

# Health Records and Information Privacy Code of Practice 2005

[2005-327]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Health Records and Information Privacy Code of Practice 2005



New South Wales

## Part 1 Preliminary

### 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 Definition

(1) In this Code:

**the Act** means the *Health Records and Information Privacy Act 2002*.

(2) Notes included in this Code do not form part of this Code.

## Part 2 Human services

### 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.

**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,
  - (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.

### **Part 3 Domestic Violence Intervention Court Model**

#### **5 Definitions**

In this Part:

**domestic relationship** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

**domestic violence offence** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

**person who has been charged with an offence** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**scheme**—see clause 6.

**victim of domestic violence** means a person who has been, or who is alleged to have been, the victim of a domestic violence offence.

#### **6 The scheme**

(1) In this Part:

**scheme** means the scheme known as the Domestic Violence Intervention Court Model.

(2) The objects of the scheme are as follows:

- (a) to ensure the safety of victims of domestic violence and persons in domestic relationships with those victims,
- (b) to ensure that persons who have been charged with domestic violence offences are dealt with appropriately,

- (c) to prevent persons who commit domestic violence offences from re-offending,
- (d) to improve the coordination of services to victims of domestic violence and persons in domestic relationships with those victims,
- (e) to ensure domestic violence matters are effectively managed throughout the criminal justice process.

## **7 Persons to whom Part applies**

This Part applies to the following persons:

- (a) a person who has been charged with a domestic violence offence by a police officer in the Campbelltown, Macquarie Fields or Wagga Wagga Local Area Command within the NSW Police Force,
- (b) a person against whom proceedings for a domestic violence offence have been commenced in (or moved or adjourned to) the Local Court at Campbelltown, Junee, Temora or Wagga Wagga,
- (c) a victim of domestic violence in respect of an offence referred to in paragraph (a) or (b),
- (d) a person in a domestic relationship with a victim referred to in paragraph (c).

## **8 Non-compliance with certain health privacy principles**

A public sector agency, or private sector person, that participates in the scheme is not required to comply with Health Privacy Principle 1 (1), 2, 3, 4, 6, 8, 10 or 11 in respect of the collection, holding, use or disclosure of health information about a person to which this Part applies, if that collection, holding, use or disclosure is:

- (a) for the purposes of the scheme, and
- (b) done in accordance with the privacy procedures for the scheme that are approved by the Attorney General from time to time.

## **9 Access to health information**

- (1) A public sector agency that participates in the scheme is not required to comply with Health Privacy Principle 7 in respect of health information about a person to which this Part applies that is held for the purposes of the scheme, unless the person is a victim of domestic violence.
- (2) A private sector person that participates in the scheme is not required to comply with Divisions 3 and 4 of Part 4 of the Act in respect of health information about a person to which this Part applies that is held for the purposes of the scheme, unless the person is a victim of domestic violence.