



DISABILITY ENTERPRISES
supporting people's abilities

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PRIVACY, CONFIDENTIALITY AND RECORD KEEPING

GUIDING PRINCIPLE: Why we do what we do!

Disability Enterprises (DE) recognises that every client has the right to privacy and confidentiality in each aspect of their life. DE provides a quality service promoting positive outcomes in the least intrusive manner; all staff must adhere to the Code of Conduct. DE recognises that a secure, integrated and well-managed record system is crucial in our ability to provide this quality service.

DE must collect and maintain private information and/or records; these will only be to fulfill the functional purpose of providing an accommodation service to children and adults with an intellectual disability and complex health problems. Information about a client will only be shared with employees on the basis of fulfilling their professional duty of care as outlined in individual job descriptions.

DE understands that information will, at times, need to be shared between agencies; the procedures outlined in this policy and other DE policies guide how this should occur.

LEGISLATIVE FRAMEWORK:

Commonwealth Privacy Act 1988,
Commonwealth Privacy Amendment (Private Sector) Act 2000,
NSW Children and Young Persons (Care and Protection) Act 1998
NSW Privacy and Personal Information Protection Act 1998,
NSW Health Records and Information Privacy Act 2002,
NSW Freedom of Information Act 1989,
NSW State Records Act 1998,
NSW Guardianship Act 1989,
NSW Disability Services Act 1993: Standard 3; Decision Making and Choice, Standard 4; Privacy, Dignity and Confidentiality, Standard 6; Valued Status, Standard 8; Service Management, Standard 10; Rights and Freedom from Abuse.

DEFINITIONS:

Advocate: Is one who speaks on behalf of another who is unable to do so independently in relation to a lack of knowledge, skill, ability or standing.

Care record: Any written, photographic or other medium relating to a client's health, development, history and identity.

Child: A child is defined under the Ombudsman Act as a person under the age of 18 years. Under the Children and Young Persons (Care and Protection) Act, a child is a person under the age of 16 and a young person is 16 or 17 years old.

Client: Refers to all clients of DE. DE clients have Intellectual and physical disabilities as well as chronic and complex health care needs.

Confidentiality: the assurance that any information (written, spoken or electronic) is protected from access and use by unauthorised persons. Confidentiality relates to how information will be held and used by the organisation that collected it.

Documents – manuals, reference books, registers and files.

Family: Family refers to legal guardian, person responsible, relatives, person with parental responsibility and significant others. Due to the complex support needs of clients receiving a service from DE, we acknowledge that families will often provide substitute consent on behalf of the client. For more information see the DE Accommodation Service Access and Exit Policy.

File: Any set of documents about a client accumulated during the provision of a service; files include current working file, health file and archived files.

Forms – single or multi-part paper work that has an approved layout. Forms may be computer generated or pre-printed.

Privacy: freedom from intrusion and public attention; an invasion of another person's privacy is unlawful. A breach of privacy occurs when there has been:

- Intrusion upon a persons privacy or private dealings,
- Public disclosure of embarrassing facts or personal information about a person,
- Publicity which places a person in a false light in the public eye,
- Appropriation of a person's name or likeness.

Privacy relates specifically to what information should be **collected** and **stored** and the legitimacy of collecting and storing this information.

Record: recorded information in any form including data in computer systems generated during the provision of service to a client.

PROCEDURAL GUIDELINES

1. PRINCIPLES OF PRIVACY AND CONFIDENTIALITY

- 1.1 The principles of privacy relate to every aspect of service provision for every client; all staff are responsible to uphold and implement the following principles of privacy as outlined by the Federal Privacy Commissioner of Australia and the NSW Health Records and Information Privacy Act (2002). Any staff member found to be in breach of the following principles will be subject to the Disciplinary Policy and Procedure.
- 1.2 Any information DE **collects** about a client or their family will only occur where that information is **relevant** to the particular part of service delivery requesting the information.
- 1.3 Any information DE **collects** will only occur after the appropriate consent has been ascertained (see 'Informed and Substitute Consent' Policy and Procedure) and the collection of that information is **lawful**.
- 1.4 Information collected by DE will only be **used** for the sole purpose the information was collected for, and will only be shared within the organisation on a 'need-to-know' basis,

for that sole purpose. This means that the information will only be shared with an individual where it is necessary for that individual to be able to perform their role in support of that client, and with consideration of both the client's interests and their right to privacy and dignity. In this situation only that information that is necessary for this purpose shall be provided, and this information shall be communicated in accordance with the procedures outlined below.

