

Privacy and Information Handling CP 2.7

POLICY

“The service keeps personal information confidential and private.”

[National Standards for Disability Services, Number 1- Rights, Indicator of Practice 1.9]

1. Introduction and Purpose

This Privacy and Information Handling Policy (“Policy”) sets out how Community Accommodation and Respite Agency Incorporated ABN 22 813 645 123 (“Cara”, “we”, “us”) complies with the Privacy Act 1988 and the National Disability Insurance Scheme Act 2013 when collecting, holding, using and disclosing customer information.

Cara works from the principle that individuals have the right to know what information Cara collects about them, how we collect the information, why it is collected, where and how it is stored, who has access to the information, how we use it, and to whom the information may be disclosed.

Cara also recognises individuals have a right to receive information about the process of making a complaint to Cara or the Office of the Australian Information Commissioner about a breach of privacy.

The Policy is applicable to safeguarding the privacy rights of all people accessing a Cara service as well as others in respect of whom Cara may collect information, including Cara staff, customers' decision makers and other key stakeholders as relevant. This Policy operates in conjunction with any mandatory reporting requirements including all relevant legislation, policies, guidelines and standards.

2. Risk

This Policy is consistent with our obligations in respect of the Privacy Act 1988 and our duty to safeguard the personal and sensitive information of customers.

The absence of a policy to give direction could lead to the unauthorised disclosure of personal or sensitive information to the disadvantage of a person and to the detriment of Cara's reputation.

3. Scope

This Policy applies to all Cara services. This includes all staff, agency staff, volunteers, contractors/sub-contractors and people on placements – where Cara has control over both the information accessed and the individual's access to it.

It applies to all personal information collected in person, in forms completed by the customer or on their behalf, by telephone, through the Cara website, via other service providers and by other electronic communication channels (e.g. desktop, laptop, mobile phone or other consumer electronic device).

4. Definitions

- **Data breach:** A data breach occurs when personal information held by Cara is subject to unauthorised access or disclosure, or is lost.
- **NDB Scheme:** The National Data Breach (NDB) Scheme forms part of the Privacy Act and requires entities to notify affected individuals and the Commissioner of certain data breaches. The primary purpose of the NDB scheme is to ensure individuals are notified if their personal information is involved in a data breach that is likely to result in serious harm.
- **OAIC:** Office of the Australian Information Commissioner; the independent national regulator for privacy and freedom of information.
- **Personal information:** is any information that can be used to identify you. This may include your name, address, telephone number, email address and profession or occupation. If the information we collect personally identifies you, or you are reasonably identifiable from it, the information will be considered personal information.
- **Privacy Principles:** The Privacy Act contains 13 Australian Privacy Principles that set out agency obligations for the management of personal information

5. Information we collect

Cara collects information about both its staff and customers in order to undertake and provide safe and person-centred services. The types of information we collect includes Personal Information, Sensitive Information, Protected Information and other information (collectively "Information").

The *Privacy Act 1988* and the *National Disability Insurance Scheme Act 2013* contemplate protections for different classes of information. The *Privacy Act 1988* regulates how we collect, store, use and disclose Personal and Sensitive Information, while the *National Disability Insurance Scheme Act 2013* contemplates Protected Information that falls within the scope of the National Disability Insurance Scheme ("NDIS"). These classes of information may not be mutually exclusive. Some Personal or Sensitive Information may also be classified as Protected Information and vice-versa.

Personal Information: In performing its functions, Cara collects and holds the following kinds of Personal Information (which may vary depending on the context of the collection):

- Name, address, telephone number and other contact information
- Photographs, video recordings and audio recordings
- Marital Status, birthdate, gender
- Details of guardians and nominees, including names, addresses and contact details

- Relevant Centrelink information (if applicable)
- Relevant financial information (e.g. payment details, customer personal expenditure records)
- Education and employment background (if applicable)
- Details of feedback or complaints about services provided by Cara
- Government related identifier for the purpose of receiving a service (e.g. NDIS Number).

