

# NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH PROFESSIONS

## Consultation paper: Proposed arrangements for information sharing and privacy

Submission by the Office of the Information Commission of the Northern Territory – 19 December 2008

### Introduction

The Office of the Information Commission (NT) (the OIC) is an independent statutory body established under the *Information Act* (the Act) to oversee the Freedom of Information and Privacy provisions of the Act. Further information about the OIC is available at <http://www.infocomm.nt.gov.au/>

The functions of the OIC relate to Northern Territory public sector organisations (PSOs), including local government. We do not cover Commonwealth organisations or the private sector.

The main functions of the OIC are to investigate complaints about breaches of privacy and about FOI decisions made by public sector organisations and to promote understanding and awareness of FOI and Privacy in the community and public sector.

### Proposed arrangements for information sharing and privacy

The OIC has made comments on the consultancy paper in the areas of privacy and information sharing which it believes are within its jurisdiction and experience to date.

#### 1. Background

##### 1.5 Principles

The OIC supports the policy framework principles for information sharing and privacy. It appreciates the importance of the public interest factors for sharing of certain information but believes that any sharing of information should be undertaken with clear authorities and frameworks in place.

#### 3. Information to be collected

##### 3.1 Information to be collected for initial registration purposes

Proposal 3.1.1 is supported.

The underlying principles for the protection of personal information are that collection of personal information must be undertaken by organisations lawfully and

fairly, that the information collected is restricted to that which is necessary for an organisations functions and activities and it is destroyed once it is no longer required.

In addition an organisation should where possible collect the information from individual's personally or if this is not possible with their informed consent and have procedures in place to ensure that the information collected is accurate, complete and up to date.

Proposal 3.1.2 is supported.

Individuals should be aware of the type of information that is legally required to be collected.

### 3.3 Unique identifier

Under Northern Territory legislation the use of unique identifiers is forbidden unless it is necessary to enable the organisation to perform its functions effectively. Where they are used the unique identifier must not be adopted by another organisation unless:

- it is necessary for the organisation to perform its functions effectively;
- it has obtained the consent of the individual; or
- it is an outsourcing organisation adopting the unique identifier created by a contract service provider in the performance of its obligations to the outsourcing organisation under a service of contract.

In addition a PSO in the Northern Territory must not use or disclose a unique identifier assigned to an individual by another PSO unless:

- it is to fulfil its obligations to that other organisation;
- it is necessary to lessen or prevent a serious threat to an individual;
- in the interests of to public health or safety; or
- it is necessary for law enforcement purposes or is required or authorised by law.

### 3.4 Identity checking on initial registration

The OIC understands and supports the need for document checking but questions the practicality of a "100 point check" system as they also create more document trails to administer and keep secure. If such a system is introduced careful thought should be given to the approved documents required for the system.

It could be that information required to be produced for initial registration purposes may already fulfil this without creating a system to produce more documentation to meet the requirements of a "100 point check" system.

### 3.8 Information to be collected for workforce planning purposes

The OIC appreciates the benefit for the collection of certain information for workforce planning purposes in the health industry.

Under Northern Territory legislation use and disclosure of personal information in connection with a function or activity of the organisation that involves compiling statistics or conducting research is permissible as long as those statistics or the research information is published in a form that does not identify a person.

#### **4. Publicly available information**

The OIC supports the proposal in that only essential information to protect public safety should be part of the public register.

The OIC questions the need for the following criteria to be on a public register:

- Sex
- Postcode of contact address and name of postcode area

It is unclear how the notification of sex and postcode and name of postcode area will protect public safety.

#### 4.2 De-registered practitioners

The OIC supports the option of removing de-registered practitioners from the public register. The mere fact that they are no longer on the register should indicate that those persons are no longer able to legally practice, whether it is due to retirement or some other reason. If a person under investigation chooses to cease registration that should indicate that they can no longer practice. The public notification that some person is under investigation and that investigation eventually finds that the complaint or accusations are unfounded could give rise to other legal issues.

The OIC questions the reasons and public interest gains for retaining practitioners de-registered for conduct reasons on the register indefinitely.

#### 4.3 Recording of conditions of practice

Under Northern Territory law personal health information is categorised as sensitive information. For such information there is a higher bar to reach before such information can be released to another organisation or made publicly available.

#### 4.4 Online public register

The proposed use of an online public register should be thoroughly explored prior to implementation including access and monitoring issues. The security and data protection issues should be such that the information is adequately protected from misuse either personally or commercially.

#### 4.5 Release of public register information

The provision of a copy of the whole register should only occur if it is for a legitimate law enforcement purpose and it can be satisfied that it is in the public interest to do so.

#### 4.6 Public access to the findings of formal proceedings

Proposals 4.6.1 and 4.6.2 Option 1 are supported.

### **5. The privacy regime**

#### 5.1 Legislative options

Proposal 5.1.1 is supported.

#### 5.2. Reference or incorporation

Proposal 5.2.1 is supported

### **6. Confidentiality**

Authority to release information should be expressly obtained and defined.

Under Northern Territory law the release of personal information should only be undertaken with the individual's consent. In saying this there is provision that such information can be used or disclosed in situations where issues of public health and safety arise, where it is required or authorised by law or the information is legitimately required by a law enforcement agency for a purpose:

- such as preventing, detecting, investigating, prosecuting or punishing an offence or a breach of a prescribed law;
- enforcing a law relating to the confiscation of proceeds of crime; protecting public revenue;
- preventing detecting, investigating or remedying seriously improper conduct or prescribed conduct;
- preparing for or conducting proceedings before a court or a tribunal or implementing the orders of a court or tribunal;
- to ASIO or ASIS in certain specified circumstances.

### **7. Information sharing**

Proposal 7.1.1 is supported

#### 7.2 Research

It is not strictly true that de-identified information does not constitute personal information. Information is personal information if the identity of a person can be reasonably ascertained from that information.

The OIC support proposal 7.2.1 as long as the identity of a person(s) cannot be reasonably ascertained from the information.

Proposals 7.3.1 and 7.4.1 are supported

In relation to proposal 7.5.1 more information is required for an informed comment to be made.

#### 7.6 Health complaint bodies and tribunals

More information is required especially in relation to provisions for information sharing between AHCCs and registration authorities before any informed comment can be made.