

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 23 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(259) Output 2.1: Settlement Services

Senator Hurley (L&C 17) asked:

Provide a copy of the complaints handling mechanism put in place by a provider in Queensland.

Answer:

A copy of the complaints handling mechanism developed and implemented in Brisbane by the MDA consortium is attached.

Multicultural Development Association Inc.



While MDA always tries to provide the information and services that people want and need, we also know that people might not be always be happy with the information or service that they receive. We want people to give us feedback, both about the things we do well and the things that we could improve. This will help us to make our services better.

You have the right to tell us if you are not satisfied with the information or service you have received without fear that you will suffer any loss of service or any other unfair treatment as a result.

If you are unhappy with something that MDA does, or doesn't do, this information sheet explains how you can make a complaint to tell us about how we can improve and what happens to any complaints that we receive.

2.0 What is a complaint?

A complaint is any expression of dissatisfaction with, or concern about, the standard of service provided by MDA or the conduct or performance of MDA staff, volunteers or Management Committee members.

In practice, this means that you can make a complaint about things like:

- The quality of the services that you have received from MDA;
- The information or facilities that MDA has provided to you;
- The work or behaviour of MDA staff and volunteers;
- The work or behaviour of MDA Management Committee members.

Please note that MDA can only deal with complaints about the work or behaviour of its staff, volunteers or Management Committee members on occasions when they have been employed by MDA or are representing MDA.

MDA cannot deal with complaints about its staff, volunteers or Management Committee members at other times, such as when they are representing other organisations or are acting as members of their own community.

3.0 How can I make a complaint?

Complaints can be made in person, by telephone, by email or in writing. A complaints form is available for you to use or you can write it down in your own words and post or fax it to us. Please make sure that you include your name and contact details and that you sign your complaint.

Complaints that are made in person, and complaints made by telephone, will be written down on a complaints form and a copy of the form will be given or sent to you for checking and signing.

You have the right to be supported by someone that you choose to help you to make a complaint. To make sure that your right to confidentiality is protected, if you ask someone to support you to make a complaint you will need to give them written permission to contact MDA on your behalf.

If you do not have someone to support you and you need some help, MDA staff members can help you to make a complaint by:

- Telling you about the process for making a complaint
- Explaining the procedure for dealing with your complaint
- Helping you to put your complaint in writing
- Providing you with information about other services that might be able to provide you with advice and support

Wherever possible, MDA will also ensure that you have access to appropriate language and interpretation support if this is necessary in order for you to make a complaint. If you want to make your complaint in your first language you will need to give MDA written permission to use an interpreter or translator when investigating your complaint to make sure that your right to confidentiality is protected.

4.0 What happens after I make a complaint?

We will write to you within seven (7) days to confirm that we have received your complaint and let you know what we intend to do to try to resolve it. We will try to resolve your complaint within 28 days but if this is not possible because your complaint is complicated, we will write to you within 28 days to let you know what is happening. If your complaint cannot be resolved by the staff of MDA, your complaint will be investigated by a Complaints Panel made up of three (3) members of the MDA Management Committee. If your complaint still cannot be resolved, we will refer your complaint to an external organisation and ask them to review your complaint and our process for dealing with it.

5.0 Is the complaints process confidential?

Your complaint will be treated confidentially and your privacy will be protected. Only people who need to be involved to resolve your complaint will be given access to any information, documents and/or reports relating to your complaint.

6.0 Where do I go to make my complaint?

6.1 Written Complaints

Mark your envelope “Private and Confidential” and send written complaints to:

The Director
MDA
Level 2, 57 Old Cleveland Road
Stones Corner
QLD 4120

If your complaint is about the MDA Director, please address your envelope to “The President” and make sure that it is marked “Private and Confidential”

You can also fax your complaint to: (07) 3394 9333 and again, mark your complaint “Private and Confidential” and “For the attention of the Director”

Or email your complaint to: kerrinb@mdabne.org.au

In the title of the email, write “Complaint – Private and Confidential”

Please tell us what your complaint is about, anything that you have already done to try to resolve it and what you would like MDA to do to resolve your complaint. Please provide as much information as possible and include copies of any relevant documents. Keep a copy of your complaint for your own reference. Please make sure that you provide your name and contact details in case we need to contact you for additional information and so that we can let you know what we are going to do to try to resolve your complaint.

