



Level 4  
East Wing  
50 Grenfell Street  
Adelaide SA 5000

GPO Box 2281  
Adelaide SA 5001  
DX 115

Tel 08 8226 8570  
Fax 08 8226 8577

[gryp@gryp.sa.gov.au](mailto:gryp@gryp.sa.gov.au)  
[www.gryp.sa.gov.au](http://www.gryp.sa.gov.au)

15 November 2011

Mr Timothy Pilgrim  
Australian Privacy Commissioner  
Office of the Australian Information Commission  
GPO Box 5218  
SYDNEY, NSW 2001

Dear Mr Pilgrim

I write in support of the application from UnitingCare Wesley Adelaide for a Public Interest Determination (PID) concerning National Privacy Principles (NPPs) 2.1 and 10.1 governing use, disclosure and collection of 'sensitive information'.

#### **Background: Information sharing in SA**

The Guardian for Children and Young People monitors the state-wide implementation of the South Australian Government's *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and their Families* (ISG). In simple terms, the ISG is a process for sharing information to promote early intervention and more effective service coordination among human service organisations. It promotes a consistent approach to disclosure and collection of personal information to assist agencies to better coordinate their efforts to support vulnerable families where there is a serious risk of harm or abuse to children, young people and their families or a risk to public safety.

In 2008 the Privacy Committee of SA granted an exemption in relation to the South Australian *Information Privacy Principle 10(b) – Disclosure of Personal Information* to agencies implementing the ISG. The exemption effectively removes the word 'imminent' from the Information Privacy Principles so that information can be shared earlier where there is risk of serious harm. The ISG was endorsed by South Australian Cabinet in October 2008 for implementation by the public sector and relevant non-government organisations (NGOs) that have funding contracts with the State Government.

#### **Evidence of need for improved information sharing**

Recent inquiries and reviews of child protection systems and coronial inquests of child deaths have repeatedly recommended a stronger focus on prevention and improved collaboration between service organisations. So too have they identified enhanced mechanisms for information sharing. The 2008 Wood report of the *Special Commission of Inquiry into child protection services in NSW* and the 2009 NSW Ombudsman's report of *The Death of Ebony: The Need for an Effective Interagency Response to Children at Risk* highlighted need for a stronger prevention focus and improved collaboration. In

South Australia, similar recommendations were made in the 2008 report of the *Commission of Inquiry (Children in State Care and Children in the APY Lands)*. More recently in the Northern Territory the 2010 inquiry report *Growing them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children, Report of the Board of Inquiry into the Child Protection System in the Northern Territory* made a series of recommendations for improved interagency cooperation and information sharing.

These recommendations have been reflected in strategy 2.2 of the Australian Governments' *National Framework for Protecting Australia's Children* with the commitment to develop "new information sharing provisions between Commonwealth agencies, State and Territory agencies and NGOs dealing with vulnerable families".

The consequences and cost of failing to intervene early and effectively can be tragic. Every family who is successfully supported to overcome problems can protect their children and, in turn, save the costs of investigations, prosecutions, and provision of remedial intensive services. The evidence considered by inquiries and reviews shows that tragic outcomes are partly as a result of workers operating in isolation and addressing one issue, with an incomplete understanding of more complex and interconnected circumstances.

Effective treatment and intervention services must consider the needs of adults in the context of their role as parents and members of a broader community. The basic premise of the ISG is that by supporting vulnerable adults you reduce the risk to safety and wellbeing of children and others. Given the factors surrounding families at high risk, it is rarely within the scope of a single agency to satisfactorily address a family's mix of high and complex needs. When faced with co-existing issues like homelessness, mental illness, family violence, drug and alcohol abuse or gambling, an informed interagency and multi-disciplinary response is required.

### **Balancing privacy with safety**

While the case for improved information sharing appears irrefutable, balancing the right to privacy and the right to safety presents a real dilemma for workers and organisations, often leading to inconsistent treatment of client information. Feedback to my office from agencies and organisations is that translating privacy requirements into practice is difficult. The legislation itself is difficult to interpret, creating challenges in staff induction. I am also advised that sharing of information between organisations has often occurred without due consideration for obtaining informed client consent for the capture and disclosure of information. Agency staff have reported confusion about who information could be shared with and how much should be disclosed. Executive and Board members have expressed their support for the ISG because the simple guidance provided clarifies appropriate information sharing practice for staff and is good risk management.

The risk of inappropriate disclosure of personal information is managed through the ISG in three fundamental ways:

- The ISG provides clear simple guidance and advice about appropriate information sharing practice. Agencies and organisations are guided to use or disclose personal information only after consent has first been sought, where it is safe and possible to do so. The ISG also describes when sharing of information without consent is justified, how this should be done and that only relevant information is to be shared.

- The requirements for organisations and agencies to develop procedures for implementing the ISG are consistent across the state and reinforced by a Cabinet direction (to government agencies) and via a contractual obligation (for NGOs) subject to compliance and quality monitoring.
- The establishment of an ongoing Information Sharing Advisor's position to support organisations and monitor implementation.

