

Privacy, Confidentiality and Managing Disclosures

Youth on Track Guidelines

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1. Purpose of the Guidelines

Youth on Track is an early intervention scheme for 10-17 year olds that identifies and responds to young offenders at risk of long-term involvement in the criminal justice system.

The purpose of the Guidelines is to ensure that information obtained by Youth on Track staff in the course of their work is dealt with appropriately, confidentially and with integrity. This is particularly the case for personal information and health information.

The Guidelines also aim to provide a clear framework for the use and disclosure of information that is consistent with legal and policy requirements. It aims to avoid the inappropriate disclosure of information while promoting the safety and wellbeing of young people, their families and the community.

2. Client and Family Consent

The Youth on Track staff must use a consent form to gain participant consent, a sample *Client Consent – Exchange of Information & Participation Form* can be found in Appendix 1 of this document. If a young person is 14 years and under, the parent or guardian must give consent for the young person to participate in the Scheme.

If the young person is under the age of 16 and parental consent has not been sought, the Youth on Track case managers must assess the client's capacity to provide their consent, i.e. their understanding of what they are consenting to. The young person has the capacity to consent if they demonstrate they understand and communicate:

- Why the information is being collected, used and exchanged
- Who the information is being collected and used by
- Who the information will be exchanged with
- How the collection, use and exchange of their information can help them and their family.

If the young person requiring the service lacks legal capacity and cannot sign consent on their own behalf, a family member or guardian must do so.

If the parent or carer is also participating in the Scheme the parent must sign a consent form as well (see Appendix 1. Consent should be:

- Given freely - not coerced
- Informed - the young person has sufficient information to know what they are consenting to
- Specific - how you collect and use information, to whom you can disclose information and for what purpose
- Given by someone with legal capacity to give consent

While gaining consent and throughout case management the Provider must give the client information on their rights and avenues to complain or provide other feedback.

3. Managing Disclosures

When discussing consent and throughout participation, Youth on Track staff should inform participants of the limits of confidentiality. This section outlines how Youth on Track staff should respond to disclosures made by young people in relation to:

- Children at risk of harm

- Existing court orders
- Existing court matters
- The commission or proposed commission of a crime

3.1 Children at risk of harm

Youth on Track staff must comply with the provisions of the *Children & Young Persons (Care & Protection) Act 1998*, the *Ombudsman Act 1974 (NSW)*, the *Child Protection (Working with Children) Act 2012* and any other legislation which applies to child protection.

The Provider should ensure that employees feel confident in responding to child protection concerns, both 'risk of significant harm' and 'risk of harm' reports. Employees should be aware of their responsibilities as mandatory reporters and must be able to communicate these responsibilities to participants when discussing limits of confidentiality.

3.2 Existing court orders

There may be situations where the young person discloses information to Youth on Track staff that indicates that they are in breach of an existing court order. This may include bail conditions, conditions of an Apprehended Domestic or Personal Violence Order or Family Law Orders.

Youth on Track staff are not legally obliged to report breaches of these orders to the Police.

Youth on Track staff should take the following steps if they hold a reasonable belief that the young person is in breach of an existing court order:

- Contact the young person's legal representative on the same business day and provide details of the breach.
- If appropriate, discuss the suitability of the legal representative seeking a variation to conditions imposed under the court order where the conditions are onerous or unreasonable.
- In the event that the legal representative does not think it is appropriate to take action in relation to the breach of the order, Youth on Track staff must note in the participant's case notes the steps that they have taken to address the breach through the legal representative.

Where Youth on Track staff are reasonably of the opinion that breach of conditions under an existing court order is likely to lead to risk of harm to a third party, and the young person has provided details of the breach to the Youth on Track staff, the staff member must advise their supervisor and discuss if a report needs to be made to the police.

3.3 Existing court matters

A case manager must not discuss an offence with the young person when a young person is appearing before the court for that offence and has:

- not yet entered a plea,
- pleaded not guilty, or
- not yet been found guilty.

