



<b>TITLE</b>	Privacy and Consent	<b>CATEGORY</b>	Safety and Quality
<b>AUTHORITY</b>	Chief Executive Officer	<b>APPLIES TO</b>	Whole of organisation
<b>DOCUMENT OWNER</b>	Manager, Quality Customer Experience	<b>LEVEL</b>	Organisation
<b>APPROVAL DATE</b>	24 June 2020	<b>ISSUE STATUS</b>	Issued
<b>NEXT REVIEW DATE</b>	24 June 2023	<b>POLICY REVIEW</b>	Three yearly

#### **RATIONALE OR PURPOSE**

This policy ensures that Merri Health (Merri) protects and handles personal information in accordance with relevant legislation and disposal guidelines. Merri acknowledges an individual's right to privacy while recognising that personal information is required to be collected, maintained and administered for the purposes of providing a safe working environment and a high standard of care. Maintaining confidentiality is an essential part of the policy. All Merri employees have a legal duty to respect client rights to privacy and confidentiality regarding their personal and health information, and how it should be used.

#### **POLICY STATEMENT**

Merri is committed to full compliance with its obligations under privacy legislation including the 13 Australian Privacy Principles stipulated in the Privacy Act 1988 (Cth) as well as the Health Records Act 2001 (Vic).

Merri provides all individuals with access to information regarding the privacy of their personal information. For clients, this information is provided at or by their first visit and wherever possible, this information will be provided to them in the relevant language. Where appropriate, Merri will also periodically remind individuals of their rights and responsibilities regarding privacy and access to information.

Individuals have the right to request access to their personal records. Requests will be processed in conjunction with the guidelines stipulated in the Health Records Act 2001 (Vic).

All relevant Merri programs and services are required to gain and document an individual's consent prior to sharing personal information within and external to Merri, and prior to the commencement of service. All adults are assumed to have the capacity to consent unless otherwise proven. Personal information may be provided to other agencies, services or health providers if the individual provides consent (written or verbal) that is voluntary and informed. Personal information may also be disclosed in connection with the performance of a duty or the exercise of a power or function in accordance with relevant legislation (such as an emergency or disaster).

Employees must not, without lawful authority, destroy or damage any personal records required to be kept in accordance with the relevant legislation or regulations. Personal information will be retained and disposed of in accordance with appropriate retention and disposal guidelines.

#### **PROCEDURES**

##### **Collection of Personal Information**

The following 13 Australian Privacy Principles (APP) stipulated in the Privacy Act 1988 (Cth) underpin the approach used by Merri when dealing with personal information:

- APP 1 - Open and transparent management of personal information.  
Merri collects and holds information in order to provide a safe working environment, high quality care to clients and to meet obligations contained in funding and service agreements. Personal information that is



collected may include an individual's name, date of birth, contact details, medical records and for clients case notes from each appointment. Personal information may be used for quality improvement and accreditation purposes.

Personal information is only ever released if required by law or requested by an individual in relation to their own personal file. Complaints about perceived or suspected breaches of privacy will be dealt with according to our Feedback, Complaints & Open Disclosure Policy and Procedure.

We welcome all feedback and complaints and respond as soon as possible. Complaints may be submitted by speaking to an employee, filling in a form, via our website or by calling the Complaints Officer on (03) 9389 2234.

All complaints are thoroughly investigated by the relevant team leader or manager and information about the outcome of the investigation is provided to the complainant. It is highly unlikely that Merri would disclose personal information to overseas recipients. This would only occur if required by law or if a request by an individual was granted in relation to their own file.

In the event of a suspected/actual data breach the notifiable Data Breaches Act 2017 is to be followed. Data Breaches are identified per the act. They notifiable Data Breaches include:

- unauthorized access to information,
- unauthorized disclosure of information or
- a loss of information.

Remedial action that prevents the likelihood of serious harm will occur in the first instance. In circumstances where Merri is unable to prevent the likelihood of serious harm or cannot prove that likely harm has not occurred and individual(s) affected and the Australian Information Commissioner are notified. "Serious Harm" can be psychological, emotional, physical, reputational or other forms of harm.

