

**OCCUPATIONAL THERAPY BOARD  
OF SOUTH AUSTRALIA**

**CODE OF  
PROFESSIONAL CONDUCT  
AND  
PRACTICE**

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# TABLE OF CONTENTS

	<u>Page No</u>
<b>1. Introduction .....</b>	<b>1</b>
<b>2. Ethical Principles .....</b>	<b>2</b>
2.1 Obligations to the Public .....	2
2.2 Obligations to the Profession .....	3
2.3 Obligations as Professional Practitioners .....	3
<b>3. Standards of Professional Conduct &amp; Practice .....</b>	<b>5</b>
3.1 Professional Accountability .....	5
3.2 Transparency .....	6
3.3 Confidentiality .....	8
3.4 Professional Boundaries .....	9
3.5 Effective Communication .....	11
3.6 Consent and Informed Consent .....	12
3.7 Conflict of Interest.....	13
3.8 Keeping of Records .....	13
3.9 Use of Titles.....	18
<b>4. Causes for Disciplinary Action.....</b>	<b>21</b>
<b>5. Glossary of Terms.....</b>	<b>23</b>
<b>Appendix I</b> Extract from “Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2004-2009”	

**Note:** *Information on the Complaints and Investigation Process is available in a separate document entitled “Investigation Process” which can be obtained from the Board’s office or the website: [www.otrb.sboards.com.au](http://www.otrb.sboards.com.au)*

## 1. INTRODUCTION

In accordance with the provisions of the Occupational Therapy Practice Act 2005 (SA) (“the Act”), the Occupational Therapy Board of South Australia (“the Board”) must perform its functions with the object of protecting the health and safety of the public by achieving and maintaining high professional standards of both competence and conduct in the provision of occupational therapy in this State.

The Board has therefore produced this Code of Professional Conduct & Practice to convey to registered occupational therapists and occupational therapy students (all referred to as “registrants”) and occupational therapy service providers (known as “providers”) the standards necessary to discharge their duties and responsibilities in an appropriate and professional manner.

Pursuant to Section 3 of the Act:

“(1) *Unprofessional conduct includes:*

- (a) *improper or unethical conduct in relation to professional practice; and*
- (b) *incompetence or negligence in relation to the provision of occupational therapy; and*
- (c) *a contravention of or failure to comply with:*
  - (i) *a provision of this Act; or*
  - (ii) *a code of conduct or professional standard prepared or endorsed by the Board under this Act; and*
- (d) *conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other Act or law.*

(2) *A reference in this Act to unprofessional conduct extends to:*

- (a) *unprofessional conduct committed before the commencement of this Act; and*
- (b) *unprofessional conduct committed within or outside South Australia or the Commonwealth.*

(3) *A reference in this Act to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.”*

(Also refer to “Unprofessional Conduct in a Private Capacity” in Glossary of Terms.)

In case law, unprofessional conduct includes conduct which may reasonably be held to violate, or to fall short of, to a substantial degree, the standard of professional conduct observed and approved by members of the profession of good repute and competency.

This Code is not exhaustive. Any dereliction of professional duty or the abuse of any of the privileges and opportunities afforded by practising occupational therapy may give rise to an allegation of unprofessional conduct.

The question of whether any particular course of conduct amounts to unprofessional conduct is a matter determined by the Board, after considering the evidence in each case.

### **Note:**

**A contravention or failure to comply with this Code of Professional Conduct and Practice will, of itself, amount to unprofessional conduct.**

## 2. ETHICAL PRINCIPLES

### 2.1 Obligations to the Public

*The public is entitled to receive safe, effective and ethical occupational therapy services performed by knowledgeable, skilled, accountable practitioners. A registrant/provider will utilise an individualised, comprehensive approach for each client, which recognises the client's needs and background and his/her right to choose from a range of options. A registrant/provider shall not take advantage of clients physically, psychologically, emotionally, or financially.*

#### **A registrant/provider shall:**

- (a) Uphold the principle of informed consent, including the client's right to choose from a range of options and to understand and exercise the right of choice.
- (b) Demonstrate respect for the physical, emotional and spiritual well-being of a client.
- (c) Treat all clients equitably and with respect.
- (d) Communicate relevant information clearly to the client through verbal, non-verbal and/or written means while also establishing a feedback process to ensure mutual understanding.
- (e) Identify the competing interests of clients and objectively address his/her needs.
- (f) Maintain a respectful relationship with members of the public in order to facilitate awareness and understanding of the profession of occupational therapy.
- (g) Embed cultural respect into the way he/she practises the profession. A registrant/provider should ensure that all practice, and in particular provision of services to Aboriginal and Torres Strait Islander people, encompasses the principles set out in section 2.3 of the 'Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2004 – 2009', extracted in Appendix 1.
- (h) Recognise and support carers in their role in the community (Refer: Carers Recognition Act 2005 (SA) and SA Carers Policy – Supporting Carers [www.familiesandcommunities.sa.gov.au/sacarers](http://www.familiesandcommunities.sa.gov.au/sacarers))
- (i) Observe professional boundaries with clients. This includes not engaging in personal relationships or sexual behaviour with clients.

#### **A registrant/provider shall not :**

- (j) Exploit any relationship to further his/her own physical, psychological, emotional, financial, political or business interests.

## 2.2 Obligations to the Profession

*The Board expects its registrants/providers to maintain standards of practice and conduct in a professional and ethical manner. A registrant/provider is obligated to comply with the Act and Regulations and adhere to the guidelines of the Board, and is required to maintain professional competency that will ensure the delivery of safe, quality occupational therapy services.*

### **A registrant/provider shall:**

- (a) Maintain professional integrity and conduct all professional activities, programs and relations honestly and responsibly.
- (b) Ensure that professional employees are registered with the Board and continue to maintain current registration.
- (c) As a partner, former partner, locum, employee or previous employee, respect the ownership and confidentiality of the principal practitioner's practice records when establishing a new practice.
- (d) Respect the right of colleagues and other health professionals to hold views that differ from his/her own. A practitioner should not demean other health professionals or their professional practices or beliefs.
- (e) Maintain awareness of the Occupational Therapy Practice Act 2005 (SA) ("the Act") and Regulations, this Code of Professional Conduct & Practice, and any other Board guidelines issued from time to time, and comply with same.