6.2 Verbal Complaints

If you want to make a verbal complaint you can do this in person or by telephone.

If you want to speak directly to the MDA Director, the MDA President or to another named member of staff to make your complaint, please telephone (07) 3394 9300 and tell our Receptionist that you want to speak to this person to make a complaint. If that person is not available to speak to you at that time, the Receptionist will take your details and ask the person to call you back and make an appointment to discuss your complaint.

If you are happy to have your complaint documented by any member of MDA staff, please telephone: (07) 3394 9300 and either make your complaint by telephone at that time or make an appointment to discuss your complaint.

All complaints that are made by telephone or in person will be documented and a copy will be given or sent to you for checking and signing. The information that you have given will then be passed to the MDA Director or President for investigation.

Complaints Form



DATE COMPLAINT RECEIVED:

COMPLAINT RECEIVED BY: _____

NAME OF COMPLAINANT	
NAME OF ADVOCATE (if applicable)	
ORGANISATION (If applicable)	
ADDRESS	
	Postcode:
PHONE NUMBER(S)	
EMAIL ADDRESS	

COMPLAINT MADE by:

- ☐ Telephone (Record details below and post a copy to the complainant for signature)
☐ In person (Record details below and give it to the complainant for signature)
☐ Letter (copy attached)
☐ Email (copy attached)

FOR USE IN THE CASE OF A COMPLAINT MADE BY TELEPHONE OR IN PERSON

Nature of Complaint:

Please tell us what happened, when and where it happened and who was involved. Give as much information as possible and enclose copies of any relevant documents. Use a separate sheet if necessary.

.....

.....

.....

Have you raised this complaint with us before?

☐

YES ☐

NO

If YES, please tell us who you spoke to, what you were told and why you are still dissatisfied.

.....

.....

.....

What would you like to see happen as a result of your complaint?

.....
.....
.....
Complainant's Signature:..... **Date:**.....

INFORMATION TO BE GIVEN TO THE COMPLAINANT:

- 1. Reassure the complainant that all complaints are treated confidentially and that they will suffer no loss of service or other unfair treatment because they have made a complaint.**
- 2. Remind the complainant that they have the right to use an advocate of their choice.**
- 3. Explain what will happen next.**
- 4. Thank the complainant for their complaint and explain that complaints are valuable in helping to maintain and improve the services of MDA.**

FOR MDA USE ONLY

COMPLAINT ID NUMBER

PASSED TO DIRECTOR/PRESIDENT FOR ASSESSMENT	DATE:	SIGNED BY DIRECTOR/PRESIDENT:
NAME OF PERSON INVESTGATING COMPLAINT		
ACKNOWLEDGMENT SENT TO COMPLAINANT	DATE:	SIGNED BY PERSON INVESTIGATING:
COMMENTS:		
ACTION TO BE TAKEN:		
UPDATE LETTER SENT TO COMPLAINANT (if applicable):	DATE:	SIGNED BY PERSON INVESTIGATING:
OUTCOME:		
OUTCOME LETTER SENT TO COMPLAINANT:	DATE:	SIGNED BY PERSON INVESTIGATING:
COMPLAINT RESOLVED? YES ☐ NO ☐	If NO, please give details of referral on to next stage of the complaints process and attached a further copy of this form to the documentation for completion during the next stage of the process.	

FOLLOW-UP OR REMEDY (e.g. policy/procedure review, staff counseling etc)		
SIGNED BY PERSON INVESTIGATING:		DATE:

Multicultural Development Association Inc.



Complaints Policy

Date Approved: 18th May 2005

Review Date: May 2006

Multicultural Development Association Inc. (MDA) recognises that feedback, both positive and negative, is essential in order to provide a quality service and to support continuous improvement in its service delivery. As a result, people that make a complaint will not suffer any loss of service, retribution, or reduction in the quality of the service they receive, and they will continue to be treated professionally and respectfully in their dealings with MDA.

