



Housing and Mental Health Agreement

Guidelines for Exchanging Client Information

Purpose

These guidelines have been developed to assist District Implementation and Coordinating Committees (DIACCs) and relevant local structures in relation to the exchange of client information under the Housing and Mental Health Agreement.

The guidelines aim to support the Housing and Mental Health Agreement by facilitating and streamlining the exchange of client information whilst safeguarding the principles of informed consent and the right to privacy. The guidelines are intended to ensure that artificial barriers to information exchange do not prevent the timely provision of services to clients by clarifying expectations and applying consistent processes.

The guidelines aim to support the DIACCs to improve service coordination, implement prevention and early intervention initiatives, strengthen transition planning and to ensure people with mental health problems and disorders and housing needs receive an adequate and consistent response when they access mental health and/or housing and homelessness services.

The guidelines are consistent with the Department of Family and Community Services (FACS) Privacy Policy and relevant legislation and seek to provide specific guidance on client consent and confidentiality in a context of meeting housing and mental health needs.

Background

In August 2011, NSW Health (now the NSW Ministry of Health) and the Department of Family and Community Services (FACS) signed the Housing and Mental Health Agreement (the Agreement).

The Agreement provides an overarching framework for planning, coordinating and delivering services for clients with mental health problems who are living in social housing or who are homeless or at-risk of homelessness. The key aim of the Agreement is to improve the housing outcomes and general wellbeing of this client group. The achievement of these outcomes is contingent on the timely, effective, appropriate and lawful exchange of information between agencies.

FACS Privacy Policy context

The FACS and NSW Ministry of Health's practice in collecting, storing, using and disclosing personal and health information is regulated by the [Privacy and Personal Information Protection Act 1998 \(NSW\)](#), the [Health Records and Information Privacy Act 2002 \(NSW\)](#) and Chapter 16A and section 248 of the [Children and Young Persons \(Care and Protection\) Act 1998](#).

FACS and other agencies are required to comply with the above legislation when collecting and managing personal and health information.

The information collected by FACS or an authorised third party will be held by the entity that collects it, or by NSW Businesslink, the Government-owned company that provides corporate support to FACS.

Health Privacy Principles

The 15 Health Privacy Principles (HPPs) are the key to the [Health Records and Information Privacy Act 2002 \(NSW\)](#). The principles are legal obligations, which NSW public sector agencies and private sector organisations must abide by when they collect, hold, use and disclose a person's health information. More information on the Health Privacy Principles can be found at:

http://www.ipc.nsw.gov.au/agdbasev7wr/privacy/documents/pdf/factsheet_health_privacy_hpps.pdf

Purpose of collecting information

Information is collected and exchanged to deliver services and meet legal obligations. FACS may use information to plan, deliver, coordinate and improve its services. FACS is also authorised to disclose information to outside bodies in certain circumstances.

What is client consent?

Client consent is an authority given by clients (or their authorised representative) to allow personal and/or health information about themselves to be shared between agencies. This may be for the purposes of referral, assessment, provision and coordination of services.

There are many different versions of client consent forms. For example, under Housing Pathways, applicants and tenants are requested to sign either the [General Consent to Exchange Information and Authority to Act on Client's Behalf](#) or the [Consent to Exchange Information Between a Social Housing Provider and Support Workers](#).

How do I gain client consent?

Use the relevant consent form and take reasonable steps to ensure clients understand:

- What personal information you want to share;
- Why you want to share their information;
- Who you want to share their information with;
- Under what circumstances it may be shared (including when prior consent is not gained);
- The consequences of sharing / not sharing the information;
- That their information will be kept secure;
- How this information will be recorded and stored;
- How long their information will be kept for (if known);
- Their rights under privacy and access laws to access their personal and health information;
- Their right to withdraw or restrict consent;
- The complaints procedure; and

- Information that does not personally identify the client will be used to improve overall services and meet reporting requirements.

Principles for appropriate information sharing

The table below sets out key principles in relation to exchanging client information.