- APP 2 - Anonymity and pseudonymity.

Individuals will have the option of not identifying themselves or using a pseudonym when dealing with the service where possible and lawful.

- APP 3 - Collection of solicited personal information.

Merri will not collect personal information (other than sensitive information) unless the information is necessary for employment or service provision. Sensitive information, such as the individuals' racial or ethnic origin, sexual preferences and health information must not be collected unless the individual consents and the information is reasonably necessary.

- APP 4 - Dealing with unsolicited personal information.

If Merri receives information that was not solicited and is not necessary for employment, provision of the service and/or to meet funding obligations, it will be destroyed as soon as practicable or de-identified.

- APP 5 - Notification of the collection of personal information.

Clients will be provided with an information sheet, which includes our privacy statement. Employees confirm the client has received and has understood this information during their first appointment or session with the service and this is recorded in the client's file. Employees are provided with access to their rights and responsibilities within this Procedure in conjunction with their individual contract of employment.

- APP 6 - Use or disclosure of personal information.

Information is only used or disclosed in order to provide a safe working environment, a health service, meet legal obligations or for quality improvement purposes. If information is to be used for a different purpose, this would normally constitute a secondary purpose and consent would be obtained.

Personal information will only be provided to a third party if consent has been given and documented in the individual's file, or if required by law. Personal information of a client may be emailed if the client is de-identified or the email is encrypted. When client data is sent via facsimile, it includes a Merri template cover letter.

The use or disclosure of information in special circumstances must be handled in consultation with the relevant General Manager and the Quality & Risk Coordinator to ensure that appropriate criteria are



considered and that necessary documentation is kept. Special circumstances include requests from a locating body (such as the Police) to locate a person reported as missing and disclosures to appropriate entities during emergencies and disasters.

- APP 7 - Direct Marketing.

Personal information will not be disclosed for the purpose of direct marketing, that is, to promote Merri services.

- APP 8 - Cross-border disclosure of personal information.

Information may only be disclosed overseas where the individual has consented or Merri believes that the recipient of the information is subject to law or a court order.

- APP 9 - Adoption, use or disclosure of government related identifiers.

Merri does not adopt, use or disclose a government related identifier unless reasonably necessary to verify the identity of the individual or if required by law or to meet obligations contained in funding and service agreements.

- APP 10 - Quality of personal information.

All reasonable steps are taken to ensure that information is complete, current and accurate. Client information that is sent or received via email is included in the client file (in MERI this occurs under 'documents' rather than 'progress notes' as for other client databases).

- APP 11 - Security of personal information.

Merri takes reasonable steps to ensure that information is protected from misuse, loss and unauthorised access. Where possible, this information is kept securely in a password protected electronic database and access is determined by the security structure, which is governed by the Executive Leadership Team and administered by the information services team. This information is collected when an individual makes first contact with the organisation. All clients are registered in the relevant database if they use a direct service or participate in group activities. All personal information in hard copy papers are secured within the hard file. Hard copy files are always stored in a secure place and kept in locked cabinets when not in use.

Where personal information is no longer required by Merri, or where required by law, Merri will securely destroy or de-identify information in accordance with legal requirements for retention and disposal. See Retention and Disposal.

- APP 12 - Access to personal information.

Clients may request access or correct their personal file by providing a written request to the Manager, Quality Customer Experience. The Access to Client Information Form provides the phone number and address of the Quality, Customer Experience Manager and requires clients to provide relevant information so that their request can be processed. Employees may make the same written request to access their personal file but through the HR Manager. All requests for access are processed in conjunction with privacy legislation as soon as practicable, within 45 days.

If a third party requests client information via phone, Merri staff to request that the person / agency to send an email, Access to client Information form or facsimile to [quality@merrihealth.org.au](mailto:quality@merrihealth.org.au) to verify who they are, what information they are seeking and which company/agency they work for eg Victorian Police or Child Protection Officer.

Merri may refuse access to the file in full or in part. Merri seeks legal advice before refusing access to any information and provides written reasons. The law requires that information is not provided if Merri believes that giving access would:

- Pose a serious threat to the life, health or safety of an individual, or to public health or public safety, or
- Have an unreasonable impact on the privacy of other individuals.

