



# Fact Sheet for Assessors – My Aged Care Consent

## 1. Purpose

This fact sheet provides guidance for My Aged Care home support and comprehensive assessors on the importance of gaining informed consent before the collection, use or disclosure of personal information when assessing for aged care services. It includes the introduction of standardised scripts and a record keeping process to support assessors with informed consent activities.

## 2. Relevant Legislation

Information that is collected on My Aged Care is always subject to the [Privacy Act 1988](#) (Privacy Act) and its [Australian Privacy Principles](#) (APPs). This is because it will include 'personal information' and most likely 'sensitive information' about clients and possibly others.

For Aged Care Assessment Teams (ACATs), information collected on My Aged Care for purposes of assessment is also subject to the [Aged Care Act 1997](#) (Aged Care Act) which they operate under while carrying out their assessment functions.

Obtaining informed consent is necessary to meet the requirements of both the Privacy Act with respect to the collection, use and disclosure of personal and sensitive information (see APPs 3 and 6 respectively) and with respect to collection, use and disclosure of protected information under Division 86 of the Aged Care Act.

## 3. Types of information

The Privacy Act provides definitions of 'personal' and 'sensitive' information. The Aged Care Act refers to 'protected information'.

### 3.1 Personal information

Under the Privacy Act, personal information includes a broad range of information, or an opinion, that could identify an individual. What is 'personal' information will vary, depending on whether a person can be identified or is reasonably identifiable in the circumstances. The Privacy Act does not cover the personal information of someone who is deceased.

Examples of 'personal' information:

- an individual's name, signature, address, phone number or date of birth
- sensitive information
- photographs
- internet protocol (IP) addresses

- voice print and facial recognition biometrics

### **3.2 Sensitive information**

Under the Privacy Act, 'sensitive' information is personal information that includes information or an opinion about an individual's:

- racial or ethnic origin
- political opinions or associations
- religious or philosophical beliefs
- sexual orientation or practices
- criminal record
- health or genetic information
- some aspects of biometric information

Generally, sensitive information has a higher level of privacy protection than other personal information.

### **3.3 Protected information**

For ACATs, assessment information collected for purposes of the assessment is 'protected information' under Division 86 of the Aged Care Act. 'Protected information' is defined under section 86-1 of the Aged Care Act as information that was acquired under or for the purposes of the Aged Care Act.

Under the Aged Care Act, information that is 'protected information' is to be accepted as protected by the secrecy provisions in Division 86. A person will not be able to access that information unless it meets one of the exceptions listed in sections 86-2(2) or 86-3 or 86-4 of the Aged Care Act. See section 18.2 of the [My Aged Care Assessment Manual](#) for more information.

The Aged Care Act does not cover the 'protected information' of someone who is deceased. However, third party information on the record of living individuals remains subject to the secrecy provisions under section 86 of the Aged Care Act.

## **4. Elements of consent**

All assessors must be aware of the four key elements of consent outlined in the APPs:

- the individual is adequately informed before giving consent
- the individual gives consent voluntarily
- the consent is current and specific, and
- the individual has the capacity to understand and communicate their consent.

### **4.1 The individual is adequately informed before giving consent**

The assessor must ensure that an individual is properly and clearly informed about how their personal information will be handled, so they can decide whether to give their consent. The information should be communicated in a way they understand, without legal or industry jargon. An individual must be aware of the implications of providing or withholding consent, for example, whether access to a service will be denied if consent is not given to collection of a specific item of personal information.

## **4.2 The individual gives consent voluntarily**

Consent is voluntary if an individual has a genuine opportunity to provide or withhold consent. Consent is not voluntary where there is duress, coercion or pressure that could overpower the person's will.

Factors relevant to deciding whether consent is voluntary that the client needs to be aware of include:

- alternatives are open to them if they choose not to consent
- the seriousness of any consequences if they decide not to consent
- any adverse consequences for family members or associates of the individual if the individual refuses to consent.

## **4.3 The consent is current and specific**

Assessors should seek consent from an individual for collection and proposed uses and disclosures of personal information at the time the information is collected. Alternatively, if consent was not sought at the time of collection, or that consent did not cover a proposed use or disclosure, an assessor should seek the individual's consent at the time of the use or disclosure.

Consent given at a particular time in particular circumstances cannot be assumed to endure indefinitely. It is good practice to inform the individual of the period for which the consent will be relied on in the absence of a material change of circumstances.

