

PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998  
ORDER

I, Jeffrey William Shaw QC MLC, in pursuance of section 31 of the Privacy and Personal Information Protection Act 1998, by this order, make the Privacy Code of Practice for NSW Health which is annexed to this order, as a privacy code of practice.

Signed at Sydney, this 28th day of June 2000.

JEFFREY SHAW, Q.C., M.L.C.,  
Attorney General

**PRIVACY CODE OF PRACTICE****NSW HEALTH****PART 1 - PRELIMINARY****1. Definitions**

- (a) In this Code the following words have the following meaning :
- (i) "the Act" means the Privacy and Personal Information Protection Act 1998;
  - (ii) "health public sector agency" means an agency listed in clause 2(a) of the Code
  - (iii) "register of registered health practitioners" means
    - A register established pursuant to section 17(1) of the Chiropractors and Osteopaths Act 1991;
    - The Register of Dental Technicians of New South Wales established pursuant to section 14 of the Dental Technicians Act 1975;
    - A register established pursuant to section 12 of the Dentists Act 1989;
    - The Register of Medical Practitioners established pursuant to clause 21 of Schedule 1 to the Medical Practice Act 1992;
    - The Register of Nurses established pursuant to section 16 of the Nurses Act 1991;
    - The Register of Optical Dispensers established pursuant to section 21 of the Optical Dispensers Act 1963;
    - A register established pursuant to section 11 of the Optometrists Act 1930;
    - The Register of Pharmacists established pursuant to section 12 of the Pharmacy Act 1964;
    - The Register of Physiotherapists for New South Wales established pursuant to section 20 of the Physiotherapists Registration Act 1945
    - A register established pursuant to section 9 of the Podiatrists Act 1989;
    - A register established pursuant to section 9 of the Psychologists Act 1989;

**2. Application [section 29(5)]**

- (a) This Code applies to the following public sector agencies, those being :
- (i) a public health organisation, as defined under section 7 of the Health Services Act 1997
  - (ii) the Ambulance Service of NSW, established pursuant to the Ambulance Services Act 1990
  - (iii) the NSW Department of Health, a government department established pursuant to section 6 of the Health Administration Act 1982

- (b) This Code applies to :
- (i) any personal information collected, held, and used by agencies listed at 2(a);
  - (ii) all activities of the agencies listed at 2(a).

## **PART 2 – MODIFICATION OF INFORMATION PROTECTION PRINCIPLES**

### **3. Disclosure of Information for the purposes of care or treatment**

A health public sector agency is not required to comply with section 19 of the Act if, in the case of health related information and in circumstances where the consent of the individual to whom the information relates cannot reasonably be obtained, the information is provided to a health service provider for the purposes of ensuring the continued care of the individual to whom the information relates

### **4. Student Placements**

A health public sector agency is not required to comply with section 19 if, in the case of health related information, the information is provided to a person during a placement in the public sector agency undertaken as part of fulfilling the requirements for a tertiary qualification in a health or health related field.

### **5. Use or Disclosure of Information for the purposes of legal representation**

A health public sector agency is not required to comply with sections 17, 18 or 19 if the information is provided to a person or used for the purposes of :

- (a) complying with any risk management scheme operated by the agency; or
- (b) obtaining legal advice or representation

### **6. Disclosure of Information to closest relatives**

- (a) A health public sector agency listed is not required to comply with section 19 if, in the case of health related information, the disclosure is made to an immediate family member and is necessary to provide appropriate care or treatment or is made for compassionate reasons.
- (b) The exemption in clause 6(a) only applies where:
  - (i) the person to whom the information relates is deceased or physically or legally incapable of giving consent to the disclosure, or physically cannot communicate consent to the disclosure; and
  - (ii) the disclosure is not contrary to any wish (of which the agency is aware) expressed by the person to whom the information

relates before that person became unable to give or communicate consent.

- (c) Any disclosure pursuant to this clause must be limited to the extent reasonable and necessary for the purposes of subclause 6(a).
- (d) In this clause *immediate family member* means, in respect of the person to whom the information relates :
- (i) a parent, child or sibling;
  - (ii) a spouse or defacto spouse;
  - (iii) a member of the person's household;
  - (iv) a person with responsibilities as a carer, as defined under section 49S of the Anti Discrimination Act 1977; or
  - (v) another person nominated to the public sector agency by the person.

#### **7. Consent to disclose information by person other than the person to whom the information relates**

- (a) A public sector agency listed in clause 2(a) of this Code may disclose information with the consent of the person responsible where :
- (i) the person to whom the information relates is deceased or physically or legally incapable of giving consent to the disclosure, or physically cannot communicate consent to the disclosure; and
  - (ii) is the disclosure is not contrary to any wish (of which the agency aware) expressed by the person to whom the information relates before that person became unable to give or communicate consent
- (b) In subclause 7(a), *person responsible* has the same meaning as in section 33A of the Guardianship Act 1987

#### **8. Public Registers**

The provisions of section 57(1) are not required to be complied with in respect of the following public registers:

- registers of registered health practitioners;

## EXPLANATORY NOTE

- Clause 1** sets out a list of definitions for the Code
- Clause 2** Section 29(5) of the Act states that the Code must set out the agencies it applies to and the types of the activities of those agencies covered.
- Clause 3** expands the exemption provided under section 28(2), to the transfer of health information between public sector agencies, to private health care providers. As such, the clause uses largely the same wording as section 28(2) of the Act.
- Clause 4** ensures that students undertaking placements in the public health system can access health information as part of that placement..
- Clause 5** as the Act stands, there is no exemption allowing for the communication of information to the TMF, GIO/GILD or, indeed, any other legal representative. This clause is designed to overcome this oversight, by providing an exemption for such communications from both section 19 (section imposing special restrictions on health information) and section 18 (the general "non-disclosure" provision).
- Clause 6** allows the public health system to disclose information to close relatives when a person is incapacitated/unconscious or dead. It reflects a similar exemption in the Commonwealth "light touch" privacy laws for the private sector.
- Clause 7** provides for substitute consent for the disclosure of information when a person is incapacitated/unconscious or dead. Consent is by a person nominated by the patient. If there is no such person, the hierarchy of section 33A of the Guardianship Act vis a vis "person responsible" will apply.
- Clause 8** provides for certain identified public registers held by NSW Health to be exempt from the requirement that the agency satisfy itself that the person accessing the register is doing so for the purpose the register was created.