If personal information is sort through a subpoena

A subpoena is a document issued by a Court ordering either:

- a) The production of records; and/or



b) The attendance of the named party at Court to give evidence.

When the subpoena is ordering the production of records, it is to be directed to the Quality Department, in person or by post. However, when the subpoena is ordering attendance in court it must be served "personally". This means that the subpoena must be personally handed to the person named in the subpoena.

It is recommended that any employee who is served with a subpoena contacts the Quality Department, who will be able to provide details on how to respond to the subpoena (e.g. circumstances when you may object to a subpoena and charging for attending court in response to a subpoena). Line managers and the Quality & Risk Coordinator should make sure any employee attending court is appropriately supported. The CEO must be notified of any subpoena request.

- APP 13 - Correction of personal information.

Individuals may request that their file be corrected by providing a written request to the Quality & Risk Coordinator (for client files) and the HR Manager (for Employee files). Correction may be permitted if the information contained in the file is inaccurate, out-of-date, incomplete, irrelevant and misleading. All requests for correction are processed in conjunction with privacy legislation as soon as practicable.

## **Use and collection of personal Information**

### **Progress Notes**

The following guidelines must be used when completing file notes:

- Service providers should be aware that clients are entitled to make a request to view their file at any time and that appropriate processes need to be followed.
- Progress notes should provide a defensible position for employees and for Merri in case of any legal action.
- Case notes must demonstrate adherence to the law of negligence and the inherent duty of care.
- Once a progress note is finalized in the applicable client information management system it should not be deleted from the client's record (even if it is incorrect).
- If a client requests an amendment to their progress notes, the original note may be 'revoked' and the amendment made.

### **Client Record Content**

- All client records should provide a legible and accurate record of services required and services provided and any proposed action following that service.
- A progress note should be completed for each direct service contact, and for group contacts as noted above.
- It is assumed that file notes will be made on the day of client contact or other recordable activity occurs. It is acceptable to record file notes up to 24 hours after client contact when it is not possible to record on the day of contact. Progress notes on Titanium (Dental Only) must be made during treatment or immediately after where possible.
- Progress notes should be factual. They should provide a substantiated assessment of the transaction and substantiated recommendations for further action.
- Describe what was said or what was observed. Avoid phrases that assume what the client thinks or feels. Use statements such as ... "the client appears to", "the client stated ...."
- Specific discussion of a case in supervision sessions or case conference should be recorded in a case note.
- Any legal transactions pertaining to a case should be recorded as a case note.
- Employees are not to keep their own separate file notes. If notes are taken about a client, relevant parts must be added to the client's file and then the notes are to be securely destroyed (e.g. shredded or deleted) as soon as possible, in conjunction with relevant privacy principles and legislation
- Note all correspondence regarding the client: including dates of faxes sent, letters received and sent.
- Each service unit is responsible for developing procedures for progress notes consistent with these



policies and best practice requirements for the relevant professions.

Appendix 1 outlines the SOAP method of client notes described by Victorian Healthcare Association (VHA).

### **Retention and Disposal**

Client information held by Merri is required to be retained and disposed of in accordance with the Public Record Office Victoria Authority, PROS 11/06: Retention and Disposal Authority for Patient Information Records and the PROS 08/13 Retention & Disposal Authority for Records of the Disability Services Function (please refer for specific information). The disposal schedules prescribe the minimum temporary and permanent retention classes (i.e. archival status) for all client records created by the organisation (electronic and hard copy).

