

## Client Privacy Policy

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**KEY POLICY AREA:** CLIENT SERVICES

**POLICY:** CLIENT PRIVACY

**APPROVED DATE:** 9 AUGUST 2004

**MODIFIED DATE:** 12 MARCH 2019

### **STANDARDS, PROTOCOLS & PROCEDURES LINKAGE**

DHHS STANDARDS

DATA SECURITY POLICY

CODE OF ETHICS AND CONDUCT POLICY

CLIENT COMPLAINTS POLICY

CLIENT PRIVACY PROCEDURES

CLIENT RECORD KEEPING POLICY

CRITICAL INCIDENT POLICY

QUALITY ASSURANCE POLICY

REPORTING TO CHILD PROTECTION/CHILD FIRST POLICY

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### **POLICY**

Wayss respects the clients' right to privacy and the right to have any information about them to be held in confidence. This policy outlines how Wayss handles personal and health information in accordance with the *Information Privacy Principals Victoria, Privacy and Data Protection Act 2014* and relevant sections of the Health Records Act 2001.

This policy applies to all personal and health information provided to Wayss and information about individuals obtained from other sources in order to provide them with a service.

### **RIGHTS OF CLIENTS**

Clients are entitled to have all information about them treated confidentially and be fully informed about the amount and type of client information being held about them at Wayss, and how it is being stored and used.

### **DEFINITIONS**

#### **Client Information**

In the context of this policy refers to personal and health information.

#### **Personal Information**

Personal information is information or an observation that is recorded in any form and about an individual whose identity is apparent, or can reasonably be ascertained from the information or observation. This can include letters, sounds, images, videos and numbers and combinations of them.

#### **Health Information**

Health information means information or an observation about:

- The physical or mental health (at any time) of an individual.
- A disability (at any time) of an individual.
- An individual's expressed wishes about the future provision of health services.
- A health service provided, or to be provided, to an individual that is also personal information.
- Other personal information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of their descendants.

#### **LGBTI Information**

LGBTI information means information about a clients:

- Gender identity

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- Sexual orientation
- Intersex status

### Religion/Spirituality

Information about a client's beliefs include:

- Their religious affiliation
- Their spiritual identification

### RESPONSIBILITY

This policy applies to all Wayss personnel, each of whom have a responsibility to ensure that client privacy is respected.

Wayss will only collect information necessary to provide an efficient and satisfactory service.

Wayss expects that information given to the service on behalf of a client will be provided with the informed and freely given consent of the client concerned. The client will be advised if information relating to the client has been collected from other sources.

### INFORMED CONSENT

The principle of informed consent is an expression of the belief in the need for truthful and respectful exchanges between staff and clients. The service Wayss delivers to clients is based on freely given informed consent of clients. There are three steps in the consent process:

- Giving information to clients.
- Obtaining freely given consent.
- Documenting that consent has been obtained, e.g. signed consent form, case note.

Staff are to be aware that consent whilst a client is receiving a service will be a process and not a one off event. Consent can comprise of several documents indicating consent has been obtained and maintained.

### CONTRACTUAL OBLIGATIONS FOR INFORMATION COLLECTION AND DISCLOSURE

#### 1. Information Collection

Wayss uses unique identifiers as it is a requirement of the funding agreements with DHHS that we comply to Australian Institute of Health and Welfare (AIHW). Clients are informed on presentation to a service that their data will be used as aggregated data by AIHW and any unique identifiers used by Wayss are encoded prior to submitting to AIHW.

Wayss will only collect information when the individual has consented to provide it for the provision of the service or the collection is required under law or it is required by contractual arrangements with government funding bodies.

Wayss is required by its contractual arrangements with the Department of Health and Human Services (DHHS) to collect information on their behalf. This information is non-identifiable information to be used in aggregated data.

#### 2. Incident Report to DHHS

Wayss is required through its reporting requirements to provide the DHHS information in relation to incidents involving clients. Clients and other individuals on whom information is being collected will be advised that the purpose of the collection of information is to report on and investigate an incident and that it will only be used for that purpose. The personal information disclosed to DHHS in relation to the incident will only be information related to the specific circumstance and is clearly

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necessary for the purpose of reporting and investigation of the incident, and include action taken by the organisation in response to the incident. If the information is of a sensitive nature or there are doubts about whether its use and disclosure would be within the person's reasonable expectations, they are to be advised of the intended use and disclosure through the reporting process. Wherever possible identifying details will be kept to the minimum required.

### USE AND DISCLOSURE

All information collected by Wayss from clients will be used to provide services for the client. Client information will not be released without the informed consent of the client, unless the disclosure of the information to an external organisation is mandatory or if there is a duty of care. Legal instances where information is disclosed will be explained to the client and agreed to by them in order to receive the service.

Clients will be informed about what information is collected from them, why it is collected and how it will be used. Clients will be informed how their information will be stored, how long it will be kept and with whom it will be shared.

Clients have a right to determine with whom information will be shared.

Written or verbal information about clients will only be given out to other agencies or family members etc. with the prior consent of the client and / or their legal guardian. Such consent must be given in writing, and Wayss staff have a responsibility to ensure that prior to giving consent, the client has access to accurate information about the intended purpose for releasing the information.

### TRANSFER OF CLIENT INFORMATION

Transfer of client information outside Victoria will again be subject to the conditions above and will require prior informed consent of the client. Wayss will take reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistent with the *Information Privacy Principles* and the *Health Records Act 2001*. Wayss will send a copy of this policy to the requesting agency and ask for written confirmation of adherence prior to transferring the client information.

Clients will be informed of their right to read, and where possible be provided with the opportunity to approve and / or revise, any Wayss material pertaining to their circumstances, before it is released.

