



New South Wales

Privacy Code of Practice (General) Amendment (Ageing, Disability and Home Care) 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 make further provision with respect to the collection, use and disclosure by ageing, disability and home care agencies of personal information relating to individuals who lack the capacity to provide or understand that information, or the purposes for which it is collected or used.

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

2006 No 580

Clause 1

Privacy Code of Practice (General) Amendment (Ageing, Disability and Home Care) 2006

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1 Name of Order

This Order is the *Privacy Code of Practice (General) Amendment (Ageing, Disability and Home Care) 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 Amendments

(Clause 2)

[1] Part 6

Insert after Part 5:

Part 6 Ageing, disability and home care services

17 Interpretation

(1) In this Part and in Schedule 3:

ageing, disability or home care service agency or **ADHC agency** means any of the following agencies:

- (a) the Department of Ageing, Disability and Home Care,
- (b) the Home Care Service of New South Wales constituted under the *Home Care Service Act 1988*,
- (c) the Disability Council of New South Wales constituted under the *Community Welfare Act 1987*.

personal information custodian, of an individual, means any of the following:

- (a) the individual's guardian (within the meaning of the *Guardianship Act 1987*),
- (b) the individual's attorney (within the meaning of the *Powers of Attorney Act 2003*),
- (c) the spouse of the individual, if the relationship between the individual and the spouse is close and continuing,
- (d) a person who has the care of the individual (within the meaning of the *Guardianship Act 1987*),
- (e) a close friend or relative of the individual (within the meaning of the *Guardianship Act 1987*).

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

2006 No 580

Privacy Code of Practice (General) Amendment (Ageing, Disability and Home Care) 2006

Schedule 1 Amendments

- (2) If any personal information that relates to an individual has been collected by an ADHC agency for any purpose related to the provision of ageing, disability or home care services to the individual, that information is, for the purposes of Schedule 3, taken to have been collected also for the following purposes:
- (a) to ensure the provision of appropriate services to an individual (whether by the ADHC agency or another body or person),
 - (b) to ascertain the appropriate priority or placement of the individual in a service,
 - (c) to prevent harm to the individual or others,
 - (d) to ensure compliance with the occupational health and safety laws by the agency.

18 Modification of certain information protection principles

The information protection principles are modified in their application to ADHC agencies as set out in Schedule 3.

[2] Schedule 3

Insert after Schedule 2:

Schedule 3 Modification of information protection principles applying to ageing, disability and home care service agencies

(Clause 18)

1 Section 9: Collection of personal information

- (1) Despite section 9 of the Act, an ADHC agency may, if the individual to whom personal information relates lacks the capacity to provide the information and the information is being collected for the primary purpose of providing ageing, disability or home care services to the individual:
- (a) collect the information from any of the following persons:
 - (i) the individual's guardian (within the meaning of the *Guardianship Act 1987*),
 - (ii) the individual's attorney (within the meaning of the *Powers of Attorney Act 2003*),

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- (iii) the spouse of the individual, if the relationship between the individual and the spouse is close and continuing,
 - (iv) a person who provides domestic services or support for the individual, or who arranges for domestic services or support to be provided to the individual,
 - (v) a person who has the care of the individual (within the meaning of the *Guardianship Act 1987*),
 - (vi) a close friend or relative of the individual (within the meaning of the *Guardianship Act 1987*), and
- (b) if the information cannot be collected from a person referred to in paragraph (a), collect the information from another person.
- (2) An ADHC agency is not required to comply with section 9 of the Act or subclause (1) if it is unreasonable or impracticable in the circumstances to do so.

2 Section 10: Requirements when collecting personal information

If the individual to whom personal information relates lacks the capacity to understand the matters listed in section 10 of the Act, the ADHC agency must instead of complying with that section make a record of those matters in its files and must ensure that the record is readily accessible by:

- (a) if the individual regains capacity, the individual, or
- (b) any personal information custodian of the individual, or
- (c) the agency itself.

3 Section 14: Access to personal information held by agencies

Without limiting section 14 of the Act, if an ADHC agency holds personal information that relates to an individual who lacks capacity to understand that personal information or the purpose for which it was collected (or is to be used), the agency must, at the request of a personal information custodian of the individual and without excessive delay or expense, provide that custodian with access to the information.