MDA is committed to:

- The effective and timely resolution of complaints;
- The use of processes that are fair, transparent, accountable and accessible;
- Protecting the confidentiality and privacy of all parties involved;
- The principles of natural and social justice; and
- Integrating complaints information into the continuous quality improvement of MDA's service delivery

Complaints Procedure

MDA Code of Conduct

Conflict of Interest Policy

For the purposes of this policy and its related procedures a complaint is any expression of dissatisfaction with, or concern about, the standard of service provided by MDA or the conduct or performance of MDA staff, volunteers or Management Committee members.

This policy and corresponding procedures apply to external complaints about:

- Policies, procedures and operations of MDA;
- The conduct and/or performance of MDA staff and volunteers while they are engaged in activities as a representative of MDA;
- The conduct and/or activities of members of the MDA Management Committee while they are engaged in activities as a representative of MDA.

A complaint of this nature may be made by or on behalf of any person that has had contact with MDA.

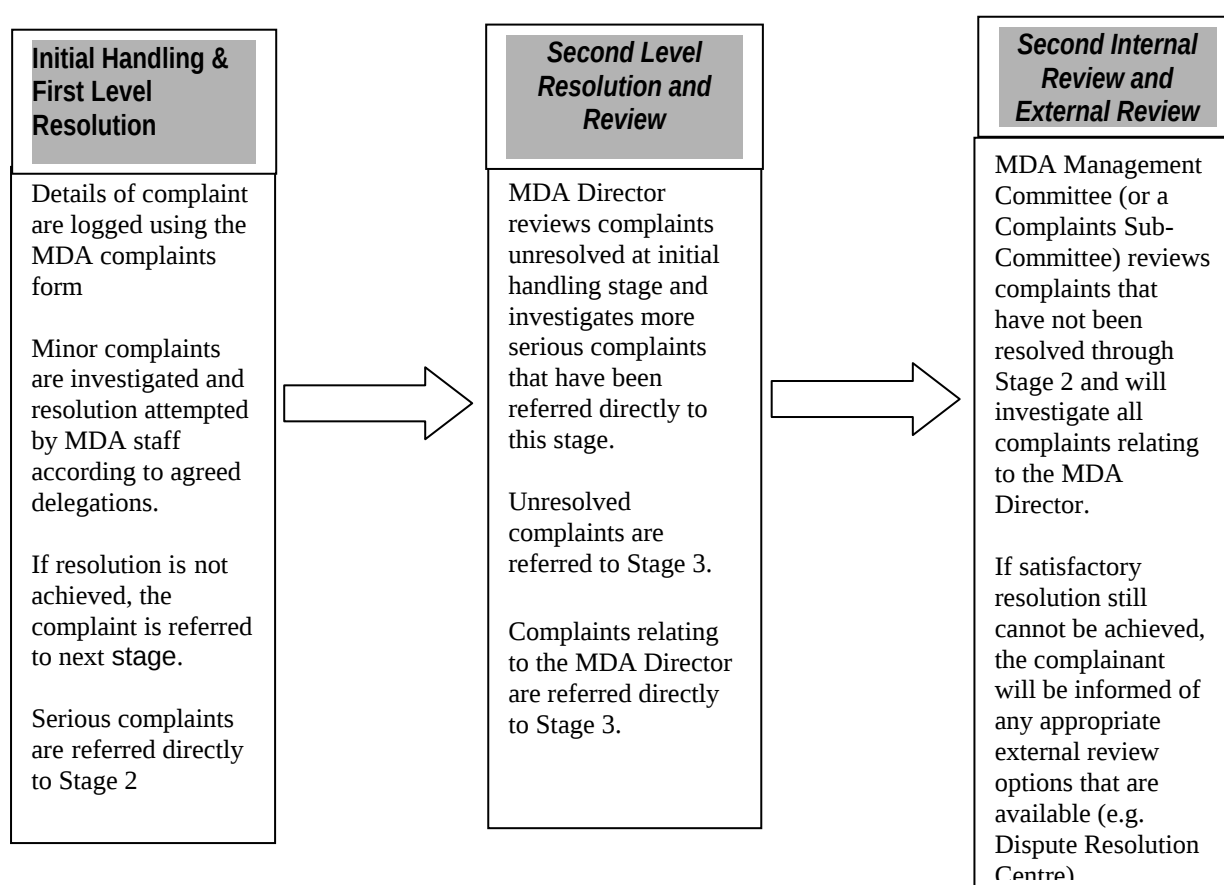
This policy and corresponding procedures do not apply to complaints regarding the conduct and/or performance of MDA staff, volunteers or Management Committee members while they are engaged in activities that are unrelated to their role as a representative of MDA, e.g. where a Management Committee member is engaged in activities as a representative of their