Listed below is a summary only of the main categories of client information held by Merri:

- Successful applications for client disability services. Includes the application and records of the assessment. Records may be destroyed 50 years after death of client
- Unsuccessful applications for client disability services. Records may be destroyed 7 years after date of rejection or conclusion of appeal.
- The summary records relating to the entire case history of a disability services client. The summary includes the client name, date of birth, gender, client identification number, date of referral, programs participated in, date of death or last contact (if client transfers to another state) and referral contact details. Records may not be destroyed – to be retained permanently as state archives.
- Case records relating to the assessment, planning and monitoring of disability services client needs and their access to non-intervention services. Records may be destroyed 7 years after death of client.
- Records documenting treatment and care including consent of non-admitted patients of out-patient and sub-acute ambulatory care services where treatment did not include a blood transfusion or treatment with blood products. Records may be destroyed 12 years after last attendance or access provided they have reached 30 years of age.
- Records documenting treatment and care including consent under the Mental Health Act for non-admitted outpatient, ambulatory, and community based patients. Records may be destroyed 25 years after last attendance or access on behalf of patient provided patient has reached 43 years of age.
- Records documenting treatment and care of non-admitted patients receiving dental services. Includes impressions and casts of patient dental structure. Records may be destroyed 12 years after last attendance or access provided they have reached 30 years of age.
- Records documenting results from a diagnostic procedure. May be destroyed 5 years after creation.

The destruction of ANY records must be done securely (e.g. shredding, burning or pulping) and MUST be done in accordance with agreed Merri practices for disposal of information. For enquires about the retention or destruction of records, contact your manager, facilities or the Quality & Risk Coordinator.

### **Receipt of client correspondence from other providers**

Correspondence that is provided to Merri from other service providers, in relation to the care of shared clients, should be received via normal methods of transport or delivery. Merri employees accompanying clients to appointments should not be used as a method of transporting client correspondence back to Merri.

### **Procedure for consent to share client information within Merri**

When a client has initial contact with Merri in relation to a service that would result in the client being registered within a Merri client management system or client file then consent to share information within Merri, with other Merri services and teams should be obtained. The nature and implications of sharing information across Merri should be explained to the client. When consent is obtained this should be recorded at the person/client level in the relevant file or management system.

### **Client Consent**

#### **Informed client consent for service and treatment**

Each service or program within Merri should obtain consent from the client for that service or program. The steps



listed below should be followed when obtaining consent for service from a client.

### 1. Provide Information and Discuss Options

Prior to providing information on intervention options there is an expectation that there has been a discussion of the client's goals. Employees are required to give a clear explanation regarding intervention options before a client can make a decision. The information provided should include:

- The nature of the condition
- Proposed intervention and
- Benefits and how likely those benefits are
- Disclosure of any likely material risk.
- A risk is material if:
  - A reasonable person if warned of the risk would attach significance to the risk
  - A practitioner should be aware that the patient/consumer if warned of the risk would attach significance to it
- Who will be involved?
- Other intervention options including the no intervention option
- Time
- Costs

To ensure a client understands the information a service provider should:

- Use language the client understands
- Allow the client to ask questions
- Repeat information when necessary
- Give the client time to make a decision
- Use a qualified interpreter when needed
- If you are unsure, the teach-back method should be used to confirm that you have explained to the client what they need to know in a manner that the client understands

### 2. Determine Capacity for Informed Consent

All clients (over 18) are assumed to have the capacity to consent unless otherwise proven. Where any doubt exists about a client's capacity for informed consent, the health professional or an appropriate colleague should assess the capacity of the person to take the decision in question, with the assistance of other workers where needed. Assessing capacity may involve investigating a client's ability to:

- Understand and Retain Information: Explore the client's ability to explain their presenting problem/issue
- Analyse Information and Decide: Explore whether the client is able to compare the options available and the risks of those options.

This assessment of capacity to consent should be recorded in the client's file. If a client is deemed incapable of consent then a person responsible must be found to provide substitute consent. When an adult client does not have the capacity to consent, Merri will follow the process for substitute consent in the case of medical treatment under the Guardianship and Administration Act 1986 (Vic). This act provides that a 'person responsible' may consent to medical treatment for an adult who is unable to consent to the treatment.

### 3. Record Evidence of Informed Consent

When consent for service is obtained this should be recorded at the case level within the Merri client file or management system. Authorisation by the client to have an agreed service may take a variety of forms: expressed, implied, verbal, nonverbal or written.

Documentation of consent is evidence that the client has agreed to the intervention but does not prove the consent was informed or valid. Additional evidence is required to demonstrate that the consent was informed and can be a summary of the information provided to the client or by a form indicating clearly the information that was given to the client on this occasion.