In rare situations where written consent is not practicable, the date, time and method by which verbal consent is given must be recorded, signed and witnessed in case notes.

### INFORMATION QUALITY

Wayss will take reasonable steps to ensure that all information collected is accurate, complete and up-to-date at the time of use or disclosure. If after disclosure Wayss becomes aware that information was inaccurate, incomplete or out of date and the information has been transferred, Wayss will attempt to advise the recipient organisation.

Staff will request the client to confirm details of the information provided at the completion of each session to ensure the quality of the information collected. Information received in relation to the client will be confirmed with the client unless it poses a serious threat to life or health of any individual. All programs will review their practice to ensure compliance with data quality.

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Where possible, clients will be provided with the opportunity to revise any information pertaining to their circumstances before it is released.

### SECURITY OF INFORMATION

The information provided to Wayss is stored electronically and paper based files as appropriate. The secure storage and use of information is of paramount importance to Wayss, therefore all reasonable steps are taken to protect the information from misuse or loss, or unauthorised access, modification or disclosure. This is achieved by means such as password and network protection and secure storage of paper based and other records through lockable storage and restricted access.

### OPENNESS

Wayss policies in relation to the management of client information is available upon request.

Wayss will publicise its privacy policy:

- With notices / posters displayed at reception or waiting rooms at all sites.
- Making Privacy Information Brochures and Your Rights and Responsibilities Brochures available at reception or waiting rooms at all sites.
- With accompanying correspondence to individuals.
- By providing a verbal explanation to the client at the point of contact.
- Where possible, by providing client with a Privacy Information Brochure and Your Rights and Responsibilities Brochure at appointments / sessions.
- On the website.

Staff will ensure client access to the Wayss privacy policy through one or more of the above means.

Staff are informed of this policy in induction and have the opportunity to discuss the policy in relation to compliance and understanding in supervision and at the annual review.

### ACCESS

Wayss will provide the client with access to all personal information and health information collected, pertaining to them on request of the client, or provide access to a person named by the individual in a written authority, in line with the **Client Record Keeping Policy**.

Clients will be provided with access to written information on how to access their personal and health information. If required, staff will support the client in making that request.

The client can be denied access to this information in accordance with Information Privacy Act 2000, Privacy Principle 6 and the Health Act 2001 Section 26. The client will be informed of the reason for denial in writing, from the following exceptions for access;

- Providing access would pose a serious and imminent threat to life or health of the individual.
- Providing access would have an unreasonable impact on the privacy of other individuals.
- The request for access is frivolous or vexatious.
- The information relates to existing legal proceeding between the organisation and the individual, and the information would not be accessible by the process of discovery or subpoena in those proceedings.
- Providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice the negotiations.
- Providing access would be unlawful.
- Denying access is required or authorised by or under law.
- Providing access would be likely to prejudice an investigation of possible unlawful activity.
- The prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction.

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- The enforcement of laws in relation to the confiscation of the proceeds of crime.
- The protection of public revenue.
- The prevention, detection, investigation or remedying of seriously improper conduct.
- The preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders - By or on behalf of a law enforcement agency.

Where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision making process, Wayss may give the client an explanation for the commercially sensitive decision rather than direct access to the information.

### **CORRECTION**

If the client is able to establish that personal and/or health information pertaining to them is incorrect, Wayss will correct the personal or health information. If Wayss refuses to correct this information in accordance with the Information Privacy Principles & Health Records Act Principle 6 they will provide a written explanation for the refusal.

If Wayss and the client disagree about whether the information is accurate, complete and up-to-date, and the client asks Wayss to associate with this information, a statement will be made that Wayss disputes the accuracy of that information.

### **EXEMPTIONS**

Exemptions to this policy apply in regard to:-

- The mandatory reporting of suspected child abuse. Wayss staff may make reports to Child Protection Services or Victoria Police with or without the consent of the client, in circumstances where they believe a child or young person is being physically, emotionally or sexually abused.
- Where a Wayss staff member has concerns regarding the content of personal or health information, and believes that risk of serious harm to any person is indicated, the staff member will consult the manager who will seek relevant advice and make a decision as to the appropriate course of action to be taken. Such decision making will be guided by the view that the obligation to ensure privacy is not sufficient to justify passively condoning the commission of crimes against the person.
- When required by law to release information; for example, Wayss files or staff members may be subpoenaed to give evidence in court, legal requirements override client consent to release information. The client and their guardian is to be made aware of such requirements.

### **COMPLAINTS**

Clients will be informed of their right of complaint, the procedures necessary to effectively institute such complaints and be provided with assistance by staff if necessary to carry out such complaint. When receiving a complaint in the first instance, staff will advise clients of the Client Complaints Policy and Procedure, and support them through this process, if required.

### **NOTIFICATION OF COMPLAINT RECEIVED BY THE PRIVACY COMMISSIONER**

All complaints to the Privacy Commissioner must show that they have first registered a complaint with Wayss.

An individual may complain to the Privacy Commissioner about an act or practices that may be an interference with the privacy to an individual.

When Wayss has received this notification the Chief Executive Officer will respond to any requests made by the Privacy Commission in a timely manner.

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### NOTIFICATION TO HEALTH SERVICES COMMISSIONER

All complaints to the Health Services Commissioner must show that they have first registered a complaint with Wayss.

An individual may complain to the Health Services Commissioner about an act or practices that may be an interference with the privacy to an individual.

### EVALUATION AND REVIEW

The organisation will review this policy as issues are raised and as part of a formal evaluation process in accordance with the review procedures as set out in the **Document Development and Review Procedures**. This policy will be monitored through:

- Client complaints and feedback.
- Feedback from other agencies.
- Observations by Wayss staff.
- Auditing of records.
- Case management practice.