

Health Records and Information Privacy Code of Practice for the Automatic Referral Pathway

1. Overview

- 1.1 This Code is made under Part 5 of the *Health Records and Information Privacy Act 2002* ('HRIP Act') to enable the operation of a domestic violence ('DV') intervention to be known as the Automatic Referral Pathway to the Men's Telephone Counselling and Referral Service ('the Program').
- 1.2 The objectives of the Program are to:
 - support a consistent and integrated approach to managing threats to the safety of victims of DV;
 - assist male persons of interest ('POI')s to change their abusive behaviours;
 - offer male POIs referrals to other support services
- 1.3 The Program is delivered by participating agencies and a non-government contracted service provider 'CSP' for the purpose of providing support and advice to assist the POI change to their abusive behaviour and to offer the POI a referral to other support services. Participating agencies are defined and listed at paragraph [3.1]. CSP is also defined at paragraph [3.1].
- 1.4 Department of Family and Community Services (represented by Women NSW 'WNSW') is the lead agency responsible for establishing and delivering the Program. A CSP contracted by FACS will be the central point of contact for POIs. FACS will remain responsible for the overall activities and outcomes of the Program.
- 1.5 The Men's Telephone Counselling and Referral Service (MTCRS) is a men's family violence telephone counselling, information and referral service. The Automatic Referral Pathway to the MTCRS refers to a proposed automated pathway of information from the NSW Police Force 'NSWPF' to Victims Services. The information can then be accessed by a CSP, delivering the MTCRS, for the purpose of providing information and immediate counselling to a POI involved in a DV incident attended by Police. It also includes offering referrals to other counselling and intervention services to a POI. A POI in this context is defined as a man, 18 years of age and over, who is a respondent to an application for an Apprehended Domestic Violence Order (ADVO) or charges laid following a DV incident.
- 1.6 The referral pathway would take place without any requirement to seek the consent of DV POIs, victims or third parties. The principal purpose of this Code is to permit this to occur, in cases where there is otherwise no legal basis for handling personal information in this way (such as an exemption under the PPIP Act, or where the information is shared in accordance with Part 13A of the *Crimes (Domestic and*

Personal Violence) Act 2007. Express consent will be obtained for any subsequent handling of personal information by the CSP, following the initial referral from NSWPF through Victims Services to the CSP.

- 1.7 The MTCRS is the central point of contact in NSW for assisting men to take responsibility for their violent behaviour. It offers a consistent approach to all POIs that are respondents to an ADVO application or charges laid following a DV incident. The MTCRS operates independently from Police, and can support POIs to participate in counselling/behaviour change programs. This approach requires automatic referral of POIs from Police to the MTCRS - without first obtaining POI consent to share their information.
- 1.8 Modification of the HRIP Act to allow the effective operation of the Program would be in the public interest. The MTCRS is designed to assist in the reduction of repeat DV offending by providing counselling and support to enable the behaviour change of POIs.
- 1.9 A corresponding Code applies to the Program in respect of the *Privacy and Personal Information Protection Act 1988* (PPIP Act).

2. Application

Information flows

- 2.1 Police officers attending a DV incident normally record specific details in their notebooks using the Domestic Violence Safety Assessment Tool ('DVSAT'), alongside other general details of the incident. This will typically include health information, such as alcohol/substance abuse and mental health information. On returning to a police station, officers enter these details into the police computer system (WebCOPS) within 24 hours, and where they have charged the POI or issued them with an Apprehended Domestic Violence Order (ADVO), they will additionally complete a Fact Sheet detailing the incident and any charges laid, and complete the application for an ADVO.
- 2.2 Under the proposed Program, WebCOPS will flag DV POIs to be referred automatically, based on fixed criteria (i.e. that they are an adult male and have an application for an ADVO made against them or have been charged following a DV incident). At this point, relevant information set out at paragraph [2.4] about the POI is extracted by WebCOPS and sent to the Central Referral Point (CRP) (administered by Victims Services). The CRP receives this information and makes agreed elements, described in paragraph [2.4], accessible to the CSP. The CSP is then able to access information, described in paragraph [2.4] from the CRP, for the purposes described in paragraph [2.5].
- 2.3 In summary:

- NSWPF - will automatically and electronically collect, use and disclose a defined set of personal information relating to POIs and victims, set out at paragraph [2.4] from WebCOPS without consent to the CSP via the CRP. This may include health information.
- CRP – collects, uses and discloses a defined set of information set out at paragraph [2.4] to the CSP without consent, which may include health information.
- CSP – uses CRP information without consent for the purposes of the Program.
- CSP - any further collection from the POI, use or disclosure of health information , such as a further referral to a non-government organisation ('NGO'), will be with the informed consent of the individual.

