) that the Inspector of Custodial Services is an investigative agency for the purposes of the *Privacy and Personal Information Protection Act 1998* (the *Act*) and is therefore exempt from the information protection principles,
- (b) information about an individual contained in archives or held by a library, art gallery, museum or the State Archives and Records Authority is not personal information for the purposes of the Act,
- (c) the exemption of certain public sector agencies from requirements relating to privacy management plans and public registers,
- (d) the exemption of the Council of the Bar Association and the Council of the Law Society from all provisions of the Act,
- (e) the exemption of local councils from certain provisions of the Act relating to the collection and disclosure of personal information, in respect of the use of CCTV cameras to film a public place.

This Regulation is made under the *Privacy and Personal Information Protection Act 1998*, including sections 3 (1) (definition of *investigative agency*), 4 (3) (k), 4B, 33 and 71 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Privacy and Personal Information Protection Act 1998

1 Name of Regulation

This Regulation is the *Privacy and Personal Information Protection Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Privacy and Personal Information Protection Regulation 2014*, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Privacy and Personal Information Protection Act 1998*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Prescribed investigative agency

The Inspector of Custodial Services is prescribed for the purposes of paragraph (a) (viii) of the definition of **investigative agency** in section 3 (1) of the Act.

5 Meaning of personal information

For the purposes of section 4 (3) (k) of the Act, the following is not personal information:

- (a) information about an individual that is contained in a document kept in a library, art gallery or museum for the purposes of reference, study or exhibition,
- (b) information about an individual that is contained in a State record under the control of the State Archives and Records Authority that is available for public inspection in accordance with the *State Records Act 1998*,
- (c) information about an individual that is contained in archives within the meaning of the *Copyright Act 1968* of the Commonwealth.

6 Privacy management plan exemptions

- (1) A public sector agency (the **relevant agency**) is exempt from the provisions of section 33 of the Act if the privacy management plan of another agency states that the plan extends to the relevant agency and:

- (a) the staff of the relevant agency are part of the staff of another public sector agency, or
 - (b) the Minister has, by order published in the Gazette, declared that the relevant agency is taken not to be a separate agency for the purposes of section 33 of the Act but is taken to be included in another public sector agency.
- (2) An Official Community Visitor appointed for the purposes of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* is not to be regarded as a separate public sector agency and instead is to be regarded for the purposes of section 33 of the Act as part of and included in the Ombudsman's Office, but only if the privacy management plan of the Ombudsman's Office states that the plan extends to an Official Community Visitor.
- (3) An Official Community Visitor appointed for the purposes of the *Ageing and Disability Commissioner Act 2019* is not to be regarded as a separate public sector agency and instead is to be regarded for the purposes of section 33 of the Act as part of and included in the Office of the Ageing and Disability Commissioner, but only if the privacy management plan of the Office of the Ageing and Disability Commissioner states that the plan extends to an Official Community Visitor.

7 Public register exemptions

A public sector agency responsible for keeping any of the following public registers is exempt from the provisions of Part 6 of the Act with respect to that register:

- (a) the following registers under the *Conveyancing Act 1919*:
 - (i) the General Register of Deeds under section 184C of that Act,
 - (ii) any index of registers under section 198 of that Act,
 - (iii) the Central Register of Restrictions under Part 24 of that Act,
- (b) the register of plans under Part 3 of the *Conveyancing (General) Regulation 2018*,
- (c) the Register of Parties under section 58 of the *Electoral Act 2017*,
- (d) any Register under Part 7 of the *Electoral Funding Act 2018*,
- (e) the register of justices of the peace under section 11 of the *Justices of the Peace Act 2002*,
- (f) the Lobbyists Register under section 8 of the *Lobbying of Government Officials Act 2011* and the Lobbyists Watch List under section 12 of that Act,
- (g) the Register under Part 6 of the *Real Property Act 1900* (that is, the Torrens Register) and any index kept by the Registrar-General under that Act in connection with it,
- (h) the Register of Land Values under section 14CC of the *Valuation of Land Act 1916*,
- (i) the Water Access Licence Register under section 71 of the *Water Management Act 2000* and the register of approvals under section 113 of that Act.

8 Bar Association and Law Society councils exemption

The Council of the Bar Association and the Council of the Law Society are exempt from all provisions of the Act.

9 Local council CCTV camera exemptions

- (1) A local council is exempt from section 11 of the Act with respect to the collection of personal information by using a CCTV camera that the council installs for the purpose of filming a public place if the camera is positioned so no other land is filmed

(unless it is not reasonably practicable to avoid filming the other land when filming the public place).

- (2) The local council is also exempt from section 18 of the Act with respect to the disclosure to the NSW Police Force of personal information by way of live transmission from such a CCTV camera.
- (3) In this clause, *public place* has the same meaning as in the *Local Government Act 1993*.

10 Repeal and savings

- (1) The *Privacy and Personal Information Protection Regulation 2014* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Privacy and Personal Information Protection Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.