



A Community Legal Centre

A MERGER OF DAREBIN COMMUNITY LEGAL CENTRE AND FITZROY LEGAL SERVICE

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PRIVACY POLICY

Applies to: Staff, Volunteers, Board and Committee members
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Specific responsibility: Principal Lawyer Legal Practice and Principal Lawyer Night Service

Version: 1

Date approved: 27 February 2020

Next review date: February 2022

This policy is to be read in conjunction with the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 ('the Uniform Rules') and the NACLC Risk Management Guide 2017 (RMG).

1. Policy statement

1.1 Fitzroy Legal Service (FLS) recognises the importance of, and is committed to protecting and upholding, the privacy and rights of individuals FLS deals with in relation to their personal information.

FLS will ensure that:

- It meets its legal and ethical obligations as an employer and service provider in relation to protecting the privacy of clients and others;
- clients are provided with information about their rights regarding privacy;
- clients, staff and others are provided with privacy when they are being interviewed or discussing matters of a personal or sensitive nature; and
- all staff, volunteers, board and committee members understand what is required in meeting these obligations

1.2 This privacy policy explains how FLS collects, uses, discloses and otherwise handles personal information. This policy does not apply to employee records, however, still applies to personal information about job applicants, contractors, volunteers or employees of related entities.

1.3 FLS is subject to Australian Privacy Principles (APPs) in the Privacy Act 1988 (Cth). FLS is also required to comply with more specific privacy legislation in some circumstances, including applicable State and Territory health privacy legislation (including the Victorian Health Records Act 2001) when we collect and handle health information in the relevant jurisdiction.

1.4 Under our Panel Deed with Victoria Legal Aid, FLS must comply with the *Privacy and Data Protection Act 2014 (Vic)*. FLS is also required to comply with privacy obligations under one or more funding agreements.¹

1.5 FLS will follow the guidelines of the Australian Privacy Principles in its information management practices.

¹ Commonwealth's National Legal Assistance Data Standards Manual and the National Partnership Agreement (NPA) data reporting requirements.

2. Confidentiality

Under the Legal Profession Uniform Law, FLS solicitors (staff and volunteers) must not disclose any information which is confidential to a client.² An FLS solicitor may disclose information which is confidential if:

- a) the client expressly or impliedly authorises disclosure;
- b) the solicitor is permitted or is compelled by law to disclose;
- c) the solicitor discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor's legal or ethical obligations;
- d) the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;
- e) the solicitor discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person, or
- f) the information is disclosed to the insurer of the solicitor, law practice or associated entity.³

FLS solicitors (staff and volunteers) should seek assistance from the Principal Lawyer Legal Practice or Principal Lawyer Night Service when considering disclosure of information as above.

3. What is personal information

3.1 Personal information means information or an opinion, whether true or not and whether recorded in a material form or not, about an individual who is identified or reasonably identifiable.

3.2 Personal information does not include anonymous information, aggregated or de-identified information.

What is sensitive information

Sensitive information is a subset of personal information and is given a higher level of protection. Sensitive information is defined in the Privacy Act and includes information or an opinion about an individual's racial or ethnic origin; political opinions; membership of a political association; religious beliefs or affiliations; philosophical beliefs; membership of a professional or trade association; membership of a trade union; sexual preferences or practices; or criminal record.

5. What types of personal information does FLS hold?

FLS may collect the following types of information

5.1 Clients of FLS

- identification and contact details, such as name, mailing or street address, email address, telephone number, age or birth date;
- family type, country of birth, year of arrival in Australia, language spoken at home;
- financial information, such as housing, occupation, financial status and income;
- sensitive information, such as racial or ethnic background, criminal history and health information, English proficiency, need for an interpreter, or disability;

² Rule 9.1, Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015

³ Ibid Rule 9.2

- other personal or sensitive information not covered above which may be collected as a result of providing a client with legal advice;
- details of the services a client has requested or enquired about, or services provided, together with any additional information necessary to respond or deliver those services;
- any additional information relating to a client that a client provides in-person, by telephone, in writing or via email; and
- Personal information relevant to the provision of legal advice under legal profession laws.