4 Section 15: Alteration of personal information

- (1) Without limiting section 15 of the Act, if an ADHC agency holds personal information that relates to an individual who lacks capacity to understand that personal information or the purpose for which it was collected (or is to be used), the agency must, at the request of a personal information custodian of the individual, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:
 - (a) is accurate, and
 - (b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.
- (2) If an ADHC agency is not prepared to amend personal information in accordance with a request by an individual's personal information custodian, the agency must, if so requested by the custodian, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.
- (3) If personal information is amended in accordance with this clause, the individual to whom the information relates and the individual's personal information custodian is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the agency.

5 Section 16: Agency must check accuracy of personal information before use

Without limiting section 16 of the Act, for the purposes of that section, reasonable steps to ensure information is relevant, accurate, up to date, complete and not misleading include:

- (a) making inquiries of the individual concerned, or
- (b) in relation to an individual who lacks capacity to understand the personal information or the purpose for which it was collected (or is to be used), making inquiries of a relevant personal information custodian of the individual.

6 Section 17: Limits on use of personal information

- (1) Despite section 17 of the Act, an ADHC agency that holds personal information that relates to an individual who lacks capacity to understand the personal information or the purpose

for which it was collected (or is to be used) may use the information for a purpose other than that for which it was collected if:

- (a) a personal information custodian of the individual has consented to the use of the information for that other purpose, or
 - (b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or
 - (c) the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.
- (2) Despite section 17 of the Act and subclause (1) (a), an ADHC agency that holds personal information in relation to an individual who lacks capacity to understand the personal information or the purpose for which it was collected (or is to be used) may use the information for a purpose other than that for which it was collected without the consent of a personal information custodian of the individual, if:
- (a) no personal information custodian of the individual exists or can be found, and
 - (b) an officer of the Department of Ageing, Disability or Home Care appointed by the Director-General of that Department to act for individuals who have no personal information custodian consents to that use of the information on the grounds that the disclosure is in the best interests of the individual, and
 - (c) the ADHC agency records details of that use of the information in its files and ensures that the record is readily accessible by:
 - (i) if the individual regains capacity, the individual, or
 - (ii) if the individual gains a personal information custodian, the personal information custodian, or
 - (iii) the agency itself.

7 Section 18: Limits on disclosure of personal information

- (1) Despite section 18 of the Act, an ADHC agency that holds personal information that relates to an individual who lacks capacity to understand the personal information or the purpose for which it was collected (or is to be used) may disclose the information to a person other than the individual to whom the

2006 No 580

Privacy Code of Practice (General) Amendment (Ageing, Disability and Home Care) 2006

Schedule 1 Amendments

information relates, or another body (whether or not such other person or body is a public sector agency), if:

- (a) the disclosure is directly related to the purpose for which the information was collected, or
 - (b) a personal information custodian of the individual has consented to the disclosure of the information for that other purpose, or
 - (c) the disclosure is made to a personal information custodian of the individual.
- (2) Despite subclause (1) (b), an ADHC agency that holds personal information in relation to an individual who lacks capacity to understand the personal information or the purpose for which it was collected (or is to be used) may disclose the information to a person (other than the individual to whom the information relates) or other body without the consent of a personal information custodian of the individual, if:
- (a) no personal information custodian of the individual exists or can be found, and
 - (b) an officer of the Department of Ageing, Disability or Home Care appointed by the Director-General of that Department to act for individuals who have no personal information custodian consents to the disclosure on the grounds that the disclosure is in the best interests of the individual, and
 - (c) the ADHC agency records details of the disclosure in its files and ensures that the record is readily accessible by:
 - (i) if the individual regains capacity, the individual, or
 - (ii) if the individual gains a personal information custodian, the personal information custodian, or
 - (iii) the agency itself.
- (3) If personal information is disclosed in accordance with this clause to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

8 Section 19: Special restrictions on disclosure of personal information

Despite section 19 of the Act, an ADHC agency may disclose personal information of an individual who lacks capacity to understand the personal information relating to the individual's ethnic or racial origin, political opinions, religious or

philosophical beliefs, trade union membership or sexual activities if:

- (a) a personal information custodian of the individual has consented to the disclosure of the information, or
- (b) the agency believes on reasonable grounds the disclosure of the personal information is necessary to give effect to the purpose for which the personal information was collected.

Example. If, in collecting personal information about an individual for the purpose of providing ageing, disability or home care services, an ADHC agency collected the information that the individual was a member of a religious group with strict dietary rules, the agency may disclose that information to a person providing such services where it is necessary, ie where a service provider is preparing food for the individual.