It could be argued that removal of the 'imminence' requirement for disclosure and collection of information without consent could potentially remove important safeguards against the mishandling of personal information. These concerns were considered in the development of the ISG framework and measures put in place to help prevent mishandling of information. For example the South Australian Privacy Committee exemption from *Information Privacy Principle (IPP) 10(b) – Disclosure of Personal Information* (attachment 1) has the following conditions:

- Departmental Chief Executives are responsible for ensuring cooperation, induction to and compliance with the ISG in their portfolios.
- Appropriate protocols for gaining client consent and discussing the limits of professional confidentiality will be consistently adopted (see [www.gcyp.sa.gov.au](http://www.gcyp.sa.gov.au) "A Guide to Writing an ISG Appendix").
- Gaining a client's consent for information sharing is the ideal and recommended practice, except where it is not safe or possible to seek consent and without doing so would place a person at increased risk of serious harm, abuse or neglect.
- The process for information sharing is consistent and appropriate. (The STAR principles and flow chart procedure (page 18-19) of the ISG ensures appropriate assessment, authorisation, documentation and dispute resolution measures are in place – with particular regard to the recording of disclosure of information without consent.)

### **Benefits of consistent practice in information sharing**

To date, feedback from organisations implementing the ISG confirms that the information that is being shared in accordance with the ISG is principally about vulnerable adults, whose vulnerability in turn poses a risk to children or young people. Agencies also confirm that the implementation of the ISG is helping providers of adult services to shift their practice towards consideration of their clients' family situations. Use of the ISG is helping all providers approach the gaining of a client's consent in a more transparent way. Agencies report that there is benefit in having a consistent approach to information sharing in all programs and the simple guided approach of the ISG has helped staff to be more confident in appropriately dealing with client information. The ISG focuses on seeking informed consent and sound documentation and I am advised that the vast majority of information sharing occurs with the client's consent and client records are accurate and secure.

By way of illustration of the benefits, I have been advised of a woman who was mentally ill and the mother of primary school age children. She had been assessed as not being so unwell as to require non-voluntary admission to a psychiatric hospital. When the mental health workers raised their concerns for her children, the ISG process was

followed and the manager authorised information to be shared between the mental health workers and the child protection agency. From this discussion a fuller picture was gained. The children were greatly distressed and not coping at school, and were able to describe some of their mother's unusual and frightening behaviour. Their mother was reassessed and detained and the children cared for by a family member during their mother's recovery period. Information sharing led to increased monitoring and safety for the children and to the woman receiving the help she needed. On returning home, the mother was better able to care for her children, which included taking the children to health appointments that she had previously refused to do.

The ISG has also influenced the development of standard operating procedures between some agencies. For example, for many years school principals and counsellors have expressed concern about the absence of information provided by hospitals when young people are admitted with mental health related issues, particularly suicide attempts. Suicide contagion is a major risk that schools must manage and this relies on relevant information exchange between hospital personnel and school principals. The ISG has provided the Department of Health with a pathway of information sharing that was previously closed. In August 2010 a protocol was agreed which prevents young people considered at risk to be returned to school without that risk being shared with the principal. This is a significant outcome as it relates to a significant number of young people and contributes to something as profound as suicide prevention. Since inducting staff into the ISG, the Department for Education and Child Development advises me that their general experience is that collaborative work with other agencies is easier to achieve because arguments of what constitutes confidentiality are resolved promptly. All stakeholders are guided by the ISG through complementary procedures and safety checks for disclosure of information.

### **Proposed legislative change**

The Australian Government has acknowledged that the test of 'imminence' can be too restrictive and agrees a 'use and disclosure' principle should allow information sharing where an agency or organisation reasonably believes it is required to lessen or prevent a serious threat to life, health or safety. However, while we wait for the proposed Australian Privacy Principles to be enacted, there remains a risk that some South Australian NGOs may not share information when a person is at serious risk of harm, neglect or abuse because of confusion about what requirements apply and whether a serious threat is 'anticipated' or 'imminent'.

### **Public interest**

The public benefit of collecting and disclosing information where serious harm can be anticipated and in accord with agreed practice outweighs the public interest in adhering to NPP2.1 and NPP 10.1. I strongly support the application by UnitingCare Wesley Adelaide for a Public Interest Determination to enable them to implement the ISG. I also respectfully request that other relevant South Australian NGOs be included within the scope of your determination.

A generalising determination will enable:

- enhanced protection of, and support for, vulnerable members of the community;
- consistency of privacy practice and language across professional groups;

- the ISG to be fully implemented across the non-government sector in South Australia;
- greater understanding of appropriate information sharing practice with particular regard to seeking informed client consent wherever possible and safe to do so;
- greater awareness of interconnected protective and risk assessments between children and adult service providers and between government and non-government service providers; and
- more effective early intervention and prevention where there are risks to safety and wellbeing.

Thank you for the invitation to comment. I am happy to provide further information as required. Please contact Donna Mayhew, Principal Advisor or me on (08) 8226 8570.

Yours sincerely

A handwritten signature in black ink that reads "Pam Simmons". The signature is written in a cursive style with a large, looped initial "P".

**Pam Simmons**  
**Guardian**