5.2 Other parties of FLS clients

- FLS may request and collect, handle and use personal information of third parties who assist, support or advocate for the FLS client; such as social workers or family members. This information may include the name, address, birth date, contact details and, if relevant, file number/s of the third party; and
- FLS may request and collect, handle and use personal information of third parties, including but not exclusive to the name and date of birth, for the purpose of conducting a conflict check in accordance with the FLS Conflict of Interest and Information Barrier Policy.

5.3 Other interactions with FLS

- If a person makes a donation to FLS, we may collect their name, organisation, contact details, the amount and frequency of their donation and payment details;
- If a person attends a professional development or training program or attend another event, we may collect their name, organisation, contact details, payment details (if applicable) and any dietary and accessibility requirements;
- If a person sends us an enquiry, we may collect their name, contact details and details of your query;
- If a person makes a complaint, we may collect their name, contact details, the details of their complaint, information collected in any investigation of the matter and details of the resolution of the complaint;
- If a person requests to be placed on our mailing list we may collect their name, email address and telephone contact details;
- If a person supplies goods or services to FLS, we may collect their name, address, contact details and financial details for payment purposes;
- If a person applies for a role at FLS we may collect their job application, cover letter, resume, contact details and referee contact details/referee letters; and
- If a person visits a web site that FLS manages, we may record their server address, the date and time of their visit, the pages they visited, any documents they downloaded, the previous site they visited and the type of device, browser and operating system they used.ⁱ

6. How does FLS collect personal information?

6.1 FLS collects personal information directly from an individual unless it is unreasonable or impracticable to do so. This may occur in a range of ways including in person; by letter, fax, email or telephone; on hard copy forms; through our website(s); from referring or third parties (with consent); and at events or forums.

7. What happens if FLS can't collect personal information?

7.1 The nature of FLS' work is that, generally, it is not possible to provide services or deal with individuals in an anonymous way. For example, if a client does not provide FLS with the personal information described above FLS may not be able to provide legal services to them, or to provide information about services.

8. For what purposes does FLS collect, hold, use and disclose personal information

FLS collects, holds, uses and discloses personal information for the following purposes:

- to assess whether a client is eligible for assistance;
- to provide legal services, referral or arrangement of non-legal assistance to clients;
- to answer enquiries and provide information or advice about FLS services;
- to recruit staff, contractors and volunteers;
- for planning, quality control and for the creation of anonymous case studies;
- to update records;
- for use in monitoring and assessing FLS services, including as part of peer review of service, and reporting to funding providers; and
- to process and respond to any complaints, and to comply with any law, rule, regulation, lawful and binding determination.

FLS may also collect, hold, use and disclose personal information for other purposes, explained at the time of collection or which are required or authorised by or under law for which the individual has provided their consent.

9. To whom may FLS disclose personal information?

FLS may disclose personal information to:

- employees, volunteers, contractors or service providers for the purposes of providing legal services, fulfilling requests by clients, and to otherwise provide services to individuals including IT systems administrators, process servers, private investigator, couriers, data entry service providers, electronic network administrators, and professional advisors such as accountants, solicitors, barristers and consultants;
- Victoria Legal Aid for legally aided matters as part of our Panel Deed; and
- any organization for any authorised purpose with the individual's consent⁴; and other third parties where required by law.⁵

10. Accessing and correcting personal information

An individual may request access to any personal information FLS holds about them at any time by contacting FLS. Where FLS holds information that an individual is entitled to access, we will try to provide the information in a timely way.

There may be instances where FLS cannot grant access to the personal information held.⁶ For example, FLS may need to refuse access if granting access would interfere with the privacy of others or if it would result in a breach of confidentiality. If that happens, FLS will provide written notice outlining the reasons for the decision and available complaint mechanisms.

If an individual believes that personal information FLS holds about them is incorrect, incomplete or inaccurate, then they may request us to amend it. FLS will then consider if the information requires amendment. If we agree that it requires amendment we will take reasonable steps to correct that information. If FLS does not agree that there are grounds for amendment then the individual may request that FLS add a note to the personal information stating that the relevant individual disagrees with the information.

