

## EABC Privacy and Confidentiality Policy

**Position Statement:** EABC is committed to respecting and protecting the privacy of all service users and their supports. Individuals have the right not to have personal information disclosed to others without their informed consent. EABC manages health information about service users and EABC staff in accordance with the privacy laws that relate to the management of health information.

### Definition:

Personal information is information or an opinion about a person whose identity can be determined from that or opinion. Examples of personal information include a person's name, address, date of birth and details about their health or disability.

### Context:

The NDIS Quality and Safeguards Code of Conduct includes the following information, which EABC acknowledges as a fundamental commitment to participants, service users, EABC staff and our broader community.

Privacy is a human right. Rights related to privacy are set out in the Commonwealth *Privacy Act 1988* and State and Territory privacy laws. People with disability have a right to privacy including in relation to the collection, use and disclosure of information concerning them, and in the dignified way services are delivered to them. Consistent with this element of the Code, EABC must comply with Commonwealth and State and Territory privacy laws.

## EABC Commitment

EABC is committed to complying with the consent requirements of the NDIS Quality and Safeguarding Framework and relevant state or territory requirements. This is demonstrated through the following behaviours:

- EABC provides all individuals with access to information about the privacy of their personal information, within initial intake, through service agreement and Participant Information Booklet.
- Service users rights are displayed on EABC's website.
- Each individual has the right to opt out of consenting to and providing their personal details if they wish
- Individuals have the right to request access to their personal records by requesting this with their contact person
- Where EABC is required to report to government funding bodies, information provided is non-identifiable and related to services and support hours provided, age, disability, language, and nationality

- Personal information will only be used by us and will not be shared outside the organisation without participant (or a representative) permission unless required by law (e.g. reporting assault, abuse, neglect, or where a court order is issued). Exceptions to this rule include when the matter is related to child protection issues, mandatory reporting around incidents of violence, abuse or neglect or exploitation, and in relation to court / criminal justice reporting.
- Images or video footage of participants will not be used without their consent.
- Participants have the option of being involved in external NDIS audits if they wish. This will require additional consent to be obtained

### **EABC Privacy Statement:**

In dealing with personal information, EABC is committed to abide by the obligations imposed under federal law, including the *Privacy Act 1988 (Cth) Privacy Act* and the *National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act)*. These laws require EABC, in certain circumstances, to disclose service users' personal information to another person or party outside of this agency in the course of providing services to you.

The information collected will be used to confirm a participant's eligibility for and/or to provide services to the person. Information collected will also be provided to the funding body for purposes which include:

- Service monitoring and evaluation;
- Confirmation of a participant's eligibility for services;
- Statistical analysis;
- Resolving complaints made by a service user;
- Reporting and legislative requirements; and
- Delivering, or continuing to deliver, services to the participant.

### **Consent**

Informed **consent** is the active (current) **permission** participants give prior to taking part in the delivery of behaviour support services. When participants provide informed consent, they indicate that they understand participation is voluntary and they accept the possible risks, benefits, and outcomes of participating.

Under Victorian law, the general age is 16 years. Under the age of 16 years, EABC requires a guardian to provide consent on behalf of the young person.

Additionally, a person with an intellectual disability has the same rights as anyone else; and should be included in all decision making that impacts on their life despite communication, literacy issues or cognitive impairments. The following fundamental principles apply when accessing consent ((Arscott, Dagnan, and Kroese 1999):

- Assume capacity. All adults have capacity unless and until they are shown not to
- Capacity refers to the ability to make a particular decision at a particular time
- Capacity can vary in the same person for different decisions and can fluctuate over time
- A person with capacity has the right to refuse treatment
- A health professional has a duty of care to patients
- If an adult lacks capacity, the health professional has a duty to provide treatment and care in the best interests of that adult, even if the person does not agree
- In English Law nobody can consent on behalf of another adult

- If you force treatment on a person who has capacity, you may be assaulting them
- If you deny treatment to a person who lacks capacity, you may be neglecting them
- The professional giving the treatment is responsible for assessing the patient's capacity, and for asking for any assistance that they need to do so
- Capacity depends on understanding
- Understanding depends on effective communication and accessible information as well as cognitive abilities.
- Even people who lack capacity may want and have the right to receive information
- Consent obtained by force (under duress) is not valid
- Consent can be shown behaviourally