- 1.5 Any **use** of information for a purpose other than why it was first collected can only occur after the appropriate consent has been ascertained (see 'Informed and Substitute Consent' Policy and Procedure). Examples may include the use of health information for the purpose of research or collection of statistics.
- 1.6 However, points 4 and 5 do not apply if DE believes the information must be **used** to lessen or prevent a serious or imminent threat to life, health and safety, or where DE suspects unlawful activity has taken place.
- 1.7 DE will ensure any private information held is **accurate** and **current** as it relates to the role of providing an accommodation service.
- 1.8 All information is held in paper or electronic files that are **securely** protected from misuse, loss and unauthorised access.
- 1.9 DE's policies including privacy confidentiality and record keeping are **open** for any relevant person or organisation who wishes to view them; each area within DE has a policy document that can be read or copied but not taken away.
- 1.10 A client can have access to any information they request concerning themselves. A client's guardian or person responsible can have **access** to any information regarding the client except where **access** to that information is unlawful, frivolous, or vexatious, or where **access** may pose a potential or actual threat to life, health, safety and well-being.
- 1.11 A clients advocate can only have access to information as it relates to the advocates role with the client.
- 1.12 If a client, their guardian, person responsible or advocate believes any information about the client is not accurate, up to date or complete, DE must ensure the anomaly is **corrected**. If DE disagrees about any claim concerning accuracy or currency of information, DE will provide a statement outlining the disagreement to the client, guardian or person responsible.
- 1.13 All clients of DE are **identified** by name only and not by an **identifier** such as a code or number. The name and identity of any client is not published without the consent of the client, their person responsible / guardian or the person with parental responsibility.
- 1.14 When DE promotes its services to the public, it will ensure that it does this in a way that does not compromise the privacy and dignity of any client. The monitoring of this is the responsibility of the Chief Executive Officer or their nominated delegate, who must approve any promotional material developed within DE prior to external distribution.
- 1.15 Any transaction between DE and another person/agency concerning private information must not be with an **anonymous** source.
- 1.16 DE can only **transfer** information to a person/agency in a different country only if that transfer is consented to, is of benefit to the client, and DE has a reassurance the other country has privacy principles similar to Australia.
- 1.17 **Sensitive** information will only be collected if that information is required to promote the health and well-being of the client and/or prevent or lessen a serious and imminent threat to the life or health of any individual.

2. CONSENT TO OBTAIN, USE AND EXCHANGE INFORMATION

- 2.1 DE's Policy and Procedure on 'Informed and Substitute consent' contains information and relevant forms that will guide staff on expected procedures for obtaining, using and exchanging information.

- 2.2 Contained in the 'Informed and Substitute Consent' policy is a Service Agreement form; point 12 in DE's responsibilities reflect the need to obtain, use and exchange information relevant to providing an accommodation service.

3. STAFF TRAINING

- 3.1 Upon commencement of employment, new staff receive induction training in the principles of privacy and confidentiality, as well as induction training in completing and maintaining client records. Each House Manager is responsible to ensure this occurs within the allocated scope and time frame of the induction period.
- 3.2 All DE support staff are expected to have a minimum qualification of Certificate 3 in Disability Work, being an accredited course that includes education on privacy and confidentiality. If a new staff member does not have this qualification, they must enrol in this course within 6 months of commencing employment. This requirement does not apply to support staff who are Enrolled or Registered Nurses.

4. PRIVATE SPACE AND PRIVATE TIME

- 4.1 Each client has an individual bedroom which will be treated as a private area for each client to experience solitude and seclusion when desired.
- 4.2 Each client shall have the reassurance that personal belongings held in private space are safe and secure from unwanted intrusion.
- 4.3 Each client shall have the reassurance that private time spent in private space will be safe and secure from unwanted intrusion.
- 4.4 Each client and their family shall be offered private space during visits to the accommodation setting.
- 4.5 Points 1 and 3 may be limited where an element of risk to the safety of well-being of the client is established. In this instance a risk assessment will be formulated.

5. SECURITY OF ELECTRONIC INFORMATION INCLUDING CLIENT RECORDS

- 5.1 All information concerning any client stored electronically within DE will be password protected; the Chief Executive Officer (head of agency) has the overall responsibility for ensuring password protection.
- 5.2 The Computer network at DE has inbuilt Firewall, Virus and other safeguards to protect the confidentiality of electronic information; the Chief Executive Officer (head of agency) has the responsibility to ensure these systems are valid and current.
- 5.3 All emails and facsimiles sent from a DE owned computer will contain a confidentiality statement as default; all staff however are responsible in maintaining the principles of privacy when sending and receiving emails and facsimilies.
- 5.4 Some Government agencies such as the NSW Department of Community Services (DoCS) may expect any confidential information to be faxed to a secure fax number. It is up to DE staff to clarify with the relevant offices as to their expectations.
- 5.5 DE has its own secure fax machine and number held in the Health Care Team office to receive confidential information.

