

Commonwealth privacy laws & the community sector

Practical lessons for NSW NGOs
Alison Choy Flannigan, special counsel

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Introduction

- ▶ Some real life examples of recent potential privacy violations



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What privacy laws apply?

- ▶ Commonwealth Privacy Act 1988/National Privacy Principles

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What privacy laws apply?

- ▶ Cth Act
 - ▶ It is the intention of the Parliament that the Cth Act is not to affect the operation of a law of a State or of a Territory that makes provision with respect to the collection, holding, use, correction, disclosure or transfer of personal information... and is capable of operating concurrently with that Act (section 3).
 - ▶ A higher duty imposed by a State Act can operate concurrently with the Cth Act.

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What privacy laws apply?

- ▶ NPPS do not apply to acts done or practices engaged in by an organisation:
 - ▶ as a contracted service provider to the Commonwealth - section 95B - Information Sheet 14-2001 - IPPS
 - ▶ services directly to the agency
 - ▶ services to 3rd parties on behalf of an agency, where the provision of those services is in connection with the performance of the functions of the agency
 - ▶ if the organisation is a contracted service provider for a State contract (whether or not the organisation is a party to the contract) and the act/practice is done for the purposes of meeting (directly or indirectly) an obligation under the contract (section 7B(5)).

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What privacy laws apply?

- ▶ Compliance with other requirements
 - ▶ When providing services under contract to NSW public sector health service providers
 - ▶ Information Privacy Principles (IPPs) - Cth Privacy Act
 - ▶ Privacy and Personal Information Protection Act (NSW)
 - ▶ Other documents eg NSW Health Privacy Management Plan, NSW Health Information Privacy Code of Practice

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What privacy laws apply?

- ▶ Compliance with other requirements

- ▶ Health Records and Information Privacy Bill 2001 (exposure draft only)

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What privacy laws apply?

- ▶ Review your activities
- ▶ Ascertain which laws apply to you
- ▶ Adopt the highest standards

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Implementing a Privacy Policy

- ▶ Why do you need a policy?
 - ▶ NPP5

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Implementing a Privacy Policy

- ▶ What should the policy contain?

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Approved Privacy Codes

- ▶ Approved Privacy Codes
 - ▶ What are they?
 - ▶ Why adopt a code?
 - ▶ Process for approval

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Practical Lessons for NGOs

- ▶ Hypothetical - Disclosure to:
 - ▶ other care providers
 - ▶ primary purpose
 - ▶ directly related secondary purpose within "reasonable expectations" of the individual to which the information relates
 - ▶ necessary to prevent or lessen a serious and imminent threat to the life or health of any individual where individual is physically or legally unable to grant consent or physically cannot communicate consent
 - ▶ health insurance companies



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Practical Lessons for NGOs

▶ Hypothetical - Disclosure to:

- ▶ significant others/primary carers
 - ▶ primary purpose
 - ▶ directly related secondary purpose within “reasonable expectations” of the individual to which the information relates
 - ▶ necessary to prevent or lessen a serious and imminent threat to the life or health of any individual where individual is physically or legally unable to grant consent or physically cannot communicate consent

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Practical Lessons for NGOs

▶ Hypothetical - accreditation and quality assurance

- ▶ accreditation
- ▶ quality assurance
 - ▶ disclosure to
 - ▶ statutory immunity for approved QA committees eg under Health Administration Act (NSW)
- ▶ management

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- ▶ Hypothetical - Request by patient to access his/her information
 - ▶ subpoenas/non-party writs of discovery
 - ▶ requests for medical records
 - ▶ imminent threat to life or health of individual
 - ▶ unreasonable impact on privacy of other individuals
 - ▶ legal professional privilege

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Practical Lessons for NGOs

- ▶ Hypothetical - Request by other person to access information
 - ▶ police
 - ▶ reporting requirements, eg Health Department, notifiable diseases, child abuse
 - ▶ family members
 - ▶ pharmaceutical companies

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Practical Lessons for NGOs

- ▶ Hypothetical - Research
 - ▶ non-identifying information



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Practical Lessons for NGOs

- ▶ Hypothetical - Research
 - ▶ identifying information
 - ▶ research relevant to public health or public safety
 - ▶ the compilation or analysis of statistics relevant to public health or public safety
 - ▶ the management, funding or monitoring of a health service

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▶ Hypothetical - Research

- ▶ identifying information
 - ▶ purpose cannot be served by non-identifying information
 - ▶ impracticable to obtain consent to collection
 - ▶ information is collected
 - ▶ as required by law
 - ▶ in accordance with rules established by competent health or medical bodies that deal with obligations of professional confidentiality which bind the organisation
 - ▶ in accordance with the section 95A guidelines

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- ▶ Using information for fundraising purposes

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Practical Lessons for NGOs

▶ 10 Tips

- ▶ know your obligations
- ▶ ensure that your staff and contractors including independent contractors are aware of privacy obligations
- ▶ audit your current processes - what information you collect, how you collect, use and disclose it
- ▶ establish policies and procedures
- ▶ training eg. SALT Privacy
- ▶ review your consent forms
- ▶ disclose to patients what information is collected and what it is used for
- ▶ be aware of dangers of third party access, including police
- ▶ reporting and audit
- ▶ maintain records of compliance

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