



New South Wales

Privacy Code of Practice (General) Amendment (Corrective Services) 2006

under the

Privacy and Personal Information Protection Act 1998

I, the Attorney General, in pursuance of section 31 of the *Privacy and Personal Information Protection Act 1998*, do, by this my Order, make the following Privacy Code of Practice.

Dated, this 12th day of September 2006.

ROBERT DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Order is to amend the *Privacy Code of Practice (General) 2003* to modify the information protection principles of the *Privacy and Personal Information Protection Act 1998* in relation to the collection, use and disclosure of personal information by the Department of Corrective Services.

This Order is made under section 31 of the *Privacy and Personal Information Protection Act 1998*.

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Clause 1 Privacy Code of Practice (General) Amendment (Corrective Services) 2006

Privacy Code of Practice (General) Amendment (Corrective Services) 2006

under the

Privacy and Personal Information Protection Act 1998

1 Name of Code

This Code is the *Privacy Code of Practice (General) Amendment (Corrective Services) 2006*.

2 Amendment of Privacy Code of Practice (General) 2003

The *Privacy Code of Practice (General) 2003* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 2)

Part 5

Insert after Part 4:

Part 5 Corrective Services

12 Definitions

(1) In this Part:

correctional centre and *correctional complex* have the same meanings as in the *Crimes (Administration of Sentences) Act 1999*.

Department means the Department of Corrective Services.

NSW Police has the same meaning as in the *Police Act 1990*.

offender means a person who is one or more of the following:

- (a) an offender within the meaning of section 3 (1) or 107 of the *Crimes (Administration of Sentences) Act 1999*,
- (b) a person in custody within the meaning of section 249 of the *Crimes (Administration of Sentences) Act 1999*,
- (c) a person who is the subject of a parole order within the meaning of the *Crimes (Administration of Sentences) Act 1999*,
- (d) a person who is the subject of an intervention program order, a non-association order, a place restriction order or a good behaviour bond within the meaning of the *Crimes (Sentencing Procedure) Act 1999* that is in force,
- (e) a person who has been granted bail and in respect of whom a court has sought a pre-sentence report from the Department.

provide services and programs to an offender includes the preparation of a case plan for the offender and any assessment of the offender's suitability for, or conduct in, a program.

staff member means a member of staff of the Department and includes:

- (a) a person working under contract, and
- (b) an Official Visitor appointed under section 228 of the *Crimes (Administration of Sentences) Act 1999*, and

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Schedule 1 Amendment

- (c) a minister of religion or other spiritual advisor appointed to a correctional centre pursuant to a regulation made under section 79 (x1) of the *Crimes (Administration of Sentences) Act 1999*.

transitional centre has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

victim means a victim of crime within the meaning of section 5 of the *Victims Rights Act 1996*.

- (2) For the purposes of this Part, the following services or programs provided to an offender are taken to be provided by the Department:
 - (a) a service or program provided on behalf of the Department,
 - (b) a service or program provided because of a requirement placed on the offender by a court or any of the following bodies within the meaning of the *Crimes (Administration of Sentences) Act 1999*:
 - (i) the Parole Authority,
 - (ii) the Review Council,
 - (iii) the Probation and Parole Service.

13 Collection from a person other than the individual

The Department is not required to comply with section 9 of the Act in relation to personal information collected by the Department in any of the following circumstances:

- (a) the information is collected from NSW Police or the CrimTrac Agency and is about:
 - (i) a criminal charge or criminal conviction against a staff member (including the making of an apprehended violence order against the staff member) that may affect the staff member's suitability for employment, or
 - (ii) an application for, or the making of, an apprehended violence order against an offender,
- (b) the information is about an offender and collection from a person other than the offender is reasonably necessary to enable the Department:
 - (i) to protect the safety, welfare or well-being of the offender, or
 - (ii) to supervise the offender effectively, or

- (iii) to provide services and programs to the offender effectively,
- (c) the collection is reasonably necessary to enable the Department:
 - (i) to maintain the security or good order of a correctional complex, correctional centre or transitional centre, or
 - (ii) to verify information about an individual supplied to it by the individual, or
 - (iii) to organise a conference or mediation between an offender and a victim of that offender, or
 - (iv) to compile statistical data, but only if it is impractical to collect the information directly from the individual to whom it relates and the information is not information of a kind referred to in section 19 (1) of the Act, or
 - (v) to investigate an allegation of misconduct against a staff member.

14 Collection and use of personal information and information about personal information held by the Department

- (1) The Department is not required to comply with section 10, 11 (b), 13 or 17 of the Act if non-compliance is reasonably necessary to enable the Department to do one or more of the following:
 - (a) to protect the safety, welfare or well-being of a person,
 - (b) to supervise an offender effectively,
 - (c) to provide services and programs to an offender effectively,
 - (d) to maintain the security or good order of a correctional complex, correctional centre or transitional centre,
 - (e) to exercise properly the Department's complaint handling or investigative functions,
 - (f) to carry out disciplinary or other proceedings before a court or tribunal,
 - (g) to prepare a comprehensive report to a court, tribunal or other relevant statutory body.

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- (2) The Department is not required to comply with section 10, 13 or 17 of the Act if non-compliance is reasonably necessary to enable the Department to prevent the disclosure of:
 - (a) intelligence information provided by an investigative agency or law enforcement agency, or
 - (b) the identity of an informant or a victim, or
 - (c) the existence of a surveillance operation.
- (3) The Department is not required to comply with section 17 of the Act if non-compliance is reasonably necessary to enable the Department to organise a conference or mediation between an offender and a victim of that offender.

15 Alteration of personal information

The Department is not required to comply with section 15 of the Act in relation to personal information if:

- (a) the information has been obtained in the course of an investigation, and
- (b) the person who is the subject of the information seeks to have the information amended during the investigation, and
- (c) amending the information at that time will detrimentally affect (or prevent the proper exercise of) the Department's complaint handling functions or any of its investigative functions, and
- (d) the information will be amended as soon as practicable after the conclusion of the investigation.

16 Disclosure of personal information

The Department is not required to comply with section 18 or 19 (1) of the Act if non-compliance is reasonably necessary to enable the Department to do one or more of the following:

- (a) to protect the safety, welfare or well-being of a person,
- (b) to provide services and programs to an offender effectively,

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- (c) to permit one or more of the following to exercise its functions properly in relation to an offender:
- (i) the Department of Community Services,
 - (ii) the Department of Health,
 - (iii) Justice Health,

Note. This does not permit the Department to disclose health information as health information is regulated by the *Health Records and Information Privacy Act 2002*.

- (d) to disclose personal information to a person for the purposes of an investigation, but only if the disclosure is made to a person:
- (i) to verify the information, or
 - (ii) to obtain professional or technical advice about the information.