employer organisation, or where an MDA staff member is engaged in activities as a community member.

Internal complaints (e.g. complaints from staff) will be dealt with through the MDA Grievance Policy and Procedure.

MDA aims for the swift and satisfactory resolution of complaints. In some cases, the staff of MDA may be able to deal with complaints promptly and directly in an informal manner. However, in the event of a complaint of a serious nature, or where a minor complaint has not been dealt with satisfactorily through informal means, the steps outlined in the following model should be followed.

Details of the process involved at each stage are contained in the MDA Complaints Procedure.



Appropriate staff delegations in relation to complaints handling, as well as information on categories of complaints, e.g. minor, serious etc. are covered in the MDA Complaints Procedure.

All reports and documents relating to a complaint or an appeal will be treated confidentially and in line with the National Privacy Principles, as set out in the Privacy Amendment (Private Sector) Act 2000.

The MDA Director will keep records for the purposes of reporting to the Management Committee on the handling of complaints received and to improve the policies, procedures and operations of the organisation.

MDA will establish a Register to record non-identifying information about complaints received. Reports compiled using the Register will be presented to the Management Committee to enable its members to monitor progress in the resolution of complaints and to take appropriate action where there are wider implications for the policies, procedures and operations of the organisation.

Information will be made available to MDA clients and other agencies through:

- Including our Policy Statement in relevant brochures, leaflets and publications.
- Providing information in the MDA Reception Area (e.g. a poster).
- Including information about our complaints process in the initial information that we provide to clients, both verbally and in writing.
- Providing information on our complaints process to other agencies and organizations that we work with.

Information will be made available to MDA staff, Management Committee members and volunteers through induction packs and ongoing training and support.

The complaints process will be reviewed annually to ensure its effectiveness and its compliance with this policy. Any review process will seek input from MDA staff, Management Committee members, volunteers, clients and any other parties that may have an interest in the continuous improvement of MDA's service delivery.



Complaints Procedure

Approved: July 2005

Review Date: July 2006

1.0 Purpose

This document sets out the procedures for receiving, documenting, investigating and resolving complaints received at the Multicultural Development Association (MDA). This procedure document should be read in conjunction with the Complaints Policy.

Complaints Policy

Complaints Form

MDA Code of Conduct

Conflict of Interest Policy

3.0 Definition

A complaint is any expression of dissatisfaction with, or concern about, the standard of service provided by MDA or the conduct or performance of MDA staff, volunteers or Management Committee members.

4.0 Who can make a complaint?

A complaint can be made by or on behalf of any person that has had contact with MDA, e.g. members, clients, visitors, representatives of other organisations, representatives of funding bodies. The person who makes a complaint is called a complainant.

If a complaint is made on behalf of a person (e.g. by an advocate or other supporter) MDA requires written evidence that the complainant has given their consent for that person to make a complaint on their behalf.

Complaints made by MDA staff members or volunteers are dealt with separately under the MDA Grievance Procedure.

5.0 How a complaint can be made

Complaints can be made in person, by telephone, by email or in writing. Complaints made in person or by telephone will be documented on a complaints form and a copy will be provided to the person making the complaint (the complainant) for verification and signing.