Sensitive Information: Cara may collect Sensitive Information about an individual. Sensitive Information will only be collected with the customer's consent or as required by law. Sensitive Information includes information about the customer's:

- Racial or ethnic origin
- Religious beliefs or affiliations
- Sexual orientation or practices
- Information relative to a person's disabilities
- Health information (including information about physical and mental health and medical history)
- Information relevant to the supports or services an individual may receive including supports or services currently received or have received under the NDIS
- Criminal record.

Sensitive Information is a subset of Personal Information. Sensitive Information will be subject to the same protections as Personal Information.

Protected Information: Cara may collect, use, store and disclose Protected Information in accordance with the National Disability Insurance Scheme Act. Protected Information is information that is or was held in the records of the National Disability Insurance Agency. This information may include:

- Medical information
- Medical history
- Information related to a customer's access to the NDIS
- NDIS participant plans.

Other Information: Cara may also collect other Information that does not fall within scope of the protections of the *Privacy Act 1988* and *National Disability Insurance Scheme Act 2013*. In so far as reasonable, we will treat any other Information received in accordance with this Privacy and Information Handling Policy. This information may include:

- Records of correspondence with us and our agents
- Information about a customer's circumstances
- Treating medical practitioner information
- Details connected with medical history (e.g. ambulance cover, Medicare number; private health cover, tax file number if applicable).

6. Commitments and Responsibilities

6.1 Collection: Cara will only collect Information that is necessary for what we do and will only do so in a fair, non-intrusive and lawful way.

Further, wherever possible and practicable, Personal and Sensitive Information will be collected directly from the customer or their nominee, rather than from a third party. Cara may collect Information from a customer's family, doctors, school or other support services after a customer's consent has been received.

Cara will ordinarily only collect Personal Information or Sensitive Information with an individual's consent, or if required by law, provided that information is required to provide services, is required by our contractual obligations, or is required to allow us to meet our duty of care obligations. Cara will only collect Protected Information in accordance with its obligations under the *National Disability Insurance Scheme Act 2013*.

Cara collects Information through a variety of different methods including:

- Paper-based forms
- Electronic forms (including online forms)
- Face to face meetings
- Telephone communication
- Email communications
- Communication with authorised persons or Agencies (e.g. via National Disability Insurance Agency Portal).

Anonymity and Pseudonymity: Wherever it is lawful, practicable and does not compromise the provision of services Cara will give people the option of not identifying themselves when personal information is collected. Customers have the right to determine what personal information they want to disclose, and are not required to disclose personal information (e.g. Gender/Sexual identity) not relevant to the delivery of supports.

Data security: Cara will take reasonable steps to protect the information it holds from misuse and loss, and from unauthorised access, modification or disclosure.

Further, Cara will ensure customer and staff records will be securely stored in areas/systems to which only authorised staff will have access and all staff, volunteers, students on placement and contractors/sub-contractors will be required to sign and meet confidentiality agreements.

Identifiers: Cara will not adopt a government identity number (e.g. Medicare number) for use in a way which is inconsistent with its primary purpose.

6.2 Disclosure

Cara will only use or disclose the Information it holds for the purpose for which it was collected, or for a matter related to that purpose. In accordance with our statutory obligations, Cara may be required to disclose Personal or Sensitive Information to third parties.

Cara may also disclose information in accordance with the South Australian Government's Information Sharing Guidelines.

If Cara needs to disclose personal or sensitive information outside of the organisation, the information will ordinarily be de-identified prior to disclosure where it is practicable to do so. A person's Personal or Sensitive Information will not be disclosed to anyone outside of Cara except where consents are in place or where the disclosure is authorised or required under law, including the National Disability Insurance Scheme Act and NDIS Statutory Rules.

