



**Australian  
Privacy  
Foundation**

---

post:GPOBox1196  
SydneyNSW2001  
email:mail@privacy.org.au  
web:www.privacy.org.au

Media enquiries:  
Juanita Fernando  
Australian Privacy Foundation  
Tel: 0408 131 535

## **MEDIA RELEASE: Leading Privacy Group Rejects Medical Code**

August 11, 2009

The newly-released “Good Medical Practice: A Code of Conduct for Doctors in Australia” has drawn immediate fire from the nation’s longest-standing privacy advocacy organisation, the Australian Privacy Foundation (APF).

“The document’s privacy provisions are completely unacceptable to the public”, said the Chair of the APF Health Sub Committee, Dr Juanita Fernando.

“The document gives advice that is in conflict with the law, and lowers the bar far below the standards that doctors currently apply anyway”.

The Australian Medical Council (AMC) that released the Code claims to have undertaken consultations during the drafting process.

“The APF heard about the release of this Code on the news. At no stage was it even advised that the Code was in preparation, let alone asked for a submission”, Dr Fernando said.

“In a matter as serious as this, it was vital that the AMC briefed organisations such as APF, and actively sought their views. Because they failed to do so, the Code is a privacy disaster, and the AMC must take at least the privacy aspects back to the drawing-boards”.

## BACKGROUND INFORMATION

### *Good Medical Practice: A Code of Conduct for Doctors in Australia, an Unacceptable One for Consumers*

The Australian Privacy Foundation (APF) understands that the Australian Medical Council (AMC) claims an extensive consultation process supported development of a revised draft code of conduct for doctors, called *Good Medical Practice: A Code of Conduct for Doctors in Australia* (<http://goodmedicalpractice.org.au/>). The report suggests the AMC engaged in a comprehensive consultation process to devise the code “in the knowledge that the ultimate legitimacy and effectiveness of the code would rest on the recognition and acceptance that it received from the medical profession, medical regulators and the broader Australian community” (<http://goodmedicalpractice.org.au/wp-content/downloads/Report%20of%20Consultation%200309.pdf>). This process evidently involved the distribution of a draft Code to unknown individuals and organisations considered “key stakeholders”, an Internet survey where the majority of participants were drawn from health and associated professions (most of whom were medical practitioners), the Consumers Health Forum and direct stakeholder engagement and public meetings.

The APF is uncomfortable about claims made by the AMC as to consultation. Where and when did stakeholder meetings take place? Who were these stakeholders? As the country's leading privacy advocacy organisation, the APF were not advised of the meetings. Which groups were apprised of the consultations and how did these occur? How and when were individual consumers apprised of the consultations and how did these occur? How and when and where were the consultation opportunities promoted to consumers?

Chapter 3 of the Code of Conduct concerns work with patients, weakening their rights to privacy (p.13). Section 3.2.3. of the code reads “A good doctor–patient partnership requires high standards of professional conduct”. This involves “Protecting patients' privacy and right to confidentiality, **unless** release of information is required by law or by public-interest considerations (my emphasis).” This appears to breach existing Privacy laws, such as IPP10.1 (information disclosure is necessary to prevent threat to an individual's health or life) or NPP2 (information disclosure is necessary to protect the individuals health and safety or public health and safety).

The vague expression 'public-interest considerations' in concert with other elements of Chapter 3 are inadequate and show no understanding of patients privacy interests. While the law provides doctors with some specific responsibilities and specific discretions, it does **not** provide them with discretionary power to decide the public interest, and nor should it. The Code as it stands actively incites doctors to breach their legal obligations, and with it their patients' privacy. Section 3.4 of the draft also conflates notions of ‘confidentiality and privacy’ and the unthinking presumption that the Code currently provides satisfactory privacy protections for patients [1]. These blunders would not have been made had open and transparent consultation actually taken place.

The APF – Australia's leading public interest voice in the privacy arena since 1987

Finally, Code development was funded by the Department of Health and Ageing (DOHA), as are a number of ostensibly transparent and consultative eHealth initiatives, like UHIs and IHIs. On the face of things, I believe the AMC has demonstrated the same disdain for patient-centred feedback as DOHA, with the latter keeping secret the findings from several Privacy Impact Assessments (PIAs) for at least a decade.

[1] Privacy and confidentiality are among the foundations of patient trust. Privacy refers to the interest that individuals have in sustaining a 'personal space', free from interference by other people and organisations. Confidentiality is the legal duty of individuals who come into the possession of information about others, especially in the course of particular kinds of relationships with them. (<http://www.rogerclarke.com/DV/Intro.html> / <http://www.rogerclarke.com/DV/Privacy.html>)