The case manager must only conduct offence focused interventions, such as CHART, using offences for which the young person has entered a guilty plea, made admission of guilt, or been found guilty. If a young person commits a new offence while participating in the Scheme, the same process should apply.

3.4 The commission or proposed commission of a crime

Youth on Track participants may disclose that they have committed crimes that they have not been charged or convicted for, or they intend to commit a crime in the future.

Youth on Track staff must encourage young people and their carers to be mindful of the limits of confidentiality. Youth on Track staff should remind participants that Youth on Track staff will need to report the following offences where information is disclosed to them.

- Serious indictable offences
- Any offence where the young person or carer has provided details regarding who, when, where and how it occurred or will occur.

3.5 Serious indictable offences

A serious indictable offence means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more. It generally refers to the more serious crimes including murder, manslaughter, arson or aggravated sexual assault.

When Youth on Track staff know or believe that a young person or carer has committed a serious indictable offence, or have information which might be of material assistance in securing the apprehension of an offender, then Youth on Track staff have a legislative duty to report this to the police. This situation arises when a young person has **not** been charged with the offence or been before a court. The report should be made on the same day as when the participant discloses the information. Failure to report such knowledge or belief may constitute an offence.

The Youth on Track staff member must record the details disclosed by the young person in the case notes, along with the details of the police officer to who they made the report and when they made the report.

3.6 Detailed disclosure of offences

If a young person or carer discloses to Youth on Track staff that they are intending to commit a less serious offence (not a serious indictable offence) and the participant has provided particular details of the offence and Youth on Track staff are reasonably of the opinion that the offence is likely to lead to risk of harm to the young person and/or third party then it must be reported to the police on the same business day.

A police report is only required if a Youth on Track staff holds a reasonable belief that the details provided by the young person are accurate and the young person or carer provides the date, the parties involved, the nature of the offence, and the place of the offence.

For example, the Youth on Track staff member meets with a young person who is heavily affected by drugs or alcohol and the young person says they are going to drive home and they have the car out the front and the keys in their hand.

Where appropriate, Youth on Track staff should tell the young person that a report will be made to the police before the report is made.

Details disclosed by the young person must be recorded on the young person's case notes along with the details of the police officer who took the report and when the report was made.

4. Conflict of Interest

4.1 Staff conflicts of interest

A conflict of interest exists when a staff member could be influenced or appear to be influenced by the staff member's private interests while conducting their role with Youth on Track. A conflict of interest can involve avoiding personal disadvantage as well as gaining personal advantage for the staff member or the staff member's family or friends.

Conflicts of interest can be classified as actual, potential or perceived. Defining the type of conflict enables use of an appropriate management approach.

- An actual conflict of interest involves a direct conflict between a staff member's duties and responsibilities and existing private interests.
- A perceived conflict of interest can exist where it could be perceived, or appears, that a staff member's private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
- A potential conflict of interest arises where a staff member has private interests that could conflict with their duties of employment in the future.

Conflicts of interest are not wrong in themselves. It is how they are managed that is important. A poorly-managed perceived or apparent conflict of interest can be just as damaging as a poorly-managed actual conflict of interest.

An example of conflict of interest is if a Youth on Track staff member's family friend or relative is referred to the service. Another conflict of interest is when a staff member has personal beliefs or attitudes that could influence, or may be perceived to influence, their impartiality or service provision.

4.2 Participants' conflict of interest

The Provider must consider whether co-offenders, participants with an Apprehended Violence Order (AVO) against another participant, or participants who are relatives should, or should not be allocated to the same case manager.

The Provider must allocate a case manager after considering any current legal orders which may restrict contact between Youth on Track participants.

In some cases the police or court can order that a young person is not to associate with a co-offender or other people. A non-association order is imposed where the court is satisfied that it is reasonably necessary to do so to ensure that the offender does not commit any further offences.

In situations where a participant has a non-association order, or AVO, and there is a possible conflict of interest with another participant, the case manager should seek the advice of the young person's lawyer or the Legal Aid Hotline. In some cases it may be useful to seek an amendment to the order via the young person's lawyer.