6.0 Assistance that can be provided to complainants by MDA

Complainants have the right to be supported by an advocate of their choice. Where a complainant has no support, MDA staff members can assist people to make complaints so

long as they are staff members who are not themselves the subject of the complaint.

The types of support that MDA staff members may be able to provide include:

- Advising on how to make a complaint
- Explaining the Complaints procedure
- Assisting with documenting a complaint
- Where appropriate referring a complainant to other services that can provide appropriate advice and support

Wherever possible, MDA will also ensure that complainants have access to appropriate language and interpretation support if this is necessary in order for them to make a complaint.

7.0 Receiving and Recording Complaints

Any member of MDA staff may be responsible for receiving and recording a verbal complaint received in person or by telephone. Complaints that are received by telephone or in person must be documented on a complaints form and then passed to the Director for initial assessment.

Complaints that are received in writing must be date stamped and passed to the Director for initial assessment.

Complaints that are received by email must be forwarded to the Director for initial assessment.

If the MDA Director is the subject of any complaint received, the complaint must be forwarded to the Chair of MDA for initial assessment.

All MDA staff members must ensure that the confidentiality and privacy of all parties is maintained in respect of any complaints that they receive. Where a complainant wishes to make a complaint by telephone or in person, please ensure that your conversation cannot be overheard by others.

8.0 Investigation and internal resolution

8.1 Responsibilities

Where a complaint involves a member of MDA staff, volunteer or Management Committee member, complainants will be encouraged to try to resolve their complaint directly with person concerned.

However where this is not possible due to the nature of the complaint (e.g. sexual harassment) or where the complainant does not feel comfortable dealing directly with a person who may be the subject of their complaint, the MDA Director, will either assess and investigate the complaint herself or pass it to the relevant line manager for investigation.

In the case of a complaint involving the MDA Director or a member of the MDA Management Committee, the President of the MDA Management Committee is responsible for assessing and investigating the complaint.

8.2 Timeframes

All complaints received in writing or by email must be acknowledged by the person who is investigating the complaint within seven (7) days of receipt. Complaints that are received in person or by telephone must be documented on a complaints form and a copy of the complaints form be provided to the complainant within seven (7) working days.

MDA aims to resolve complaints within 28 days of receipt of the complaint. Where this is not possible due to the nature of the complaint, the complainant will be notified of progress, in writing, within 28 days and every 14 days thereafter until the complaint is resolved or the internal complaints process has been exhausted.

8.3 Investigation Process

The methods used and timeframes for investigation of a complaint will vary according to the type and nature of each complaint, however the following key steps in the process must be followed in every case:

- Identify issues for investigation and possible sources of information;
- Properly record relevant information obtained during any investigation, paying due regard to confidentiality and privacy issues;
- Assess information and sources impartially, including avoiding any possible conflicts of interest;
- Give people an opportunity to comment on information that may be adverse to their interests (natural justice);
- Ensure findings are soundly based and properly recorded;
- Provide adequate reasons for decisions made;
- Keep the complainant informed of progress;
- Provide written information to the complainant on the outcome of their complaint, any remedy to be offered and/or their options for review of the decision if they are not satisfied with the outcome.

8.4 Categories of Complaint

Category	Risk Level	Level	Example
Negligible	No impact or risk	Any MDA staff member, as appropriate.	An organisation has not received

			information it requested.
Minor	Resolvable at point of first contact with no ongoing implications	Any MDA staff member as appropriate.	A client has received incorrect information due to a system error.
Moderate	Issues that may require more investigation	Program Coordinator/Senior Worker or MDA Director	A client is not satisfied with the level of service they have received.
Serious	Significant issues that may cause lasting detriment	MDA Director or Management Committee	A complaint about the conduct of an MDA staff member, volunteer or Management Committee member
Extreme	Serious issues about activities or adverse events	Automatic external investigation. Management Committee to be notified immediately	Criminal activity, or activities resulting in death or serious injury etc.

9.0 Internal review when complainant is not satisfied

Complaints that have been initially handled by MDA staff members will be reviewed in the first instance by the MDA Director.

