

# Privacy and Confidentiality

**Education and Care Services National Law:**

175 – Offence relating to the requirement to keep enrolment and other documents

**Education and Care Services National Regulations:**

- 168 – Education and care services must have policies and procedures
- 177 – Prescribed enrolment and other documents to be kept by an approved provider
- 180 – Evidence of prescribed insurance
- 181 – Confidentiality of records kept by an approved provider
- 183 – Storage of records and other documents

**National Quality Framework:**

7.1.2 – Management systems

**Privacy act 1988**

**Policy Link:**

- Acceptance and Refusal of Authorisations
- Child Safe Environments
- Complaints and Grievances
- Delivery and Collection of Children
- Food and Nutrition
- Governance and Leadership
- Medical Conditions
- Orientation and Enrolment
- Records and Record Keeping
- Volunteers and Students
- Child Protection and Safety
- Diversity and Equity
- Educator Qualifications/Study
- Internet and Social Networking Usage

- Code of Conduct
- Directors Manual
- Educator Handbook

**Definitions**

Term	Meaning	Source
Confidentiality	the state of keeping or being kept secret or private.	Dictionary definition

## Policy Statement

Our service has developed practices that respect privacy and confidentiality so that stakeholders can trust services to exchange information with relevant parties in a lawfully appropriate manner.

## Goals / What are we going to do?

- Only collect data relevant to ensuring the well-being, safety and inclusion of the family within the service.
- Ensure the information is only used for its intended purpose and only shared with relevant and authorised personnel.
- Stored in a locked draw/cupboard.
- Ensure that the personal information recorded is up to date and correct.
- Ensure that families are informed of how images/photographs of their children will be used on the internet or other publications.
- Archived appropriately when an enrolment is finalised and stored off-premises in a locked facility.
- Once kept for the required legislative time frames, the information will be shredded.
- Report any data breaches as outlined in the National Data Breach Scheme.

## Procedures / How will we do this?

### Collection of Personal Information

The service is required to collect private information from parents and educators so an effective system of operations can be maintained. This information will be stored on hard copy and electronically within the service while a child is in care.

The personal information that the service collects includes-

- Contact details of families, employees, students, volunteers and management, including emergency contacts.
- Children's health status, immunisation and developmental records and plans, external agency information, custodial arrangements, incident records and medication records.
- Employee documentation relating to recruitment and selection, performance reviews, qualifications, work history, child protection checks, health status, immunisation records and workers' compensation claims.
- Student and volunteer work history and child protection checks.
- Information about families' Child Care Subsidy status and other additional funding arrangements.

### Employee Information

Employees will be required to provide the following upon orientation.

- Employment details, including emergency contacts.
- Tax declaration form.
- Bank Account Details.
- Qualifications.
- Health and Immunisation details.
- Blue card details.
- First Aid Certificates.

### Access to information

The service will ensure that information kept is not divulged or communicated directly or indirectly to anyone other than-

- Medical and developmental information that is required to provide education and care for the child,
- The Department of Education, or an authorised officer; or
- As permitted by any other Act or law

Individuals will be able to access their personal information as requested. Individuals must request in writing to the Nominated Supervisor or Responsible Person in charge.

Information may be denied under the following conditions-

- Access to information would compromise the privacy of another individual.
- The request for information is frivolous or vexatious.
- The information relates to legal issues, or there are legal reasons not to divulge the information, such as in the case of custody and legal guardianship.

### Keeping data up to date

The service is required to collect private information from parents and educators so an effective system of operations can be maintained. This information needs to be maintained, and parents/guardians and educators have a responsibility to inform the centre of the following changes-

- Contact details for themselves or their nominated emergency personnel.
- Work details.
- Court orders/custody changes.
- Health status and additional child immunisations.
- Information relating to Child Care Subsidy status and any additional funding arrangements.
- Blue Card Status

### Storage and Security of Personal Information

The service stores all confidential information in locked filing cabinets. Upon documentation being required to be archived, the Responsible person in charge will box the documents, label each box and store them off-premise in a locked facility. Electronic data will be secured under a password in the computer and backed up electronically weekly.

## Data Breaches

It was established by the passage of the Privacy Amendment (Notifiable Data Breaches) Act 2017. The scheme includes an obligation to notify individuals whose personal information is involved in a data breach likely to result in serious harm. An eligible data breach arises when the following three criteria are satisfied:

- there is unauthorised access to or unauthorised disclosure of personal information, or a loss of personal information, that an entity holds.
- this is likely to result in serious harm to one or more individuals and
- the entity has not been able to prevent the risk of serious harm with remedial action.

If the service feels that a data breach has occurred, the Responsible Person in charge will notify the service Area Manager. Guidance and information will be sought from the Office of the Australian Information Commissioner.

