

# Privacy and Confidentiality



## Policy Details

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## Purpose

The purpose of this policy is to describe how People Who Care manages the information about individuals the organisation collects in the course of providing its services. This policy is available for viewing on line and can be obtained by interested parties in accessible form free of charge.

## Policy

All clients are advised of Privacy and Confidentiality Policies using the language, mode of communication and terms that the client is most likely to understand.

The framework of the People Who Care Privacy Policy is determined by the Australian Privacy Principles (APP) as contained in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth) and recognises the authority of the *Office of the Australian Information Commissioner (OIAIC)*. The principles are as follows:

### APP 1 – open and transparent management of personal information

In order to effectively provide its services, People Who Care may need to collect from its clients, staff and other stakeholders some or all of the following information:

The types of personal information we collect may include name, date of birth, gender identity, contact information, credit/debit card information, health information and other information connected with a person's history or relationship to People Who Care, and the services we provide.

We collect personal information from people who are connected to our operations and activities – including staff, people we support, suppliers, service providers and donors.

We may collect personal information for a number of purposes, including:

- Support services: to provide information about support services, and to evaluate and report on these services
- Volunteering and other support: to assist us with volunteering and other activities where we seek the community's assistance
- Other issues: communicating in relation to our operations, activities and objectives, to verify identity, to improve and evaluate our programs and services and to comply with relevant laws.
- Marketing: to communicate about products, services, donations and events

Where we collect personal information for a specific purpose not outlined above, we will provide a collection notice which explains the primary purpose and any related secondary purposes for which we are collecting personal information.

An individual may access the information about them held by People Who Care by contacting the relevant Leadership Team Member of the service area concerned. An individual, or other external stakeholder, who

considers that People Who Care has breached one of the privacy principles may lodge a complaint in the manner described in the People Who Care External Feedback, Compliments and Complaints Policy. Staff who considers that People Who Care has breached their privacy should pursue their complaint using the People Who Care Staff Grievances and Dispute Resolution Policy and Procedures.

People Who Care limits access to information collected about individuals to those staff who have a legitimate need for the information in order to fulfil their duties. All People Who Care staff are required to sign a confidentiality agreement at the commencement of their employment with People Who Care.

## **APP 2 – anonymity and pseudonymity**

APP 2 sets out a requirement that an organisation provide individuals with the option of dealing with it using a pseudonym. This obligation is in addition to the existing requirement that organisations provide individuals with the option of dealing with them anonymously.

Both requirements are subject to certain limited exceptions, including where it is impracticable for the organisation to deal with an individual who has not identified themselves, or where the law or a court/tribunal order requires or authorises the organisation to deal with individuals who have identified themselves.

Where it is reasonable and practicable to do so, People Who Care will engage with supported individuals who want to remain anonymous or to be identified using a pseudonym.

## **APP 3 – collection of solicited personal information**

People Who Care will not collect personal information (other than sensitive information) unless the information is reasonably necessary for one or more of People Who Care's functions or activities, and the information relates solely to the clients and staff of the organisation, or to individuals who have regular contact with the organisation in connection with its activities.

APP 3 clarifies that, unless an exception applies, sensitive information must only be collected with an individual's consent if the collection is also reasonably necessary for one or more of the organisation's functions or activities.

An organisation must only collect personal information from the individual, unless it is unreasonable or impracticable to do so.

"Sensitive" information is a sub-set of personal information and is afforded a higher level of protection. It may include:

- Racial or ethnic origin;
- Political opinions;
- Membership of a political association;
- Religious beliefs or affiliations;
- Philosophical beliefs;
- Membership of a professional or trade association;
- Membership of a trade union;
- Sexual orientation; or
- Criminal record.

People Who Care will only seek to obtain personal information that is reasonably necessary for the organisation to provide services to the individual concerned. People Who Care will only collect personal information from, and with the consent of the individual, or, where the individual is unable to provide information and consent, from, and with the consent of a person or entity acting lawfully on behalf of the individual.

#### **APP 4 – dealing with unsolicited personal information**

APP 4 creates obligations in relation to the receipt of personal information which is not solicited.

Where an organisation receives unsolicited personal information, it must determine whether it would have been permitted to collect the information under APP 3. If so, APPs 5 to 13 will apply to that information.

If the information could not have been collected under APP 3, and the information is not contained in a Commonwealth record, the organisation must destroy or de-identify that information as soon as practicable, but only if it is lawful and reasonable to do so.

In the event of People Who Care being in receipt of unsolicited personal information, and provided that information is not of a kind that People Who Care would reasonably be permitted to collect, People Who Care will destroy or de-identify that information as soon as practicable, provided it is lawful and reasonable to do so.

#### **APP 5 – notification of the collection of personal information**

APP 5 specifies certain matters about which People Who Care must generally make an individual aware, at the time, or as soon as practicable after, People Who Care collects their personal information.