## 2.3 Obligations as Professional Practitioners

*Each registrant/provider must demonstrate competence. A registrant/provider must continually update professional knowledge and skills relevant to his/her area of practice. A registrant/provider shall collaborate with professionals and others as appropriate with a goal to enhancing client care.*

### **A registrant/provider shall:**

- (a) Provide competent, ethical service to clients.
- (b) Aspire to a high level of professional efficacy through the application and maintenance of current, relevant knowledge and skill.
- (c) Develop and maintain collaborative relationships and exchange knowledge as required in the interests of a client's health and well being, while respecting client confidentiality and legislation and/or common law relating to consent to treatment.

- (d) Report to the Board:
  - (i) medical unfitness or unprofessional conduct of a registrant (refer Section 40 of the Act);
  - (ii) any misuse of the title “Occupational Therapist” by a person not registered by the Board;
  - (iii) if he/she becomes aware that he/she is or may be medically unfit to provide occupational therapy (refer Section 59 of the Act);
  - (iv) prescribed information relating to any claim for damages or other compensation (refer Section 62 of the Act, and Regulation 11 of the Occupational Therapy Practice (General) Regulations 2006 (the General Regulations));
  - (v) details of interest in a prescribed business (refer Section 53 of the Act, and General Regulation 10);
- (e) Co-operate with internal quality assurance and external statutory investigations to improve the safety and quality of services.

**A registrant/provider shall not :**

- (f) Provide occupational therapy services when impaired by alcohol or other addictive substances, or while medically unfit.

### 3. STANDARDS OF PROFESSIONAL CONDUCT & PRACTICE

#### 3.1 Professional Accountability

*As a regulated professional, a registrant/provider is required to clearly demonstrate that he/she serves the client's best interest, in particular regard to accountability, safety and quality of client care. Accountability means that a registrant/provider is responsible for his/her actions. A registrant/provider has an obligation to account for and explain his/her actions. A competent registrant/provider is aware of his/her strengths and limits, knows the guidelines and rules, makes appropriate choices consciously and deliberately, and is able to explain why he/she took a particular course of action.*

#### **A registrant/provider shall:**

- (a) Maintain a high level of professional knowledge and skill to ensure continued competency (refer to the Board's "Ongoing Competency Model for Maintaining Registration"). The onus is on the registrant/provider to seek out and utilise assistance and resources on an ongoing basis to remain competent and provide quality care (eg. participation in courses, seminars, conferences, workshops etc.).
- (b) Be responsible for working within the scope of practice of the profession and ascertaining the extent to which legislation, regulations, standards, competencies, guidelines and policies related to the practise of the profession apply to his/her practice.
- (c) Recognise the parameters of his/her professional competence and avoid going beyond the limitations of his/her knowledge and skills. For clients whose needs fall outside the domain of the registrant/provider's competence, assistance and resources must be sought out and utilised to provide the required services, or the client must be referred or recommended for referral to appropriate professional services.
- (d) Act in accordance with the highest standards of professional integrity and impartiality. A registrant/provider must not exploit professional relationships for personal gain or for imposing religious or political beliefs.
- (e) Update his/her knowledge and skills before re-entering the workforce if he/she has not practised occupational therapy for a continuous period of five years or more. This may be at the direction of the Board and involve supervised practise.
- (f) When supervising a student or person seeking full registration under the Act:
  - (i) ensure that clients are aware of the student's registration status or person's conditional registration status (refer Section 34 of the Act);
  - (ii) be directly responsible for care and treatment provided to clients;
  - (iii) provide appropriate training and feedback in accordance with the University's or Board's guidelines;
  - (iv) ensure that, at the start of the supervisory period, the student or conditional registrant understands and, thereafter, adheres to the professional and ethical standards of occupational therapy practice in accordance with this Code.

**A registrant/provider shall not :**

- (g) Disrespect the ethical, cultural, religious and political beliefs of clients, students or colleagues. Registrants/providers must not discriminate in employment or in the provision of services on grounds of place of origin, race, Aboriginality, sex, marital status, pregnancy, disability, sexuality or age. Registrants/providers must not engage in an act of victimisation or sexual harassment against clients, students or colleagues.
- (h) Unless exempted by the Board, provide occupational therapy unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred in the provision of occupational therapy (refer Section 61 of the Act).
- (i) Overservice a client. It is the responsibility of the registrant/provider to treat the client only while occupational therapy can be shown to be of benefit (clinical justification). Care that is not justified constitutes overservicing.
- (j) Overstate or exaggerate the seriousness of a client's condition.
- (k) Directly induce or solicit clients from the practice of another registrant/provider.
- (l) Overcharge a client.

**3.2 Transparency**

*Transparent practice requires full disclosure, and clear, open and thorough communication. Transparent practice contributes to a registrant's/provider's integrity. It is inappropriate to withhold information that may impact on the client's ability to become involved as an informed participant. The registrant/provider is responsible for ascertaining the nature and extent of information to be shared and the persons with whom it needs to be shared.*

**A registrant/provider shall:**

- (a) Practise in an open, professional and objective manner. This involves recognising any potentially competing expectations of the client and other stakeholders (family, team members, payer), including self-interest.
- (b) Recognise the importance of clear understanding with respect to financial matters with clients. Arrangements for payments and payment rates should be settled at the beginning of a therapeutic relationship. The registrant/provider's bill must reflect services actually rendered.
- (c) Be cautious in prognosis, act only on up to date information and not exaggerate the efficacy of his/her services or give specific guarantees regarding the results to be obtained from occupational therapy treatment.
- (d) Ensure that advertising materials or statements do not intend, or are not likely, to appeal to a client's fears, anxieties or emotions concerning his or her medical treatment or condition or the possible results of his or her failure to obtain the offered services.

- (e) Only use occupational therapy practice names which are not misleading or deceptive, or likely to mislead or deceive. Practice names shall be in good taste and not designed to adversely affect the standing of the occupational therapy profession.