6. MANAGEMENT OF PAPER-BASED INFORMATION INCLUDING CLIENT RECORDS

- 6.1 DE maintains only care records for each client that relates to the provision of an accommodation service. These care records include daily working records, health related records, archived records, financial records, Individual Support Plan records, and any life story work. The structure of these care records will vary between each accommodation setting depending upon client need.
- 6.2 Care records are kept confidential at all times as per the guidelines in Section 1.
- 6.3 Each care record held in any file/s are kept securely behind a locked door.
- 6.4 The Client Services Manager is responsible for managing DE's Accommodation Service record system, including a tracer system that can be used to locate information at any time.
- 6.5 Each House Manager is responsible to ensure all care records for that house are current, accurate and in order.
- 6.6 Each House Manager is responsible to ensure that care records are accessible to those employees who need to use them, and that information is only used by employees where the information is relevant to their role and duties.
- 6.7 The Health Care Team is responsible for the maintenance of files containing copies of health information relevant to the Health Planning role of the Health Care Team.
- 6.8 Corporate Services is required to keep and maintain information pertaining to financial issues for each client. These financial files are securely kept within a locked cupboard and are only accessed by employees where the information is relevant to their role and duties. The Chief Executive Officer (head of agency) is responsible for the management of financial files. The management of financial records are conducted using guidelines produced by the NSW Department of Ageing Disability and Homecare (DADHC): Management of Clients' Personal Finances (Draft June 2006).
- 6.9 There will be occasions when care records will require transporting to and from appointments and meetings, these care records will only relate to the purpose and function of that appointment and/or meeting. All employees of DE are expected to exercise due diligence when transporting care records for such a purpose.

7. GUIDELINES FOR CLIENT CARE RECORDS

- 7.1 Any information recorded about a client should be comprehensive and accurate.
- 7.2 Language used in care records should be clear, non-judgemental, professional and respectful of the client.
- 7.3 Each entry in a care record should be signed and dated, with the name of the contributor also clearly printed.
- 7.4 Client care records should be clearly presented in a format that shows where all information related to that client can be located and easily accessed as needed. This includes organising the records into binders entitled 'Client File' and 'Client Health File', which are each divided into logical, clearly marked sections that reflect the different areas of the client's life, care and support.
- 7.5 Each client's care record should contain a Summary Sheet of up-to-date information including the client's name, date of birth, language, Aboriginality, cultural identity, current address, details of their living situation and care arrangement, contact details of their family and any significant others, and contact details of key services such as their GP, school or community access program etc.
- 7.6 This Client Profile Summary Sheet shall be developed within one month of the client's placement, and then updated every three months, by the client's Key Worker in consultation with the House Manager.
- 7.7 The care record should include all documentation regarding:
 - Health, behaviour, and needs assessments and any related plans
 - Health records and medical information

- The client's Individual Support Plan
 - Any DoCS case plans or case reviews
 - Signed consents, including the client service agreement
 - Education records and/or Community Access Program information
 - Any court orders or other legal matters
 - Care history including how the client came to be in residential care and their social/psychological history
 - Life story records, including photos
 - Family situation and history, including current details and any correspondence
 - Financial matters
- 7.8 The House Manager is responsible for developing the client's care record within one month of the client's placement, and ensuring that it is up-to-date.
- 7.9 Care records should clearly show who is accountable for decisions and actions relating to each client.
- 7.10 While the support needs of clients who access DE's Accommodation Service are such that they are unlikely to be able to contribute their own entries to their case file independently, staff will support any client who indicates a desire to do so by either assisting them to communicate in a manner that is appropriate to the client, or communicating on their behalf where this is necessary and appropriate. This may include such methods as assisting the client to develop artwork for inclusion, documenting communications that occur with the client via methods such as compic, or including photographs and other visual documentation, as desired by the client and communicated to staff.

8. FILE AUDITS

- 8.1 DE has a responsibility to ensure regular audits are performed of all care records to ensure the currency and accuracy of information held. The audit should also examine how the records and records system complies with the requirements of both DADHC's Disability Service Standards and Integrated Monitoring Framework, and the Office of the Children's Guardians Out-of-Home Care Service Standards. The Manager, Client Services is responsible to ensure this occurs annually by a member of DE's management team.
- 8.2 The NSW Ombudsman has a responsibility to conduct audits of all care records held by DE; Community Visitors (NSW Ombudsman representatives) can visit at any time and must be given access to any information relating to the operation of the service or care records belonging to individual clients.
- 8.3 The NSW Children's Guardian has a role to conduct audits of care records during the process of monitoring for Quality Assurance. However, only care records relating to children and young people whose parental responsibility lies with the Minister for Community Services can be accessed.
- 8.4 General information concerning each client (such as address, next of kin name and address, person responsible, guardian, contact numbers, email addresses) is kept on a centralised database. Each House Manager is responsible to ensure changes to information are communicated to the administration department of DE.