The assessor should not seek a broader consent than is necessary for its purposes, for example, consent for undefined future uses, or consent to 'all legitimate uses or disclosures'. When seeking consent, an assessor should describe the purpose to which it relates. The level of specificity required will depend on the circumstances, including the sensitivity of the personal information.

A client may withdraw their consent at any time, and this should be an easy and accessible process. Once a client has withdrawn consent, an assessor can no longer rely on that past consent for any future use or disclosure of the individual's personal information. Individuals should be made aware of the potential implications of withdrawing consent, such as no longer being assessed or able to access a service.

## **4.4 The individual has the capacity to understand and communicate their consent**

An individual must have the capacity to consent. This means that the individual is capable of understanding the nature of a consent decision, including the effect of giving or withholding consent, forming a view based on reasoned judgement and how to communicate a consent decision. Assessors must focus on whether the client has capacity to understand, to communicate their consent and be aware of matters that may suggest a lack of capacity. Issues that could affect an individual's capacity to consent include:

- The client is struggling to hear or speak due to limited understanding of the language being used
- mental incapacity, for example during a psychotic episode, a temporary mental illness, or because the individual is unconscious, in severe distress or has advanced dementia.

The assessor should not proceed to obtain consent or to set up a support network relationship if capacity is an issue. If an assessor is uncertain as to whether an individual has capacity to consent at a particular time, assessors should not rely on any statement of consent given by the individual at that time.

The assessor should consider whether any such issue could be addressed by providing the individual with appropriate support to enable them to have capacity to consent. If an individual does not have capacity to consent, even with support or the provision of additional resources such as an

interpreter or alternative communication methods, and consent is required, an assessor should consider who can act on the individual's behalf. Options include:

- a guardian. For example, a person recognised by other relevant laws, for example in NSW, a 'person responsible' under the Guardianship Act 1987 (NSW) (this may be an individual's spouse, partner, carer, family member or close friend); or
- someone with an enduring power of attorney

A client who lacks the capacity to consent should nevertheless be involved, as far as practicable, in any decision-making process. To the extent practicable in the circumstances, the assessor should ensure that privacy issues are discussed with individuals who have impaired decision-making capacity in a way that is understandable and comprehensible.

## **5. When and how to seek consent?**

### **5.1 My Aged Care assessor portal consent to commence triage**

Before commencing the triage questions with the client, staff holding a Team Leader role will be required to read out the consent script for triage, which is located within the My Aged Care portal's triage component (or in the app in the case of self-referrals).

Recording consent for triage can only be completed in the My Aged Care assessor portal or the Aged Care Assessor App.

### **5.2 My Aged Care Assessment Consent Form**

Assessors must seek and gain informed consent from the client (or authorised representative) in the following scenarios using the My Aged Care Assessment Consent Form (the Consent Form):

- Prior to and when commencing the assessment or reassessment
- Referring clients to a service provider.

Assessors are able to access the Consent Form via the Document tab on the My Aged care assessor portal.

### **5.3 Does the client have capacity to give informed consent?**

Prior to completing consent, the assessor must gauge whether the client has the capacity to understand and communicate their consent by determining if:

- The client can provide their informed consent independently
- The client can provide their informed consent with the assistance of their support person
- The client lacks capacity and requires their My Aged Care authorised representative to provide consent on their behalf.

If a support person is necessary to assist a client who has capacity, then this support should be arranged prior to obtaining the client's consent. Where the client lacks capacity, for another individual to formally act on behalf of the client in My Aged Care, the person must meet requirements to be an authorised representative in My Aged Care.

See the fact sheet on the [Overview of client support relationships in the Assessor Portal and myAssessor application](#) and [My Aged Care Fact Sheet - Confirming Authorised Representatives in My Aged Care](#) for more details regarding support networks and authorised representatives in My Aged Care.

## 5.4 Read the consent scripts

The consent scripts are designed to be read out to the client (or their authorised representative) prior to starting an assessment.

The scripts have been developed to be as specific as possible with the use of simple English to assist assessors in the process of informing clients (or their authorised representative) on how their personal information will be handled, so that they can make an informed decision on whether to provide consent.

