

## Record of Review

Review Date	Lead by	People consulted
10 September 2020	Marketing and Communications Manager	Board

## WHY is this policy important?

People have a right to have their personal information kept private.

### Our Legislative Requirements

The way we handle personal information is regulated by the *The Privacy Act 1988*.

We are also governed by the *Health Records and Information Privacy Act NSW 2002*, *Privacy and Data Protection Act 2014*, and the *Public Records Act 1973*. In addition, we have obligations under professional and ethical codes of practice to protect the confidentiality of health information.

The Privacy Act contains 13 Australian Privacy Principles (APP) which regulate the way we collect, store, provide access to, use and disclose personal information.

### Definitions

- Privacy provisions of the [Privacy Act 1988](#) govern the collection, protection and disclosure of personal information provided to Everyday Independence by the people we support, their family and supports, board members, employees, volunteers, students and stakeholders.
- Confidentiality applies to the relationship of confidence. Confidentiality ensures that information is accessible only to those authorised to have access and is protected throughout its lifecycle. Confidential information may be marked as such or deemed confidential by its nature, e.g. it is information that is not available in the public domain.

Document title: [Privacy Policy](#)

Reviewed by: [Board](#)

Version :1.2, Effective Date: [10 Sept 2020](#)

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- Consent means voluntary agreement to some act, practice or purpose. Consent has two elements: knowledge of the matter agreed to and voluntary agreement.
- Individual means any person such as a person we provide therapy, their family member and support person, employee, board member, volunteer, student, contractor or a member of the public.
- Organisational information includes publicly available, and some confidential, information about organisations. Organisational information is not covered in the Privacy Act (1988) but some organisational information may be deemed confidential.
- Personal information means information or an opinion (including information or an opinion forming part of a database) about an individual (Office of the Federal Privacy Commissioner, 2001). It may include information such as names, addresses, bank account details and health conditions. The use of personal information is guided by the Federal Privacy Act (1988).
- The public domain in relation to confidentiality is “common knowledge,” i.e. information that can be accessed by the general public.

### **Privacy is fundamental to Person-Centred Practice**

Everyday Independence is a person-centred organization, we empower people to make decisions and to be central to all information and conversations about their health, disability, and treatment. We place a high value on developing and maintaining trusting relationships with people. We believe that within a confidential environment that people are more open and honest, making it easier to work on areas that will make a difference to the person and their family.

Respecting and protecting a person’s privacy and having open and transparent conversations about the information we collect, receive and store is aligned with our person-centred values.

We want to create and maintain an environment and culture where protecting an individual’s privacy is top of mind for every employee, board member, contractor or student whenever personal information is handled. We want privacy to be “the way we do things around here”.

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## Functions and Delegations

Position	Delegation/Task
Board of Directors	<p>Endorse Privacy and Confidentiality Policy.</p> <p>Be familiar with the organisation's legislative requirements regarding privacy and the collection, storage and use of personal information.</p> <p>Understand the organisation's ethical standards with regards to the treatment of other confidential information relating to Everyday Independence, the people we support, employees and all other stakeholders.</p> <p>Comply with Privacy and Confidentiality Policy and associated procedures.</p>
Management	<p>Be familiar with the legislative requirements regarding privacy and the collection, storage and use of personal information.</p> <p>Understand the organisation's ethical standards with regards to the treatment of other confidential information relating Everyday Independence, the people we support, employees and all other stakeholders.</p> <p>Ensure systems are in place across the organisation to adequately protect the privacy of personal information and confidentiality of other sensitive information.</p> <p>Act in accordance with organisational systems in place to protect privacy and confidentiality.</p> <p>Comply with Privacy and Confidentiality Policy and associated procedures.</p>
<i>Employees, Students and Contractors</i>	<p>Be familiar with the legislative requirements regarding privacy and the collection, storage and use of personal information</p>

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	<p>Understand the organisation's ethical standards with regards to the treatment of other confidential information relating to Everyday Independence, the people we support, their family and supports, board members, employees, volunteers, students and stakeholders.</p> <p>Act in accordance with organisational systems in place to protect privacy and confidentiality.</p> <p>Comply with Privacy and Confidentiality Policy and associated procedures.</p>
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## 1. Risk Management

Everyday Independence ensures mechanisms are in place to demonstrate that decisions and actions relating to privacy and confidentiality comply with federal and state laws.

All employees, contractors, board members and students are made aware of this policy during orientation.

All employees, contractors, board members and students are provided with ongoing support and information to assist them to establish and maintain privacy and confidentiality.

## WHAT is the scope and content of this policy?

This policy describes the way in which Everyday Independence approaches, respects and protects the privacy of the people using our services, their family and supports, our board members, our employees, students and contractors.

