

Growing Early Minds Confidentiality and Privacy Guidelines

1. PURPOSE:

1.1 Growing Early Minds (GEM) respects and safeguards the privacy of all people associated with our services, including, but not limited to; participants, parents, carers and staff members. GEM is committed to complying with the privacy requirements of the *Australian Privacy Principles (APP)* contained in the *Privacy Act*, the *Privacy Amendments (Notifiable Data Breaches) Act* and the *Privacy Amendment Act*; as required by organisations providing disability services.

2. SCOPE:

2.1 Growing Early Minds (GEM) respects and safeguards the privacy of all people associated with our services, including, but not limited to; participants, parents, carers and staff members.

3. RELEVANT LEGISLATION:

3.1 These guidelines adhere to the listed legislative instruments:

- *Children and Young Persons (Care and Protection) Act 1998*
- *Health Records and Information Privacy Act 2002(NSW)*
- *National Disability Insurance Scheme Act 2013 (NDIS)*
- *Privacy Act (Cth) 1988*
- *Privacy Amendment Act 2000*
- *Privacy and Personal Information Protection Act 1988 (NSW)*

Related Documents:

- *Australian Privacy Principles (APPs)*

4. DEFINITIONS:

- **Advocate:** An informal (e.g. family member, friend or peer) or formal (external agency) individual or organisation who speaks on behalf of the Participant and/or their family and assist with supporting the participant and/or their family to communicate their needs or desires.
- **Privacy:** A person's right to keep personal matters known only to a select group of people

- **Carer:** An individual who provides personal care, support and assistance to another individual who needs it because that other individual is a person with a disability.¹
- **Court:** Any tribunal or person having power to require the production of documents or the answering of questions.²
- **Employee Record:** A record of personal information relating to the employment of the employee.³
- **Participant:** A person becomes a *NDIS participant* on the day the NDIA decides that the person meets the access criteria.⁴
- **Record:** Includes a document, or electronic or other device but **does not include** a generally available publication, letters or other articles in the course of transmission by post.
- **Sensitive Information:** includes information about an individual's ethnic origin, sexual orientation, criminal record or health information

5. GUIDELINE STATEMENT:

5.1 GEM will only collect and release personal information or health information with consent, except in specified circumstances such as emergencies, or as required, or permitted by law.⁵ Participant information collected includes personal details and medical history to ensure the highest quality service provision. Information regarding staff members is collected for administrative and workplace health and safety purposes.

All GEM employees and volunteers have the responsibility to ensure that the handling personal information complies with this guideline.

6. PROCEDURE:

6.1 Collection of Information

- Personal information will be collected directly from the Participant, parent/carer or advocate
- Each individual has the right to opt out of consenting to and providing the personal details they wish
- Images and video footage will not be used without Participant, parent/carer or advocate consent

¹ *National Disability Insurance Scheme Act 2013* (Cth) s 9.

² *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 195(4)(a).

³ *Privacy Act 1988* (Cth).

⁴ *National Disability Insurance Scheme Act 2013* (Cth).

⁵ *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* (Cth) s 8(4).

- GEM will only collect solicited personal information for the purposes directly related to the services provided and includes, but is not limited to;⁶
 - The provision of services and support
 - Administrative activities
- GEM may collect personal information through its normal means of communication and may include; emails, and telephone calls.⁷
- In some circumstances, GEM may receive unsolicited personal information. GEM will decide whether that collected personal information could have been obtained from that person had they asked.⁸ GEM may use or disclose that information to make that decision.⁹
- Unsolicited personal information that could not have been collected under APP 3, must be destroyed or de-identified as soon as practicable if it is lawful and reasonable to do so.
- If an APP entity is not required to destroy or de-identify the unsolicited personal information under APP 4, GEM may retain the personal information but must deal with it in accordance with the Australian Privacy Principles.
- GEM does not sell, loan or give away an personal information it collects.