Some examples of when Cara may be required to disclose Information include:

- Where we are issued with a court subpoena or when authorised by Commonwealth or State statute
- Mandatory reporting (e.g. abuse pertaining to customers under the age of 18 years)
- As required in accordance with the *National Disability Insurance Scheme Act* or statutory rules (including reporting requirements)
- Where it is a necessary part of an internal or external investigation following a complaint, incident or care concern
- Where it will prevent or lessen a threat to someone's health or safety
- Suicide – where the person is at risk of causing self-harm
- Duty to the public – where the person is a danger to others
- When applying the Information Sharing Guidelines to address risks to safety and wellbeing.

Customer Consent for Disclosure of Information: All customers of Cara consent to Cara disclosing information in accordance with its statutory obligations and in order to provide services to customers.

Disclosure of customer Information to third parties not related to the provision of services by Cara requires express consent of the customer. Customers of Cara, or those lawfully able to act on their behalf, will be asked to complete a Consent to Obtain and Release Information. Following completion of this form, Cara **will not** provide customer Information to a person who is not: the customer, a third party directly related to the provision of services to a customer, a validly appointed nominee of the customer, or a third party legally entitled to access the Information, unless the customer has expressly consented to their receipt of customer Information. The Consent to Obtain and Release Information form must be revised at a minimum every three years or earlier if circumstances change by the Customer or those entitled to lawfully act on their behalf.

No third party service provider will be permitted to disclose customer Information other than in accordance with the Consent to Obtain and Release Information form or where authorised to do so by law or the S.A. Government Information Sharing Guidelines.

Disclosure of Information overseas: Cara outsources a number of operational activities which includes entities overseas.

Cara takes all steps reasonable in the circumstances to implement contractual data protection requirements in order to meet obligations under Australian privacy laws and ensure that any entity provided with personal information also protects information to a high standard.

Cara may also securely store electronic information in data centres overseas. Information held in these data centres is not used or accessed by foreign entities unless otherwise provided in this Policy.

Accuracy of Information: Cara will take reasonable steps to confirm the accuracy, completeness and currency of the Information it collects, uses or discloses. Wherever possible and reasonable, steps will be taken to correct inaccurate or incomplete Information.

Access to Information: Cara recognises customers have a right under the Privacy Act to access Personal and Sensitive Information held about them. Customers also have the right to withdraw or amend their prior consent to obtain or release information.

A request to access customer Information held by Cara must come from a Cara customer, an individual who is lawfully entitled to act on behalf of a Cara customer, or in accordance with a written consent from the customer. We may request Personal Information from an individual in order to verify their identity prior to granting them access to Personal Information Cara holds. Information will not be provided to a person who is not the customer, a validly appointed nominee of the customer, a third party legally entitled to access the

Information, or person who holds a written consent from the customer (or those entitled to act on their behalf).

Cara may decline to provide a customer, or those acting on their behalf, access to the Personal or Sensitive Information where the refusal is required by law.

A customer may request NDIS Information held by Cara in accordance with the *National Disability Insurance Scheme Act*. Cara may be barred from disclosing, correcting or destroying information under the *National Disability Insurance Scheme Act*.

Correction of Information: Further, customers have a right under the Privacy Act to request corrections to any Personal and Sensitive Information held about them. Any request to amend customer information must be made by the customer, a nominee of the customer, or another person legally entitled to act on behalf of the customer.

Customers have the right to seek correction of the Personal and Sensitive Information Cara holds about them within a reasonable timeframe. In the event that Cara does not, upon legitimate grounds, agree to the correction sought, the correction sought shall nevertheless be documented.

A customer may seek correction of Protected Information. Cara may be barred from correcting this information under the *National Disability Insurance Scheme Act*.

Information Sharing Guidelines: provide a mechanism for information sharing when it is believed a person is at risk of harm and adverse outcomes unless appropriate services are provided. The Guidelines were developed by the South Australian Government and apply to information sharing practices across vulnerable adult and child services.