**A registrant/provider shall not :**

- (f) Misrepresent his/her role or competence to the client. A registrant/provider will represent his/her knowledge, skills and abilities in a clear, open manner having considered the knowledge and expectation of the intended audience.
- (g) Misrepresent professional qualifications, education, experience or affiliations. Descriptions of practice, experience, techniques and training (eg. training in paediatrics, service with a focus on children) are permitted, in that they support the public's ability to make an informed choice, so long as they do not amount to an assertion of specialist status.
- (h) Advertise or make a statement that, in any way:
- (i) is false, misleading or deceptive;
  - (ii) is designed to mislead or deceive;
  - (iii) creates an unjustified expectation of beneficial treatment;
  - (iv) promotes the unnecessary or inappropriate use of his/her services;
  - (v) claims that he/she has unique prominence in the practice of occupational therapy; or
  - (vi) is likely to bring the profession into disrepute.

An advertisement or statement may be considered to bring the profession into disrepute if it:

- is disparaging of any other profession or professional; or
  - contains material of a rude, offensive or undignified nature.
- (i) Pay or give anything of value to a representative of the media or anyone else in anticipation of, or in return for, professional publicity in a news item, or for receiving or making a referral.

### 3.3 Confidentiality

*A registrant/provider is entrusted with personal and often sensitive information about his/her clients. A registrant/provider has a responsibility to respect, secure and protect the privacy of this information subject to any legal requirement to the contrary (eg. mandatory reporting). Even when sharing with those individuals who have the appropriate authority to receive it, the quantity and content of information provided should reflect a principle of a “need to know” basis only.*

**A registrant/provider shall:**

- (a) Comply with the relevant codes and principles pertaining to confidentiality – the National Privacy Principles (“NPPs”) as contained in Schedule 3 of the Privacy Act 1988 (Commonwealth) (available from the Office of the Privacy Commissioner’s website: [www.privacy.gov.au/Health](http://www.privacy.gov.au/Health)) where a registrant/provider is in private practice, and the Code of Fair Information Practice for a registrant in the public sector (available from the Department of Health’s website: [www.health.sa.gov.au/Publications/Guidelines](http://www.health.sa.gov.au/Publications/Guidelines)).
- (b) Report all abuse or neglect, even if only suspected, involving children under the age of 18 to the Department for Families and Communities.
- (c) Report all cases of actual and alleged sexual abuse by a regulated health professional of a client to the Registration Board of the abusing or allegedly abusing professional. In the event of an alleged sexual abuse of a client who is over the age of 18 by a non-regulated health provider, a registrant/provider should report the information to an appropriate authority (ie. Police, employer) if the client consents.
- (d) Take reasonable steps to inform the appropriate third party (eg. Police, Assessment & Crisis Intervention Service (ACIS), person at risk, client’s general practitioner) in the event that the registrant/provider has reason to believe that a client will seriously harm himself/herself or another person.

### 3.4 Professional Boundaries

*The professional-client relationship is an unequal relationship and a registrant/provider is responsible for establishing and maintaining professional boundaries with his/her clients. A registrant/provider is in a position of power because of the knowledge he/she holds and the client's need for that knowledge. In order to ensure a trusting relationship a registrant/provider must not misuse or abuse the position of power by crossing boundaries. The crossing of boundaries has multiple dimensions that include sexual misconduct, physical abuse, financial abuse, dual relationships, breaches of confidentiality, inappropriate acceptance of gifts and inappropriate self-disclosure. The professional relationship between a registrant/provider and client relies on trust and on the assumption that a registrant/provider will act in the best interests of the client. In order to maintain healthy trusting professional relationships a registrant/provider must ensure his/her own competence, integrity and dependability.*

#### **A registrant/provider shall:**

- (a) Behave ethically at all times and maintain professional boundaries with clients, the client's immediate family and significant others.
- (b) Be mindful at all times of the varying vulnerability of clients and the imbalance of power in the professional relationship. Clients are often vulnerable, especially when their health care makes it necessary for them to reveal themselves intimately to their health professional, physically or emotionally.
- (c) Seek appropriate advice and or counselling on recognition of the potential for professional boundary violations by either the registrant/provider or the client, and if necessary transfer the client to another registrant/provider for continuing and future health needs.
- (d) Seek appropriate advice and or counselling prior to entering into a relationship with a former client or someone with whom the client has a significant personal relationship.
- (e) Avoid as much as possible the establishment of dual relationships with his/her clients, and if this is not possible ensure mechanisms are established to avoid prejudicial practices.
- (f) Carefully consider the implications of giving gifts to, and accepting gifts from, his/her clients. A registrant/provider is reminded that it is an offence under section 54 of the Act to give, offer or accept a benefit for referral or recommendation.
- (g) Be aware of the warning signs that indicate professional boundaries are being crossed. Such warning signs include self-disclosure of information of a personal nature; flirtatious or overt sexual content interactions with clients; spending time with clients outside of working hours; and clients requesting or receiving non-urgent appointments at unusual hours, especially when other staff are not present.
- (h) Be aware of the factors that may increase the likelihood of the registrant/provider breaching professional boundaries. These include stressors in the registrant/provider's personal life; breakdown of personal relationships; drug and or alcohol abuse; mental illness and professional isolation.

**A registrant/provider shall not :**

- (i) Exploit a trust relationship with clients. Initiation and/or consent by the client in the case of economic, personal and/or sexual behaviour between a registrant/provider and a client is not an excuse. Any exploitation of the relationship between the client and registrant/provider for the gratification or benefit of the registrant/provider is an abuse of power. For example, a registrant/provider must not:
  - (i) use his/her position to establish improper personal relationships with clients, the client's immediate family and significant others;
  - (ii) put pressure on his/her clients to give or lend money or to provide other benefits to him/her;
  - (iii) put pressure on his/her clients to enter into an economic venture or investment scheme with him/her. There may be a detrimental effect on a professional relationship with a client if therapeutic and financial aspects in a relationship between a registrant/provider and a client are combined.
- (j) Engage in a personal relationship or sexual behaviour with a current client, or someone with whom the client has a significant personal relationship. A sexual or improper personal relationship, even if the patient is a consenting adult, may cloud the registrant/provider's judgement and make him/her less objective, which may in turn, result in the quality of care and service the registrant/provider provides for the client being compromised. A registrant/provider must not, for example:
  - (i) have sexual intercourse with a client;
  - (ii) initiate any form of sexual conduct in the client's presence;
  - (iii) make any inappropriate physical contact with a client;
  - (iv) make sexual proposals to a client;
  - (v) make unnecessary comments about a client's body or clothing;
  - (vi) tell a client of his/her own sexual problems, desires, practices, preferences or fantasies;
  - (vii) show disrespect of a client's sexual orientation;
  - (viii) make sexually suggestive comments or innuendo to a client.
- (k) Disclose information of a personal or intimate nature to his/her clients including, for example, details of his/her life, or personal crises or sexual desires or practices.

