

# Permitted General Situations

'Permitted general situations' are circumstances that provide exemptions to the general limitations on the collection, use and disclosure of personal information. There are seven permitted general situations, and each is discussed below. To determine if they apply, you need to look at the relevant Australian Privacy Principle. The permitted general situations are available in pdf or Word format at the bottom of this page.

## 'Reasonably necessary'

The permitted general situations often permit the collection, use or disclosure of personal information where it is reasonably necessary for the purpose of the permitted general situation. The term 'reasonably necessary' is an objective test that has regard to whether a reasonable person, who is properly informed, would agree that the collection, use or disclosure is necessary. A collection, use or disclosure would not be considered necessary where it is merely helpful, desirable or convenient. It is the responsibility of the APP entity to be able to justify that the particular collection, use or disclosure is reasonably necessary.

## 1. To lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety

This permitted general situation allows APP entities to collect, use and disclose personal information if there is a reasonable belief that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

In order to rely on this permitted general situation, it has to be unreasonable or impracticable to obtain the individual's consent to the collection, use or disclosure.

**For example:** The individual is not able to give consent due to a lack of consciousness, or capacity, or an attempt to seek consent may expedite that threat being put into action.

There are also limits on the use of this permitted general situation. It can only be used to lessen or prevent the threat. Once the threat has been removed, the permitted general situation can no longer be relied on.

## 2. To take appropriate action in relation to suspected unlawful activity, or misconduct of a serious nature


This permitted general situation allows APP entities to collect, use or disclose personal information where it is reasonably believed that the collection, use or disclosure of that information is necessary in order for the entity to take appropriate action in relation to the matter. Importantly, this permitted general situation can only be used where there is a reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in.

Unlawful activity in this context includes activity that is criminal, illegal or prohibited or proscribed by law, and can include unlawful discrimination or harassment, but does not include breach of a contract.

'Serious' misconduct includes fraud, negligence, default, breach of trust, breach of duty, breach of discipline or any other misconduct in the course of duty, but does not cover minor breaches and transgressions. The serious misconduct must relate to the APP entity's functions or activities and may include serious breaches of the APS Code of Conduct.

Whether action is 'appropriate' will depend on the nature of the suspected unlawful activity or misconduct and the nature of the action that the APP entity proposes to take. Appropriate action may include investigating an unlawful activity or serious misconduct and reporting these matters to the police or another relevant person or authority.

### **3. To locate a person who has been reported as missing**

This permitted general situation allows an APP entity to collect, use or disclose personal information where it reasonably believes that the collection, use or disclosure is reasonably necessary to assist any APP entity, body or person to locate a person who has been reported as missing. In these circumstances the APP entity must comply with the rules issued by the Office of the Australian Information Commissioner. (<http://www.comlaw.gov.au/Details/F2014L00229> )

### **4. For the establishment, exercise or defence of a legal or equitable claim**

This permitted general situation allows APP entities to collect, use or disclose personal information that is reasonably necessary for the establishment, exercise or defence of a legal or equitable claim. The legal proceedings in a court or tribunal may be existing or anticipated. Where legal proceedings have not yet commenced, this situation will usually only apply to a collection, use or disclosure involving a real possibility of legal proceedings, for example where professional legal advice is sought about commencing legal proceedings.

### **5. For the purposes of a confidential alternative dispute resolution process**

This permitted general situation allows APP entities to collect, use or disclose personal information that is reasonably necessary for the purposes of a confidential alternative dispute resolution (ADR) process.

ADR covers processes in which an impartial person assists those in a dispute to resolve the issues between them. Examples of ADR processes include mediation, conciliation, facilitation, expert assessment, determination, or neutral evaluation. (see Chapter 2 of the Complaints and alternative Resolutions Manual).

For the exception to apply, the parties to the dispute and the ADR provider must be bound by confidentiality obligations such that any personal information collected, used or disclosed for the purpose of that ADR process will not be used or disclosed for any purpose outside the ADR process, including use or disclosure in subsequent proceedings. The confidentiality obligations may be imposed through contractual agreements or legislative provisions.

### **6. For the entity's diplomatic or consular functions or activities**


This permitted general situation allows APP entities to collect, use or disclose personal information that is reasonably necessary for the entity's diplomatic or consular functions or activities.

An agency can rely on this permitted general situation only if it has diplomatic or consular functions or powers, conferred either by legislation or an executive instrument (such as the Administrative Arrangements Order).

### **7. For war or warlike operations; peacekeeping or peace enforcement; civil aid; humanitarian assistance, medical or civil emergency or disaster**

## **relief occurring outside Australia and the external territories**

This permitted general situation allows the Defence Force (and only the Defence Force) to collect, use or disclose personal information that is reasonably necessary for the purpose of any of the listed activities. Importantly, these activities must be occurring outside Australia and the external Territories, however the collection, use or disclosure may be within or outside of Australia and its external territories.

(see the  [Important terms](#) page for a definition of Australia and its external territories)

## **Additional information**

 [OAIC APP guidelines - Chapter C - Permitted general situations](#)

Permitted general situations [  [pdf](#) ] or [  [Word doc](#) ]