

## 2.4 PRIVACY, CONSENT AND FREEDOM OF INFORMATION

### 1. Policy purpose

All personal information collected, stored, used, released and destroyed by Inspiro complies with all Commonwealth and Victorian legislation relating to confidentiality and privacy, including where relevant, the *Privacy Act 1988 (Cth)*, *Health Services Act 1988 (Vic)*, the *Health Records Act 2001 (Vic)*, the *Mental Health Act 1986 (Vic)* and the *Freedom of Information Act 1982 (Vic)*.

### 2. Policy statement

Inspiro will:

- maintain the privacy of personal information
- ensure this information is handled in an appropriate manner
- uphold all requirements of Privacy and Freedom of Information legislation

### 3. Policy scope

Identify issues or situations to be subject, or not subject, to this policy.

- This policy deals with the collection, storage, use, disclosure and destruction of personal information at Inspiro.
- This policy does not deal with the collection, storage, use, disclosure or destruction of Inspiro employee information.

### 4. Responsibilities

List of responsibilities essential to the delivery of this policy.

- Policy implementation: Inspiro staff, management, CEO
- Policy authorisation: CEO
- Policy maintenance: Executive Assistant

### 5. Definitions

List of terms with specific meanings relevant to this policy.

**FOI:** Freedom of Information

**FOI Act:** *Freedom of Information Act 1982 (Vic)*

**HPP:** Health Privacy Principles of the *Health Records Act 2001 (Vic)*

**Health Records Act:** *Health Records Act 2001 (Vic)*

**Client-Parent:** the parent who brought a child under 18 years of age for treatment.

**Consent:** For the purposes of this policy, "consent" is limited to permission for the *collection, recording, storing and/or sharing of personal information* and should not be confused with other types of consent (e.g. permission for specific treatments, participation in research, surgical procedures etc).

Consent can either be express (e.g. on a signed consent form) or implied. It is best practice to seek express consent wherever possible, particularly where significant privacy implications are involved.

**Implied consent:** Consent may be implied where it is reasonable to conclude from a person's words or actions that they consent, e.g. if a person expresses interest in a business's services and provides a business card, it could general be implied that

the person consents to the business sending him or her information about its services.

Implied consent is likely to be established the more an organisation can demonstrate that:

- the individual was given details about uses and disclosures (e.g. in a Privacy Statement);
- the individual was given an opportunity to withhold consent (e.g. on an application form);
- the individual was aware of the consequences of giving consent;
- the disadvantages of giving consent were negligible; and
- the individual will not be disadvantaged by choosing to withhold consent at a later date.

**Inspiro:** Ranges Community Health trading as Inspiro

**Personal Information:** Information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) Whether the information or opinion is true or not; and
- b) Whether the information or opinion is recorded in a material form or not. (Privacy Act 1988 Section 6)

**Reasonable steps:** The reasonable steps test is an objective test: whether a reasonable person in those circumstances would agree that we have acted reasonably in providing a notice or ensuring awareness. It is our responsibility to show that reasonable steps were taken.

**Sensitive information:** is defined as (Privacy Act 1988 Section 6):

- a) Information or an opinion about an individual's:
  - i. racial or ethnic origin
  - ii. political opinions
  - iii. membership of a political association
  - iv. religious beliefs or affiliations
  - v. philosophical beliefs
  - vi. membership of a professional or trade association
  - vii. membership of a trade union
  - viii. sexual orientation or practices
  - ix. criminal record.
- b) health information about an individual
- c) genetic information about an individual that is not otherwise health information
- d) biometric information that is to be used for the purpose of automated biometric verification or biometric identification
- e) biometric templates.

## 6. Policy procedure and guidelines

### 6.1. Procedures

#### 6.1.1. Collection of personal and sensitive information including health information (Australian Privacy Principle 3)

Inspiro will only collect personal and sensitive information, including health information necessary for the performance of a function or activity and with consent. All clients will be informed of what is done with this information and how they can gain access to it.

#### 6.1.2. Use and disclosure (Australian Privacy Principle 6)

Inspiro will only use or disclose personal and sensitive information for the primary purpose for which it was collected or a directly related secondary purpose the person would reasonably expect. Disclosure (discussion with a secondary person) will be recorded within the client file.

Client consent (or guardian's consent in the case of children who are not capable of giving informed consent) must be obtained to consult or share information about a client with other workers within Inspiro or any person external to the service and must be recorded within the client file.

Aside from where the law specifically allows, Inspiro staff will not use or disclose information for purposes which are unrelated to the treatment or care of client, without the consent of a client.