### 3.5 Effective Communication

*Clear communication is fundamental to the development of the professional-client relationship. It is considered a competency of practice for a registrant/provider to utilise a communication process that promotes shared understanding with those with whom he/she interacts. Effective communication involves the establishment of a feedback process and includes appropriate use of verbal, non-verbal and written communication.*

#### **A registrant/provider shall:**

- (a) Subject to the consent of the client, ensure that there is an agreed, clear, mutual understanding of the registrant/provider's care plan by all persons involved with the client (eg. the client, other professionals, care givers, referral source, payers).
- (b) Address clients in a form or level of English which they understand or, if the client so wishes, through an interpreter fluent in the client's preferred language.
- (c) Fully inform the client of the purpose, process and risks of any testing/assessment and how the results will be used, prior to administration of the testing/assessment.
- (d) Treat colleagues and students with respect, courtesy, fairness and good faith.
- (e) When engaged in study and research be guided by and be familiar with the World Medical Association Declaration of Helsinki, and the National Health & Medical Research Council (NHMRC) Statement on Human Experimentation. Where appropriate, researchers should approach relevant ethics committees for advice or approval.

#### **A registrant/provider shall not :**

- (f) Discuss in a disparaging way, or offer an opinion that discredits the competency, quality of service provided or methods used by another professional or an agency. Prior to offering a professional opinion about the competency or services provided by another registrant/provider, another professional and/or another agency, a registrant/provider should consider:
  - (i) whether he/she has sufficient information;
  - (ii) the quality of that information;
  - (iii) his/her competence in evaluating the information;
  - (iv) the potential impact on the client;
  - (v) who has requested the opinion and for what purpose.

### 3.6 Consent and Informed Consent

*Informed consent of the client promotes free choice. It supports an honest, client-centred approach that helps to ensure that the client's best interests are served. Consent is defined as the client's permission to proceed with an agreed course of action. Informed consent requires that the person making the decision receives all the information that a reasonable person in the same circumstances would require in order to make a decision, including alternative options and risks of not having treatment, and that the registrant/provider responds to any reasonable requests for additional information about the matter.*

*If the client is unable to give informed consent appropriate steps must be taken to obtain the consent of a guardian, relative or, if necessary, the Guardianship Board as provided for under the Guardianship and Administration Act 1993 (SA).*

#### **A registrant/provider shall:**

- (a) Obtain consent verbally or in writing, or in rare cases, by implication. There should be documented evidence of such consent for occupational therapy services.
- (b) Respect the right of the client either to consent or refuse to consent to participate in occupational therapy services and to be fully informed at all stages of treatment.
- (c) Ensure the client knows the specific nature of the services being provided both initially and on an ongoing basis. A registrant/provider, at the earliest opportunity, should ensure the client understands and appreciates:
  - (i) the nature and purpose of the treatment/service to be provided;
  - (ii) the expected benefits and limitations of the treatment/service;
  - (iii) the material effects, risks and side effects of the treatment/service;
  - (iv) any alternative treatment or courses of action that might reasonably be considered;
  - (v) the likely consequences of not undertaking the treatment/service;
  - (vi) the scope of the referral;
  - (vii) who is the payer of the services;
  - (viii) the extent of confidentiality to be maintained;
  - (ix) who is/are the person/s with whom verbal or written reports/documentation will be shared.
  - (x) where his/her consent is required.
- (d) Comply with current legislation where it exists (eg. Consent to Medical Treatment and Palliative Care Act 1995 (SA), Guardianship and Administration Act 1993 (SA), Carers Recognition Act 2005 (SA)) and adhere to the principles of informed consent for all occupational therapy services provided to the client.
- (e) In seeking informed consent in the case of children, take care in relation to kin and cultural beliefs, so that the right person is approached for consent.

### 3.7 Conflict of Interest

*A conflict of interest arises when a registrant/provider has a relationship or interest that could be seen as improperly influencing his/her professional judgement or ability to act in the best interests of the client. Conflicts may present in different ways and if identified, whether they are real or perceived, need to be addressed.*

#### **A registrant/provider shall:**

- (a) Make every effort to avoid dual relationships (eg. treatment of his/her own family or friends) that could impair his/her judgement or increase the risk of exploitation.
- (b) Only provide professional services to family and friends if there is full disclosure of all potential issues to all involved stakeholders. A thorough and objective intervention must occur.
- (c) In situations where dual relationships are impossible to avoid (e.g. in rural and remote areas), take particular care to ensure that the professional and personal relationships are clearly delineated. In such a situation, registrants/providers are advised to seek guidance and supervision.
- (d) Be familiar with the provisions of sections 56, 57, 58, 59 and 61 of the Act.

#### **A registrant/provider shall not:**

- (e) Allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound professional judgment and skill.
- (f) Become involved in fraudulent or unethical activity related to his/her professional practice.

### 3.8 Keeping of Records

*A registrant/provider is responsible for the content of the record related to the occupational therapy service. The record must reflect the registrant/provider's professional analysis and/or opinion, intervention and recommendations.*

#### **(a) Types of Records**

Client records are those clinical notes and supporting documentation maintained by a registrant/provider on his/her clients. Any reference to client records encompasses health information in any form, including paper, electronic, visual (x-rays, CT scans, videos and photos) and audio records. Client records should meet the Board's requirements as set out at point (c) Maintenance of Records. In addition, electronic records should be capable of being printed on paper when required or being reproduced electronically in a form readily understood.

