

STANDARD NPP PARAGRAPHS

In summary, we do not believe that access to referee reports can be withheld from a candidate by a recruitment organisation seeking to rely on NPP 6.2 and I would anticipate that the approach taken to the investigation of any complaints to this Office on the basis of denial of access would be along the lines discussed.

NPP 9

NPP 9(a) – ‘substantially similar’

- Unfortunately this office does not currently have the resource to make assessments about which countries’ laws meet the ‘substantially similar’ test in National Privacy Principle (NPP) 9(a). In general, where the European Union has assessed the privacy laws of a non-European country as having an adequate level of protection to satisfy the requirements of Article 25 of the European Union *Directive on the Processing of Personal Data and on the Free Movement of Such Data* (1995) these laws are also likely to meet the ‘substantially similar’ test. Information on the EU’s assessments can be found at http://europa.eu.int/comm/internal_market/en/dataprot/index.htm or you may wish to seek independent legal advice on this issue.

I also note that NPP 9 provides a number of other approaches, including contract provisions, to satisfying privacy obligations when transferring personal information overseas.

NPP 10

NPP 10.1(a) – ‘legal or equitable claim’

Question: Does “legal or equitable claim” in NPP 10.1(e) include criminal offences?

Context: Specifically, can an organisation collect sensitive information without consent if the collection is necessary for the investigation of fraud in the context of insurance.

Discussion: The phrase “legal or equitable claim” most naturally refers to claims under civil law (including contract law, tort law, law of equity), not criminal law.

In the context of insurance fraud, there is likely to be a relevant contract (e.g. the insurance contract), and so an investigation relating to whether a particular claim should be paid may be necessary to the establishment, exercise or defence of a claim or possible claim under the contract. In this situation, NPP 10.1(e) permits collection of sensitive information without consent.

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In addition, fraud can also be a criminal matter, depending on the circumstances. If, however, information was being collected only to further an investigation into a criminal offence (e.g. fraud), and not for the establishment, exercise or defence of a claim under civil law, then NPP 10.1(e) would not permit collection of sensitive information without consent.

More broadly, it is also worth noting that 'legal or equitable claim' would likely include actions relating to breach of confidence.

Section 95B

Contracts for the supply of goods only

Question: Section 95B of the Privacy Act requires an agency, when entering into a "Commonwealth contract", to take contractual measures to ensure that the contract service provider (presumably an "organisation" subject, normally, to the NPPs), does not do anything which, if done by the agency, would constitute an IPP breach. "Commonwealth contract" is defined in section 6 in terms of a contract under which "services" are to be provided to the agency. No reference is made in that definition to the supply of "goods" to the agency. Does this mean that an agency is not bound by section 95B if the contract between the agency and the organisation is for the supply of goods (e.g., a stationery contract)?

Answer: It could be argued that the provision of goods is itself a service but this seems very artificial. Our view is that a contract purely for the provision of goods to a Commonwealth agency would not fall within the definition of "Commonwealth contract" in s.6 and, similarly, a contract purely for the provision of goods to a State or Territory authority would not fall within the definition of 'State contract'. However, if the contract combines the provision of goods with the provision of services (eg printing and supplying business cards), it would fall within the scope of these terms.