9. RETENTION OF AND ARCHIVING FILES

- 9.1 DE utilises the services of local secure storage for all archive files concerning clients who are no longer in receipt of a service. This includes files that have become State Records under the NSW State Records Act, 1998.b. The Chief Executive Officer (head of agency) is responsible for the management of DE's archive system and procedures.

- 9.2 Where a client remains in receipt of a service, DE maintains an archive file stored within the accommodation setting where the client lives unless the records are too numerous to store on site.
- 9.3 All archive files kept in an accommodation setting are behind a locked door; the House Manager is responsible to maintain the safety and security of these files.
- 9.4 All care records for all clients are kept **indefinitely** irrespective of whether the client has left DE's service or are deceased. This decision allows DE to meet its legislative requirements (Section 14 and Section 170 of the NSW Children and Young Persons (Care and Protection) Act 1998) for clients who entered the service as children under the Act and all clients who come from an Aboriginal or Torres Strait Islander background.

10. PRIVACY AND CONFIDENTIALITY DURING MEETINGS AND TELEPHONE CONVERSATIONS

- 10.1 All staff have a responsibility to ensure discussions concerning any client, irrespective of the forum they take place in, are conducted with the principles of privacy and confidentiality in mind.
- 10.2 Staff will often be required to participate in meetings that may include discussion of client's personal information, such as House team meetings, Support and Supervision, OH&S, Health Care Team meetings, ISP, or medical appointments. Staff are responsible to ensure that the information discussed in such meetings is not discussed outside that meeting, unless they are directed otherwise. This includes the discussion of information among staff at different houses eg. discussing the content of one house team meeting when you do a shift at a different house.
- 10.3 All staff have a professional responsibility to ensure they do not breach confidentiality at any time unless a client's immediate well being and safety is under threat.
- 10.4 All meetings where client information may be discussed, including those where the client and/or their family are attending, must be conducted in a private space where the confidentiality and security of information is assured. The House Manager is responsible to ensure the appropriate arrangements are made; any staff attending are made aware of their responsibilities beforehand.
- 10.5 On occasions where issues concerning confidentiality and privacy may not be clearly understood, it may be helpful for the person chairing the meeting and/or the most senior person attending, to make a statement concerning confidentiality during the meeting. An example of such a statement can be found in DE's ISP package.
- 10.6 Any meetings with a client and/or their family will take place in privacy.
- 10.7 Discussion of private and confidential information at Board meetings is a requirement of the governance role of the Board; all Board members must adhere to the same principles of privacy and confidentiality that applies to employees of DE. This may at times mean a Board member may be required to miss certain discussion where a conflict of interest is determined.
- 10.8 Staff are not permitted to release any confidential information over the telephone concerning any client or other staff member. Where a caller is requesting confidential information staff are required to pass the phone to a more senior staff member or take the caller's details so that the validity of the request can be determined before any action is taken.
- 10.9 When answering the telephone in any residential setting staff are not permitted to answer the phone using the house address. Staff are required to answer the phone stating the house name only, and their name, eg. "Sinclair House, Mark speaking". It is then the responsibility of the caller to identify themselves; where a caller will not identify themselves DE staff will end the call and report this to their House Manager.

11. MAIL OTHER THAN ELECTRONIC

- 11.1 Mail received at DE's Head Office is opened by the Chief Executive Officer (Head of Agency) or their appointed representative unless the mail is addressed to a particular department or program of the organisation, in which case the mail should be forwarded to the Manager of that department or program.
- 11.2 In the first instance, mail that is addressed to a client should be opened by that client. However, we acknowledge that this may not be possible for many of DE clients based on our client profile. Where this is not possible, this mail should also be opened by the House Manager.
- 11.3 If client information needs to be transferred by mail, due care should be taken to protect that information. This would include: marking any mail that includes client details as "private and confidential"; taking care to ensure that the addressee details are current and correct, and; ensuring that any transfer that includes extensive and/or particularly sensitive information is transported via courier or registered post.

12. DISPOSAL OF CARE RECORDS

- 17.1 No original care records will be shredded or disposed of.
- 17.2 A House Manager can shred copies of care records provided they have evidence an original of the care record exists.