1. Client welfare	The client's safety and well-being are the primary consideration in all decision-making about information sharing.
2. Lawful	The intended sharing of information must be authorised or required under legislation or policy directive and, where possible, supported by a Service Level Agreement, a Memorandum of Understanding or similar document.
3. Client consent	Where possible, informed consent should be obtained before personal information is shared, except in certain defined circumstances (see legislative exemptions section below). Informed consent implies that the person has been advised what information is to be shared, the purpose of sharing, the duration of sharing (where relevant) and the anticipated consequences of the giving of consent. The advice must be given directly to the person concerned and in a language they can understand.
4. Legitimate purpose and notice	Information can be shared with consent, or the person whose information it is can be notified that their information will be shared with the party to whom it is proposed to be given. Information obtained for one purpose cannot be shared for another purpose.
5. Relevance	Information shared should be relevant, necessary and proportionate to need.
6. Accuracy	Before information is shared, it should be checked for accuracy, currency, relevance and completeness. The recipient of the information should advise the provider of inaccuracies that they may become aware of.
7. Limited disclosure	An organisation can only disclose client information for the purpose for which it was collected, or a directly related purpose, except in certain defined circumstances (see legislative exemptions section below). Otherwise separate consent is required.
8. Limited use	An organisation can only use client information for the purpose for which it was collected, or a directly related purpose, except in defined circumstances (see legislative exemptions section below).
9. Security and storage	All parties to the sharing of information must ensure there are controls to protect information in both paper-based and electronic form from misuse, unauthorised modification, loss, additional disclosure, or inadvertent or inappropriate access by other staff or external people.
10. Record keeping	When information is shared, a record should be made of when it was shared, with whom, for what purpose, in what form and whether it was disclosed with or without consent. If a decision is taken not to share information, this decision should also be recorded and reasons provided. In situations where there is dissent or dispute, this should also be recorded.

Legislative exemptions to sharing client information

The following legislation provides for defined exemptions to sharing client information:

- [Privacy and Personal Information Protection Act 1998 \(NSW\)](#): sections 17, 18, 23-28;
- [Health Records and Information Privacy Act 2002 \(NSW\)](#): Schedule 1;
- [Health Records and Information Privacy Code of Practice 2005](#);
- [Children and Young Persons \(Care and Protection\) Act 1998](#): Chapter 16 A and section 248; and
- [Occupational Health and Safety Act 2000](#) (specifically provides for information to be provided to ensure employees' health, safety and welfare at work).

Defined exemptions when consent is not required to share client information include:

- The use of client information or disclosure of client information without informed consent is appropriate where it is necessary to prevent or lessen a serious and imminent threat to the life or health of the client or another person. It is important to note that the threat must be both serious and imminent, and not *either* serious or imminent. In such scenarios, agencies must consider their duty of care obligations to the client. Please see case studies below for further information.
- The use of client information or disclosure of client information, when it is deemed reasonably necessary for law enforcement purposes.
- Other lawful exemptions that apply under the legislation above or Codes of Practice or Public Interest Decisions are made under that legislation.

Specific considerations

In order to meet duty of care responsibilities, government agencies and organisations should consider the need to

- access interpreter or other support services for clients from culturally and linguistically diverse backgrounds;
- respect and be sensitive to the cultural preferences and customs of clients from Aboriginal and Torres Strait Islander backgrounds;
- respect and be sensitive to the needs of clients who are lesbian, gay, bisexual or transgender;
- recognise that some clients may face literacy and numeracy challenges;
- recognise the additional security and safety of information concerns of victims of domestic and family violence;
- respect and be sensitive to the needs of clients with dementia, cognitive impairment, disability or acute mental illness; and
- recognise the additional duties and obligations around information about third parties (i.e. other family members and carers). In particular, carers are recognised in the [NSW Mental Health Act 2007](#) as having a need to access information about the person living with a mental illness (the consumer) so as to provide care and support. A consumer can nominate their 'primary carer', i.e. the person will be contacted, information shared, and be involved in the consumer's treatment and discharge planning.

Exchanging Information with another agency

If making a direct referral to another agency, you must not disclose a client's personal information (including health information), unless written authority has been granted, or an exemption exists, or the disclosure is permitted under another Act. You must:

- Confirm the identity of the person you are sharing information with by checking important details such as date of birth and full name of person.
- Establish if there is a legitimate purpose for you or your agency/NGO to share the information;
- Ensure that the information you share is necessary for the purpose for which you are sharing it (ensure it is proportionate, relevant and accurate);
- Confirm whether the client has appointed a guardian. Guardianship is when a person is appointed to make decisions on behalf of another person who lacks decision-making capacity because of a disability.
- Confirm whether the client has an advance care directive (sometimes known as a living will). An advance care directive is a clear statement that sets out directions including a client's wishes and values that need to be considered before medical treatment decisions are made.
- Check with a supervisor or seek legal advice if you are unsure (without disclosing the identity of the person, where possible);
- Inform the recipient if any of the information is potentially unreliable;
- Ensure that the information can be shared safely and securely;
- Be clear with the recipient how the information should be used;
- Record information sharing decisions, regardless of outcome; and
- Record what information is shared, if any.

