



# Privacy & Information Access Policy 2022

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**Applies to:** All staff, Board members

**Version:** 6

**Specific responsibility:** CEO and Principal Solicitor

**Date approved:** 12 June 2023

**To be uploaded to website:**

**Next review date:** June 2026

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## Context of Policy:

### Standards or other external requirements:

- Risk Management Guide
- National Accreditation Scheme
- Data Breach Preparation & Response: A guide to managing data breaches in accordance with the Privacy Act 1988 (Cth)

### Legislation or other requirements:

- Legal Profession Uniform Law (NSW)
- Legal Profession Uniform Regulations 2015
- Legal Profession Uniform General Rules 2015
- Legal Profession Uniform Law Australian Solicitor' Conduct Rules
- Privacy Act 1988 (Cth)
- Australian Privacy Principles
- Children and Your Person's (Care and Protection) Act 1998 (NSW)

### Contractual obligations:

- CLSP Service Agreement

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## Policy Statement

The Welfare Rights Centre ("the Centre") recognises the importance of protecting the privacy of individuals and their personal information. The Centre is committed to protecting and upholding the privacy of its clients, staff, volunteers and Board members. In particular, the Centre acknowledges its commitment to protecting and upholding the privacy of its clients in the way their personal information is collected, stored and used, including information about them, their needs and the services the Centre provides to them.

The Centre is also committed to transparency in its operations and to ensuring it is open to public scrutiny. It must also balance this with upholding the rights of individuals to privacy and of the organisation to confidentiality on sensitive corporate matters.

The Centre requires staff, volunteers and Board members to be consistent and careful in the way they manage what is written and said about individuals and how they decide who can see or hear this information.

This document sets out the Centre's policy in relation to privacy, including how the Centre collects and manages personal information. Additionally, this policy applies to all Centre records, whether hard copy or electronic, containing personal information about individuals, and to interviews or discussions of a sensitive or personal nature.

Through this policy, the Centre ensures that:

- it meets its legal and ethical obligations as an employer and service provider in relation to protecting the privacy of clients, staff and volunteers;
- clients are provided with information about their rights regarding privacy and access to their records;
- clients, staff and volunteers are provided with privacy when they are being interviewed or discussing matters of a personal, confidential or otherwise sensitive nature; and
- all staff, volunteers and Board members understand what is required.

This Policy conforms to the *Privacy Act 1988* (Cth) ("Privacy Act") and the Australian Privacy Principles, which govern the collection, use and storage of personal information. Additionally this Policy conforms to the Centre's obligations as set out in the CLSP Service Agreement.

The Centre and its staff (in particular, its solicitors and caseworkers) are also subject to the obligations attached to their role as legal practitioners under relevant statutory provisions and the common law. Generally, these laws reinforce the Centre's obligation to uphold a client's privacy. However, where these laws may require the Centre and its staff to act in a manner contrary to this policy, these laws must take precedence and are in conflict with the maintenance of a person's privacy. For example, the Centre cannot provide legal advice to a client anonymously and, in some very limited circumstances, the Centre may be prevented from disclosing certain information to clients.

The Centre's Domestic Violence Community Worker is subject to the Mandatory Reporting provisions for children at risk of significant harm. The Centre's Mandatory Reporting procedures have been developed to protect the privacy of clients and allow them to make an informed decision about whether to speak to the Domestic Violence Community Worker.

### **What is personal information?**

This Policy adopts the definition of "personal information" as set out in the Privacy Act. Generally, personal information is any information that could be used to personally identify an individual (e.g. a telephone number). The Centre considers any information it collects which could reasonably be used to identify a client as personal information.

### **What is sensitive information?**

Sensitive information refers to personal information of a particularly sensitive nature. The definition of sensitive information is set out in the Privacy Act and is adopted in this Policy. Sensitive information is to be given a higher level of protection.

## What is data breach?

A data breach is an unauthorised access or disclosure of personal information or loss of personal information. Examples of a data breach include:

- loss or theft of physical devices or paper records that contain personal information;
- unauthorised access to personal information by an employee; and
- inadvertent disclosure of personal information due to human error, e.g. an email sent to the wrong person.

## What are client documents?

“Clients documents” have the same meaning as provided in the Legal Profession Uniform Law Australian Solicitor’ Conduct Rules (“Solicitors’ Conduct Rules”). These are documents to which a client is entitled to access, for example correspondence with the client and third parties, evidence relating to their matter, and Tribunal submissions. Not all records relating to a particular client are “client documents”, e.g. file notes made by a staff member about a client.

