



New South Wales

Health Records and Information Privacy Code of Practice 2005

under the

Health Records and Information Privacy Act 2002

I, the Minister for Health, in pursuance of section 40 of the *Health Records and Information Privacy Act 2002*, do, by this my Order, make the following Health Privacy Code of Practice.

Dated, this 29th day of June 2005.

MORRIS IEMMA, M.P.,
Minister for Health

Explanatory note

The object of this Order is to give effect to the *Health Records and Information Privacy Code of Practice 2005* under the *Health Records and Information Privacy Act 2002*.

The *Health Records and Information Privacy Code of Practice 2005* is intended to permit, in certain limited circumstances, the collection, use and disclosure of health information by human services agencies without the consent of the person to whom the health information relates.

This Order is made under section 40 of the *Health Records and Information Privacy Act 2002*.

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Health Records and Information Privacy Code of Practice 2005

under the

Health Records and Information Privacy Act 2002

1 Name of Code

This Code is the *Health Records and Information Privacy Code of Practice 2005*.

2 Commencement

This Code takes effect on 1 July 2005.

3 Notes

Notes in this Code do not form part of this Code.

4 Collection, use and disclosure of health information by human services agencies

(1) In this clause:

allied agency means an agency (other than a public sector agency) that is wholly or partly funded by a human services agency and that is approved in writing by the head of that human services agency as an allied agency for the purposes of this clause.

human services agency means a public sector agency that provides any one or more of the following types of services to the public:

- (a) welfare services,
- (b) health services,
- (c) mental health services,
- (d) disability services,
- (e) drug and alcohol treatment services,
- (f) housing and support services,
- (g) education services.

senior officer means a senior member of staff of a human services agency who has been nominated in writing for the purposes of this clause by the head of that agency.

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Clause 4

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substantial adverse impact includes, but is not limited to, serious physical or mental harm, significant loss of benefits or other income, imprisonment, loss of housing or the loss of a carer.

- (2) Despite the Health Privacy Principles, a human services agency (*the authorised agency*) may collect and use health information about an individual, and may disclose health information about the individual to another human services agency or an allied agency, if the collection, use or disclosure is in accordance with a written authorisation given by a senior officer of the authorised agency.
- (3) An authorisation under subclause (2) must specify:
 - (a) the period (maximum 12 months) for which the authorisation has effect, and
 - (b) the classes of health information to which the authorisation is to apply (*the specified information*), and
 - (c) the human services agencies or allied agencies (if any) to whom the specified information may be disclosed (*the specified agencies*).
- (4) A senior officer may give an authorisation under subclause (2) only if the officer is satisfied that:
 - (a) the individual to whom the specified information relates is a person to whom services are provided or proposed to be provided by a human services agency or an allied agency, and
 - (b) the individual (or if the individual is incapable, within the meaning of section 7 (1) of the Act, of giving consent, the individual's authorised representative) has failed to consent to the agency collecting or using the specified information, or disclosing the specified information to the specified agencies, and
 - (c) there are reasonable grounds to believe that there is a risk of substantial adverse impact on the individual or some other person if collection or use of the specified information, or disclosure of the specified information to the specified agencies, does not occur, and
 - (d) the collection or use of the specified information, or disclosure of the specified information to the specified agencies, is likely to assist in developing or giving effect to a case management plan or service delivery plan that relates to the individual, and
 - (e) reasonable steps have been taken to ensure that the individual has been notified by the agency of each of the following:
 - (i) the specified information,
 - (ii) the specified agencies,

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- (iii) the period for which the authorisation is proposed to be sought to have effect.

Note. Notification under this paragraph would normally be in writing. However, other notification methods may be more appropriate in the case of certain clients. For example, if the client is illiterate.