Health Information

2.4 This Code applies to the following information, to the extent that it constitutes "health information", as defined by s 6 of the HRIP Act:

Incidental health information, collected by Police about the POI and victim that may be detailed in the NSWPF Fact Sheet about a DV incident, and provided to the CSP:

- (a) Alcohol abuse
- (b) Drug abuse
- (c) Mental health issues; including whether a mental health caseworker is providing support to the subject individual
- (d) Psychological issues; including homelessness, unemployment, separation
- (e) Disability information; including speech and hearing
- (f) Health conditions
- (g) Presence of children
- (h) Copy of relevant ADVO or ADVO application
- (i) Details of previous DV incidents including any charges laid
- (j) Any other health information about the POI or victim that may be included in the NSWPF Fact Sheet about the DV incident

2.5 The intention of this Code is to permit the collection, use and disclosure of health information for the following purposes:

- (a) To identify POIs so that their eligibility for the MTCRS can be determined

- (b) To assess the suitability of a POI for the MTCRS
- (c) To refer POIs to the MTCRS without consent from the POI
- (d) To enable participating agencies or CSPs to contact POIs for the purpose of offering participation in and delivering the MTCRS, and obtaining consent for further engagement

3. Interpretation

3.1 In this Code:

"ADVO" means an apprehended domestic violence order under Part 4 of the *Crimes (Domestic and Personal Violence) Act 2007*.

"Automatic Referral Pathway to the Men's Telephone Counselling and Referral Service" means the automated referral pathway between NSWPF, Victims Services and the CSP for the purpose of providing counselling, interventions and referrals to other intervention services to a POI in DV incidents attended by Police.

"CRP" – Department of Justice, Victim Services' Central Referral Point system

"CSP" – Contracted service provider to FACS for the MTCRS

"The Department" means the Department of Family and Community Services (FACS).

"DV incident" means a domestic violence offence under the *Crimes (Domestic and Personal Violence) Act 2007* or a threat to the life, health or safety, or an act or alleged act of personal violence committed by a POI against a victim, which may or may not result in a police or a judicial response.

"DV threat" means a threat to the life, health or safety of a person that occurs because of the commission or possible commission of a domestic violence offence.

"domestic violence offence" has the same meaning as it does under s 11 of the *Crimes (Domestic and Personal Violence) Act 2007*.

"DVSAT" means the Domestic Violence Safety Assessment Tool, a common risk assessment tool to identify the level of threat to victims of domestic violence.

"Health information" has the same meaning as in s 6 of the HRIP Act.

"HRIP Act" means the *Health Records and Information Privacy Act 2002*.

"MRS" means the Men's Referral Service (consent-based trial program).

"MTCRS" means the Men's Telephone Counselling and Referral Service.

"NGO" means a non-government organisation, including a not for profit organisation and a private sector organisation.

"NSWPF" means the NSW Police Force.

"participating agency" means a public sector agency (as defined in the PPIP Act) that is directly involved in the delivery of the Program, including FACS, the Department of Justice, and NSWPF, that collects, uses or discloses health information for one or more of the purposes set out in this Code.

"POI" means an adult male person of interest, which includes a person who:

- a) is reasonably believed to be the cause of a DV threat;
- b) has been charged with or convicted of a domestic violence offence;
- c) has had an ADVO sought or made against them; or
- d) is an "associated respondent" or "threatening person" under Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007*.

For the purposes of the Code, the term POI includes alleged perpetrators.

"personal information" has the same meaning as in s 5 of the HRIP Act.

"PPIP Act" means the *Privacy and Personal Information Protection Act 1998*.

"the Program" means the Automatic Referral Pathway to the Men's Telephone Counselling and Referral Service.

"third party" includes a person other than a POI who is a person involved in a DV incident and/or subsequent legal proceedings, a child or other family member, friend, or professional (including an agency, any support service or individual working in a professional capacity with a victim or POI).

