

Privacy and Records Policy

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Next Review Dates:
When Tranche 1 and 2 of
Privacy and Other
Legislation Amendment Bill
2024 becomes effective

EDUCATION AND CARE SERVICES NATIONAL REGULATIONS

168	Education and care services must have policies and procedures
181	Confidentiality of records kept by approved provider
181-184	Confidentiality and storage of records

QUALITY AREA

7.1	Governance	Governance supports the operation of a quality service.
7.1.1	Service philosophy and purpose	A statement of philosophy guides all aspects of the service's operations.
7.1.2	Management systems	Systems are in place to manage risk and enable the effective management and operation of a quality service.
7.1.3	Roles and Responsibilities	Roles and responsibilities are clearly defined and understood and support effective decision-making and operation of the service.
7.2	Leadership	Effective leadership builds and promotes a positive organisational culture and professional learning community.

Related Legislation

Commonwealth Privacy Act 1998
A New Tax System (Family Assistance) Act 1999
Family Law Act 1975
Child Care Subsidy Secretary's Rules 2017
Family Assistance Las – all incorporated legislation for Child Care Provider Handbook

Policy statement:

Privacy is acknowledged as a fundamental human right. Our Service has an ethical and legal responsibility to protect the privacy and confidentiality of children, individuals and families as outlined in Early Childhood Code of Ethics, Education and Care Services National Regulations and the Privacy Act 1988 (Cth). The right to privacy of all children, their families, and educators and staff of the Service will be upheld and respected, whilst ensuring that all children have access to high quality early years care and education. All staff members will maintain confidentiality of personal and sensitive information to foster positive trusting relationships with families.

Target Audience:

All Educators, Staff, Directors, Management, Families, Children, Students and Volunteers

Abbreviations:

Australian Privacy Principles (**APPs**)

Commonwealth Privacy Act 1998 (**the Privacy Act**)

Education and Care Services National Law and Regulations (**the National Law and Regulations respectively**)

Australian Children's Education and Care Quality Authority (**ACECQA**)

National Quality Framework (**NQF**)

Aim:

The policy aims to ensure that the confidentiality of information relating to children, families, educators, staff and visitors is upheld through use of established and maintained systems for collection, storage and disposal of information which are consistently implemented and regularly reviewed and improved. The Service will take reasonable steps to protect personal information it holds from misuse, interference and loss, as well as unauthorised access, modification or disclosure.

The Service understands the importance of creating and retaining records as required by the National Law and Regulations as well as keeping them confidential, making them available to authorised persons only when required, for example for CCS or enrolment purposes.

Responsibilities:

Board, Nominated Supervisor, Responsible Persons, Educators and Staff

Guiding Principles

This policy is both required by, and intended to ensure compliance by the Service with The Privacy Act, and the APP's which underpin this legislation.

There may, where contained within the Privacy Act, be exceptions or additions to the principles outlined in this policy.

The Service is obliged to comply with the Privacy Act, and therefore this policy should be read subject to and in conjunction with that Act.

In particular, the Privacy Act provides for exceptions to some principles in the case of employee information. The exceptions relate to principles limiting the collection of individuals' personal information from other individuals, the collection of sensitive information, and the use of unique identifiers. Accordingly, these exceptions also apply to this Policy.

This Policy secondly outlines how the Service will comply with our record keeping obligations under the National Law and Regulations.

Part 1 Privacy Policy

What Information we collect and hold

Employees and Board Members

The Service collects and holds personal information that is required to administer applications for employment, to administer employment entitlements, and to enable compliance in relation to reporting requirements to external agencies as required by Law.

Personal information collected includes name and address, residential status, date of birth, employment /training details, qualifications/registrations, bank account details, driver license number, identifying number

and expiry date for working with vulnerable people registration, tax file number, superannuation membership, phone number and email address. Employees are also asked to provide personal information relating to emergency contact details, medical information and equal employment opportunity issues.

Records are also kept of the name and hours worked by each staff member who works with children.