APP 5 requires People Who Care to notify individuals about the access, correction and complaints processes in their APP privacy policies, and also the location of any likely overseas recipients of individuals' information.

People Who Care will notify individuals of the purpose of the collection of their information and of any organisations to which this information may be disclosed. People Who Care will also notify individuals about whom it holds information of the way in which they can access and/or correct their information and of People Who Care's complaints process.

#### **APP 6 – use and disclosure of personal information**

APP 6 outlines the circumstances in which People Who Care may use or disclose the personal information that it holds about an individual.

APP 6 introduces a limited number of new exceptions to the general requirement that People Who Care only uses or discloses personal information for the purpose for which the information was collected. These exceptions include where the use or disclosure is reasonably necessary:

People Who Care will only use or disclose personal information for the purpose for which the information was collected. Exceptions to this principle will be only those identified in the legislation and include:

- To assist in locating a missing person
- To establish, exercise or defend a legal or equitable claim
- For the purposes of a confidential alternative dispute resolution
- As required or authorised by or under an Australian law or court/tribunal order
- If necessary to lessen or prevent a serious threat to any individual's life, health or safety or to public health or safety, and it is unreasonable or impracticable to obtain the consent of the individual whose personal information is to be used or disclosed
- If necessary in order for People Who Care to take appropriate action in relation to a reasonable suspicion of unlawful activity, or misconduct of a serious nature, that relates to People Who Care's functions or activities

#### **APP 7 – direct marketing**

The use and disclosure of personal information for direct marketing is now addressed in a discrete privacy principle.

Generally, People Who Care may only use or disclose personal information for direct marketing purposes where the individual has either consented to their personal information being used for direct marketing, or has a reasonable expectation that their personal information will be used for this purpose, and conditions relating to opt-out mechanisms are met.

APP 7.5 permits contracted service providers for Commonwealth contracts to use or disclose personal information for the purpose of direct marketing if certain conditions are met.

Under APP 7.3, where an individual would not reasonably expect his or her personal information to be used for direct marketing, or the information has been collected from a third party, People Who Care may only use or disclose personal information (other than sensitive information) about an individual for the purpose of direct marketing if:

- The individual has consented to the use or disclosure for this purpose, or it is impracticable to seek this consent
- People Who Care has provided a simple means by which the individual can opt out of direct marketing and the individual has not opted out, and
- In each direct marketing communication People Who Care must include a prominent statement telling the individual that he or she may request to no longer receive direct marketing, and no request is made.

APP 7.4 requires People Who Care to obtain the consent of the individual before using or disclosing sensitive information for the purpose of direct marketing. People Who Care will not use or disclose personal information for direct marketing purposes except in the following circumstances: where the individual concerned would reasonably expect that their personal information would be used or disclosed for direct marketing and has not made a request to not receive direct marketing. All direct marketing from People Who Care will include a prominent statement advising the individual that they may request to no longer receive direct marketing and the manner in which to do this. Individuals may also request People Who Care not to disclose their personal information to other organisations for the purposes of direct marketing and to provide its source of the individual's personal information.

#### **APP 8 – cross-border disclosures**

Before People Who Care discloses personal information to an overseas recipient, People Who Care must take reasonable steps to ensure that the overseas recipient does not breach the APPs (other than APP 1) in relation to that information. In some circumstances an act done, or a practice engaged in, by the overseas recipient that would breach the APPs, is taken to be a breach of the APPs by People Who Care. There are a number of exceptions to these requirements.

In the event that People Who Care has a need to disclose personal information to an overseas recipient, People Who Care will take reasonable steps to ensure that the overseas recipient does not breach the Australian Privacy Principles in relation to that information.

#### **APP 9 – adoption, use or disclosure of government related identifiers**

APP 9 prohibits People Who Care from adopting, using or disclosing a government related identifier unless an exception applies.

People Who Care will not adopt, use or disclose a government related identifier unless an exception applies as described in the legislation, including for example:

- The use or disclosure is necessary for People Who Care to fulfil its obligations to the agency or

- People Who Care has been prescribed by regulations to use or disclose a prescribed identifier in prescribed circumstances.

#### **APP 10 – quality of personal information**

Under APP 10, People Who Care must take reasonable steps to ensure the personal information it collects is accurate, up-to-date and complete

For uses and disclosures, the personal information must be relevant, as well as, accurate, up-to-date and complete, having regard to the purpose of the use or disclosure.

People Who Care will take reasonable steps to ensure the personal information it collects is accurate, up-to-date and complete. In relation to the use and disclosure of personal information, People Who Care will ensure that the personal information is relevant, as well as, accurate, up-to-date and complete, having regard to the purpose of the use or disclosure.