**(b) Privacy Principles**

A registrant/provider shall comply with the relevant privacy principles. Those in the private sector must comply with the National Privacy Principles as contained in Schedule 3 of the Privacy Act 1988 (Commonwealth) (“NPPs”). A registrant in the public sector is to comply with the Department of Health’s Code of Fair Information Practice, which is based on, and mirrors, the NPPs.

A registrant/provider is advised to familiarise himself/herself with the key principles of the NPPs, or where applicable, the Code of Fair Information Practice, particularly in relation to the following matters:

- The purpose and manner of collecting personal information;
- The use and disclosure of personal information collected;
- The requirement to take reasonable steps to ensure the personal information collected, used or disclosed is accurate, complete and up-to-date;
- The requirement to take reasonable steps to protect personal information held from misuse and loss and from unauthorised access, modification or disclosure;
- The requirement to adopt a policy of openness, transparency and accountability for the management of personal information collected;
- The requirement to give access to the personal information held on request, and the need to take reasonable steps to correct personal information if it is found to be inaccurate, incomplete, misleading or not up-to-date;
- The requirement to limit the use of identifiers that government agencies have assigned to an individual;
- The requirement to give individuals, wherever it is lawful and practicable, the option of not identifying themselves when their personal information is collected;
- The requirement to take reasonable steps to maintain the security and protect the privacy of personal information if it is transferred to a third party; and

The requirement to limit, wherever possible, the collection of sensitive information about individuals.

A registrant/provider can access the NPPs from the website of the Office of the Privacy Commissioner: [www.privacy.gov.au](http://www.privacy.gov.au).

The Code of Fair Information Practice can be accessed from the Department of Health’s website: [www.health.sa.gov.au](http://www.health.sa.gov.au)

**(c) Maintenance of Records**

Occupational therapy practice demands that adequate client records covering history, diagnosis and treatment of the client by the registrant/provider be created and maintained. See the definition of ‘unprofessional conduct’ in Section 3 of the Act.

**A registrant/provider shall:**

- (1) Keep records and reports clearly, concisely, accurately and objectively for the information of professional colleagues, for legal purposes and to record plans and interventions for clients.
- (2) For individual and ongoing consultations, ensure that client records contain the following:
  - (i) The client's medical history, including the presenting complaint, if appropriate.
  - (ii) The therapist's initial and any subsequent examination of the client and the findings.
  - (iii) Assessment of the client and the client's diagnosis and any changes to that assessment or diagnosis from time to time.
  - (iv) The proposed treatment goals and management plan and any modifications.
  - (v) The treatment given to the client on each occasion.
  - (vi) The client's response to the treatment, both subjective and objective.
  - (vii) Any referrals made or other treatment, strategies or advice recommended or given to the client.
  - (viii) Documented evidence of consent obtained for occupational therapy services.
- (3) Initial any changes to paper records and changes should be made in such a way as to make the previous entry visible. Computerised records must be established in such a way that, for every entry to the record, there is a record of when the entry was made, by whom and when changes were made and an adequate back-up kept.

**A registrant/provider shall not :**

- (4) Record terms or abbreviations that are derogatory or emotive.
- (5) Record abbreviations or 'short hand' expressions that are not recognisable and comprehensive within the context of the client's care.

**(d) Retention of Records**

Although there is no legislation to specify how long client records are to be maintained, it is recommended from a practical perspective, adult records should be retained for at least seven (7) years after the last treatment of a client by the registrant/provider, and child records until the person is 25 years of age.

A registrant in the public sector should be aware that official records made or received by a public agency in the conduct of its business will form part of an official record under the State Records Act 1997 (SA). Destruction (or disposal) of an official record may only be carried out in accordance with a determination made by the Manager of State Records with the approval of the State Records Council.

**(e) Destruction of Records**

A person shall not destroy, deface or damage a client record with intent to evade or frustrate the operation of the Privacy Act 1988 (Cth.) or other relevant legislation.

Where it is appropriate to destroy client records, a registrant/provider must ensure that it is done so as to maintain confidentiality.

**(f) Ownership of Records**

A registrant/provider in private practice owns the records created in that practice.

In a group practice, the right of ownership of records will depend on the terms and conditions of the form of partnership or association. Records created by an employee or a locum remain the property of the employing registrant/provider or group.

**(g) Right of Access to Records**

The right to access personal information is a very important privacy right. The NPPs (available from the Office of the Privacy Commissioner's website: [www.privacy.gov.au](http://www.privacy.gov.au)) provide clients with a right of access to their personal information held by private sector registrants/providers. Where a government agency has in its possession or under its control records of personal information of a client, he or she may have access to those records in accordance with the Freedom of Information Act 1991 (SA) (FOI Act) (available at the website: [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)).

Ways in which clients may gain access to their personal information include:

- inspecting the record (if held in electronic form, by way of a print out);
- by receiving a copy of the record; or
- by viewing the record and having its content explained by the registrant/provider holding the record or by another suitably qualified professional.

There is a limited number of exemptions to this general right of access to records, thus registrants/providers should familiarise themselves with the relevant exceptions as outlined in the NPPs, or where applicable, the FOI Act.

**(h) Transfer of Records**

When a client changes registrant/provider the Board requires that, on the written request of the client, at least a summary of the client record maintained by the first registrant/provider be transferred to the second registrant/provider.

A registrant/provider must therefore ensure that a sufficient health history is made available on request and with consent to any subsequent treating registrant/provider, thus ensuring the continued good management of the client.

**(i) Medico-Legal Reports**

Reports prepared for third parties, such as those prepared for medico-legal or insurance purposes, are the property of the party for whom they were prepared. A registrant/provider who holds copies of such reports has no right to release them to clients without consent of the person requesting the report.

**(j) Costs of Access to Records**

The Board accepts that reasonable charges sufficient to meet the costs of researching and documenting information sought on client records, may be charged to clients or their legally authorised agents for the provision of such information. However, it should be noted that the NPPs provide that such a charge must not be excessive and must not apply to lodging a request for such information or access.

The NPPs govern the cost of access in the private sector, and the FOI Act governs the cost of access in the public sector.

**(k) Death or Retirement of a Registrant/Provider**

A sole registrant/provider shall make appropriate provisions for the storage, transfer or sale of records upon his/her retirement and termination of business and as a contingency in the event of his/her untimely death.