This means Cara will work closely with other agencies to co-ordinate the best support for vulnerable adults and children. Under the Information Sharing Guidelines, informed consent for the sharing of information will be sought and respected in all situations unless:

- it is unsafe or impossible to gain consent or consent has been refused; and
- without information being shared, it is anticipated a person or member of their family will be at risk of serious harm, abuse or neglect, or pose a risk to their own or public safety.

Reasonable steps will be taken to maintain the security and protect the privacy of personal information that is transferred to a third party.

Data Breaches:

Cara takes all reasonable steps to prevent data breaches. However, if we suspect that a data breach has occurred, we will undertake a reasonable and expeditious assessment to determine if the data breach is likely to result in serious harm to any individual affected. If so, we will:

- take all reasonable steps to contain the breach;
- where possible, take action to remediate any risk of harm;
- notify individuals and the Commissioner where an individual is likely to suffer serious harm (or if otherwise required by law); and
- review the incident and consider what actions can be taken to prevent future breaches.

Accidental or unauthorised disclosure of personal information: Cara will take seriously and deal promptly with any accidental or unauthorised disclosure of personal or sensitive information. Matters relating to the accidental or unauthorised disclosure of personal or sensitive information are to be responded to in accordance with the Cara complaints policy.

7. Complaints

If a customer wishes to make a complaint about a possible breach of privacy or a failure to correct any personal information that Cara holds about the customer and the matter cannot be resolved at the service level, they will need to provide full details of their complaint in writing and send it to the Cara Privacy Officer at privacy@cara.org.au. If the complaint is regarding a failure to provide access to personal information, this should be sent directly to the Privacy officer.

Cara will respond to all complaints or requests promptly. Cara are committed to the quick and fair resolution of any complaints and will ensure complaints are taken seriously and without prejudice.

If the customer is not happy with the management of their complaint, they may lodge a complaint directly with the Office of the Australian Information Commissioner (OAIC) on 1300 363 992. The OAIC website www.oaic.gov.au contains information on how to make a privacy complaint.

8. Access to Cara's Privacy Policy

Cara will make its Privacy Policy accessible on Cara's website and upon request. All people accessing a Cara service will be informed about how the Privacy Policy can be accessed.

9. Policy Directives / References

- Privacy Act, as amended 2012, Australian Privacy Principles (APPs)
- Information Sharing Guidelines for promoting safety and wellbeing (2013), SA

- National Disability Insurance Scheme Act, as amended
- National Disability Insurance Scheme (Protection and Disclosure of information – Commissioner) Rules 2018
- NDIS (Code of Conduct) Rules 2018
- NDIS Practice Standards and Quality Indicators (as amended 2021)
- National Standards for Disability Services
- Data Breach Preparation and Response – A guide to managing data breaches in accordance with the Privacy Act 1988 (Cth)
- Archives Act 1983
- CP 2.7 (c) Confidentiality Deed
- CP 2.7.3.1 Access to Personal Information
- CP 2.7.5 Data Breach
- CP 2.5 Complaints Management
- CP 2.7 (a) New Employee Acknowledgement & Statement of Confidentiality
- CP 2.7 (b) Consent to Obtain and Release Information
- CP 2.7.1 Customer Media and Photographic Consent
- CP 2.8 Information Sharing Guidelines

10. Approval

Date: 25 August 2022

Approved by

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Reviewed by

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Historical Record of CP 2.7 Privacy and Information Handling

Document Number	Review Date	Revision Number	Reason for Changes to document
CP 2.7	Aug 2022	6	Additional information regarding data breaches added
CP 2.7	Jan 2020	5	Updated regarding disclosure of information overseas
CP 2.7	Jan 2019	3	Review and alignment to NDIS legislation
CP 2.7	May 2019	4	Policy extended to address information handling in addition to privacy
CP 2.7	Feb 2015	2	Review to align with revised Privacy legislation; new numbering to fit within revised policy framework structure

Historical records prior to 2015 have been archived.