#### **APP 11 – security of personal information**

APP 11 requires People Who Care to take reasonable steps to protect the personal information it holds from interference, in addition to misuse and loss, and unauthorised access, modification and disclosure.

APP 11 requires People Who Care to take reasonable steps to destroy or de- identify personal information if the organisation no longer needs it for any authorised purpose. Under APP 11 there are two exceptions to this requirement:

- The personal information is contained in a Commonwealth record, or
- People Who Care is required by or under an Australian law or a court/tribunal order to retain the information.

People Who Care will take reasonable steps to protect the personal information it holds from interference, misuse and loss, and unauthorised access, modification and disclosure. People Who Care will take reasonable steps to destroy or de-identify personal information it no longer requires for an authorised purpose unless:

- The personal information is contained in a Commonwealth record, or
- People Who Care is required by or under an Australian law or a court/tribunal order to retain the information.

#### **APP 12 – access to personal information**

The APPs separate the access and correction requirements into two separate principles.

APP 12 requires People Who Care to give an individual access to the personal information that it holds about that individual, unless an exception applies. Examples of exceptions can be found at the Office of the Australian Information Commissioner website: [oaic.gov.au](http://oaic.gov.au)

There is a new requirement for organisations to respond to requests for access within a reasonable period. In addition, organisations must give access in the manner requested by the individual if it is reasonable to do so. If an organisation decides not to give an individual access, it must generally provide written reasons for the refusal and the mechanisms available to complain about the refusal.

If an organisation charges an individual for giving access to the individual's personal information, the charge must not be excessive, and must not apply to the making of the request.

People Who Care will provide to an individual access to the personal information it holds about the individual within a reasonable period, and in the manner requested by the individual if it is reasonable to do so, and provided

an acceptable exception does not apply. Generally, People Who Care will not charge individuals for access to the information unless there is sound justification for doing so, in which case the charge will be as minimal as possible.

People Who Care will not give an individual access to their personal information if:

- People Who Care has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to People Who Care's functions or activities has been, is being or may be engaged in, and
- Giving access would be likely to prejudice the taking of appropriate action in relation to the matter.

In the event that People Who Care declines to give an individual access to their information, People Who Care will provide written reasons for the refusal and advice on the mechanisms available to complain about the refusal.

Requests from employees for access to their employee records will be considered on the merits of the case. People Who Care may refuse to make available to an employee some records pertaining to their employment. The Privacy Act exempts employee records from the Act in respect of current or former employee records.

### **APP 13 – correction of personal information**

APP 13 introduces some new obligations in relation to correcting personal information. The APPs remove the former National Privacy Principle requirement for an individual to establish that their personal information is inaccurate, incomplete or is not up-to-date and should be corrected.

APP 13 now requires an organisation to take reasonable steps to correct personal information to ensure that, having regard to a purpose for which it is held, it is accurate, up- to-date, complete, relevant and not misleading, if either:

- The organisation is satisfied that it needs to be corrected, or
- An individual requests that their personal information be corrected.

Organisations generally need to notify other APP entities that have been provided with the personal information of any correction, if that notification is requested by the individual.

APP 13 contains provisions in relation to associating a statement with the personal information if the organisation refuses to correct the information and the individual requests a statement to be associated.

An organisation must also respond to a correction request or a request to associate a statement by the individual within a reasonable period after the request is made, and must not charge the individual for making the request, for correcting the personal information, or for associating the statement with the personal information.

When refusing an individual's correction request, an organisation must generally provide the individual with written reasons for the refusal and notify them of available complaint mechanisms.

People Who Care will take reasonable steps to correct personal information to ensure that, having regard to the purpose for which it is held, it is accurate, up- to-date, complete, relevant and not misleading, if either:

- The organisation is satisfied that it needs to be corrected, or
- An individual requests that their personal information be corrected.

In the event that People Who Care refuses an individual's correction request, People Who Care will provide the individual with written reasons for the refusal and notify them of available complaint mechanisms.

## Procedure

N/A

## Breaches

Breaches of policy are serious and may result in disciplinary action up to and including termination.

## Applicable Standard/s

- NDIS Practice Standards
  - Rights and Responsibilities
    - Privacy and Dignity
  - Provider Governance and Operational Management
    - Information Management
- Aged Care Quality Standards
  - Standard 1 – Consumer Dignity and Choice
    - Requirement 3(f)
  - Standard 8 – Organisational Governance
    - Requirement 3(c)(i)

## Cross reference to relevant policy

- Intellectual Property Policy
- Communications Policy
- Code of Conduct Policy
- Choice and Control
- Client Rights
- Client Records
- Involvement and Consultation
- Monitoring Legal Compliance
- Providing Client Advocacy and Support
- Records Management

## Forms/Documents/Records pertaining to this policy are

- Consent Form
- Client Care Planning Information Sheet and Consent
- Privacy Principles Information Sheet