## What personal information does the Centre typically collect and hold?

The Centre typically collects the following categories of personal information:

- Identification and contact details (e.g. name, address, phone number, date of birth);
- Other statistical information (e.g. country of birth, language spoken at home, family type, financial status, income source, housing type);
- Sensitive information (e.g. ethnic or cultural background, health status, criminal history); and
- Other personal or sensitive information that may be necessary in order to provide a client with legal services.

The Centre must collect identifying information in order to provide clients with legal services, in accordance with its obligations at common law and under the relevant legal professional legislation.

The Centre also collects other information which is not personal information. For example, the Centre collects some information about users of its website.

## Why does the Centre collect, hold, use and disclose personal information?

The Centre collects personal information for the primary purpose of providing clients with legal advice, ongoing casework assistance, information and referral services and as well as for assessing eligibility for its service. In most cases this is the only purpose for the Centre obtaining personal information.

The Centre may also collect personal information for the purpose of:

- complying with its reporting requirements to funding and accreditation bodies;
- assessing and/or monitoring the Centre’s website and other online services or social media profiles;
- administrative, planning, quality control or research purposes;
- responding to any client complaints; and
- complying with the law.

The Centre will generally only disclose an individual’s personal information to third parties with that person’s express and prior consent, or as required by law and for lawful purposes. The Centre will generally only use or disclose information for a purpose other than a legal purpose in an anonymised or aggregate way (e.g. reporting purposes).

## Dealing with personal information

In dealing with personal information, Centre staff will:

- ensure privacy for clients, staff, volunteers or Board members when they are being interviewed or discussing matters of a personal or sensitive nature;
- only collect and store personal information that is necessary for the functioning of the Centre and its activities;
- use fair and lawful ways to collect personal information;
- collect personal information only by consent from an individual;
- ensure that people know what sort of personal information is held, what purposes it is held for and how it is collected, used, disclosed and who will have access to it;
- provide access to any individual to review information or correct wrong information about themselves; and
- take reasonable steps to protect all personal information from misuse and loss and from unauthorised access, modification or disclosure.

## Privacy Contact Officer

The Centre Manager (or a Centre staff member delegated the role by the CEO) will be the Privacy Contact Officer under this policy. The Privacy Contact Officer will be responsible for:

- ensuring that all staff are familiar with this policy and administrative procedures for handling personal information;
- ensuring that clients and other relevant individuals are provided with information about their rights regarding privacy; and
- handling any queries or complaint about a privacy issue.

## Responsibilities for managing privacy

All Centre staff and volunteers are responsible for the management of personal information to which they have access, and in the conduct of research, consultation or advocacy work.

The CEO is responsible for content in Centre publications, communications and online content and must ensure the following:

- appropriate consent is obtained for the inclusion of any personal information about any individual including Centre personnel;
- information being provided by other agencies or external individuals conforms to privacy principles; and
- that the Centre's website contains a privacy statement that makes clear the conditions of any collection of personal information from the public through their visit to the website.

The Centre Manager is responsible for safeguarding personal information relating to Centre staff, Board members, volunteers, contractors and Centre members.

## Collection of personal information

The Centre generally collects personal information directly from its clients, although in some cases where this is unreasonable or impracticable, the Centre may collect personal information from other persons, including third parties, on a client's behalf. Where information is sought from persons other than the client and from third parties, this is done with the consent of the person whose information is being sought.

Personal information is typically collected over the phone or in person but is frequently also collected via email or through receipt of physical documents.

To ensure privacy for clients or staff when discussing sensitive or personal matters, the Centre and its staff will use its best endeavours to provide a physical environment conducive with the maintenance of that privacy.

### **What is the Centre is unable to collect a client's personal information?**

If the Centre is unable to collect the requisite or sufficient information about a person, it may be unable to provide that person with any legal services and may also be unable to provide that person with information or referrals.

### **Disclose of personal information to third parties**

The Centre generally only discloses personal information to third parties having first obtained the express consent from the individual whose information is to be disclosed. Such a disclosure will in most cases only be for the purpose of providing the client with legal services (e.g. disclosure of information to Centrelink or a doctor).

In limited circumstances, the Centre may disclose personal information where it is compelled to do so by law or for lawful purposes (e.g. for the sole purpose of avoiding the probable commission of a serious crime).

Personal information may be used when managing the Centre's service, for example, contracting with an IT provider to service our website. The Centre will require service providers of this type to keep any information they collect or view to be kept confidential and deleted from their records where possible.