This privacy policy informs:

- what information we can collect and how we collect it
- how we store and protect personal and health information
- how a person can find out what information we hold and correct it if it is wrong
- how we can use and disclose information
- how a person can complain if they think there has been a privacy breach
- how to obtain valid consent

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## **WHAT personal information does Everyday Independence collect from people?**

Everyday Independence collects and records a large amount of personal and sensitive information for the following purposes:

- responding to enquiries about our services
- providing therapy and support to people
- ensure therapy meets the highest standards of safety and quality and is equal to best practice
- conducting business
- handling complaints
- evaluating our service and complying with legal and professional obligations

Our definition of personal and sensitive information includes but is not limited to: information or an opinion that identifies a person, regardless if the information is true or not; health and disability, likes, dislikes, preferences, attitudes and what is important to the person.

## **What uses and disclosures of personal information may occur?**

We share information with other service providers only in limited circumstances.

We will not normally disclose personal information to anyone outside of our organisation except where the person has consented or where the identifying data can be removed. In circumstances where the person has not consented to the disclosure of personal information, we will only disclose that information under certain circumstances that permit us to depart from the privacy principles. This may occur if it is required or authorised by law, or we believe that it is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

In circumstances where the right to privacy may be overridden by other considerations, employees will act in accordance with the relevant policy and/or legal framework.

Employees and contractors are to refer to the CEO/Manager before transferring or providing information to an external source if they are unsure if the information is sensitive or confidential to Everyday Independence or the people we support, their family and supports, Everyday Independence employees and stakeholders.

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We do not use or disclose sensitive information, including health information, for direct marketing unless the person specifically and expressly consents.

We do not send information outside of Australia.

### **Who owns information about a person?**

The *Health Records Act* is about **access**, not ownership – all personal information belongs to the holder of the information, and that individual can access their personal information under the Act.

The *Health Records Act* applies to health information held by an organization in a document. A document is defined as: book, map, graph, drawing, photograph, tape, marking, disc, tape, sound track, film, anything whatsoever on which is marked any words, figures, letters, or symbols which can carry a definite meaning to persons conversant with them.

### **If a report has been commissioned/paid for by a third party, who has responsibility for the record.**

If we hold information about a person, then we are obligated under the Act to keep the information secure. The individual can request a copy of the report from either us or the third party, regardless of who prepared the report or who commissioned the report.

### **WHAT is the difference between the Health Records Act and the FOI Act?**

The Health Records Act gives individuals access to health information about them held in the private sector, whereas the FOI Act will continue to give individuals access to health information about them held by the public sector.

### **HOW is Privacy managed for parents who have separated?**

When parents of a child under 18 separate, they both have parental responsibility for the child, subject to any court order.

Under the [Family Law Act 1975](#) there is a presumption that both parents will have an equal parental responsibility—that is, they will both have a role in making decisions about major long-term issues such as where a child goes to school or major health issues.

- The presumption does not apply if the parent engaged in abuse of the child or family violence.
- The presumption also does not apply if it is not in the best interests of the child.

Ref: <https://www.ag.gov.au/FamiliesAndMarriage/Families/ChildrenAndFamilyLaw/Pages/default.aspx>

We will provide access to information relating to the child to both parents unless there is a court order provided by a parent that stipulates any specific restrictions relating to communication and privacy of information.

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We do not consider being an NDIS nominee automatically gives one parent the right to restrict another parent from access to information relating to the child.

## HOW does Everyday Independence collect and handle personal and sensitive information?

### Everyday Independence will:

- collect personal information only for the purposes of providing a therapy service to that person within the context of their family and community i.e. we will not intrude more than we need to into a person's private life
- generally, only collect sensitive information if the person consents to the collection. Exceptions to this apply (where a person is unconscious, incapacitated, a child, or if we deal on their behalf with the person responsible for their welfare)
- collect personal information by lawful and fair means
- collect information directly from the person unless this would be unreasonable or impracticable

### Everyday Independence will not:

- collect general personal information without an awareness of how that information is going to be used in the context of the therapy service
- not collect personal information from a person who is making a **general** enquiry about our service
- provide therapy services to a person on an anonymous basis

## HOW do we manage unsolicited personal information?

Unsolicited personal information is personal information received by Everyday Independence where we have taken no active steps to collect the information. We must decide whether the individual would reasonably expect personal information about them to be collected directly from them or another source or whether the information could have been collected from the person.

If we determine that the information could not have been collected directly from the person, we must destroy or de-identify the information as soon as practicable, and only if it is lawful and reasonably practical to do so.