Children and Families

Children's details required for enrolment include name, date of birth, gender, Doctor information, medicare number, medical details, immunisation status, Family Assistance Customer Reference Number (CRN), address where the child resides, cultural background (including language spoken at home), and details of any individual needs. Details of the child's routines, likes and dislikes which make up a personal profile are requested to support delivery of a quality program. Details of any court orders relating to the child must be provided.

To complete an enrolment, parent / guardian details are also required such as name and address, relationship to child, occupation, employment /training details, photo ID details, phone number and email address. Evidence of guardianship will be required when the enrolling person is not the parent of the child. It is a Commonwealth department requirement that the Service collect the date of birth and the CRN of the enrolling / claiming parent/guardian. Each child must also have a nominated emergency contact, who can provide authorisation for medical treatment, and details of any authorised nominees (being a person who is given permission to collect a child from the Service).

If information is not provided, the enrolment may not be accepted at the Service. Enrolment details are updated annually and as required throughout the year.

Suppliers and potential employees

We collect information about:

- Suppliers and their employees (including business name and address, contact details, and employee names); and
- potential employees (including names, addresses, contact details, employment and academic histories and the names of their referees).

Employees

We also keep records about our employees but these are not subject to the Privacy Act.

Unsolicited personal information

If unsolicited information is received, it will be determined whether the personal information could have been collected using normal procedures, and if it could have, it will be treated normally. If the personal information could not have been collected using normal procedures, the information to whom it relates will be notified and the personal information will be destroyed.

How we collect and hold information

The Service collects Personal information during the enrolment process, when we complete the Child Care Agreement and when families provide us with updated information during the year. It collects information about suppliers and potential employees as they engage with the Service during the year.

The Service holds Personal Information for periods as required by the Law and Regulations as set out under the second part of this Policy "Record keeping and retention" below.

Why we collect information

The information collected assists the Service to meet our obligations to the Department of Education and Centrelink, and supports the Service in providing the best possible individual care for children.

How Personal Information is Used and Disclosed

The Service will generally only use or disclose personal information for a purpose for which it was collected as outlined above, unless the individual concerned has consented to another use or disclosure, or if required by law, including where required or authorised by the Privacy Act.

We may also disclose personal information:

- for research or the compilation or analysis of statistics in the public interest, in a non-identifying way.
- Where reasonably necessary for the purposes of a law enforcement agency in accordance with the Privacy Act.
- As required by law to certain government departments and statutory bodies including Centrelink, the Department of Immigration and Multicultural Affairs, the Department of Education and the Australian Taxation Office.
- To provide officers of the Service or its affiliated bodies with information to allow them to administer the Service
- Where needed for the maintenance of the Service's information technology systems
- To insurance providers in relation to specific claims
- To comply with the Law and protect against fraudulent activity
- To investigate any complaints made by an individual, or against an individual
- If we have reason to suspect that an individual is in breach of their Child Care Agreement or that they have been engaged in any unlawful activity
- To anyone to whom the individual concerned authorises the Service to disclose the information.

The Service may also use or disclose information in other circumstances in accordance with the Privacy Act, including where the individual would reasonably expect the Service to do so for a purpose related to the purpose for which the Service collected the information (as set out above).

Security

The Service is committed to ensuring that personal information is secure. In order to prevent unauthorised access, disclosure, misuse, modification or loss of your personal information, the Service has in place suitable physical, electronic and managerial procedures to safeguard and secure the information.

These include Information technology security (including application restrictions, multi-factor authorisation, firewalls and password-protection), secure document storage, and confidentiality agreements and policies with our employees and board members.

Records kept at programs are kept in secure or locked cupboards /filing cabinets.

Some information is stored in shared space (OSHC programs), however LCCS has ensured it is secured and has sole access.

All archived records are stored in a secure, lockable place. Records for archiving are filed in archive boxes with details of Service, content, year of archiving and year of expiry.

Access to personal information is limited to those parties within the Service who require legitimate access to it.