"victim" includes a person who:

- a) is reasonably believed to be the subject of a DV threat;
- b) is the victim or the alleged victim of a domestic violence offence;
- c) is a "protected person" under the *Crimes (Domestic and Personal Violence) Act 2007*; or
- d) is a "primary person" or "threatened person" and the particular POI is the "associated person" or "threatening person" under Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007*.

"Victims Services" means the 'Victims Services' agency of the Department of Justice.

4. Modification of the Health Privacy Principles

4.1 The application of the Health Privacy Principles (HPP's) under Schedule 1 of the HRIP Act is modified to the extent described below.

HPP 1

4.2 There is no intention to depart from HPP1. For the purposes of HPP1, the collection by the Department or a CSP of health information is taken to be for a lawful purpose

that is related to a function or activity of that agency if the collection of that health information is:

- a) for the purposes of the Program; and
- b) is reasonably necessary for those purposes.

HPP 2

- 4.3 There is no intention to depart from HPP2.

HPP 3

- 4.4 Notwithstanding HPP3, a participating agency or CSP may collect health information from another participating agency or CSP about a POI, victim or third party, without the person's consent, where reasonably necessary for one or more of the purposes specified in paragraph [2.5].

HPP 4

- 4.5 A participating agency or a CSP is taken to have complied with the requirements of HPP4 in respect of the collection of health information when a participating agency or CSP informs a POI that he has been referred to the MTCRS.
- 4.6 A participating agency or CSP need not comply with HPP4 when collecting a victim or third party's health information for the purposes described in paragraph [2.5].

HPP 5

- 4.7 There is no intention to depart from HPP 5.

HPP 6

- 4.8 There is no intention to depart from HPP 6.

HPP 7

- 4.9 There is no intention to depart from HPP 7.

HPP 8

- 4.10 There is no intention to depart from HPP 8.

HPP 9

- 4.11 For the purposes of HPP 9:

- (a) health information about a POI, victim or third party used by a participating agency or CSP in connection with the MTCRS is, having regard to the purposes for which the information is proposed to be used, taken to be relevant, accurate, up to date, complete and not misleading; and
- (b) the taking of "such steps as are reasonable in the circumstances" in relation to health information about a victim or third party does not require the participating agency or CSP to consult with or make inquiries of the victim or third party.

HPP 10

- 4.12 There is no intention to depart from HPP 10.

HPP 11

- 4.13 Notwithstanding HPP11, a participating agency or a CSP may disclose health information specified in paragraph [2.4] about a POI, victim or third party if the disclosure is reasonably necessary for one or more of the following purposes:

- (a) to a participating agency or CSP for the purposes of referral or conduct of the Program or MTCRS ;
- (b) to another participating agency or CSP where the disclosure is reasonably necessary for one or more of the purposes specified in paragraph [2.5];
- (c) to a participating agency, person or other body where there are reasonable grounds to believe that the disclosure is necessary to prevent or lessen a threat to the life, health or safety of any person or to public health or public safety;
- (d) to evaluate the Program and complete quality assurance assessments of participating agencies and CSP.

HPP 12

- 4.14 There is no intention to depart from HPP12.

HPP 13

- 4.15 There is no intention to depart from HPP13.

HPP 14

- 4.16 HPP 14 is not departed from. For clarity, in the event that FACS contracts, for the purposes of the Program, with a CSP who is in a jurisdiction outside of NSW, FACS will be considered to have taken reasonable steps to ensure that CSP's compliance with the HPPs if:

- (a) there is a contract in place with the service provider; and
- (b) that contract includes conditions that the CSP be bound by the HPPs as modified by this code.

HPP 15

- 4.17 There is no intention to depart from HPP15.

5. Privacy procedures or protocols

- 5.1 The FACS Secretary or a delegate of the Secretary may from time to time approve of privacy procedures or protocols for the MTCRS, consistent with the Code. Privacy procedures or protocols for MTCRS are in force where it has been approved by the Secretary or their respective delegates, and has been published on the Department's website.

Application of the Code

- 5.2 This Code does not affect the operation of any exemption provided under the HRIP Act.

Review

- 5.3 This Code will be reviewed 3 years from the date it is gazetted.

A large, stylized handwritten signature in black ink, appearing to read 'BRAD HAZZARD'.

Brad Hazzard MP
Minister for Health