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If we receive unsolicited personal information, we will take reasonable steps to notify the person that we have received that information and how that information will be used within the therapy service.

### **How does Everyday Independence store and protect personal information?**

We act to ensure that no other organisation or person can access personal information without a person's consent whilst we hold it.

We have systems and procedures in place to protect personal information from misuse and loss, and from unauthorised access, modification, or disclosure. For example, electronic records are kept safe from damage, loss, or theft a backup of the computer records is performed daily with the backup disc stored off-site. Computers are password protected and the passwords are changed on a regular basis.

We have controls over the amendments of electronic records, computer virus protection and firewalls.

Written records are kept secure and are always stored out of public view.

Everyday Independence will not adopt a government related identifier (such as a Medicare number) to identify people unless this is required or authorised by law or where this is reasonably necessary to verify a person's identity e.g. NDIA provider number or TAC claim no. These numbers do not form our identification numbers.

We are required to keep records for a minimum period of 7 years from the date of the last entry for people 18 years or more, and for individual less than 18 years of age, seven years from the date the person turns 18 i.e. aged 25.

Records are kept in electronic format. Where paper format exists, information needs to be transferred or scanned into the electronic records. Paper copies of notes that have been transferred or scanned into the electronic records is allowed if the disposal is done in a manner which preserves confidentiality and complies with legislative requirements. A register of all records that have been destroyed is kept.

## HOW does Everyday Independence embed privacy into our day to day?

### Privacy systems are embedded into critical business functions in the following ways:

- privacy training is included in the induction program for new employees and before granted access to files and systems
- our privacy policy is readily accessible to all staff
- A plain language statement about how we manage privacy is provided to all people who use our service during the intake phase
- privacy is a critical measure of success
- we are proactive and anticipate privacy risks. Our team leaders and site practice administration conduct privacy audits at each site twice yearly. A privacy gap analysis report from each site is presented to the Leadership Impact Team twice yearly to raise the awareness of privacy risk areas within our organization.
- any privacy breaches are documented and reported to the Leadership Impact Team. The breaches are reviewed for compliance.
- team leaders model behaviours and instances of non-compliance are dealt with swiftly and consistently.
- we are aware of the importance of being discreet in the type and nature of information we obtain from a person in a public space.
- we avoid taking personal information off-site and if we do, we carry files in locked bags

### HOW does EI ensure that personal information it holds is accurate

EI seeks to ensure that the information it holds about a person is accurate, up to date, complete and relevant. If we learn that personal information EI holds about a person is inaccurate, not up to date, incomplete, irrelevant or misleading the information is promptly corrected.

## **HOW can a person access the information held about them?**

People can make a request for EI to correct personal information it holds about them. EI must respond to the request within 30 days. The person can request that we notify changes to any other agency or organization that we have previously disclosed information to.

If we refuse to correct personal information, we must inform the person requesting the changes in writing about the decision and the reasons for refusing the request. We must also inform the person about the options available for making a complaint about the decision. The person can request that we associate a statement with the personal information that the person believes it is inaccurate, out of date, incomplete, irrelevant, or misleading.

If a person wishes to see what information Everyday Independence holds about them they can make a written request to Mal Healey, Director, which we need to respond to within 30 days. Sometimes it may not be possible to give the person a copy of the information if;

- it contains details about other people,
- it would be unsafe to provide the information in that it may lead to harm being done to another person.
- the request is clearly frivolous or vexatious or access to the information has been granted previously
- there are existing or anticipated legal dispute resolution proceedings
- denial of access is required by legislation or law enforcement agencies

If we refuse the person's request for access to personal information, we will take reasonable steps to give the person access to the information in a way that meets their needs and our obligations or concerns.

## **HOW can a person make a complaint about the way we collect or handle their personal information?**

If a person believes we have breached our privacy obligations they should contact Mal Healey, Director, and the complaint will be investigated. If the person is still unhappy, they can complain about a privacy matter to the Office of the Australian Information Commissioner.

The Office of the Australian Information Commissioner is an independent agent and has the power to investigate complaints about possible interferences with privacy.

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## **What happens if we have a privacy breach?**

We operate within a “no blame” culture and a suspected privacy breach must be reported to a team leader within 24 hours of detection. The team leader will carry out an initial assessment of the suspected breach and determine what measures should be taken to quickly contain the breach. Affected individuals are notified, a report prepared for the Operations Director including updating processes or systems to minimize the risk of reoccurrence.

## **WHY is consent and capacity linked to privacy?**

### **The concept of consent is related to a person’s right to privacy.**

**Consent** (or withholding consent) to what happens to one’s personal information is fundamental to privacy. Giving or withholding consent increases a person’s control over whether and what personal information is known to others.