#### 4. Duration of Consent

The process of informed consent should occur as close as possible to the clients receiving the service or intervention proposed. Consent remains valid until it is withdrawn by the client or if there is a change in the client circumstances. It is suggested that the validity of the consent be affirmed with the client at a new episode of care. If there have been any significant changes in health status then a new consent must be sought to reflect any changes in material risk.

A client may withdraw their consent at any stage before, or during the course of the intervention.

#### **Procedure for consent to share client information with external agencies, services or health providers**

each service or program within Merri should obtain consent from clients prior to sharing information with external agencies, services or health providers. Information may be shared with external providers as part of referral, care planning, care coordination or liaising with the client's GP. Consent should also be obtained from the client prior to contacting external providers to obtain further information about the client. Consent to share information with external providers should be documented at the program or case level in the Merri client file or management system and should detail the specific external providers with which the client has agreed to share information. There is a SCTT Consumer Consent to Share Information form that can be used if programs want to obtain written consent.

Merri may share applicable identifiable data, without prior consent, with the Chief Data Officer and other government departments in accordance with and subject to the Data Sharing Act.

#### **Consent for minors (applicable to service users)**

In general, consent for service given to a minor must be given by a person with parental responsibility for the child (for example, a parent or guardian). The consent process should include the parent or guardian confirming that they do have parental responsibility for the child and the legal right to consent on their behalf. Under current law both parents have equal rights to a child who is a minor, unless the right has legally been removed from one parent. Consent from both parents is desirable, although not legally required. When employees are aware that the child's parents are separated and there is no Court Order in relation to the child, they may assume that the parent appearing for the appointment may provide consent for the child.

In cases where parents disagree with each other about consent or service, and both hold shared parental responsibility, then the employee is to make a professional judgment about whether to provide a service, keeping the best interests of the child as paramount. When making decisions about the best interests of the child, consideration should be given to their safety, security and wellbeing. This would apply to situations where parents are separated and when they are not separated. In cases where one parent has had parental responsibility removed, Merri should not provide them with information about services provided to the child without the consent of the person with parental responsibility. If an organisation is unsure whether there are orders against one parent they can contact the Family Court for assistance.

In Victoria there are common law principles that recognize the developing competency of adolescents to make decisions regarding their own medical treatment. As a result, in some circumstances, parents and their teenage children hold concurrent rights to consent to the child's treatment.

A checklist of questions to consider when assessing the capacity of a child to consent for a service is provided in Appendix 2. If a worker is unsure about the competence of the child to give consent to the service in question they should consult with their line manager. Where a minor lacks the relevant capacity to consent to the intervention, parental or guardian consent is required.

In the case where a child consents to treatment but the parents become aware of the issue and refuse to provide consent, then the child's consent will generally be sufficient legal authority if the child is competent. Where there is a conflict between a parent and a young person as to treatment, the CEO **must** be contacted.



**DEFINITIONS**

*Employee* refers to a person who carries out work for Merri. This includes all employees, contractors, work experience students, locums and volunteers.

Consent is valid (legally effective) if:

- It is freely given, without pressure, coercion or fraud
- It is in respect of the proposed use such as service/s and/or treatment
- It is given by a person who is legally able to consent; and
- The individual has been informed, at least in broad terms, of the nature in which the information is to be used such as the proposed service(s) and/or treatment.