With respect to computers at the Service:

- Computers used at the Service have security software installed with licenses always kept current.
- Computers in the Office are backed up nightly to the 'cloud' with servers in Australia.
- All computers are password protected and all employees have their own personal password
- All employees have read and signed LCCS Computer Access Agreement which sets out how employees will use and disclose information.
- Only employees approved by the Director are able to enter/ access personal information stored on the office computer network

Maintenance of Quality and Security of Personal Information

The Service will take reasonable steps to:

- Ensure that the personal information it collects, uses, holds or discloses is accurate, complete, up-to-date, and relevant to its functions or activities.
- Protect the personal information it holds from misuse, loss, unauthorised access, modification or disclosure.
- Destroy or permanently de-identify personal information if it is no longer needed (the current disposal method used for hard copy at the Service is shredding of documents).

Access to and updating personal information

Individuals may request the details of any personal information the Service holds about them. The Service may charge a small fee for providing the information.

Individuals may request amendment of their personal information, if they believe that personal information held is incorrect, incomplete, out of date or misleading.

Access to personal information will be supervised.

Notification of Data Breach

The Notifiable Data Breach Scheme requires Early Childhood Services to provide notice to the Office of the Australian Information Commissioner (formerly known as the Privacy Commissioner) and affected individuals of any data breaches that are 'likely' to result in 'serious harm'. Businesses that suspect an eligible data breach may have occurred, must undertake a reasonable and expeditious assessment to determine if the data breach is likely to result in serious harm to any individual affected. A breach of an Australian Privacy Principle is viewed as an '*interference with the privacy of an individual*' and can lead to regulatory action and penalties.

If the Service experiences a data breach, for example, unauthorised access to, or disclosure of personal information, or where personal information is lost in circumstances that could give rise to unauthorised loss or disclosure, we will advise persons impacted as soon as reasonably practical of the breach, and work with them to resolve it or mitigate the circumstances of the breach. It is recognised that action taken within 24 hours of the breach can significantly decrease the impact on affected individuals.

In the case of a Data Breach as defined by the Privacy Act 1988, notification should be made to the Office of the Australian Information Commissioner.

If a complaint is received in relation to a breach of privacy, the Director/Assistant Director will notify ACEQA.

Information to support what to do in the event of a data breach can be found at <https://www.oaic.gov.au/privacy-law/privacy-act/notifiable-data-breaches-scheme>

Queries

If there are any questions or concerns relating to this Privacy Policy or the way in which the Service deals with personal information, or in order to make a request for access to your Personal Information please contact:

Privacy Officer: Kelly Ashton

Email: kelly@lipscombechildcare.asn.au

Part 2 Records Policy

Record Keeping

The Service must keep records as per Section 175 of the Law and Regulation 177 which includes a requirement for the following records amongst others:

- Documentation of child assessments or evaluations for delivery of the educational program as per Regulation 74;
- Attendance records must be kept listing the full name, time of arrival and departure of each child. The person delivering and collecting the child up must sign the attendance record as per Department of Education Guidelines and Regulation 158.
- Enrolment records as per Regulation 160;
- Medication records as per Regulation 92;
- Staff and educator records as per Regulations 145-152;
- Accident, injury, illness, incident, trauma record as per Regulation 87

Storage and Retention cycle of records

Records are stored in a safe and secure place for the retention periods set out below. Subject to the retention periods set out below, personal information and records are destroyed once they are not required for the purpose for which they were collected.

The following records are retained by the Service until the child is twenty- five (25) years old:

- (a) a record that relates to an incident, illness, injury or trauma **suffered by a child while being educated** and cared for by the Service;
- (b) a record that relates to an incident, illness, injury or trauma suffered by a child that **may have occurred** following an incident while being educated and cared for by the Service.

All other child records are kept for **three (3) years** after the last date on which the child was educated or cared for by the Service except if the record relates to a death of a child while in care, in which case records are to be kept for **seven (7) years** after the death.

Records of the Service, staff, supervisors etc, are kept for 3 years after such persons have ceased to provide care at the Service. All other records are kept until the end of 3 years after the date on which the record was made.