If an order exists that cannot be amended, Youth on Track staff must make all reasonable efforts to provide individual support to the young person. Youth on Track staff must ensure that the relevant participants are not required to attend meetings with Youth on Track at the same time and venue. This will assist participants to comply with their court orders.

Case managers who are responsible for participants with a conflict of interest should not discuss the personal circumstances of their participant with the case manager(s) for the other relevant participant. Case managers may discuss which external service providers each participant has been referred to, to avoid complicating compliance with court orders.

Wherever possible, Youth on Track staff should avoid referring participants with non-association orders or an AVO to the same external service provider. Where it is unavoidable to refer these participants to the same external service provider, Youth on Track staff must advise the other service provider of the participant's order conditions. The Youth on Track staff should encourage the service provider to take measures to ensure there is no contact between the relevant participants.

4.3 Disclosing conflicts of interest

If, in the course of their duties, Youth on Track staff obtain information that involves people, organisations or activities in which they have a personal interest, they should follow their agency's conflict of interest procedure.

The suggested response is to discuss the conflict with the direct supervisor and together they should make a decision whether the matter represents a conflict of interest, whether the conflicted staff member's involvement with the matter should cease, and how the matter should be handled.

4.4 Managing conflicts of interest

To resolve or manage a conflict of interest which occurs or could occur, a range of options are available depending on the significance of the conflict.

Youth on Track staff should not provide a service to Youth on Track participants with whom they have a close personal, social or business association. Youth on Track staff with a conflict of interest should make every effort to hand carriage of the conflicting matter to a colleague.

Where a colleague takes on management of a case, the staff member with the personal conflict must not share information about the participant with their colleague. Information must not be shared either formally or informally including in supervision or peer supervision meetings.

Where it is not possible to hand the matter to a colleague, the Youth on Track staff member should discuss the case with their supervisor immediately. An alternate approach should be considered so the young person can still receive a service. The Provider may discuss the situation with the Youth on Track Unit to identify an appropriate course of action. The conflict of interest and the resulting decision to manage the conflict must be recorded.

4.5 Recording conflicts of interest

A Conflict of Interest Register should be created and maintained by the provider. The register enables the Department and the Provider to monitor conflicts of interest and how they are managed within the Scheme. The register should be stored securely.

The Provider must ensure the register includes:

- Details of the participant
- The conflicted staff member
- The reason for the conflict of interest, and
- The strategies taken to avoid any perceived or actual conflict in the register

The Provider must provide the Conflict of Interest Register to the Department of Justice Youth on Track Unit when requested by the Youth on Track Unit.

5. Responding to Subpoenas

If the Department of Justice receives a subpoena to produce information about a Youth on Track participant the subpoena should be forwarded to Office of the General Counsel for advice and response.

If a Provider receives a subpoena to produce a participant file or any other Youth on Track related records, the Provider should respond to the subpoena in line with their organisation's policies. The Youth on Track Unit should be notified of the subpoena and the organisation's response within 5 working days from receiving the subpoena.

All documents created by Youth on Track staff including case notes can be subpoenaed for any number of reasons and therefore Youth on Track staff must ensure that all case notes and participant documentation is written in an accurate and timely manner.

6. Security, Retention and Destruction of Participant Records

6.1 Records management processes of the Youth on Track Provider

The Provider should use a consistent and defined approach to providing participants with access to external services and case management (as outlined in the Youth on Track service specifications), including through keeping accurate records as well as any additional electronic or paper files created that contain Youth on Track participant personal and health information.

Information collected and used and disclosed under Youth on Track must be routinely recorded to ensure the best possible outcomes for Youth on Track participants, to ensure compliance with privacy laws, and to ensure proper tracking and control and management of information can be carried out.

Any transfer of personal information must be carried out in a secure manner, having regard for the confidentiality and potential sensitivity of any personal information of participants that is handled under Youth on Track, and in line with directions, guidelines, codes and applicable legislation.

The Provider is required to comply with the *Privacy and Personal Information Protection Act 1998* (PIIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act). These Acts set out particular privacy laws that apply to record keeping.