**REFERENCES**

Legislative and Regulatory	Merri Health Policy and Procedures	Other
<ul style="list-style-type: none"> <li>• Privacy Act 1988 (Cth)</li> <li>• Freedom of Information Act 1982 (Cth)</li> <li>• Aged Care Amendment Act 2011 (Cth)</li> <li>• Privacy and Data Protection Act 2014 (Vic)</li> <li>• Health Records Act 2001 (Vic)</li> <li>• Health Records Regulations 2012 (Vic)</li> <li>• Public Records Act 1973 (Vic)</li> <li>• Equal Opportunity Act 2010 (Vic)</li> <li>• Public Health and Wellbeing Act 2008 (Vic)</li> <li>• NDIS Act 2013</li> <li>• Mental Health Act 1986 (Vic)</li> <li>• Mental Health Regulations 2008 (Vic)</li> <li>• Health Services Act 1988 (Vic)</li> <li>• Veteran's Entitlement Act 1986 (Vic)</li> <li>• Disability Act 2006 (Vic)</li> <li>• Child Wellbeing and Safety Act 2005 (Vic)</li> <li>• Human Services (Complex Needs Act) 2009 (Vic)</li> <li>• Guardianship and Administration Act 1986 (Vic)</li> <li>• Medical Treatment Act 1988 (Vic)</li> <li>• Crimes Act 1958 (Vic)</li> <li>• Interpretation of Legislation Act 1984 (Vic)</li> <li>• Privacy (Persons Reported as</li> </ul>	<ul style="list-style-type: none"> <li>• Client Record Management &amp; Data Quality P&amp;P</li> <li>• Client Rights and Responsibilities P&amp;P</li> <li>• Code of Conduct</li> <li>• Document Handling &amp; Retention</li> <li>• Feedback, Complaints and Open Disclosure P&amp;P</li> <li>• Interpreters and Translations P&amp;P</li> <li>• Violence, Abuse and Neglect P&amp;P</li> </ul>	<ul style="list-style-type: none"> <li>• Public Record Office Victoria Authority, PROS 11/06; Retention and Disposal Authority for Patient Information Records</li> <li>• PROS 08/13 Retention &amp; Disposal Authority for Records of the Disability Services Function</li> <li>• SCTT Consumer Consent to Share Information Form</li> <li>• APS Guidelines for working with young people</li> </ul>





Missing) Rule 2014 (Cth) •Public Interest Disclosure Act 2013 (Cth) •Commission for Children and Young People Act 2012 (Vic)		
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## APPENDIX 1

### VHA Client Record Documentation in Community Health

#### 1. SOAP NOTES

The standard SOAP format is described below:

**S - SUBJECTIVE DATA:** Includes information from the client, such as the client's description of pain or the acknowledgment of fear. Including subjective input from the client aids in his participation in the plan of care.

**O - OBJECTIVE DATA:** Objective data is data that can be measured. Physical examinations, laboratory data, observations, and results of x-ray examinations are sources of objective information.

**A – ASSESSMENT:** The assessment is an interpretation of the client's condition or level of progress. The conclusions made in the assessment are more than a restatement of the original problem. The assessment determines whether the problem has been resolved or if further care is required.

**P – PLAN:** Plans may include specific orders designed to manage the client's problem, collection of additional data about the problem, individual or family education, and goals of care. The plan in each SOAP note is compared with the plan in previous notes. A decision is made to revise, modify, or continue previously proposed interventions.

**I – INTERVENTION:** This section of the SOAP note is optional and can be used as a continuation of the original SOAP note. It may include the client's response to the intervention.

**E – EVALUATION:** This section is commonly used to conclude the SOAP note. It includes a brief summary of the plan. Evaluates if the plan was effective or needs revision. If the plan needs to be revised, it will be stated in the evaluation section and a new SOAP note will then be written.

**R – REASSESSMENT:** This section can be used to record subjective and objective reassessment finding after the intervention

Variations to the standard SOAP format exist in the form of:

#### ISBAR

- Identify,
- Situation,
- Background,
- Assessment,
- Recommendation

## APPENDIX 2

### Checklist for assessing minors competence to consent

- Does the individual understand the nature of the proposed service?
- Do they understand the benefits and risks of the proposed service?
- Do they understand that there is a choice and choices have consequences?
- Do they understand the consequences of receiving or not receiving the proposed service?
- Did they demonstrate a willingness to weigh up the information provided and discussed with them, and arrive at



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a decision?

- Do they have the capacity to make an informed choice?
- Can they understand the limits to confidentiality?

Source: Di Petta, T, Pinnuck, H, Rojas, J, Triffett, D, Wang, B and Wijeyeratne, A (2012)- The Ethical Dilemma in Assessing the Maturity of 15-17 Year Old Adolescents to Consent to Health Service 2012, Nillumbik Community Health Service Project Report