6. Responsibilities:

6.1 The Senior Operations Manager (SOM) will:

- Adhere to the GEM Guidelines for Privacy and Confidentiality and will be governed by all legislation relating to Privacy.
- Ensure that all staff receive training relating to Privacy and Confidentiality as contained in the relevant legislative instruments
- As far as practicable, ensure that Participants and/or their representatives, including advocates, are aware of GEM's practices for the collection, storage and disposal of private and confidential information.

6.2 GEM Staff will:

- At all times, be mindful of and adhere to GEM's Guidelines on Privacy and Confidentiality
- Be governed by all legislation and guidelines relating to Privacy.

⁶ *Australian Privacy Principles 2014 (Cth)* APP 3: the collection of solicited personal information.

⁷ *Ibid* APP 4; dealing with unsolicited personal information.

⁸ *Ibid* APP 3.

⁹ *Ibid*.

- Ask their Direct Supervisor or SOM if at all unsure about any privacy concerns.

7. USE AND DISCLOSURE OF INFORMATION:

7.1 GEM only holds personal information for the primary reason it was given. It is not used or disclosed to anyone for a secondary purpose unless:

- The Participant, parent/carer or advocate agrees
- It is expected the personal information is used for a secondary purpose as it relates to the primary purpose
- A general permitted situation exists under the *Privacy Act*¹⁰
- A permitted health situation exists:¹¹ steps must then be taken to de-identify the information before disclosure
- It is necessary the personal information be disclosed for a law enforcement activity¹²
- A person who is a member of the staff must not, except for the purpose of the exercise of the functions of the staff or in such other circumstances as legislation may prescribe, make a record of, or directly or indirectly reveal to any person, any information (including the contents of any document) that was acquired by the person by reason of being a staff.¹³

7.2 GEM takes all steps necessary to protect the personal information it collects against misuse, interference, loss, unauthorised access, modification or disclosure. The steps include password protection for electronic files and securing paper files in locked cabinets.

7.3 When no longer required, personal information will be destroyed, deleted or de-identified in a secure manner; unless GEM is required by law to retain the information.¹⁴

7.4 If a person asks for access to their personal information held by GEM, access will be allowed unless there is a reason under the Privacy Act or any other law not to give access to the information. These reasons may include:

- A serious threat to the life, health or safety of any individual, or to public health/safety
- It would impact on the privacy of other individuals
- The request is frivolous or vexatious
- The information relates to existing or anticipated legal proceedings
- It would prejudice negotiations with the individual
- It would be unlawful

¹⁰ *Privacy Act 1988* (Cth) s 16A.

¹¹ *Ibid* s 16B.

¹² *Australian Privacy Principles 2014* (Cth) APP 6.

¹³ *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 195(1).

¹⁴ *Australian Privacy Principles 2014* (Cth) APP 12.

- Denying access is authorised by law

7.5 If able to do so, GEM will respond to the request for access to personal information within a reasonable timeframe and will give access in the manner requested

8. CONFIDENTIALITY:

8.1 Employees, volunteers and contractors who may have access to personal and sensitive information in the course of their duties are bound by their commitment to confidentiality.

8.2 Breaches of confidentiality by employees, volunteers and contractors will be dealt with in accordance with Growing Potential's Code of Conduct.

9. DATA BREACH:

9.1 GEM takes all reasonable steps to reduce the likelihood of a data breach occurring including storing information securely and accessible only by relevant workers

9.2 If we know or suspect your personal information has been accessed by unauthorised parties and we think this could cause you harm, we will take reasonable steps to reduce the chance of harm and advise you of the breach and where necessary, the Office of the Australian Information Commissioner

Executive Approval:

Executive Name	Position	Signature	Date of Approval
Dylan Reynolds	Executive General Manager		

Review History

Procedure Review Date	Modifications	Next Scheduled Review Date
June 2019	Guideline Created	June 2020