Complaints that have been handled by the MDA Director or MDA President will be reviewed by a Complaints Panel consisting of three (3) members of the MDA Management Committee. Membership of a Complaints Panel will be determined on a case-by-case basis with due regard to potential conflicts of interest. Where necessary or desirable, an independent person may be co-opted on to the Complaints Panel.

The handling of complaints by a Complaints Panel will be reviewed by a full meeting of the MDA Management Committee.

If the complainant is still not satisfied with the outcome of their complaint, they will be advised of any external review options available.

10.0 Types of remedies

Where a complaint is upheld, one or more of the following remedies may be applied:

- A written apology
- A written explanation
- Correction of incorrect or misleading records or information

- Review of policy, procedure and/or practice
- System change

11.0 External review

Depending on the type and nature of the complaint, potential sources of external review include:

The Dispute Resolution Centre

Information on the most appropriate external review options will be provided to complainants on a case-by case basis.

12.0 Recording and tracking system

The following non-identifying information will be recorded and used to track both the progress of complaints and MDA's complaints handling system:

- When the complaint was received, acknowledged and who is dealing with the complaint
- The nature of the complaint
- Actions taken to investigate the complaint
- The outcome of the complaint and at what stage in the process
- Any remedy offered
- Information provided to the complainant
- Date the complaint was resolved and/or file closed

13.0 Reporting and organisational improvement

The MDA Director will provide regular reports to Management Committee on the number and types of complaint, the outcome of complaints and any apparent trends. The report will also outline any proposals for organisational improvement based on complaints data.

[Principle 1 - Collection](#)

[Principle 2 - Use and disclosure](#)

[Principle 3 - Data quality](#)

[Principle 4 - Data security](#)

[Principle 5 - Openness](#)

[Principle 6 - Access and correction](#)

[Principle 7 - Identifiers](#)

[Principle 8 - Anonymity](#)

[Principle 9 - Transborder data flows](#)

[Principle 10 - Sensitive information](#)

The National Privacy Principles in the *Privacy Amendment (Private Sector) Act 2000*:

[PDF, Word 2](#)

1. Collection

1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.

1.2 An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.

1.3 At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of:

- (a) the identity of the organisation and how to contact it; and
- (b) the fact that he or she is able to gain access to the information; and
- (c) the purposes for which the information is collected; and
- (d) the organisations (or the types of organisations) to which the organisation usually discloses information of that kind; and
- (e) any law that requires the particular information to be collected; and
- (f) the main consequences (if any) for the individual if all or part of the information is not provided.

1.4 If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.

1.5 If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in subclause 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

2. Use and disclosure

2.1 An organisation must not use or disclose personal information about an individual for a purpose (the *secondary purpose*) other than the primary purpose of collection unless:

- (a) both of the following apply:
 - (i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;
 - (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or
- (b) the individual has consented to the use or disclosure; or
- (c) if the information is not sensitive information and the use of the information is for the secondary purpose of direct marketing:
 - (i) it is impracticable for the organisation to seek the individual's consent before that particular use; and

(ii) the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications; and

(iii) the individual has not made a request to the organisation not to receive direct marketing communications; and

(iv) in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a notice, that he or she may express a wish not to receive any further direct marketing communications; and

(v) each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organization's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically; or

(d) if the information is health information and the use or disclosure is necessary for research, or the compilation or analysis of statistics, relevant to public health or public safety:

(i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and

(ii) the use or disclosure is conducted in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph; and

(iii) in the case of disclosure the organisation reasonably believes that the recipient of the health information will not disclose the health information, or personal information derived from the health information; or

(e) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:

(i) a serious and imminent threat to an individual's life, health or safety; or

(ii) a serious threat to public health or public safety; or

(f) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or

(g) the use or disclosure is required or authorised by or under law; or

(h) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of an enforcement body:

- (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
- (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
- (iii) the protection of the public revenue;
- (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
- (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

Note 1: It is not intended to deter organisations from lawfully co-operating with agencies performing law enforcement functions in the performance of their functions.