A registrant/provider in partnership with other registrants/providers should ensure that he/she has a detailed formal written agreement at the time of entering into the partnership addressing the issues likely to be encountered, including the division or transfer of records, upon the dissolution of the partnership, or upon the retirement or death of one partner.

To ensure continuity of care, a registrant/provider shall make appropriate provisions to inform patients of the registrant/provider to which his/her records, if held, will be or have been transferred in the aforementioned situations.

### 3.9 Use of Titles

*The use of any title or designation is an effective method of quickly imparting considerable information about an individual to others. It immediately allows the audience to identify the common roles or activities and characteristics about that title. Titles may be attributed to an individual through a variety of mechanisms, some earned through training or education (eg. professional credentials) and others as a result of a position held (eg. a job title such as case manager).*

(a) Protected Title

One of the central elements of the Occupational Therapy Practice Act 2005 is the protection of title. See Sections 34, 35 and 36 of the Act.

Title protection as part of the regulation of a profession is one mechanism used to help the public readily identify those individuals who are registered with the Board and are subsequently accountable for the delivery of occupational therapy which meets the established standards of the profession.

The principle purpose for protection of title is to prevent confusion or misrepresentation to the public. Based on that understanding, it is important to recognise that the use of a title or designation is only a small part of the broader issue of how one represents oneself to others.

In South Australia the titles (or prescribed words) “occupational therapy student” and “occupational therapist” are reserved for individuals registered with the Board.

(Refer Section 35 of the Act)

(b) Interpretations of Title Use

Other than registered occupational therapists, there are some individuals in associated roles who are involved in providing occupational therapy services to the public. It is important that the public clearly recognises the relationship of these individuals with the registrant.

(i) *Students*

An occupational therapy student, under the supervision of an occupational therapist, must identify himself/herself as an occupational therapy student. This immediately identifies the student role to the public.

(ii) *Assistants*

Although the Board does not have any jurisdiction over support personnel, there is concern about how a registrant/provider assigns his/her work in order to ensure that safe, high quality care is provided to his/her clients. The title "Assistant" may be used when service has been assigned to an assistant who is supervised by an occupational therapist. This title relates the role as one of assisting and attaches accountability to a professional person (occupational therapist) rather than a program or profession (occupational therapy). (Refer to the Board's "Policy for Registered Occupational Therapists re: Assistants in Occupational Therapy Practice".)

(iii) *Limited or Conditional Registration*

A person whose registration is limited or subject to a condition under the Act must not hold himself/herself out as having registration that is not limited or not subject to a condition or permit another person to do so (refer Section 34 of the Act).

(iv) *Occupational Therapy Service Providers*

An occupational therapy service provider means a person (not being an occupational therapist) who provides occupational therapy through the instrumentality of an occupational therapist or occupational therapy student, but does not include an exempt provider. (Refer to "Provider" in the Glossary of Terms.)

Service providers and students are subject to the Board's Code of Professional Conduct & Practice and disciplinary powers.

(c) Specialty or other Designations

Occupational therapy as a profession in South Australia does not have formal specialty areas. The Board provides registration certificates for general practice, reflective of the common knowledge and skills of occupational therapy.

While there are clearly distinct areas of practice such as psychiatry, physical medicine etc. in occupational therapy, a process to establish specialty certification/registration does not exist under the Act.

A registrant must not include credentials, or initials for such, after his/her name that would suggest specialisation. It is suitable however to make a statement about an area of special interest or additional training, eg. rather than stating “Paediatric Therapist” it would be appropriate to state “occupational therapist with training and expertise in paediatrics”.

Similarly, terms or abbreviations used after a registrant’s name such as MAAOT or AccOT are not permitted as members of the public would not understand these abbreviations, and could be misled into believing the registrant has formal additional qualifications. These terms must be used in full, ie:

- Member of Australian Occupational Therapists Association
- Occupational Therapist Accredited by OT AUSTRALIA

(d) Use of other University Degrees (not indicating specialisation)

Not uncommonly, a registrant may have pursued post-graduate degrees outside occupational therapy such as an M Ed, or an MBA. These conferred degrees, obtained at a University level, can be used by a registrant after his/her name in addition to the occupational therapy degree, provided the additional qualifications are entered on the Register of Occupational Therapists. Applications to have additional qualifications on the appropriate Register must be made to the Board with the prescribed fee.

(e) Job Titles

Recent trends toward interdisciplinary approaches to service delivery have contributed to the use of a large variety of job titles, often shared by individuals from different professions and sometimes specific to the organisation. Job titles do not replace nor do they preclude the use of a professional designation. What remains important is the clear and appropriate representation. A registrant should consider the audience and determine the most appropriate means of portraying his/her role to the client.

(f) Misuse of Title

Title protection is critical to a regulation model that certifies providers through title registration. The Board takes seriously its role to safeguard public interest by ensuring that only qualified and competent registrants use the title granted on registration.

The misuse of title most frequently occurs when an individual who is not a registrant uses a title or practises in a manner which would lead a member of the public to reasonably presume that he/she is registered with the Board.

All cases brought to the attention of the Registrar are investigated. Penalties for proven misuse of title bring a maximum penalty of \$50,000 or imprisonment for 6 months.

(Refer Sections 33, 34, and 35 of the Act.)

#### 4. CAUSES FOR DISCIPLINARY ACTION

Pursuant to Section 37 of the Act:

- “(1) There is proper cause for disciplinary action against a registered person if –*
- (a) the person’s registration was improperly obtained; or*
  - (b) the person is guilty of unprofessional conduct; or*
  - (c) the person is for any reason no longer a fit and proper person to be registered on the appropriate register.*
- (2) There is proper cause for disciplinary action against an occupational therapy services provider if –*
- (a) the provider has contravened or failed to comply with a provision of this Act; or*
  - (b) there has been, in connection with the provision of occupational therapy by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or*
  - (c) the provider or any person employed or engaged by the provider has, in connection with the provision of occupational therapy by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or*
  - (d) the provider is for any reason not a fit and proper person to be an occupational therapy services provider; or*
  - (e) in the case of a corporate or trustee occupational therapy services provider, an occupier of a position of authority in the provider:*
    - (i) has contravened or failed to comply with a provision of this Act; or*
    - (ii) has, in connection with the provision of occupational therapy by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or*
    - (iii) is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee occupational therapy services provider.*
- (3) There is proper cause for disciplinary action against the occupier of a position of authority in a corporate or trustee occupational therapy services provider if –*
- (a) the person has contravened or failed to comply with a provision of this Act; or*
  - (b) the person has, in connection with the provision of occupational therapy by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or*
  - (c) the person is for any reason not a fit and proper person to occupy a position of authority in a corporate or trustee occupational therapy services provider; or*