Disclosure of information without consent may occur:

- When the service user is either permanently or temporarily in an emotional/mental or physical state in which he/she is clearly unable to make any decisions for him/herself and information is needed to be acted on urgently.
- When advocating and referring on behalf of children when, according to the worker's assessment, they are at risk.
- To Inspiro insurer where there is a reasonable belief that a client may take legal action against Inspiro.
- Legislative requirements such as infectious disease notification.

#### 6.1.3. Data quality (Australian Privacy Principle 10)

Inspiro takes all reasonable steps to ensure that the personal and sensitive information held is accurate, complete, up-to-date and relevant to the functions performed by the service.

#### 6.1.4. Data security and retention (Australian Privacy Principle 11)

Inspiro will, at all times, safeguard the health information held against misuse, loss, unauthorised access and modification. Destruction or deletion of health records will take place in strict adherence of the Act.

Outside service contractors are required as part of their contract conditions to abide by the Inspiro Privacy Policy and must demonstrate they comply with both State and Commonwealth privacy laws.

#### **6.1.5. Openness (Australian Privacy Principle 1)**

Inspiro will have available documentation relating to its policy on the management of health information. See Department of Health handout "Your Information – It's Private".

#### **6.1.6. Access and correction (Australian Privacy Principles 12 & 13)**

Inspiro follows all legislative guidelines for clients to access their health records:

- 'New records' are categorised by those created since December 21, 2001.
- 'Old records' are those for clients seen prior to December 21, 2001 but not subsequently. Access to 'old records' may be granted in one of the forms outlined or alternatively, the client will be provided with an accurate summary of the information. There is no right of access to non-factual information in 'old records' (such as practitioner's comments.)
- Removal of any part or whole document is not permissible. The document remains the property of Inspiro.
- Where a practitioner is requested to explain the contents of records to clients the standard consultation fee will be applied.

#### **6.1.7. Identifiers (Australian Privacy Principle 9)**

Inspiro assigns a numerical identifier to client files, in order to facilitate effective health information management. Dental client files are identified by using the client's surname and first initial. No other identifiers appear on the outside of health records.

#### **6.1.8. Anonymity (Australian Privacy Principle 2)**

Where practical, Inspiro gives individuals the option of not identifying themselves in relation to their contact with the Service.

#### **6.1.9. Trans border data flows (Australian Privacy Principle 8)**

No information will be transferred by Inspiro outside Victoria unless the organisation receiving it is subject to laws substantially similar to the Health Privacy Principles.

#### **6.1.10. Transfer/closure of service (Health Privacy Principle 10)**

Should Inspiro cease to practice, notice to current and past clients accessing the service will be given.

#### **6.1.11. Making information available to another service provider (Health Privacy Principle 11)**

Should an individual client request it in writing, health information relating to their contact with Inspiro will be provided to another health service provider.

#### **6.1.12. Dealing with unsolicited personal information (Australian Privacy Principle 4)**

- Unsolicited information is information received where Inspiro has taken no active step to collect the information (e.g. referrals, unsolicited CVs, student placement enquiries, misdirected mail/email).

- If the information could have been collected in accordance with Australian Privacy Principle 3 (which deals with solicited information) it can be retained and must be dealt with as solicited information in accordance with Australian Privacy Principles 5-13.
- If the information could not have been collected under Australian Privacy Principle 3 it must be destroyed or de-identified as soon as practicable if it is lawful to do so.

#### **6.1.13. Notification of the collection of personal information (Australian Privacy Principle 5)**

- Inspiro will take reasonable steps to notify the individual, or otherwise ensure the individual is aware, of certain matters, including:
  - o Inspiro's name and contact details (including the position title, telephone number and email address of the contact who handles enquiries in relation to the Privacy Act). A generic phone number and email address (hello@inspiro.org.au and main phone number) will be used. (Australian Privacy Principle 5.2(a)).
  - o The fact and circumstances of collection, including the fact either that we have collected personal information from the individual, if the individual may not be aware of this, or that the information has been collected from a third party. The notice includes the circumstances of the collection, such as the date, time, place and method of collection. (Australian Privacy Principle 5.2(b)).
  - o Whether the collection is required or authorised by law. (Australian Privacy Principle 5.2(c)).
  - o The purposes of collection, including the primary purpose of collection. (Australian Privacy Principle 5.2(d)).
  - o The consequences if personal information is not collected. (Australian Privacy Principle 5.2(e)).
  - o Inspiro's usual practices in disclosing personal information to other entities or persons. (Australian Privacy Principle 5.2(f)).
  - o Information about Inspiro's privacy policy, including how an individual may access and seek correction of personal information, complain about a breach of the Australian Privacy Principles. The APP5 notice includes a link to the privacy policy on the website and explains how else it can be accessed. (Australian Privacy Principle 5.2(g&h)).
  - o Whether Inspiro is likely to disclose personal information to overseas recipients. (Australian Privacy Principle 5.2(i&j)).
- Notification must be provided before, or at the time the personal information is collected, or if not practicable, as soon as practicable after collection.
- Special needs of the individual will to be taken into account (e.g. non-English speaking, disabled).