As required under privacy laws, any records kept by the Providers regarding a participant's personal or health information must be up to date, accurate, relevant and complete, and not misleading.

The Providers should have in place their own processes for ensuring record requirements are being met, to identify any records management problems and reach resolutions to ensure proper record keeping.

6.2 Security of Youth on Track records

The Provider must ensure that all records created under Youth on Track are stored securely and are handled in line with these Guidelines, the Youth on Track service specification and the privacy laws and permissions set out in the *Privacy Code of Practice for participating agencies in Youth on Track* and the *Health Privacy Code of Practice for the exchange of information of participating agencies in Youth on Track*.

Youth on Track records should be stored securely in lockable document storage (hard copies) or alternatively on electronic systems which are accessed by authorised Youth on Track personnel only.

Maintaining the security of Youth on Track records includes taking reasonable safeguards to protect the personal information on files from loss, unauthorised access, use or disclosure. Some safeguards include:

- Not disclosing any personal or health information relating to any participant or participant's relative or associate without the consent of the person themselves, or as authorised under a law referred to in these Guidelines, the *Privacy Code of Practice for participating agencies in Youth on Track* and the *Health Privacy Code of Practice for the exchange of information of participating agencies in Youth on Track*
- Securing all files and records that contain personal and health information at the close of business each day in locked file storage units
- Refraining from removing any file or record from office premises without a compelling reason

- Ensuring files are secure and always on the person of a Provider's staff member if they are taken outside the office
- Taking additional steps necessary to ensure the security of Youth on Track records where they are kept within a workspace or an electronic filing system that is accessible by a non- Youth on Track staff member
- Ensure access is provided only for staff members working directly with Youth on Track
- Ensure all electronic records are kept using password secured access only for Youth on Track staff members.

6.3 Maintenance of Youth on Track records

The Providers must ensure that accurate and up to date records are kept for each participant, including records of any:

- Complaints (including any privacy complaints) received by the Provider
- Verbal or written contact with the participant, including to seek consent to participate
- Signed consent form (including of the participant and any relative/friends)
- Assessments conducted of the participant's needs
- Referrals to appropriate services to meet the participant's needs
- Progress reviews of the participant's engagement in Youth on Track
- Documents produced under Youth on Track
- Correspondence regarding the Youth on Track participant with external services or government agencies
- Exit information regarding the participant's exit from Youth on Track
- Requests for information received by the Provider, and
- Correspondence with the Department of Justice staff regarding a participant under Youth on Track or otherwise

7. Professional Use and Retention of Records

The Provider is responsible for keeping all participant records secure at all times including throughout the person's active participation in Youth on Track and following their exit until all records are securely returned to the Department of Justice as required under the Funding Deed of Agreement.

When closing a Youth on Track participant file, either upon their exit from Youth on Track altogether or upon the person's transfer to another Youth on Track site, the Provider should follow these processes:

- Enter all outcome relevant data for the Youth on Track participant into the secure Juvenile Justice YoT Portal under the participant's record.
- Securely deliver all hard copy and electronic records relating to the participant's file held by the Provider to Department of Justice.
- The Provider to securely destroy all hard copy and electronic records held by the Provider.
- The Provider should not retain any hard copy or electronic records relating to a non-active (permanently ineligible) Youth on Track participant.

Youth on Track records must be stored securely and kept no longer than is necessary. Juvenile Justice will keep Youth on Track participant records for at least 30 years from the end of the Youth on Track Funding Deed of Agreement, after which they will be destroyed securely by Department of Justice records management staff as appropriate in line with State Records Act 1998 requirements.

Department of Justice staff will then manage the Youth on Track participant records held in the YoT Portal, and held in any Department of Justice electronic storage systems, in line with the relevant State Records Act requirements and the relevant Department of Justice records management policies and procedures.

Note: an exception to the above process is where any requirements set out under professional standards legislation specify that a Provider must retain records of services they have provided to clients. Professional standards legislation must be complied with and in these cases the Provider must follow step 1 above, but may then additionally retain a copy of the relevant record, as necessary to comply with the legal requirements. The Provider must securely return the copy of the relevant record that has been retained to comply with the legislation to the Department of Justice as soon as the period of required retention ends.