- (d) (i) *the provider has contravened or failed to comply with a provision of this Act; or*
- (ii) *there has been, in connection with the provision of occupational therapy by the provider, a contravention or failure to comply with a code of conduct under this Act applying to the provider; or*
- (iii) *the provider, or any person employed or engaged by the provider, has, in connection with the provision of occupational therapy by the provider, engaged in conduct that would, if the provider or the person were a registered person, constitute unprofessional conduct,*
- unless it is proved that the person could not, by the exercise of reasonable care, have prevented the contravention, failure to comply or conduct.”*

The Board uses the following case law as a guide to the meaning of the term “fit and proper”:

Sobey v Commercial and Private Agents Board (1979)  
22 SASR 70, at page 76 per Walters J:

*“The issue whether an appellant has shown himself to be a fit and proper person within the meaning of section 16(1) of the Act is not capable of being stated with any degree of precision. But for the purposes of the case under appeal, I think all that I need to say is that, in my opinion, what is meant by that expression is that an applicant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities devolving upon him as the holder of a particular licence under the Act, but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work to which the licence entails. The burden clearly lay upon the appellant to satisfy the board of his fitness and propriety to hold the licences for which he applied.”*

Fitness and propriety of a person relates to knowledge, competency, honesty, moral integrity, ability and character.

Medical fitness of a practitioner is treated separately under the Act and an application to the Board to inquire into the matter can only be made by the Registrar, Minister or a representative body.

**Note:**

**Given that unprofessional conduct includes a contravention of, or failure to comply with, a provision of the Act, it is the responsibility of a registrant/provider to fully acquaint himself/herself with the relevant provisions of the Act in relation to offences (also refer to information under “Offences” on the Board’s website).**

## **5. GLOSSARY OF TERMS**

The following definitions are intended to clarify the Board's interpretation of the following commonly-used terms and provide some additional context for their use in this document.

### **5.1 Accountability**

A registrant/provider is responsible for his/her actions and has an obligation to account for and explain his/her actions.

### **5.2 Client**

The client is the individual whose occupational performance has resulted in a request for occupational therapy service. It is the client to whom the registrant/provider has a primary duty to apply the principles of practice.

### **5.3 Client's Rights**

In general a client has three major rights:

- the right to decide whether or not to undergo treatment, after receiving a reasonable explanation of what the treatment involves and the risks associated with the treatment;
- the right to be treated with reasonable care and skill by a registrant/provider;
- the right to confidentiality of information about medical conditions and treatments.

(Also refer to the principles to be considered in the development of the Charter of Health and Community Services Rights under the Health and Community Services Complaints Act 2004 (SA), Part 3, Section 22, and the Charter itself, when developed)

### **5.4 Common Law**

Common law is the body of law evolved through the practice of English Courts. It is law made by Judges (also known as precedent law) as distinct from law laid down by Acts or Statutes (Parliament made law). An Act overrules the common law if both apply in the same area.

### **5.5 Competence**

A complex interaction and integration of knowledge, skills and professional behaviours and judgement. It embodies the ability to generalise or transfer and apply skills and knowledge from one situation to another.

## **5.6 Confidentiality**

A registrant/provider has a responsibility to respect, secure and protect the privacy of personal and sensitive information about his/her clients, subject to any legal requirement to the contrary.

## **5.7 Cultural Respect**

Cultural respect is the recognition, protection and continued advancement of the inherent rights, cultures and traditions of Aboriginal and Torres Strait Islander people.

## **5.8 Ethics**

Ethics is the science of moral principles. In a professional context ethics relates to moral behaviour in a professional capacity.

## **5.9 Incompetence**

Incompetence is the professional care of a client that displays a lack of knowledge, skill or judgement or disregard for the welfare of the client of a nature or to an extent that demonstrates that the registrant/provider is unfit to continue to practise or that the registrant/provider's practice should be restricted.

## **5.10 Informed Consent**

In order for a client to give permission to proceed with an agreed course of action a registrant/provider has a duty to explain, as far as may be practicable and reasonable in the circumstances:

- the nature, consequences and risks of the proposed treatment;
- the likely consequences of not undertaking the treatment;
- any alternative treatment or courses of action that might reasonably be considered.

## **5.11 Integrity**

Within the context of the professional-client relationship, it is important to the client that he/she believes that the registrant/provider is acting with integrity.

Honesty with and respect for the client form the basis of this integrity. This means that clients are regarded as active and valued participants within the professional-client relationship.

## 5.12 Negligence

Negligence is a failure to take reasonable care to avoid causing injury or loss to another person. There are four steps in proving negligence. It must be proved:

- that there is a duty in the circumstances to take care (*duty of care*);
- what is the standard of care which a reasonable person would meet in the circumstances (*standard of care*);
- that the behaviour or inaction of the health professional in the circumstances did not meet the standard of care (*breach of duty*);
- that the client has as a result suffered injury or loss which a reasonable person in the circumstances could have been expected to foresee (*damage*).

The *standard of care* for a health professional is that expected of the reasonably competent practitioner of that profession. The actions of the health professional will be compared with the standard. Negligence can occur in any aspect of professional practice, whether history taking, advice, examination, testing or failing to test, reporting and acting on results of tests, or treatment. The standard is one of reasonable care, not perfection.

## 5.13 Occupational Therapy

Occupational therapy means:

- (a) any therapy provided to persons with disabilities arising out of injury, illness or impairment of any kind, being therapy directed towards the acquisition (or reacquisition) of life skills; and
- (b) all diagnostic, therapeutic, health or other services or advice provided in the course of practice by an occupational therapist or a person who holds himself/herself out, or is held out by another, as an occupational therapist.