An important part of the service referral script includes information on the types of service referral methods (**referral code**, **sequential** or **broadcast**). The assessor has a responsibility to gain informed consent from the client on the referral method of their choice. This includes explaining the types of referral method, ensuring the client understands the different type of referral methods and the possible implications of choosing one over the other in terms of how their information will be shared with providers and how many and which providers see their information.

The Department recommends that the scripts are read verbatim to most clients. If necessary, the assessor can tailor the scripts to the client's communication needs, to ensure it is understandable and accessible. Further discussion or explanation may be required to ensure that the information in the script is understandable to the client.

A client with impaired decision-making capacity should still be involved to the extent possible in discussion and decisions about their privacy in a way that is understandable and comprehensible.

If required the assessor should continue to arrange an interpreter or communication support as necessary to facilitate this support for the client.

## 5.5 Manage questions

If the client (or their authorised representative) has questions or concerns, the assessor can discuss these before recording the consent.

Note: Most assessment information would be classed as 'sensitive' under the Privacy Act and be appropriately stored in the assessment on My Aged Care.

However, if there is information of a highly sensitive nature, the assessor may think it is appropriate to discuss the use of the sensitive notes and attachments functionality on My Aged Care with the client. See Section 5.6 Recording Assessment Information of the [My Aged Care Assessment Manual](#) for more information.

## 5.6 Record of informed consent

The triage consent section within the My Aged Care assessor portal and the Consent Form are designed so that it can be completed by the assessor on behalf of the client (or their authorised representative).

After the consent scripts are read out, the assessor seeks the person's acknowledgement that they understand the information in the scripts and that they have provided consent to proceed with relevant activities (e.g. the assessment or the service referrals). For service referrals the client provides informed consent to their preferred referral method.

The assessor completes the recording of the client's decision and if applicable records the support person and/or authorised representative details. The assessor signs and dates when the consent was given (this is done electronically for triage).

If the assessor has gauged the client has capacity, they must acknowledge in good judgement that "*there was nothing to suggest the client lacked capacity*", and indicate who the scripts were read to and who provided the informed consent.

## 5.7 Upload documentation to the client record and additional notes

For assessments, when the Consent Form is completed it is uploaded as an attachment to the My Aged Care client record.

In client notes the assessor can record:

- The Consent Form is uploaded and includes confirmation of informed consent for assessment and/or service referrals and that an assessor has signed the form on the client's (or their authorised representative's) behalf
- Additional notes relating to the outcome of any conversations with the client (or their authorised representative) on informed consent.

## 5.8 Exceptional circumstances (ACAT only)

For ACATs there may be exceptional circumstances where the client does not have decision-making capacity and a confirmed authorised representative relationship is not established in My Aged Care. In this instance, the [Application for Care Form](#) has provision to be completed by another person who is acting in the best interests of the client, such as a spouse or other close relative, close friend, general practitioner or solicitor. See Section 9.7 Application for Care Form of the [My Aged Care Assessment Manual](#) for further information.

In these rare circumstances, ACATs will:

- Upload the completed [Application for Care Form](#) including the reason why the applicant was unable to sign the Application for Care Form
- Make a note on the client record that the assessor was unable complete the Consent Form and document the reason why
- Assist the client and significant others with progressing formal representative arrangements through the relevant state or territory authority.

## 6. Key Resources

- [My Aged Care Assessment Manual](#)
  - Section 5.1 Consent
  - Section 5.6 Recording Assessment Information
  - Section 9.7 Application for Care Form
  - Section 18.1 Privacy Act 1988
  - Section 18.2 Aged Care Act 1997
- My Aged Care:
  - [Privacy Policy](#)
  - [Legal Information](#)
  - [Arranging someone to support you](#)
  - [Appointment of a support person form](#)
- My Aged Care Fact sheets for Assessors
  - [Confirming Authorised Representatives in My Aged Care](#)
  - [Overview of client support relationships in the Assessor Portal and myAssessor application](#)
- My Aged Care Assessor Portal User Guides
  - User Guide 2 – Registering support people and adding relationships [ACAT](#) and [RAS](#)
  - User Guide 6 – Completing an assessment [ACAT](#) and [RAS](#)
  - User Guide 8 – Referring for services [ACAT](#) and [RAS](#)
- [Privacy Act 1988](#)
- [Aged Care Act 1997](#)
- The Privacy Act and APPs [The Privacy Act - Home \(oaic.gov.au\)](#)