8. Complaints and Potential Privacy Breaches

8.1 Potential privacy breaches

If the Provider or Department of Justice staff become aware of a privacy breach or potential privacy breach regarding personal information obtained through Youth on Track they must immediately notify the relevant staff in the Department of Justice in writing.

8.2 Receiving and responding to privacy complaints

The Provider must advise Youth on Track participants that privacy complaints regarding Youth on Track can be made to the Department of Justice. If a participant wishes to make a privacy complaint, the Provider should provide the form found at <http://www.ipc.nsw.gov.au/how-do-i-make-complaint> and direct them to: http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/client_complaints.aspx for further information about the complaint process of Juvenile Justice.

If a Provider receives a privacy complaint, the Provider must notify the Department of Justice immediately in writing and take actions as directed by the Department regarding the complaint. All privacy complaints will be handled by the Department of Justice.

Privacy complaints about the Provider or the Department of Justice handling of information under Youth on Track will be handled through the usual complaints processes under the PPIP Act and HRIP Act that applies to government agencies, as the Provider is delivering services under contract to the Department of Justice.

Part 5 of the PPIP Act and Section 21 of the HRIP Act provides a right of review for contravention of information or health information protection principle or a privacy code of practice.

A summary of the complaints process is outlined on the IPC's website here: <http://www.ipc.nsw.gov.au/how-do-i-make-complaint>. It starts with the person submitting a form or writing to request an internal review be completed assessing whether the agency has complied with its privacy obligations. A privacy complaint means:

- An application for internal review of the handling of personal/health information in line with privacy laws, or
- An application to the Administrative Decisions Tribunal for review of the handling of person/health information in line with privacy laws or

- Any other complaint in writing by a person in relation to personal or health information collected, used or disclosed under the operation of the Youth on Track.

A Provider is required to cooperate with Department of Justice (DJ) in relation to any complaints by:

- Complying with any direction of DJ to immediately provide a copy of any personal or health information about a specified person that is in the possession or control of the Provider
- Providing any information that DJ may require in relation to any matter about the subject of the Complaint
- Directing all Provider staff to cooperate with efforts by DJ to undertake a review, to investigate the conduct or handling of information or any other matters that are the subject of the complaint
- Directing all Provider staff to cooperate with DJ including by giving evidence in relation to any legal proceedings arising from an application to the Administrative Decisions Tribunal.

A Provider is required to cooperate with DJ in relation to the outcomes of complaints, by complying with and/or cooperating with DJ to implement:

- The outcomes of any internal review, including any outcome involving the taking of disciplinary action by a Provider against its staff, and
- Any orders made by the Administrative Decisions Tribunal

Attachment 1: Client Consent Exchange of Information and Participation

Youth on Track

Young Person Name:		Date of Birth:	
Parent/Carer 1 participant:		Date of Birth:	
Parent/Carer 2 participant:		Date of Birth:	

Your privacy and confidentiality is important to us. We believe the information you share with us belongs to you. For this reason

1. We will only share information about you to enable us to continually improve the services we provide to you and your family.
2. We will only discuss your situation with other people where (i) you are present; or (ii) we have been invited or you have agreed to us attending; or (iii) where we are required to by the law.
3. We will pass on any information we receive from others about you, except where there are legal or ethical reasons for not doing so.
4. [YoT Service Provider] keeps computerised client information and you can check these at any time.
5. The program will be evaluated. As a participant in the program you will be invited to participate in the evaluation.
6. Your consent will remain valid until you no longer wish to participate in Youth on Track including if you move to a different Youth on Track site with a different provider. Your information will be securely stored but not shared if you withdraw consent.