⁴ Wherever possible, written consent should be obtained via an authority and placed on the file. If verbal consent is provided, this will be recorded in a file note and placed on the file.

⁵ See exceptions in Rule 9.2 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015.

⁶ See exemptions in Principle 12.3 of the Australian Privacy Principles 2014. Also see, the Law Institute of Victoria's fact sheet 'File ownership, retention & destruction guidelines'.

If FLS corrects personal information about an individual and has previously disclosed that information to another agency or organisation that is subject to the Privacy Act, the individual may ask FLS to notify that other entity and FLS will take reasonable steps to do so, unless this would be impracticable or unlawful. FLS does not however have scope to correct or amend information held by other entities.

11. Complaints

If an individual believes that their privacy has been breached, they can contact the FLS Principal Lawyer Legal Practice or Principal Lawyer Night Service. FLS treats all complaints confidentially. FLS will try to resolve all complaints in a timely, fair and reasonable way. In most cases, we expect that complaints will be investigated and a response provided within 30 days of receipt of the complaint. If the matter is more complex and our investigation may take longer, we will write and let the complainant know.

If an individual is not satisfied with FLS' response, a complaint can be made to the Office of the Australian Information Commissioner (by telephone: 1300 363 992, by email enquiries@oaic.gov.au or by post: GPO Box 5218 Sydney NSW 2001), or other regulatory bodies such as the Victorian Legal Services Board and Commissioner, or the Health Complaints Commissioner.

12. Security and integrity of personal information

FLS takes reasonable steps to ensure that personal information we collect, use and disclose is accurate, up-to-date, complete and relevant. FLS also takes reasonable steps to ensure personal information is protected from misuse and loss and from unauthorised access, modification or disclosure.

All archived files will be stored in a secure environment, including in electronic form, that cannot be accessed by the general public and/or any person without express authority.

13. Destruction of personal information⁷

FLS is obliged to retain legal files for seven (7) years after the completion or termination of the matter unless there are circumstances that warrant a longer period of retention. Different limitation periods for the retention of files can apply to particular types of legal matters and can be subject to relevant legislative requirements. It is essential that the lawyer check the limitation period upon completion of the matter.

Legal files may be retained in electronic form.

If reasonably practicable, all original documentation must be returned to the client upon completion of the matter. Prior to the destruction of a file, the lawyer must make additional and reasonable efforts to return all original documentation to the client.

FLS will destroy hard and electronic copies of legal files that are older than seven (7) years, unless otherwise instructed by the client in writing. A copy of this instruction from the client must be kept on the file. It is prudent and recommended that a lawyer review the file prior to destruction.

⁷ Rule 14.2; Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 and 18.5.16-8.5.17, 18.14.1-18.14.2; NACLC Risk Management Guide 2017.

Prior to destruction, should an individual request documentation in the possession of FLS a determination must be made to assess if a document belongs to either FLS, the individual or both FLS and the individual. When considering if a document belongs to FLS or the individual, FLS should consider if the individual was charged for the creation of the document and if FLS created the document primarily for the benefit of the individual, or benefit and use of FLS.

FLS solicitors should seek assistance from the Principal Lawyer Legal Practice or Principal Lawyer Night Service when determining file ownership.

Contacting FLS

For questions about this Privacy Policy, as well as any concerns contact the Principal Lawyer Legal Practice, or Principal Lawyer Night Service.

Changes to the Policy

FLS may amend this Privacy Policy from time to time. The current version will be held in the Policies and Procedures folder on the FLS Server.

i We use and disclose this information in anonymous, aggregated form only for purposes including statistical analysis and to assist us to improve the functionality and usability of our website. People are not individually identified, however we reserve the right to use or disclose this information to try to locate an individual where we reasonably believe that the individual may have engaged in any unlawful or inappropriate activity in connection with our website, or where we are otherwise required or authorised by law to do so.