

Information Sheet

Disclosure of Patient Information and Consent

24 November 2016

You should seek independent legal advice if you are in doubt or feel uncertain of your legal obligations as a health professional in this space.

As health service providers employed in the private sector, the release by audiologists of any personal information related to a client is governed by the Australian Privacy Act (1988). State and territory public hospitals and health services on the other hand are not covered by the Privacy Act (1988), so audiologists employed in the public sector will need to seek out and find the respective state or territory legislationⁱ.

Generally speaking, the release or disclosure of health informationⁱⁱ is not permissible without consent. There are some limited exemptions to this requirement, but the main one for a health service provider is that disclosure without consent is only permitted when that *'disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety'*ⁱⁱⁱ.

In relation to consent, in the case of children and young people, *'An individual aged under 15 is presumed not to have capacity to consent'*^{iv}. However, this needs to be considered alongside the general principle that *'an individual under the age of 18 has capacity to consent when they have sufficient understanding and maturity to understand what is being proposed'*.

Consent requires four key elements as follows:

- the individual is adequately informed before giving consent;
- the individual gives consent voluntarily;
- the consent is current and specific; and
- the individual has the capacity to understand and communicate their consent^{vi}.

Consent must be given orally or in writing. This could include:

- a handwritten signature;
- an oral statement; or
- use of an electronic medium or voice message to signify agreement^{vii}.

However, to support this, it is recommended that procedures and systems are put into place to obtain and record consent, to resolve any doubt about whether consent has been or was given^{viii}.

Issues may present themselves around capacity to consent and it is acknowledged that the following factors could affect an individual's capacity to provide consent^{ix}:

- age;
- physical or mental disability;
- temporary incapacity, for example during a psychotic episode, a temporary psychiatric illness, or because the individual is unconscious, in severe distress or suffering dementia; or
- limited understanding of English.

However even under such situations, it is recommended that, as a health service provider, you should consider and seek out who can act on behalf of the individual i.e. their guardian, enduring power of attorney, a person recognised by other relevant laws or a person nominated in writing by the individual while he/she was capable of giving consent^x.

ⁱ Office of the Australian Information Commissioner, Australian Government, Other privacy jurisdictions, www.oaic.gov.au/privacy-law/other-privacy-jurisdictions, last accessed 24 Nov 2016

ⁱⁱ Health Information (definition) – Australian Privacy Act (1988), Section B.75, key concepts

- Information about an individual's physical or mental health,
- Notes of an individual's symptoms or diagnosis and the treatment given,
- Specialist reports and test results,
- Appointment and billing details,
- Prescriptions and other pharmaceutical purchases,
- Dental records,
- Records held by a fitness club about an individual,
- Information about an individual's suitability for a job, if it reveals information about the individual's health,
- An individual's healthcare identifier when it is collected to provide a health service,
- Any other personal information (such as information about an individual's date of birth, gender, race, sexuality, religion), collected for the purpose of providing a health service.

ⁱⁱⁱ Privacy Act (1988), Section 16 A (1)

^{iv} Privacy Act (1988), Section B.58, key concepts

^v Privacy Act (1988), Section B.57, key concepts

^{vi} Privacy Act (1988), Section B.35, key concepts

^{vii} Privacy Act (1988), Section B.36, key concepts

^{viii} Privacy Act (1988), Section B.42, key concepts

^{ix} Privacy Act (1988), Section B.53, key concepts

^x Privacy Act (1988), Section B.54, key concepts

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