Agencies/people we are authorised to exchange your personal information with:	Circle
NSW Community Services (CS)	YES / NO
NSW Department of Education & Communities (School and TAFE)	YES / NO
NSW Department of Health (Including Justice Health)	YES / NO
NSW State Debt Recovery Office (SDRO)	YES / NO
NSW Aging, Disability and Home Care (ADHC)	YES / NO
Legal Aid and / or Aboriginal Legal Services (ALS)	YES / NO
NSW Births Deaths and Marriages	YES / NO
Juvenile Justice NSW	YES / NO
NSW Health	YES / NO
UnitingCare Burnside	YES / NO
Other:	YES / NO
Other:	YES / NO

Agencies/people we are NOT authorised to exchange your personal information with:

Note to case managers: <i>If the young person is 14 years and under, the parent/guardian must co-sign this form</i>					
Young Person:		Sign:		Date:	
Parent/Guardian:		Sign:		Date:	

Parent or carer consenting to participate in Youth on Track					
Parent/Carer 1:		Sign:		Date:	
Parent/Carer 2:		Sign:		Date:	

Case manager/Coordinator:		Sign:		Date:	
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Client capacity to provide consent

The young person must have the capacity to understand what they are consenting to. The responsibility for determining if a young person has capacity to consent is the case managers.

The young person has the capacity to consent if they demonstrate they understand and communicate:

- Why the information is being collected, used and exchanged;
- Who the information is being collected and used by;
- Who the information will be exchanged with; and
- How the collection, use and exchange of their information can help them and their family

Does the young person have capacity to provide consent?	Yes / No
Reasons for view	
Case manager sign off	

Youth on Track Client Consent Policy

Youth on Track is subject to privacy laws including but not limited to the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*. These laws require that client information needs to be kept confidential, unless consent is given to disclose information to another person. The 'Client Consent – Exchange of Information & Participation Form' is the tool used to obtain this consent. Laws also require case managers to be specific with clients about any limits to confidentiality, for example in cases of child protection, case managers may have to disclose personal information to ensure the young person's safety.

Consent needs to be:

- given freely, not coerced;
- informed: the young person has sufficient information to know what they are consenting to;
- specific: how you can collect and use information, to whom you can disclose information and for what purpose;
- given by someone with legal capacity to give consent, for example, the young person has the mental capacity to understand what they are consenting to.

Case managers must explain in a language that is clear and simplified that the young person's legal rights are balanced with the need to talk to other organisations about their circumstances (current and past) in order to complete assessments and reports, monitor progress with services or assist in obtaining services as part of their case management.

Case managers must **clearly identify to the client, and record on the consent form, the name of the organisation/persons** with whom the client information will be exchanged prior to information exchange taking place unless information exchange is required under law and therefore informing the young person may not be appropriate. While obtaining consent case managers must explain that there are situations where the case manager may be required to disclose information by law without the young person's consent. This may occur for various legal purposes or in order to deal with a serious and imminent threat to any person's health or safety.

The **purpose** of the information being sought or exchanged is listed on the form. This should be explained to the young person with examples.

The **type** of information being sought or exchanged is also listed on the form. These types of information should be explained to the young person with examples. Some examples include:

- *Personal* – name, date of birth, address, contact number etc.
- *Family* – parents and/or siblings names, details and any relevant family issues etc.
- *Financial* – income from work or benefits, ability to pay fines or living expenses etc.
- *Health* – information from doctors or psychologists about physical or mental health matters and health services for the person
- *Legal* – court appearances, offences, legal orders, conditions of legal orders etc.

Case Managers must inform the young person and their family that limited use or disclosure of his or her private information may occur if the young person declines to participate or disengages.

Legal capacity to give consent

Where a young person has the capacity to understand the nature and effect of their consent they can legally provide personal consent without requiring parental consent. This will generally be at age 14, but this may be higher depending on the individual's capacity. When gaining consent for a young person to participate in Youth on Track and have their information share the 'Client Capacity to Consent' section of the form must be completed.

Where the young person is under 16 and written consent from parents or a guardian is not obtained, or it does not seem appropriate for a variety of reasons, the reasons why consent was not obtained need to be documented in the appropriate file or record. If the young person requiring the service lacks legal capacity and cannot sign consent on their own behalf, a family member or guardian is able to do so.