Note 2: Subclause 2.1 does not override any existing legal obligations not to disclose personal information. Nothing in subclause 2.1 requires an organisation to disclose personal information; an organisation is always entitled not to disclose personal information in the absence of a legal obligation to disclose it.

Note 3: An organisation is also subject to the requirements of National Privacy Principle 9 if it transfers personal information to a person in a foreign country.

2.2 If an organisation uses or discloses personal information under paragraph 2.1(h), it must make a written note of the use or disclosure.

2.3 Subclause 2.1 operates in relation to personal information that an organisation that is a body corporate has collected from a related body corporate as if the organization's primary purpose of collection of the information were the primary purpose for which the related body corporate collected the information.

2.4 Despite subclause 2.1, an organisation that provides a health service to an individual may disclose health information about the individual to a person who is responsible for the individual if:

(a) the individual:

(i) is physically or legally incapable of giving consent to the disclosure;
or

(ii) physically cannot communicate consent to the disclosure; and

(b) a natural person (the *carer*) providing the health service for the organisation is satisfied that either:

(i) the disclosure is necessary to provide appropriate care or treatment of the individual; or

(ii) the disclosure is made for compassionate reasons; and

(c) the disclosure is not contrary to any wish:

(i) expressed by the individual before the individual became unable to give or communicate consent; and

(ii) of which the carer is aware, or of which the carer could reasonably be expected to be aware; and

(d) the disclosure is limited to the extent reasonable and necessary for a purpose mentioned in paragraph (b).

2.5 For the purposes of subclause 2.4, a person is *responsible* for an individual if the person is:

(a) a parent of the individual; or

(b) a child or sibling of the individual and at least 18 years old; or

(c) a spouse or de facto spouse of the individual; or

(d) a relative of the individual, at least 18 years old and a member of the individual's household; or

(e) a guardian of the individual; or

(f) exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual's health; or

(g) a person who has an intimate personal relationship with the individual; or

(h) a person nominated by the individual to be contacted in case of emergency.

2.6 In subclause 2.5:

child of an individual includes an adopted child, a step-child and a foster-child, of the individual.

parent of an individual includes a step-parent, adoptive parent and a foster-parent, of the individual.

relative of an individual means a grandparent, grandchild, uncle, aunt, nephew or niece, of the individual.

sibling of an individual includes a half-brother, half-sister, adoptive brother, adoptive sister, step-brother, step-sister, foster-brother and foster-sister, of the individual.

3. Data quality

An organisation must take reasonable steps to make sure that the personal information it collects, uses or discloses is accurate, complete and up-to-date.

4. Data security

4.1 An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.

4.2 An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose for which the information may be used or disclosed under National Privacy Principle 2.

5. Openness

5.1 An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.

5.2 On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

6. Access and correction

6.1 If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that:

(a) in the case of personal information other than health information providing access would pose a serious and imminent threat to the life or health of any individual; or

(b) in the case of health information providing access would pose a serious threat to the life or health of any individual; or

(c) providing access would have an unreasonable impact upon the privacy of other individuals; or

(d) the request for access is frivolous or vexatious; or

(e) the information relates to existing or anticipated legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery in those proceedings; or

(f) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or

(g) providing access would be unlawful; or

(h) denying access is required or authorised by or under law; or

(i) providing access would be likely to prejudice an investigation of possible unlawful activity; or

(j) providing access would be likely to prejudice:

(i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; or

(ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or

(iii) the protection of the public revenue; or

(iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; or

(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders;

by or on behalf of an enforcement body; or

(k) an enforcement body performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

6.2 However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.

Note: An organisation breaches subclause 6.1 if it relies on subclause 6.2 to give an individual an explanation for a commercially sensitive decision in circumstances where subclause 6.2 does not apply.

6.3 If the organisation is not required to provide the individual with access to the information because of one or more of paragraphs 6.1(a) to (k) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.

6.4 If an organisation charges for providing access to personal information, those charges:

(a) must not be excessive; and

(b) must not apply to lodging a request for access.

6.5 If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up-to-date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up-to-date.