The flowchart at **Appendix A** demonstrates the questions that should be asked when an issue has been identified and it is necessary to share client information.

Good practice for information sharing at multi-agency meetings

Information sharing may take place in meetings that are considering specific individuals or groups of individuals with a view to assessing risk, developing a more comprehensive and shared understanding of relevant issues, or developing effective shared responses.

Information sharing in these meetings will usually, in the first instance, be oral but must still be governed by data protection and confidentiality principles. Such meetings should ensure that:

- Those attending have a 'need to know' reason to be part of the process, either as information sharers or decision makers;
- The agenda should be structured in advance, to ensure that only relevant parties are in attendance when client information is exchanged;
- The individuals whose information is being exchanged should generally be made aware of this process. The client's consent to share their information should be recorded in the minutes. In circumstances where obtaining consent is not required (see exemptions above), the reasons should be stated at the start of the meeting and recorded in the meeting minutes;
- Confidentiality and privacy obligations should be noted at the beginning of each meeting. A privacy undertaking should be signed by those attending and kept as part of the meeting record;
- The meeting record and any associated paperwork must be managed in accordance with privacy principles; and
- Participating NGOs and Carers and Consumer Groups need to be informed of their privacy and confidentiality obligations in relation to information sharing.

Scenarios – Exemptions to client consent

Scenario 1

Carl is living in a public housing unit and complaints have been made by neighbours to local FACS Housing NSW officers about Carl's behaviour. Carl lives alone in a one bedroom apartment and has no identified carer or support person. Neighbours have described hearing erratic and noisy behaviour from Carl's apartment throughout the night for the past two weeks. Neighbours have reported to Housing NSW officers that they are concerned about his welfare as the few times they have seen him in the building he appears to have lost weight, is talking incoherently and does not respond to their enquiries.

Housing NSW officers are not aware whether Carl has a history of mental illness. Housing NSW officers have checked Carl's account and discovered that he has not paid his rent for the past 4 weeks. Housing NSW officers then decided to visit Carl's apartment and he did not answer the door. Based on the reports of neighbours and the attempt to visit Carl in his home, Housing NSW officers have decided the threat to Carl's health is serious and imminent. Carl has not provided client consent, but their duty of care to Carl warrants that they make the decision to contact the police and have them assess Carl's situation.

Scenario 2

Amanda is a community housing tenant. She is suffering from a severe mental illness and her health care provider has determined her to be at risk of harm. She has been hospitalised on the advice of the local care provider. Her hospitalisation presents a risk to her tenancy, as depending on how long she remains in hospital she may be unable to pay her rent.

The local health service is concerned about the potential loss of tenancy for Amanda as this represents a significant harm to her welfare and health status. Amanda has not consented for her care provider to share her personal information. Consistent with their duty of care obligations, the local health service decides to contact Amanda's community housing provider and share her personal information to enable discussions aimed at preserving her tenancy. The local health service informs Amanda of the decision they made to provide the information to her community housing provider and the reasons for sharing the information.

Scenario 3

Paul is a public housing tenant who has recently been absent from his normal routine. Paul has not been seen in three weeks at the community vegetable garden where he has been seen working most days over the past year. Friends at the community garden have tried to contact Paul but he has not answered his phone or answered his door. They are concerned about Paul so they contact the local Housing NSW office.

Housing NSW officers know that Paul was prioritised for social housing because of his mental health issues. Housing NSW officers have found there are no issues with Paul's tenancy and he is regularly making rental payments. However, Housing NSW officers act on the concern of his friends and visit Paul, who tells them he is fine. Housing NSW officers do not know whether Paul is still in contact with his mental health service. The officers are concerned about Paul's mental health but at this time decide there is no imminent threat to Paul's health. The officers decide not to contact the local mental health service. Housing NSW officers inform Paul they have not contacted the local mental health service but encourage Paul to make contact with his mental health service.