The Centre does not directly market or provide personal information to others for the purpose of marketing. However, the Centre may wish to use a client's story (e.g. the story of a successful outcome for a client at the tribunal), to, amongst other things, highlight a particular favourable decision and the work of the Centre. The Centre's client agreement will include reference to the collection and use of case studies and their possible publication. The Centre will seek the prior consent of all clients who do not have a client agreement and where the Centre wishes to use their story. The Centre will always seek a client's written consent before using or publishing their story in any way. Subject to a client's view, any such publication will protect a client's privacy by anonymising the story and insofar as possible, omitting all personal information.

### **Security**

The Centre takes reasonable steps to ensure personal information is protected from misuse, loss, unauthorised access, modification or disclosure. The Centre may hold a client's information in electronic or hardcopy form and is generally destroyed after 7 years.

Where the Centre communicates via email or any via any other online platform, the Centre makes no representations or assurances regarding the security of those online communications.

### **Data breaches**

Where a data breach has been identified, the Centre will take the following action:

- Contain the data breach to prevent any further compromise of person information;
- Assess the data breach by gathering the facts and evaluating the risks, including potential harm to affected individuals and, where possible, taking action to remediate the risk of harm;
- Notify individuals affected by the data breach; and
- Review the incident and consider what actions may be taken to prevent future breaches.

### **Requests for access – general records**

All records and materials may be released to the public at the discretion of the Executive Director, except for:

- Corporate records which contain confidential or commercially sensitive information about the organisation's business;
- Personnel files (with the exception of requests by the relevant employee);
- Personal information and contact details of the Centre's membership and Directors of the Board; and
- Client records.

Any request for access to information should be directed to the Centre Manager, who will:

- make available to staff, volunteers or Board members information that they are entitled to access; and
- consider any request from the public for access to the organisation's records or materials.

In considering a request, the Centre Manager will take into consideration:

- a general presumption in favour of transparency;
- the relevant provisions of the Centre's Constitution regarding information to be made available to members; and
- the business, legal, and administrative interests of the Centre, including commercial confidentiality and privacy obligations.

If an external party requests access to information that requires staff to devote time to collating, copying or otherwise making material accessible, the Executive Director may determine a fee to be charged.

### **Requests for access – client documents**

The Centre complies with the Solicitors' Conduct Rules with regards to the creation and handling of client documents, as well as requests from clients for documents held and created by the Centre.

All clients have the right to access their client documents and advise the organisation about inaccuracies. However, clients do not generally have a right to access records made by the Centre in relation to a particular client, for example, file notes of meetings with the client or regarding their matter.

The Centre will:

- inform clients about their right to access client documents containing personal information about themselves and how they can request this;
- record client requests to access files;
- make fair and appropriate decisions about permitting or refusing access to personal information;
- provide access for clients or former clients to their own confidential information in accordance with the Solicitors' Conduct Rules;
- advise clients refused access to personal information how to appeal (if appropriate); and
- enable clients to change records they believe to be inaccurate or misrepresenting, as appropriate, in accordance with the Solicitors' Conduct Rules.

Requests for information about clients from outside agencies or individuals will be referred to the Principal Solicitor. Before any information is released, the Principal Solicitor will contact the client and will not release any information without client consent or as required by law.

In limited cases, the Centre may be unable to provide an individual with some of their personal information (e.g. where the Centre and its solicitors' overriding professional obligations as legal practitioners prevent them from doing so).

### **Complaints**

If an individual thinks their privacy has been breached and wishes to make a complaint, that complaint is to be made in accordance with the Centre's *Client Complaints Policy*.

## Documents relating to this Policy

<b>Related policies &amp; procedures</b>	<p>Conflict of Interest Policy</p> <p>Feedback &amp; Complaints Policy &amp; Procedures</p> <p>Personnel File Record Keeping Policy</p> <p>Filing and Records Management Policy</p> <p>Code of Ethics &amp; Conduct Policy</p>
<b>Forms, record keeping\or other organisational documents</b>	CLASS to be used for recording client requests for records

<b>Reviewing and approving this policy/procedure</b>		
<b>Frequency</b>	<b>Person responsible</b>	<b>Approval</b>
Every 3 years	CEO	Board

<b>Policy review and version tracking</b>			
<b>Review</b>	<b>Date Approved</b>	<b>Approved by</b>	<b>Next Review Due</b>
1	February 2013	Board	February 2018
2	20 March 2013	Access to Confidential Information policy approved	February 2018
3	6 February 2018	GRACE	n/a
4	22 February 2018	Board	February 2021
5	18 September 2019	GRACE – Access to Confidential Information Policy partially incorporated into Privacy Policy	n/a
6	26 September 2019	Board	September 2022
7	21 December 2022	CEO (reviewed to incorporate Centre Manager)	December 2025
8	12 June 2023	Principal Solicitor reviewed to reference Mandatory reporting procedures	June 2026