13. POLICIES

- 13.1 Policies may be formulated by: Board of Directors, and/or, the Chief Executive Officer (CEO)
- 13.2 The Board of Directors shall approve Service User policies, and the CEO all other policies?
- 13.3 Corporate Services shall maintain a Document Register that records each policy.
- 13.4 The approval of a "Policy" shall be recorded in the minutes of the approving authority's meeting at which it is approved.
- 13.5 Policies shall be reviewed annually. The review shall be undertaken as determined by the Board.

14. PROCEDURES

- 14.1 Any stand-alone procedures shall be registered in the document register.
- 14.2 Procedures set out operational matters and therefore will not require board approval and can be adjusted by the CEO as considered appropriate.
- 14.3 The Management Team and the originator of the amendment shall review the amendment prior to approval.

15. APPROVAL AND CONTROL OF DOCUMENTS OTHER THAN POLICIES & PROCEDURES

- 15.1 Unit Managers shall review all documents and forms that are written for use within their area of operations, prior to distribution to staff.
- 15.2 A member of the Corporate Services staff appointed by the Management Team shall record each document or form in the Register once it's been approved for use.
- 15.3 Every form or document must carry a DE logging code and number.

15.4 An electronic copy of each form is to be kept in the Forms Register and a paper copy given to each relevant work site.

16. RAISING, AMENDING AND REVIEW OF FORMS

16.1 The Management Team shall ensure that copies of forms carry a revision status and the original copy of each form is held in the Forms Register.

16.2 Request for new or revised forms shall be submitted on a Service Improvement Form, via Unit Managers.

16.3 The Management Team and the originator of the request shall review any final draft prior to final approval and issue.

17. AMENDING EXTERNAL DOCUMENTS

17.3 The Management Team shall ensure that the required external documents are listed in the document register; and,

17.4 Ensure that external documents used as regulatory or compliance documents for operations are distributed to appropriate staff, and,

17.5 Nominate a person who shall be responsible for obtaining each amendment and updating the external documents.

18. RETENTION OF OBSOLETE DOCUMENTS

18.1 The Management team shall stamp obsolete documents that are to be retained for legal or knowledge preservation purposes "Superseded".

18.2 Obsolete documents shall not be used for operational purposes and shall be retained as directed by the management.

19. ORGANISATIONAL LIBRARY

19.1 General reference documents and publications shall be retained in the library and shall not be subject to document control procedure.

20. COMPLAINTS ABOUT THE USE, OR ALLEGED MISUSE, OF INFORMATION

20.1 In the first instance, any complaint about the use of alleged misuse of private and confidential information should be handled according to DE's 'Complaints Policy and Procedure'.

20.2 A client, their person responsible or guardian should be advised of their right to take a complaint to the NSW and/or Federal Privacy Commissioner (see contact details below).

20.3 A client, their person responsible or guardian should also be advised to take a complaint to any of the agencies listed in DE's 'Complaints Policy and Procedure'.

21. BREACHES OF PRIVACY AND CONFIDENTIALITY

21.1 Where it is determined following a complaint that a breach of confidentiality is proven, the staff member in question will be subject to DE's Staff Disciplinary Procedures.

Management committee approved	Sign:	Date:
Policy approved by board	Sign:	Date:
Policy to be reviewed	Sign:	Date:

ASSOCIATED DE POLICIES:

Client and Service: Rights and Responsibilities.
 Client Health
 Code of Conduct
 Complaints
 DE Accommodation Service Philosophy of Care Statement
 Individual Development
 Individual Support Planning
 Informed and Substitute Consent
 Organisational Management
 Protection of Children and Vulnerable Adults
 Supporting Clients with Intimate and Personal Care

REFERENCES AND LINKS:

COMMONWEALTH: OFFICE OF THE PRIVACY COMMISSIONER,
 GPO Box 5128, Sydney NSW 2001
 General enquiries: 1300 363 992
www.privacy.gov.au

OFFICE OF THE NSW PRIVACY COMMISSIONER,
 GPO Box 5218, Sydney NSW 2001
 General enquiries: 1300 363 992 (for the cost of a local call anywhere in Australia)
 Fax: 9284 9666
 Email: privacy@privacy.gov.au Web: www.privacy.gov.au

NSW OMBUDSMAN
 Level 24, 580 George St, Sydney NSW 2000.
 General enquiries: 02 9286 1000
 Toll free (outside Sydney Metro): 1800 451 524
 Fax: 02 9283 2911
 Email: nswombo@ombo.nsw.gov.au
www.ombo.nsw.gov.au

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