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## PRIVACY AND CONFIDENTIALITY

### RESPECT AND PROTECT PERSONAL INFORMATION

Privacy is a human right. People with disability have a right to privacy including in relation to the collection, use and disclosure of information about them.

In dealing with personal information, all organisations included in the delivery and oversight of the National Disability Insurance Scheme (NDIS) must abide by the obligations imposed by federal law including:

- Privacy Act 1988 (Cth)
- National Disability Insurance Scheme Act 2013 (Cth).

### PERSONAL INFORMATION

Personal information is information or an opinion about an individual whose identity is reasonably identifiable, whether it is true or not.

Examples of personal information include a person's name, address, date of birth, bank account details, or an opinion about a person.

If a person can be identified, it is still personal information even if they are not named.

You must not collect personal information unless it is reasonably necessary for you to perform your work.

### SENSITIVE INFORMATION

Sensitive information is a subset of personal information and includes details such as:

- health or medical information (including a person's disability)
- ethnicity
- religious beliefs or affiliations
- sexual preferences or practices
- criminal record information.

Sensitive information attracts a higher level of privacy protection. In addition to the general rule about only collecting personal information reasonably necessary to do your work, you can only collect sensitive information if the person consents, or another basis to permit collection exists.

Inappropriate handling of sensitive information can lead to discrimination or mistreatment, which is sometimes based on a person's health status or ethnic origin.

Mishandling of sensitive information may also cause humiliation or embarrassment or undermine an individual's dignity.

This could include discussing the information inappropriately, or repeating things to others who do not have a need to know.

### CHECK YOUR UNDERSTANDING

Would you consider a medical report to be personal information?

The answer is yes, a medical report includes personal information about the patient and usually the medical practitioner.

Is an email with the name, contact details and summary of disability for an NDIS participant considered personal information?

The answer is yes, this is personal information unless the person is deceased.

Is a complaint raised with you about the services your organisation has provided to a family member considered personal information?

The answer is yes. This is personal information about both the person making the complaint, the family member and potentially the worker named in the complaint.

Is information you receive from a colleague about an NDIS participant using a pseudonym or 'nickname' rather their name personal information?

Yes, this is personal information. Even if a person's name is not used, it is still personal information if the person's identity can be worked out.

Is a case study used for your NDIS provider's annual report where the name, photo and details of the person and their circumstances have been changed to exclude identifying circumstances considered to be personal information?

The answer is no. If the person's identity is not reasonably identifiable, it is not personal information.

The Australian Privacy Principles (A.P.P.) are standards for how you must deal with personal information. An act or practice which breaches an A.P.P. is an interference with the privacy of an individual.

The Australian Privacy Principles Guidelines is a useful resource. You can access this resource by activating this [link](#). Please refer to the Office of the Australian Information Commissioner (O.I.A.C.) website also contains useful information.

## **COLLECT PERSONAL INFORMATION**

You must only collect personal information:

- where it is reasonably necessary for, or directly related to the services you are required to provide
- if it is sensitive information (such as information about disability), you have the person's consent or another basis to permit collection
- from the person unless they or their representative consent to you collecting their information from another person or the collection is required or authorised by law.

## **HELP PARTICIPANTS TO UNDERSTAND WHAT HAPPENS TO THEIR INFORMATION**

In your work, you should explain to participants:

- the kinds of personal information about that will be collected and held, including recording audio/visual material
- why this information is collected and held
- who will have access to this information
- how you will ensure the information is secure
- how this information will be used and disclosed
- how to access and amend information held about them
- how to make a complaint if they feel that the NDIS provider has breached their privacy obligations.

Privacy is not just about the collection, storage and usage of personal information.

It also requires you to think carefully about the things that you repeat about your dealings with the participant and your reasons for repeating them. You also have privacy obligations under the NDIS Code of Conduct.

## **PROTECTING PERSONAL INFORMATION**

NDIS providers need to have systems and procedures in place to protect personal information from misuse and loss, as well as from unauthorised access, modification or disclosure.

Make sure you're aware of your provider's privacy and confidentiality processes and follow them. Know what you need to do, if a breach has occurred or a participant complains.

## **RESPECTING THE RIGHTS OF PEOPLE WITH DISABILITY TO PRIVACY AND DIGNITY**

Privacy is a human right. People with disability have a right to privacy including in relation to the collection, use and disclosure of information about them.

## EXEMPTIONS TO DISCLOSE CONSENT

As per the NDIS Code of Conduct, there are certain circumstances where NDIS providers and workers may disclose information about a person even if consent cannot be obtained from the participant.

Examples of situations where consent to disclose personal information is not required include:

- mandatory reporting requirements on child protection matters
- obligations to report incidences of violence, exploitation, neglect and abuse, and sexual misconduct to the Commission and police.

While consent may not be required, it's still important to explain to the person that the information may be reported, as mentioned.

Under the NDIS Code of Conduct, privacy extends beyond a careful approach to handling personal information to the way in which services are delivered to people with disability.

You should be aware of the privacy needs and preferences of people with disability and deliver services in a way that maintains personal dignity. This includes:

- requesting permission to perform and explaining procedures that involve physical touch or the invasion of personal space
- the timely provision of services to prevent embarrassment and discomfort such as toilet breaks or the changing of incontinence pads
- considering everyday privacy needs such as being able to shower and dress in a private and comfortable space.

## SUMMARY

People with disability have the right to not have their personal information disclosed to others without their informed consent – unless mandatory reporting necessitating that disclosure is required.

You should explain to people with disability why and what information is kept about them, who has access to it and what to do if they believe their privacy is breached.

Privacy goes beyond handling personal information to delivering services in a way that maintains personal dignity. This includes both asking permission to perform and explaining procedures that involve physical touch or invading personal space.