For further information on how EABC supports participants Informed Decision making refer to:

- **Commitment to Support Active Participation of all Service Users Policy and Procedures**

## **EABC Confidentiality Statement**

EABC recognises that keeping everyone's information confidential is important. Therefore, EABC will not disclose to any other person or party any information about a participant or service user where EABC has not been given permission in writing to do so, except in relation to mandatory reporting requirements on child protection matters, and obligations to report incidences of violence, exploitation, neglect and abuse, and sexual misconduct to the NDIS Commission and police. Examples include:

- If there is a significant risk of harm (to self or otherwise)
- If the person appears at risk of causing significant harm to another person
- Where it is believed that a child under the age of 17 may be at risk of harm
- Where EABC is mandated by law to share information
- Or where participants have given permission to share information

## **Sharing Information with Third Parties**

- EABC will only share information with persons/ organisations nominated by the participant and/or their representative as listed on the EABC consent form for sharing with third parties.
- EABC practitioners must regularly review third party nominations with the participant to ensure current representatives and organizations are listed, and or removal of people/ organisations that are no longer applicable or where consent has been withdrawn.
- Exceptions to this rule are listed above under the confidentiality statement.

## **Person's Right to Access Their Information:**

The [Freedom of Information Act 1982 \(Cth\) \(external\)](#) (the FOI Act) gives individuals the right to:

- access copies of documents (except exempt documents) held by EABC
- ask for information held about you to be changed or annotated if it is incomplete, out of date, incorrect or misleading
- seek a review of our decision not to allow you access to a document or not to amend your personal record.

You can ask to see any document that EABC holds.

EABC can refuse access to some documents, or parts of documents that are exempt.

Exempt documents may include those relating to national security, documents containing material obtained in confidence and other matters set out in the FOI Act.

### **How to Access Their Personal Information at EABC**

Participants have the right to request access to their information and to ask for it to be corrected if necessary. Under the *Freedom of Information Act* services users (or a representative) can make a request in writing to EABC to obtain documents from their case files. Written requests are to be directed to a Director via the email address: [info@elementsabc.com](mailto:info@elementsabc.com). Once the request is received EABC will:

- EABC will not charge participants for making a request for their information.
- Make a written response to the person making the request, within 14 days of receipt of the request.
- Within 30 days, EABC will report on the decision regarding the access. (Where a third party is required to be consulted, EABC may extend the time in which a decision is reported on, by another 30 days.)
- If EABC decides not to give access to the document requested, we must identify the documents withheld and provide written reasons for the decision and advise of the participant's rights of appeal.
- If participants are unhappy with the way EABC has handled your request, service users are able to complain to the Australian Information Commissioner who may investigate EABC's actions
- More information is available at the [Office of the Australian Information Commissioner \(OAIC\) website \(external\)](#) .

### **Types of Personal Information**

Any personal information retained is specifically for the purpose of providing behaviour support services to a participant or service user. Personal information can include, but is not limited to:

- Person's name, address, phone number, date of birth, NDIS number;
- Data related to the delivery of services, including evaluation of skill development, behavioural tracking charts, incident reports, restrictive intervention data;
- Assessment reports from other practitioners to help inform an individualised treatment approach and behaviour support plan;

- Videos, photos or audio recordings that are known to the service user, and when consent from the participant was provided prior to the recordings being made. The reasons for making of these recordings will be based on the details provided when seeking consent. Any additional use of the media images (I.e. for presentation / research purposes, annual reporting), will require additional consent from the service user.
- Records that demonstrate accountability of the services delivered to a participant. These can include: participant service agreements containing the schedule, cost, type and quality of supports to be delivered; as well as the expected outcomes for the participant, and any regulated restrictive practices in place for the participant; approved quotes as appropriate; evidence of support quantity and type delivered.