Examples of record handling and retention process at the Service are as follows:

- Enrolment records will be reviewed annually and records will be archived if the child has not attended for a period of one year;
- Excursion and other permission forms are to be kept on the child's file;
- Child Care Subsidy (CCS) notices and all relevant documentation e.g. parent statements, records for allowable absences etc. are required to be kept for a period of 3 years as per requirements of the Family Assistance Office;
- Portfolios and curriculum records are to be kept for up to 3 years, thereby enabling assessment for the ACECQA;
- Any written records of verbal conversations between Educators, Staff and Parents will be kept in the relevant Educator/Child folder or Diary.

Confidentiality of Records

Information kept in a record required by the Regulations by the Service or by a Service educator must not be divulged or communicated, directly or indirectly, by the Service, its employees, contractors, volunteers and agents to another person other than in accordance with Regulation 181-182 which provide they can be disclosed to:

- the extent necessary for the education and care or medical treatment of the child to whom the information relates; or
- a parent of the child (information pertaining to their own child), except in the case of information kept in a staff record; or
- the Regulatory Authority or an authorised officer (Department of Education, DEEWR); or As expressly authorised, permitted or required to be given by or under any Act or law (for example to Police upon issue of warrant form, to Solicitors and/or court upon issue of subpoena of records).
- With the written consent of the person who provided the information (for example with the permission of a parent information may be provided to early childhood professionals (Inclusion support) to whom the child has been referred).

Policy non-compliance

A breach of this policy may result in disciplinary action and/or termination of employment, contractual or volunteer arrangements by the Service [in accordance with the Counselling and Discipline Policy and Procedure](#).

People who become aware of a breach of this policy must disclose this breach to the Service management.

In extreme circumstances an individual may be concerned that a serious breach of this policy has occurred but considers that it would be personally damaging to report it through normal channels, in such a case they should report it under the Speak Up Policy.

Links to other Policies:

Communication
Family and Staff Handbooks
Staff Code of Conduct
Family Code of Conduct
Grievance and Complaints Management Policy
Child Protection
Enrolment, Orientation and Access Policy
Information and Communications Technology Policy
Cyber Security Policy

References:

The Privacy Act 1988, Office of the Australian Information Commissioner, www.oaic.com
The National Law and Regulations
Early Childhood Australia Code of Ethics (2016)
Guide to the National Quality Standard (2020)

Policy Review:

Lipscombe Early Years Education & Care will review this policy and related documents, every 2 years, or more often as required where there is a change to the Law or a significant change to our business that impacts this Policy.

Families are encouraged to collaborate with the Service to review the policy and procedures. It is essential for all staff to be involved in the policy review process and familiarise and acknowledge in writing any changes to policy made at review.

Compliance:

Failure to comply with this Policy by staff will result in disciplinary procedures including the possibility of termination of employment or contract.

Changes made at review:

Changed Policy Statement, added reference to the Privacy Act 1988, added how information is used or disclosed
July 2013 - New format, added reference to OSHC in security of personal information section
April 2014 - Added reference to storage of sensitive information, Change to Australian Privacy Principles (APPs) replace both the Information Privacy Principles (IPPs) that applied to Australian Government agencies and the National Privacy Principles (NPPs) that applied to some private sector organisations to reflect changes in legislation March 2014.
February 2015 - Added reference to Computers, added procedure if a breach occurs. Changed time records to be kept to 25 years other records to be kept 3 to 7 years.
September 2015 - Further detail and clarification added
September 2017 reviewed, adjustment under abbreviations from 'forum' to 'framework'.
February 2018 Amendment to Privacy Act (Notifiable Data Breaches Bill 2016)
May 2018 – Updated National Quality Standards.
November 2020 – corrected abbreviation; updated CCR & CCB to Child Care Subsidy (CCS); added Code of Ethics as a reference; updated Guide to NQS.
September 2021 – move NQS table to start of document, added additional information collected by the Service, specified documentation is destroyed once no longer needed to be retained, included how unsolicited personal information is dealt with.

October 2022 – Added information to data breach section; updated format; updated reference to ‘DSE’ to ‘Department of Education; added reference to code of ethics;
September 2024- Added Privacy Act amendment reference and breach clause