At Everyday Independence, we assume that a person has decision-making capacity unless proven otherwise and we acknowledge that a person’s capacity varies for each decision and situation.

### **A ‘bad’ decision does not indicate incapacity**

A person might decide that an agency or their support person regards as uninformed or misguided, but still have capacity. To have capacity, a person does not need to make what other people might regard as a ‘good’ or ‘right’ decision, or a decision that may be in the person’s best interests. A person only needs to understand the general nature and effect of a decision or action and can communicate their intentions or consent.

In a situation where a person has been assessed as not having the capacity to make his or her own decision a decision will need to be made on the person’s behalf. This is known as substitute decision-making and can be either informal or formal. We must ensure all informal decision-making arrangements are clearly recorded.

## **Cultural and linguistic background**

Assumptions about a person's cultural and linguistic background should not influence judgements about capacity. For example, behaviour that may seem irrational or unacceptable in one culture does not necessarily indicate that a person lacks capacity. If a person loses their second language ability and reverts to speaking their first language as they grow older, this does not necessarily indicate that the person lacks capacity.

### **For consent to be valid it must be voluntary, informed, specific, and current.**

#### **Consent must be voluntary**

A person must be free to exercise genuine choice about whether to give or withhold consent.

#### **Consent must be informed**

Consent is only valid if the person has been provided with all the relevant facts (risks and consequences) and this information must be presented in such a way that person can fully understand it.

#### **Consent must be specific**

Generally, the more privacy-intrusive the proposed use or disclosure, the more specific the notification and consent will need to be. For example, consent to collect and use personal information to provide therapy services could be sought on a general consent form however consent obtained for this purpose would not cover the use of personal information on social media.

## **Express and Implied Consent**

Consent may be either express or implied.

#### **Express consent**

Express consent is consent that is clearly and unmistakably communicated. Express consent may be given in writing, orally or in any other form where the consent is clearly communicated. Express consent should be sought in writing wherever practicable. If a person gives their express consent orally or by other means such as through a language or sign interpreter, agencies should document this in their records.

## Implied consent

Implied consent is consent that can reasonably be inferred from an individual's conduct or actions. However, it may be difficult to demonstrate that an individual has genuinely consented. Because of this it is generally preferable to seek a person's express consent. This is especially the case if there are significant implications for a person's privacy.

If we are to rely on implied consent, we should be careful not to make assumptions that are not based on fact. The person may not have heard, may not have understood, or may have had insufficient information to make an informed decision.

### Consent should not be inferred just because:

- the person's capacity to provide or refuse consent is impaired
- the intent is to disclose personal information to a spouse or family member
- of the benefits of consenting, suggest that the person would 'probably' consent if asked
- most other people have consented to the same use or disclosure of the information
- the person has given consent in the past
- the person has given general consent only
- the person does not have sufficient English language proficiency to communicate their wishes without an interpreter.

### When is inferred consent acceptable?

In some cases, it may be possible to infer consent (or refusal of consent) from such things as previously expressed wishes from the person, the views of close relatives or other people with whom the individual has or has had a relationship of trust, ay also assist in inferring whether consent is given or refused.

## HOW do we manage consent at Everyday Independence?

- Wherever possible Everyday Independence provides people with information, resources and tools needed for the person to make their own decisions.
- We provide information in a way that is appropriate to a person's abilities and usual methods of understanding.

- We are aware that a person may be able to make decisions and give informed consent in some areas of their life but not in others depending on their skills and experience.
- During the intake process, we provide a person with a broad consent form, known as a “bundled consent”. This consent form provides relevant information and seeks consent for us to collect and handle personal information. This document provides people with the opportunity to opt in or out of specific items. This document is available in both plain language and Easy English versions.
- Therapists are encouraged to seek ongoing consent for specific procedures, interactions, collection, or disclosure of information. The person’s response must be documented in their file. For example, “express consent (verbally) was obtained from Pam, John’s mother, to discuss the progress he has made in therapy with his teacher, Mrs Pyke”.
- We always seek express consent in writing when taking photographs or videos
- We always seek express consent in writing if using personal information for marketing or on social media

We are aware that a person may change their mind about consent or the nature of a person’s disability may cause them to lose awareness of matters about which they were previously informed. Conversations about consent are part of our day to day practice.

### **Fact Sheets**

We want to support people to make choices, to be in control and to fully participate in decisions about them. We provide the person using our services with a range of fact sheets about:

- *Everyday Independence*
- *How to make a complaint*
- *How we calculate travel costs*
- *Keeping appointments*

These *Fact Sheets* are written in plain language and an Easy English version is also available.