### **Storing of Personal information**

All personal information, including that of participants, must be:

- stored securely with reasonable security precautions against misuse or unauthorised access (e.g. electronic information should be password protected, hard copies stored under lock and key)
- readily accessible but only on a need-to-know basis
- retained for the required time (7 years)
- destroyed securely when no longer required
- not shared with any third parties without correct consent

### **Information Security:**

EABC takes reasonable steps to protect the personal information held, against misuse, interference, loss, unauthorised access, modification and disclosure:

- Personal information is accessible to the participant and is available for use by an EABC Director and nominated practitioner allocated to provide services.
- Personal Information of EABC staff is saved on a separate business drive under EABC One Drive (Cloud) Account, only shared and accessible by the Executive team.
- Security for personal information includes password protection for IT systems, locked filing cabinets and physical access restrictions with only authorised personnel permitted access at places of businesses, secured cloud-based data storage, and encrypted emails.
- Personal information no longer required is securely destroyed or de-identified.
- EABC client management system (Cliniko) is a cloud-based practice software that is the primary location that participants personal information is stored. Practitioners must be nominated by an EABC Director to be able to access Cliniko.
- Practitioners registered with Cliniko under EABC have their own log in details. EABC Directors can monitor activity across all practitioners on how they use Cliniko and monitoring of patient files for quality purposes or when contact with the service user is required (I.e. staff taking unplanned leave).
- Cliniko has various levels of security roles that can be assigned to the registered staff person, associated with what activity they are expected to do with participants. The level of security will determine how much information they are able to see of the service user (I.e. uploading information, submitting case notes, making calendar appointments).

## Who can access participant Information:

- EABC Operations Leader processes behavior support referrals, by putting information into EABC waitlist and creating new profiles for new referrals. The Operations Leader will have access to the participant's personal information as included in the original referral.
- Participant assessments/ reports, data, case notes and all other correspondence is saved on the person's Cliniko file.
- Participant files on Cliniko are only accessed by EABC employees

## Data Breaches

1. EABC will take reasonable steps to reduce the likelihood of a data breach occurring, including storing personal information securely and accessible only by an EABC Director.
2. If there is suspicion that personal information has been accessed by unauthorised parties, EABC will take reasonable steps to reduce the chance of harm and advise the affected parties of the breach, and if necessary, the Office of the Australian Information Commissioner.

## Breaches of Privacy and Confidentiality

- A breach of privacy and confidentiality is an incident and a Director is responsible for reviewing the incident and actions required to resolve this.
- A breach of privacy and confidentiality may require an internal or external investigation.
- If a participant or service user believes their privacy has been breached, and would like to make a complaint to the NDIS Commission, this can be done via the following details:
  - email: [contactcentre@ndiscommission.gov.au](mailto:contactcentre@ndiscommission.gov.au).
  - telephone: 1800 035 544.
  - post: **NDIS** Commission Feedback, PO Box 210, Penrith NSW 2750.

## How this policy is communicated to staff and service users

EABC is committed to ensuring all staff understand these policies and procedures and the importance of protecting the rights of privacy for all service users, EABC staff and our community.

- All EABC staff must review and sign this policy during their staff induction as a formal declaration and acknowledgment to provide services to all participants in a way that promotes their rights and dignity.

## EABC Practitioner Responsibilities & Declaration:

Privacy extends beyond a careful approach to handling personal information to the way in which services are delivered to people with disability. EABC staff must be aware of the privacy needs and preferences of participants and deliver services in a way that maintains their personal dignity. In order to commence delivery of services, staff must agree to the following:

I \_\_\_\_\_ have read this policy and understand my responsibilities to protect the privacy of all service users of EABC.

In addition, I agree to:

	Maintain the confidentiality of the person's personal information.
	Request permission to use or change various strategies/ treatment approaches or to perform assessments (prior to commencing the changes).
	Explaining procedures that involve any form of physical touch or invasion of personal space.
	Explain the timely provision of services to prevent embarrassment or social identification (I.e times of observations).
	Discuss sensitive issues around personal hygiene or toileting, sexuality, etc in a dignified manner, and private space.
	Consider the social validity of services being provided. Always ask what is important to the person and their specific goals for the services throughout the course of engagement, to ensure the services being planned and delivered are in line with the persons' unique situation and interests.

**Signature:**

**Date:**