#### **6.1.14. Direct marketing (Australian Privacy Principle 7)**

- Inspiro will not use or disclose personal or sensitive information for the purpose of direct marketing (communicating directly to an individual to promote goods and services) unless an exception applies.

- Where Inspiro is permitted to disclose personal information for the purpose of direct marketing, Inspiro will always provide a means for an individual to 'opt out' and must comply with this request.
- Inspiro will provide the source of an individual's personal information if requested to do so by the individual.

## **6.2. Procedures relating to consent to share client information**

Privacy and consent is discussed with all clients at intake through Initial Needs Identification. The Service Coordination Tool, Consumer Consent Template will be completed at this time. Specific release of information will be discussed with the client during consultations and recorded on the consent form and also signed by the client where practical to do so. If written/signed consent is not possible, verbal consent once given is recorded on the consent template or in the progress notes.

In order to give consent, clients need to understand what will happen to their information following clear advice from the staff member. Clients must be able to make their own decision about the sharing of information.

Written/signed consent for MBS clients regarding the use and disclosure of information is obtained using the MBS Consumer Personal Details and Consent to Share Information form.

NB: for the purposes of this policy consent to share information is not to be confused with consent to treatment.

### **6.2.1. Procedures relating to requests for information from non-custodial parents**

No information can be provided without consent. Either the child, if capable, provides informed consent to disclosure, or the client-parent provides the information, or a court orders that information must be provided. Mere acknowledgement by Inspiro that the child is a client may be a breach of privacy if made without consent.

## **6.3. Procedures relating to FOI requests**

The CEO is appointed "Principal Officer" to respond to FOI requests. All requests for information must be in writing. Clients requesting information must specify the document sought (NB. some documents are exempted from FOI).

- The "Principal Officer" will approve access to the information requested and arrange viewing and/or copying of the document. Removal of any part or whole document is not permissible and the document will remain the property of Inspiro.
- If access to a document is denied, the "Principal Officer" will give an explanation in writing including avenues of client appeal.
- The CEO is responsible for providing reports on FOI to the appropriate government department.

#### **6.4. Procedures for subpoenas and solicitors' requests**

All external requests for client information are to be directed to the CEO.

- The CEO will ensure subpoenas and other court orders are complied with.
- Requests by solicitors for information or reports must be in writing and require the written permission of the client before any client information is provided.

#### **6.5. Key responsibilities**

The CEO is responsible for ensuring compliance with the Act and the FOI Act and may delegate this responsibility to members of the Management Team.

The CEO is responsible for any reporting related to these Acts.

The Management team are responsible for ensuring all new staff, students and volunteers are informed of this policy.

#### **6.6. Quality assurance**

The Management Team and CEO will monitor privacy issues through file audits, supervision and intake practices.

### **7. Policy specified documents**

These are documents specifically required by, and named in, the policy. They include procedures, work instructions, templates, forms, checklists, brochures.

#### **7.1. Work instructions and procedures**

- Nil.

#### **7.2. Forms, checklists and brochures**

- SCT Consumer Consent Template  
<http://www.health.vic.gov.au/pcps/coordination/sctt2009.htm>
- DoH brochure "Your Information: It's Private"  
<http://www.health.vic.gov.au/pcps/downloads/publications/languages/english.pdf>
- MBS consumer details and consent form <G:\Administration\Standard Forms\MBS\MBS CONSUMER PERSONAL DETAILS AND CONSENT TO SHARE INFORMATION.pdf>
- Website Privacy Statement  
[http://www.inspiro.org.au/images/uploads/documents/Website\\_Privacy\\_Statement.pdf](http://www.inspiro.org.au/images/uploads/documents/Website_Privacy_Statement.pdf)

### **8. References and associated documents**

List of relevant or associated policies, documents, references, information sources.

- Policy 0.3 Policy and Document Control
- Policy 1.7 Client Records
- *Health Records Act 2001 (Vic)*
- *Privacy Act 1988 (Cth)*
- *Health Services Act 1988 (Vic)*
- *Mental Health Act 1986 (Vic)*
- *Freedom of Information Act 1982 (Vic)*.
- *Gillick v West Norfolk AHA (1986) 1 AC 150*
- Employment Collection Notice G:/Corporate/HR/Employment Collection Notice 20130207

## 9. Policy review

To recommend improvements, see Policy 0.3 Policy and Document Control.

Revision history:

- Authorised at Inspiro Management meeting 16 September 2014
- Implemented: 14 May 2002
- Reviewed: 20 April 2009
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