## 5.14 Power Imbalance

The knowledge that a registrant/provider possesses about health care conditions and other private information about the client, and the need of the client for professional services, combined with the registrant/provider's ability to recommend or deny various treatments, places a registrant/provider in a position of power. As a recognised professional, a registrant/provider should be aware of the power imbalance between himself/herself and his/her clients.

## 5.15 Provider

An occupational therapy services provider means a person (not being an occupational therapist) who provides occupational therapy through the instrumentality of an occupational therapist or occupational therapy student but does not include an exempt provider.

An exempt provider includes a recognised hospital, incorporated health centre or private hospital within the meaning of the South Australian Health Commission Act 1976 (SA) until 1 July 2008, and an incorporated hospital or private hospital under the Health Care Act 2008 (SA) thereafter, or any other person declared by the regulations to be an exempt provider.

A person who is not an occupational therapist will, unless exempted by the regulations, be taken to provide occupational therapy through the instrumentality of an occupational therapist if that person, in the course of carrying on a business, provides services to the occupational therapist for which the person is entitled to receive a share in the profits or income of the occupational therapist's practise of occupational therapy.

A provider also includes a corporate or trustee occupational therapy services provider.

- (a) *A corporate occupational therapy services provider* is an occupational therapy services provider that is a body corporate and a person occupies a position of authority in such a provider if the person:
- (i) is a director of the body corporate; or
  - (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or
  - (iii) manages, or is to manage, the business of the body corporate that consists of the provision of occupational therapy; or
  - (iv) where the body corporate is a proprietary company – is a shareholder in the body corporate.
- (b) *A trustee occupational therapy services provider* is a person acting as an occupational therapy services provider in the capacity of trustee of a trust and a person occupies a position of authority in such a provider if the person is a trustee or beneficiary of the trust.

### **5.16 Registrant**

An occupational therapist or occupational therapy student registered by the Occupational Therapy Board of South Australia.

### **5.17 Respect for Professional Boundaries**

Setting and observing professional boundaries by the registrant/provider is critical to ensure the trust the client places in the registrant/provider is not betrayed. A registrant/provider must exercise good judgement in order to manage professional boundaries. Violation of these boundaries is an abuse of power.

### **5.18 Transparency**

Transparent practice requires full disclosure and clear, open and thorough communication.

Transparent practice contributes to the registrant/provider's integrity.

### 5.19 Trust

Trust is a firm belief in the reliability and truth of something. In a professional relationship it is a confidence in the knowledge, skills, abilities, behaviour and judgement of the professional. It is the client's trust in the registrant/provider's professionalism that automatically accords power.

### 5.20 Unprofessional Conduct in a Private Capacity

Improper conduct in a private capacity may also be held to be unprofessional conduct. Duggan J in *Reyes v Dental Board of SA* 83 SASR 551 per the Supreme Court of South Australia held:

- “(1) The ambit of unprofessional conduct is not restricted to acts or omissions occurring in the direct performance of professional tasks or duties. It includes:
- (a) acts sufficiently closely connected with actual practice; and
  - (b) conduct outside the course of practice which manifests the presence or absence of qualities which are incompatible with, or essential for, the conduct of practice.
- New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279, applied.  
*Ziems v Prothonotary of Supreme Court of NSW* (1957) 97 CLR 279;  
*Raylance v General Medical Council* (2000) 1 AC 311, referred to.
- (2) The important consideration is the actual conduct which has been proved and whether such conduct establishes that the person is unfit to remain a member of his or her profession.”

(Also refer to definition in Introduction.)

**EXTRACT FROM “CULTURAL RESPECT FRAMEWORK FOR ABORIGINAL AND  
TORRES STRAIT ISLANDER HEALTH 2004 – 2009”**

### **2.3 The Principles**

The Cultural Respect Framework recognises the following principles which are consistent with the National Aboriginal and Torres Strait Islander Health Strategy and the *Aboriginal and Torres Strait Islander Health Workforce National Strategic Framework 2002*.

- **A holistic approach:** recognising that the improvement of Aboriginal and Torres Strait Islander health status must include attention to physical, spiritual, cultural, emotional and social wellbeing, community capacity and governance.
- **Health sector responsibility:** improving the health of Aboriginal and Torres Strait Islander individuals and communities is a core responsibility and a high priority for the whole of the health sector. Making all services responsive to the needs of Aboriginal and Torres Strait Islander peoples will provide greater choice in the services they are able to use.
- **Community control of primary health care services:** supporting the Aboriginal community controlled health sector in recognition of its demonstrated effectiveness in providing appropriate and accessible health services to a range of Aboriginal communities and its role as a major provider within the comprehensive primary health care context. Supporting community decision-making, participation and control as a fundamental component of the health system that ensures health services for Aboriginal and Torres Strait Islander peoples are provided in a holistic and culturally sensitive way.
- **Working together:** combining the efforts of government, non-government and private organisations within and outside the health sector, including areas of employment, education and housing, and in partnership with the Aboriginal and Torres Strait Islander health sector, provides the best opportunity to improve the broader determinants of health.
- **Localised decision-making:** health authorities devolving decision-making capacity to local Aboriginal and Torres Strait Islander communities to define their health needs and priorities and arrange for them to be met in a culturally appropriate way in collaboration with Aboriginal and Torres Strait Islander specific and mainstream health services.
- **Promoting good health:** recognising that health promotion and illness prevention is a fundamental component of comprehensive primary health care and must be a core activity for specific and mainstream health services.
- **Building the capacity of health services and communities:** strengthening health services and building community expertise to respond to health needs and take responsibility for health outcomes. This includes effectively equipping staff with appropriate cultural knowledge and clinical expertise, building physical, human and intellectual infrastructure, and fostering leadership, governance and financial management.

- **Accountability for health outcomes:** recognising that accountability is reciprocal and includes accountability for health outcomes and effective use of funds by community controlled and mainstream services to governments and communities. Governments are accountable for effective resource application through long-term funding and meaningful planning and service development in genuine partnership with communities.

The full text of the 'Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2004-2009' can be accessed through the Department of Health's website: [www.health.sa.gov.au/Publications/Planning](http://www.health.sa.gov.au/Publications/Planning).