Ph. 1300 363 992 A National Data Breach Form can be completed online at - [www.oaic.gov.au](http://www.oaic.gov.au)

## Disposing of Personal Information

The service acknowledges that information gathered from families cannot be kept indefinitely. However, specific information is required by law to be kept for specific periods. They are-

- Child attendance - until 3 years after the child's last attendance.
- Child enrolment - until 3 years after the child's last attendance.
- Child assessments - 3 years.
- Incident, injury trauma and illness record - until the child is 25.
- Medication forms - until 3yrs after the child's last attendance.
- Death of a child in the service - until 7 years after the death.
- Record of service compliance - until 3 years after the provider operated the service.
- Record of responsible person in day-to-day charge - until 3 years after the provider operated the service.
- Staff records - until 3 years after the staff member works for the service.
- Record of access to early childhood teachers - until 3 years after the provider operated the service.
- Record of educators - until 3 years after the provider operated the service.
- Records of volunteers and students - until 3 years after the provider operated the service.

Office records:

- Banking records – 7 years.
- Public liability - available for inspection at all times.
- Quality Improvement Plan – the current plan must be available for inspection at all times.

## Links to Theory

Privacy has deep historical roots, but because of its complexity, privacy has proven challenging to define. It has been the subject of extensive and often heated debate by philosophers, sociologists, and legal scholars.

The term “privacy” is used frequently, yet there is no universally accepted definition, and confusion persists over the meaning, value, and scope of the concept of privacy. At its core, privacy is experienced personally and often means different things to different people (reviewed by [Lowrance, 1997](#); [Pritts, 2008](#)).

In modern society, the term denotes different but overlapping concepts, such as the right to bodily integrity or to be free from intrusive searches or surveillance. The idea of privacy is also context-specific and acquires a different meaning depending on the stated reasons for the information being gathered, the intentions of the parties involved, as well as the politics, convention and cultural expectations ([Nissenbaum, 2004](#); [NRC, 2007b](#)).

### Early Childhood Australia Code of Ethics

In relation to the children, I will:

“Safeguard the security of information and documentation about children, particularly when shared on digital platforms.”

In relation to the families, I will:

“Respect families’ right to privacy and maintain confidentiality.”

### National Quality Framework – Governance and Leadership

7.1.2. Systems are in place to manage risk and enable the effective management and operation of a quality service.

### Culturally Valued Perspectives

Privacy and confidentiality concerning Aboriginal and Torres Strait Islander people's personal affairs should also be respected. Consulting with Elders and other Aboriginal and Torres Strait Islander people in authority to identify any sensitive, sacred or religious issues that might prevent the use of the material.

## Reflective questions about this policy.

Is the Privacy and Confidentiality policy working and functioning as it should be?

Have some incidents required further conversations about privacy or confidentiality?

**When answering the reflective questions, did you have areas identified for improvement:**

If change is required:

- Discuss any proposed changes to policy and practice.
- Obtain agreement with others about how issues might be addressed.

To implement the changes effectively:

- Trial the changes
- Seek feedback and consult.

A review of change is an important step:

- Evaluate whether the changes have improved practice or whether other strategies or plans need to be trialled and implemented.

Document in your Quality Improvement Plan.

### **Roles and Responsibilities in maintaining privacy and confidentiality.**

#### **Approved Provider, Area Managers and Responsible person.**

- Ensure each family's information is correct in enrolment records.
- Ensure that the information provided by families and educators is only used for what it was collected for.
- Scan and upload all documents. Check the enrolment record for any remaining unscanned documents at the end of the child's enrolment. These will be scanned and uploaded, and the enrolment will be shredded.
- Managers will ensure that any boxes of archiving to be sent to storage will be labelled with the archiving labels provided by your area manager.
- Educators will be shown where their records are to be kept and receive information and checklists on what needs to be maintained and how long.
- Maintain children's information and store documentation according to policy.

### **Families**

- Upon enrolment, families will have been explained by the Responsible Person in charge how their child's files will be kept and where.

### **Sources and Further Reading**

Privacy Act 1988 (Commonwealth)  
<https://www.legislation.gov.au/Details/C2022C00321>

State and Territory Privacy Laws -  
[www.privacy.gov.au/law/states](http://www.privacy.gov.au/law/states)

Australian Government – Office of Australian Information Commissioner - [www.oaic.gov.au](http://www.oaic.gov.au)

Institute of Medicine (US) Committee on Health Research and the Privacy of Health Information: The HIPAA Privacy Rule; Nass SJ, Levit LA, Gostin LO, editors. Washington (DC): [National Academies Press \(US\)](http://www.nationalacademies.org); 2009.