6.6 If the individual and the organisation disagree about whether the information is accurate, complete and up-to-date, and the individual asks the organisation to associate with the

information a statement claiming that the information is not accurate, complete or up-to-date, the organisation must take reasonable steps to do so.

6.7 An organisation must provide reasons for denial of access or a refusal to correct personal information.

7. Identifiers

7.1 An organisation must not adopt as its own identifier of an individual an identifier of the individual that has been assigned by:

- (a) an agency; or
- (b) an agent of an agency acting in its capacity as agent; or
- (c) a contracted service provider for a Commonwealth contract acting in its capacity as contracted service provider for that contract.

7.1A However, subclause 7.1 does not apply to the adoption by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before those matters are prescribed: see subsection 100(2).

7.2 An organisation must not use or disclose an identifier assigned to an individual by an agency, or by an agent or contracted service provider mentioned in subclause 7.1, unless:

- (a) the use or disclosure is necessary for the organisation to fulfil its obligations to the agency; or
- (b) one or more of paragraphs 2.1(e) to 2.1(h) (inclusive) apply to the use or disclosure; or
- (c) the use or disclosure is by a prescribed organisation of a prescribed identifier in prescribed circumstances.

Note: There are prerequisites that must be satisfied before the matters mentioned in paragraph (c) are prescribed: see subsection 100(2).

7.3 In this clause:

identifier includes a number assigned by an organisation to an individual to identify uniquely the individual for the purposes of the organization's operations. However, an individual's name or ABN (as defined in the *A New Tax System (Australian Business Number) Act 1999*) is not an *identifier*.

8. Anonymity

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation.

9. Transborder data flows

An organisation in Australia or an external Territory may transfer personal information about an individual to someone (other than the organisation or the individual) who is in a foreign country only if:

(a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the National Privacy Principles; or

(b) the individual consents to the transfer; or

(c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of pre-contractual measures taken in response to the individual's request; or

(d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or

(e) all of the following apply:

(i) the transfer is for the benefit of the individual;

(ii) it is impracticable to obtain the consent of the individual to that transfer;

(iii) if it were practicable to obtain such consent, the individual would be likely to give it; or

(f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the National Privacy Principles.

10. Sensitive information

10.1 An organisation must not collect sensitive information about an individual unless:

(a) the individual has consented; or

(b) the collection is required by law; or

(c) the collection is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual, where the individual whom the information concerns:

(i) is physically or legally incapable of giving consent to the collection;
or

(ii) physically cannot communicate consent to the collection; or

(d) if the information is collected in the course of the activities of a non-profit organisation the following conditions are satisfied:

(i) the information relates solely to the members of the organisation or to individuals who have regular contact with it in connection with its activities;

(ii) at or before the time of collecting the information, the organisation undertakes to the individual whom the information concerns that the organisation will not disclose the information without the individual's consent; or

(e) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

10.2 Despite subclause 10.1, an organisation may collect health information about an individual if:

(a) the information is necessary to provide a health service to the individual; and

(b) the information is collected:

(i) as required by law (other than this Act); or

(ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation.

10.3 Despite subclause 10.1, an organisation may collect health information about an individual if:

(a) the collection is necessary for any of the following purposes:

(i) research relevant to public health or public safety;

(ii) the compilation or analysis of statistics relevant to public health or public safety;

(iii) the management, funding or monitoring of a health service; and

(b) that purpose cannot be served by the collection of information that does not identify the individual or from which the individual's identity cannot reasonably be ascertained; and

(c) it is impracticable for the organisation to seek the individual's consent to the collection; and

(d) the information is collected:

(i) as required by law (other than this Act); or

(ii) in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation; or

(iii) in accordance with guidelines approved by the Commissioner under section 95A for the purposes of this subparagraph.

10.4 If an organisation collects health information about an individual in accordance with subclause 10.3, the organisation must take reasonable steps to permanently de-identify the information before the organisation discloses it.

10.5 In this clause:

non-profit organisation means a non-profit organisation that has only racial, ethnic, political, religious, philosophical, professional, trade, or trade union aims.

For further information please contact:

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